



**SOUTH  
KESTEVEN  
DISTRICT  
COUNCIL**

# Constitution Committee

25 April 2022

**Report of:** Councillor Nick Robins  
Cabinet Member for Planning and  
Planning Policy



## Amendments to the Council's Constitution relating to planning decision making

This report proposes changes to the Council's Constitution and recommends amendments that clarify and streamline the planning process.

### Report Author

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Corporate Priority:	Decision type:	Wards:
Housing that meets the needs of all residents	Governance	All Wards

<b>Reviewed by:</b>	Graham Watts, Assistant Director Governance and Deputy Monitoring Officer	8 April 2022
<b>Approved by:</b>	Nicola M <sup>c</sup> Coy-Brown, Director of Growth and Culture	8 April 2022
<b>Signed off by:</b>	Councillor Nick Robins (Cabinet Member for Planning and Planning Policy)	11 April 2022

### Recommendations to the decision makers

**It is recommended that Constitution Committee:**

1. Supports the proposed amendments to the Planning Protocols at Appendices A and B
2. Endorses the deletion of Article 9c in the Constitution.
3. Supports, as part of the overall review of the Constitution, recommendations 1 and 2 being presented to Council for further consideration in May 2022.

# 1 The Background to the Report

- 1.1 Housing that meets the needs of all residents is a key theme within the Corporate Plan (2020-2023). This is because high quality housing is seen as essential for all, and the council is committed to working with partners to provide this. A key action within the Corporate Plan was to undertake a planning review to improve performance and support local sustainable, high-quality growth.
- 1.2 Accordingly, an independent review of the Council's Planning Service was carried out during summer 2020. The review identified several areas where improvements could be made to both the Planning Service and the Planning Committee. It was specifically recommended that a review of the Planning Committee's protocols and functions would be beneficial.
- 1.3 Almost in parallel with the planning review, was the review of the Council's constitution. Therefore, several consultations took place to both review the Council's constitution and associated planning protocols, including workshops with Members, together with two Informal Planning Committee meetings to discuss the proposed changes. The last of which was held on 26 November 2021, where Members resolved to endorse:
- a) the revisions to Article 16 of the Constitution to set out which applications can be dealt with by Officers and the circumstances when applications must be reported to the Planning Committee for a decision (see **Appendix A**).
  - b) the proposed planning protocols to provide guidance on the standards to be followed by Members in relation to planning matters, and which supplement the Members Code of Conduct.
  - c) the amendment to Article 9c regarding the process required to be followed in the event that Members wished to overturn an officer recommendation and refuse a planning application.
- 1.4 The protocols for Members were revised following the Informal Planning Committee (November 2021) to provide clarity around who can request site visits and when a non-ward Member can "call" a planning application to Planning Committee for debate. The amended text is coloured red in the protocols (**Appendix B**) for ease of reference.
- 1.5 Furthermore, it is proposed to delete Article 9(c) of the Constitution which currently sets out that where the Committee is minded to overturn an Officer recommendation and refuse an application, they should enter into a cooling-off period to reflect upon that decision. Instead, there should be clear guidance within the protocol setting out that how these decisions are reached and that decisions should be taken at Committee, without further delay. The guidance is set out in the proposed protocols (**Appendix B**).

# 2 Consultation and Feedback Received, Including Overview and Scrutiny

- 2.1 Councillors and Officers had several opportunities to consider the proposed changes to the constitution and protocols, with the most recent being an Informal Planning Committee in November 2021. All Members were given the chance to speak and take part in the discussion.
- 2.2 The Portfolio Holder for Planning and Planning Policy was involved throughout the process of drafting the proposed amendments and protocols and have had significant input into what is presented today.

### **3 Available Options Considered**

- 3.1 There are options to leave the arrangements as they currently are, or to take an alternative approach which could be more lenient or more stringent in terms of what decisions should be made by the Planning Committee. Whilst the 'do nothing' option was discounted, the recommendations are appropriate having regard to the public interest.

### **4 Preferred Option**

- 4.1 The preferred option is to recommend to Full Council that the proposed revisions and specified deletion are adopted.

### **5 Reasons for the Recommendations**

- 5.1 National Planning Policy guidance advises that it is in the public interest for a local planning authority to have effective delegation arrangements in place to ensure that decisions on planning applications that raise no significant issues are made quickly, and that resources are appropriately concentrated on the applications of greatest significance to the local area.
- 5.2 The proposed amendments reflect the recommendations of the planning review in relation to best practice, which are balanced with the views of Members. It is considered that the proposed amendments will be beneficial in the running of the Planning Committee and provide clarity for Officers and Councillors around the procedures and conduct.

### **6 Next Steps – Communication and Implementation of the Decision**

- 6.1 If Constitution Committee supports the recommendations, this will be reported to Full Council for adoption in May 2022.

### **7 Financial Implications**

- 7.1 There will be no direct financial implications arising from the implementation of the stated protocols as they relate to procedural matters. Councillor expenses may reduce because of fewer individual site visits and a favour towards committee site visits.

**Financial Implications reviewed by: Alison Hall-Wright, Assistant Director of Finance & ICT**

### **8 Legal and Governance Implications**

- 8.1 External and independent reviews are a valuable way of assessing the Council's current policies, protocols and governance which can contribute to the sharing and implementation of good practice and improve the way in which services are delivered.
- 8.2 The changes set out in the report are at the local discretion of the Council and do not breach legislation or have any legal implications.

**Legal Implications reviewed by: Mandy Braithwaite, Legal Executive**

### **9 Equality and Safeguarding Implications**

- 9.1 Under the Equality Act's (2010) Public Sector Equalities Duty, decision makes are required to consider the need to:
- Eliminate discrimination harassment, victimisation and any other prohibited conduct
  - Advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs, and

- Foster good relations between people by tackling prejudice and promoting understanding

9.2 To comply with the general duty, authorities must assess the impact on equality of decision, policies and practices. These duties do not prevent the authority from reducing services where necessary. They offer a way of developing proposals that consider the impacts on all members of the community.

9.3 In making the decisions, the authority must consider the potential impact of that decision in relation to age, disability, race, ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

9.4 In recommending this proposal, no potential impact has been identified on people with protected characteristics as determined by the Act because the report is simply varying existing delegated powers.

## **10 Risk and Mitigation**

10.1 The recommendations do not reduce the opportunity for Member involvement in planning decision-making and are not considered to introduce any significant risks. Failure to have robust governance arrangements in place could impact on the Council's control environment and ability to operate in an economic, efficient and effective matter. This could lead to recommendations being made by Internal and External Audit.

10.2 The determination of planning applications is a statutory administrative process involving the application of national, strategic, local and neighbourhood level planning policies within a legislative framework. Planning decisions can be appealed by unsuccessful applicants and challenged by way of judicial review by aggrieved parties. Complaints regarding maladministration and injustice can also be made to the Local Government Ombudsman.

10.3 To mitigate these risks, it is vital that those involved in the determination of planning applications, and particularly Officers and Councillors, act reasonably and fairly to applicants, supporters and objectors. Having contemporary protocols and guidance will reinforce Councillors' community engagement role whilst maintaining a robust standard of probity that minimises the risk of legal challenge.

## **11 Community Safety Implications**

11.1 There are no direct community safety implications resulting from this report.

## **12 How will the recommendations support South Kesteven District Council's declaration of a climate emergency?**

12.1 With cross-party support, the Council declared a climate emergency in September 2019 when it pledged to reduce its carbon footprint by at least 30% by 2030 and become net-zero carbon as soon as viable before 2050. This requires action at a local level. The Local Plan requires the highest possible standards of energy efficiency for new housing and other buildings. The Council aims for sites allocated for new housing to be accessible by walking, cycling and public transport and to avoid loss of local nature sites and green spaces.

12.2 To help reduce the carbon pollution from car use, save money and demonstrate leadership through practical actions, Members are encouraged to make site visits collectively. Members are reminded that a regular schedule of Planning Committee site visits will continue to operate. A common-sense application of this matter will be applied.

### **13 Other Implications (where significant)**

13.1 None identified.

### **14 Background Papers**

14.1 South Kesteven Local Plan: <http://www.southkesteven.gov.uk/index.aspx?articleid=14904>

14.2 Governance and Audit Committee 30 November 2020: Planning Service External Review: [Planning Service Review.pdf \(southkesteven.gov.uk\)](#)

14.3 Information Planning Committee 27 September 2021- Consultation on Amendments to Planning Protocols: [Consultation on suggested Amendments to Planning Protocols.pdf \(southkesteven.gov.uk\)](#)

14.4 Informal Planning Committee 26 November 2021 – Consultation on Amendments to Planning Protocols: [Revision to the planning protocol and accompanying guidance.pdf \(southkesteven.gov.uk\)](#)

14.5 Governance and Audit Committee 26 January 2022: Planning Service Review – Progress Report: [Planning Service Review - Progress Report.pdf \(southkesteven.gov.uk\)](#)

### **15 Appendices**

15.1 Appendix A – Proposed Revisions to Article 16 of the Constitution

15.2 Appendix B – Proposed draft protocols – Guidance for Members and Officers dealing with Planning Matters