

Appendix 1 - Proposed Amendments to the Constitution

Part 2 – Committee Terms of Reference

Replace paragraph 2.17 (Planning Committee terms of reference) with:

(11 members based on proportional representation made up primarily of non-executive members, but with specific reservation of a place for the Executive Portfolio Holder holding the area of responsibility for planning matters. 11 named substitute members reflecting the proportional make-up of the Committee).

The Chair of the Committee (or, in their absence or in the event of a conflict of interest, the Vice Chair) will be the Nominated Member for the purposes of the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026.

Except where there is a specific delegation to an officer:

- (a) To undertake all statutory functions of the Council acting as Local Planning Authority, subject to the provisions of the National Scheme of Delegation of Planning Functions, as outlined in the Officer Scheme of Delegation in Part 3, below.*
- (b) When a determination under paragraph (a) would, in the view of the [Assistant Director Planning] or such officers authorised by them (or their nominated lead at each Committee meeting) to undertake this function in their absence:*
 - (i) be fundamentally against local and national planning policy; or*
 - (ii) have major detrimental implications for planning policy in Cherwell; or*
 - (iii) be a significant departure from the Development Plan without sound reasons for doing so; or*
 - (iv) be contrary to proposals formulated by the Executive or relevant Portfolio Holder; or*
 - (v) fail to observe the proper principles of planning decisions;*

then a resolution will be made that the Committee is 'minded to' approve or refuse the application and the application will be deferred until a subsequent meeting of the Committee when a 'risk assessment' report will be presented outlining the implication of such action.

- (c) Following the subsequent meeting referred to in (b) above, the Assistant Director Planning may refer an application to Council for final determination where the Committee is minded to approve or refuse that application if the determination meets any of the criteria listed at paragraph (b)(i)-(v) above, provided that, in accordance with the relevant Council Procedure Rule, at least one third of Council Members have signed a statement to the effect that they are of the view that the particular application is of such special significance to the District that it ought to be determined by Council.*
- (d) To determine major applications submitted by or on behalf of the Council.*

- (e) *To determine minor applications submitted by or on behalf of the Council where representations have been received from external consultees or a member of the public raising material planning matters that advocate a different outcome (i.e. approval/refusal) to the officers' recommendation.*
- (f) *To determine planning and listed building applications where Members of the Council; officers of the Council or close family relatives of any of those people have a pecuniary interest (see exceptions at Note 2, below).*

Note 1: For the purposes of this paragraph, 'close family relative' means:

- (a) *Spouse (including husband wife, civil partner, or person living with them as if they were a husband/wife/civil partner);*
- (b) *Parent/parent of spouse;*
- (c) *Child/child of spouse;*
- (d) *Sibling/sibling of spouse;*
- (e) *Niece/nephew and their spouse;*
- (f) *Grandparent and their spouse;*
- (g) *Uncle/Aunt/ first cousin and their spouse.*

Note 2: For the purpose of this paragraph this function only relates to planning applications (including outline, full and reserved matters applications) and listed building consent applications. This means all of the following types of application shall be determined by the Assistant Director Planning (or officer authorised by them), unless they decide not to exercise the delegation:

- (a) *Discharges of Condition submissions;*
- (b) *Non-Material Amendment Applications;*
- (c) *Screening and Scoping Opinions;*
- (d) *Advertising Consent applications;*
- (e) *Habitat Regulation Assessments;*
- (f) *Certificate of Lawful use/Development;*
- (g) *Prior approval applications under the Town & Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and any subsequent amendments;*
- (h) *Works to trees and/or hedgerows.*
- (g) *To make recommendations to the Executive or Council (or constituted Committee or Working Parties of either) on matters of planning policy or practice, including Local Plan and Neighbourhood Plan matters, and/or the designation of Conservation Areas and or the making of Conservation Area Appraisals.*

Part 3 – Officer Scheme of Delegation

Replace paragraphs 22.1-22.7 with:

Planning matters

Default Delegation to the [Assistant Director Planning (on behalf of the Executive Director Place and Regeneration)]:

22.1 *To undertake all statutory functions of the Council acting as Local Planning Authority including to determine all planning and listed building applications and related matters, advert consent applications, certificate of lawful use/development applications, all tree and hedgerow matters including making Tree Preservation Orders, prior approval applications, screening and scoping opinions, Habitats Regulations Assessments and the service of any notices in relation to any of the functions delegated, including the serving of all types of planning enforcement notice.*

Conditions:

22.2 *Except in relation to applications submitted in the circumstances set out in paragraphs 22.4 and 22.5, the following application types **MUST** be determined under powers delegated to the [Assistant Director Planning] without determination by the Planning Committee. Such applications are prescribed within Schedule 1 of the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 and include:*

- (a) Applications made under section 17(1) of the Land Compensation Act 1961 (certificates of appropriate alternative development);*
- (b) Applications made under section 26H(1) of the Listed Buildings Act (certificate of lawfulness of proposed works);*
- (c) Householder applications;*
- (d) Minor commercial applications;*
- (e) Minor residential applications;*
- (f) Applications for permission in principle;*
- (g) Applications made under section 73(1) of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) in respect of which the original planning permission was a Schedule 1 planning permission.*

Note: In this paragraph “original planning permission” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions were granted under section 73(1) of the TCPA 1990;

“Schedule 1 planning permission” means a planning permission granted pursuant to an application which is of a kind specified in Schedule 1 of the 2026 Regulations.

- (h) Applications made under section 96A(4) of the TCPA 1990 (non-material*

changes to planning permission or permission in principle);

- (i) *In respect of a planning obligation that the Council considers is connected with a Schedule 1 approval:*

(i) *a request to agree to modify or discharge that obligation under section 106A(1)(a) of the TCPA 1990; or*

(ii) *an application to modify or discharge that obligation under section 106A(3) of the TCPA 1990.*

Note: In this paragraph “Schedule 1 approval” means any permission, agreement, consent or approval (other than a planning obligation) pursuant to an application which is of a kind specified in Schedule 1 of the 2026 Regulations.

- (j) *Applications made under section 191(1) of the TCPA 1990 (certificate of lawfulness of existing use or development);*
- (k) *Applications made under section 192(1) of the TCPA 1990 (certificate of lawfulness of proposed use or development);*
- (l) *The submission of a biodiversity gain plan under Schedule 7A paragraph 13(2)(a) of the TCPA 1990;*
- (m) *Reserved matters approval applications in respect of an outline planning permission other than a large outline permission.*

Note: In this paragraph “large outline permission” means an outline planning permission which permits development involving either or both of:

- (i) *the provision of 500 or more dwellings;*
- (ii) *the provision of a building or buildings where the floorspace to be created by the development is 50,000 square metres or more.*
- (n) *Applications made under article 27(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (applications made under a planning condition); and*
- (o) *Applications pursuant to provision in Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for:*
- (i) *prior approval, or*
- (ii) *determination as to whether prior approval is required.*

22.3 *Except in relation to applications submitted in the circumstances set out in paragraphs 22.4 and 22.5, the following application types **MUST** be determined under powers delegated to the Assistant Director Planning without determination by the Planning Committee unless the application passes the “Gateway Test” set out at paragraph 22.6, which means that the application **MAY** be determined by the Planning Committee. Such applications subject to the “Gateway Test” are prescribed within Schedule 2 of the Town and Country*

Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026 and include:

- (a) Applications for listed building consent made under section 10(1) of the Listed Buildings Act;*
- (b) Applications made under section 19(1) of the Listed Buildings Act (variation or discharge of conditions of listed building consent);*
- (c) Applications for planning permission that the Council considers is connected with an application of a kind specified in paragraphs (a) or (b);*
- (d) Applications for planning permission that are not:*
 - (i) householder applications;*
 - (ii) minor commercial applications; or*
 - (iii) minor residential applications.*
- (e) Applications made under section 73(1) of the TCPA 1990 (application to develop land without compliance with conditions previously attached) in respect of which the original planning permission was a Schedule 2 planning permission.*

Note: In this paragraph “original planning permission” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions were granted under section 73(1) of the TCPA 1990.

“Schedule 2 planning permission” means a planning permission granted pursuant to an application which is of a kind specified in Schedule 2 of the 2026 Regulations.

- (f) Applications made under section 73A(1) of the TCPA 1990 (planning permission for development already carried out);*
- (g) In respect of a planning obligation that the Council considers is connected with a Schedule 2 approval:*
 - (i) a request to agree to modify or discharge that obligation under section 106A(1)(a) of the TCPA 1990; or*
 - (ii) an application to modify or discharge that obligation under section 106A(3) of the TCPA 1990.*

Note: In this paragraph, “Schedule 2 approval” means any permission, agreement, consent or approval (other than a planning obligation) pursuant to an application which is of a kind specified in Schedule 2 of the Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026.

- (h) Reserved matters phase applications;*
- (i) Applications made under regulation 9(1) of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007*

(application for express consent to display advertisement);

- (j) Applications made under regulation 16(1) of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (application for consent under tree preservation order).*

22.4 All major applications submitted by or on behalf of the Council shall be determined by Planning Committee. Minor applications submitted by or on behalf of the Council where representations have been received from external consultees or a member of the public raising material planning matters that advocate a different outcome (i.e. approval/refusal) than the officers' recommendation shall be determined by Planning Committee.

22.5 Planning and listed building applications where members of the Council; officers of the Council or close family relatives of any of those people have a pecuniary interest, shall be determined by the Planning Committee (see exceptions at Note 2, below).

Note 1: For the purposes of this paragraph, 'close family relative' means:

- (h) Spouse (including husband wife, civil partner, or person living with them as if they were a husband/wife/civil partner);*
- (i) Parent/parent of spouse;*
- (j) Child/child of spouse;*
- (k) Sibling/sibling of spouse;*
- (l) Niece/nephew and their spouse;*
- (m) Grandparent and their spouse;*
- (n) Uncle/Aunt/first cousin and their spouse.*

Note 2: For the purpose of this paragraph this condition only relates to planning applications (including outline, full and reserved matters applications) and listed building consent applications. This means all of the following types of application shall be determined by the [Assistant Director Planning] (or officer authorised by them), unless they decide not to exercise the delegation:

- (i) Discharges of Condition submissions;*
- (j) Non-Material Amendment Applications;*
- (k) Screening and Scoping Opinions;*
- (l) Advertising Consent applications;*
- (m) Habitat Regulation Assessments;*
- (n) Certificate of Lawful use/Development;*
- (o) Prior approval applications under the Town & Country Planning (General Permitted Development) (Amendment) (England) Order 2015 and any subsequent amendments;*

- (p) *Works to trees and/or hedgerows.*

“Gateway Test”

22.6 Where an application is for a type of development falling within Schedule 2 of the 2026 Regulations, an application may be referred to the Planning Committee for determination subject to the following:

- (a) **Both** the Nominated Member **AND** Nominated Officer or their authorised substitute (see Note 1, below) agree that a proposal raises:
- (i) One or more issues of economic, social or environmental significance to the local area; or
 - (ii) One or more significant planning matters having regard to the Development Plan and any other material considerations.
- (b) In considering whether paragraph 22.6(a)(i) or (ii) above apply, the Nominated Member and Nominated Officer or their authorised substitute shall have regard to any representations made in writing by Local Members (see Note 2, below) so long as any such representations raise material planning matters and are received no later than **5 clear working days** following the end of the public consultation period (see Note 3, below) and so long as the relevant Local Member does not have a conflict of interest under 22.5, in which case no representation from that member shall be accepted.

Note 1: Authorised Substitute Nominated Member means the Vice Chair of Planning Committee. Authorised Substitute Nominated Officer means the [Head of Development Management]. For the avoidance of doubt, a Nominated Member, Authorised Substitute Nominated Member, Nominated Officer or Authorised Substitute Nominated Officer shall not undertake the Gateway Test for applications where paragraph 22.5 applies (pecuniary interest) to that member or officer.

Note 2: For the avoidance of doubt, Local Member means the Ward Member for the area covered by the application, and may also include (subject to the agreement of the Committee Chair) an adjacent Ward Member. Relevant circumstances are likely to include

- (i) *where it is a major application and just outside the boundary of the Member’s Ward and likely to have a significant bearing on the adjacent Member’s Ward; or*
- (ii) *the Ward Member has a conflict of interest in the application and has suggested their constituents approach the adjacent Ward Member about the application; or*
- (iii) *the Ward Member is not available due to unforeseen circumstances and the adjacent Ward Member is helping out in their absence and with their agreement.*

Note 3: For the purpose of 22.6(b), ‘public consultation period’ means any formal consultation period with the general public through the placing of a site notice by the Local Planning Authority which accords

with the requirements set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 but only in relation to those types of planning applications falling within scope of this condition as set out in paragraph 22.3.

- (c) *In considering whether paragraphs 22.6(a)(i) or (ii) above apply, the Nominated Member and Nominated Officer or their authorised substitute shall have regard to the following “Gateway Test” Guidance:*

“Gateway Test” Guidance

- 22.7 *Where an application relates to a listed building consent as set out at paragraph **22.3(a) or (b)**, referral to Committee should take account of any Gateway decision made in relation to any accompanying planning application (where relevant) as set out at paragraph **22.3(c)** and whether Committee referral has been requested for that application. The planning and listed building applications should both be referred to Planning Committee if one of them is referred, having regard to the following advice. Referral to Committee for the listed building application should only be made based on the heritage (environmental) impact of the proposal. An application may only be called to Committee for determination where a proposal would result in substantial heritage harm or less than substantial heritage harm WITHOUT evidential public benefit to outweigh the identified harm AND where the officer recommendation is for approval.*
- 22.8 *Where an application is for a type set out at paragraph **22.3(c)**, referral to Committee should take account of any Gateway decision made in relation to any accompanying listed building consent application (where relevant) as set out at paragraph **22.3(a) or (b)** and whether Committee referral has been requested for that application. The planning and listed building applications should both be referred to Planning Committee if one of them is referred, having regard to the following advice. Referral to Committee for the planning application should only occur where the proposal amounts to a clear departure from the Development Plan and the officer recommendation is for approval OR where the officer recommendation is for refusal and there are significant matters having regard to the Development Plan and any other material considerations which could justify approval.*
- 22.9 *Where an application is for a type set out at paragraph **22.3(d), (e) or (f)**, referral to Committee should only occur where the proposal amounts to a clear departure from the Development Plan and the officer recommendation is for approval OR where the officer recommendation is for refusal and there are significant matters having regard to the Development Plan and any other material considerations which could justify approval.*
- 22.10 *Where an application is for a type set out at paragraph **22.3(g)**, referral to Committee should only occur in exceptional circumstances where the modification of a s.106 obligation would amount to a departure from the Development Plan AND the officer recommendation is for approval. All discharge of s.106 obligation applications will be delegated to officers.*
- 22.11 *Where an application is for a type set out at paragraph **22.3(h)**, referral to Committee should only occur where the reserved matters phase proposal amounts to a clear departure from the Development Plan and/or the original outline consent and the officer recommendation is for approval OR where the*

officer recommendation is for refusal and there are significant matters having regard to the Development Plan and any other material considerations which could justify approval.

*22.12 Where an application is for a type set out at paragraph **22.3(i)**, referral to Committee should only occur where the proposal gives rise to significant amenity or public safety concerns and the officer recommendation is for approval OR where the officer recommendation is for refusal and there are significant matters having regard to the Development Plan and any other material considerations which could justify approval.*

*22.13 Where an application is for a type set out at paragraph **22.3(j)**, referral to Committee should only be considered where five or more public representations have been received which raise material planning matters in objection to the proposal. All other applications shall be delegated to officers.*

22.14 For the avoidance of doubt, the Gateway Test does not need to be applied where the officer proposed recommendation is in general accordance with the Local Member representation received in accordance with paragraph 226(b).

Other Decisions under Planning Legislation

22.15 All other planning functions not listed above are delegated to the Assistant Director Planning.

Paragraph 25 - Proper Officers and Authorised Officer Appointments

Add to the table after paragraph 25.6:

Legislation	Section	Purpose of appointment	Proper Officer / Authorised Officer
Town and Country Planning (Discharge of Local Planning Authority Functions) (England) Regulations 2026	Regulation 3(b)	Nominated officer for the purposes of determining planning applications not referred to a committee.	Assistant Director Planning