

Response ID ANON-6MAG-NE5B-N

Submitted to Planning committee reforms: statutory consultation on draft Regulations and guidance
Submitted on 2026-04-23 00:31:04

Respondent details

1 What is your name?

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3 What is the name of your organisation?

Organisation name:
Royal Borough of Windsor and Maidenhead

4 Please indicate in what capacity you are responding to this consultation (please only select one)

Local authority

Question 1

5 Do you have any comments on the draft Regulations?

Do you have any views on the draft Regulations?:

On 21st April 2026, the Full Council of the Royal Borough of Windsor and Maidenhead passed unanimously the following motion:

This Council:

- i) Agrees that our Development Management Committees play a vital role in democratic oversight and community empowerment in planning decisions with Government's characterisation of Committees as blockers clearly misplaced;
- ii) Expresses deep concern that the Draft Regulations are overly prescriptive, provide no alternative to call-in and should instead introduce a more flexible framework;
- iii) Requests that the Leader of the Council and Cabinet Member for Adult Services, Planning and Governance provide a response to the government consultation on the Draft Regulations to record this Council's objections and convey any alternative proposals emerging through the debate.

Accordingly, we are making the following representations.

Whilst we acknowledge the Government's argument that a national scheme of delegation, properly drafted with the correct balance, has the potential to ensure greater consistency in the approach to decision making at a national level, sadly, the proposals consulted on completely miss the mark.

The correct balance would have provided clarity on the determination route for less consequential applications and those where committee determinations hold risks (such as prior approvals). While it would have removed some local discretion it would have left scope for authorities to reach sensible decisions about local priorities and refer appropriate planning applications to a planning committee.

However, the Regulations have been drafted on the flawed assumption that a Planning Committee is always a blocker seeking to resist development; this stereotype is simply incorrect. Planning committees intervene in only a very small minority of cases and when they do, their decisions are overwhelmingly upheld on appeal. There are compelling examples from across the country where planning committees, acting against officer recommendation or strengthening conditions, secured better outcomes, decisions that were later upheld by Inspectors.

These are not rogue decisions and the Planning Inspectorate has explicitly recognised the legitimacy of local planning judgement and the value of site specific local knowledge. Moreover, there are many occasions on which members are more sympathetic to schemes than officers or seek to reduce conditions/obligations which are an impediment to development.

Development Management Committees play a vital role by providing democratic oversight, transparency and community empowerment in planning decisions. These plans will reduce public confidence in planning by closing off opportunities to be heard and weaken democratic accountability for the most controversial decisions. They will do so without compelling evidence that Planning Committees are the cause of delay or poor decision making.

These Draft Regulations get the balance wrong leaving no flexibility whatsoever for a local elected Members to decide which planning applications should be referred to a Committee. Whilst the principle of national schemes is already enacted into the primary legislation, there must be a better way to do this where local discretion is retained, rather than abolished.

Instead, they would also appear to introduce an additional bureaucratic step in the gateway referral, susceptible to legal challenge, and foreseeable

difficulties which will likely delay rather than speed up the vast majority of Schedule 2 decisions. The key issues are highlighted below.

Purpose of a Planning Committee and lack of scope for Local Constitutional Decisions

The primary role of a planning committee is to determine planning applications, making democratic and transparent decisions on applications in accordance with planning policy.

However, the regulations include all planning applications within Schedules 1 and 2 leaving absolutely no scope for local discretion to positively address planning priorities or concerns.

Approaching this positively. If a Planning Authority decided that the delivery of a particular type of development was a local priority, it should be able to stipulate that such applications are referred to a Planning Committee.

RBWM's strategic aims include ensuring the providing a cleaner, greener borough and providing the best start for children and young people. It's clear we should be able to direct schemes which deliver renewable energy or provide children's facilities to a committee to ensure political oversight.

The current draft regulations cannot be right and we cannot support them.

Lack of flexibility for Minor applications

The current draft regulations include all householder application, minor commercial application, and minor residential application within schedule 1 and mandates a delegated decision by officers.

This provides a great deal of certainty on the determination route and would likely lead to quicker decisions, but it is not the most supportive route for every application. For example, minor housing schemes (up to nine homes) may still have a significant impact in a small rural community. Similarly, a minor commercial application may come forward that is compliant on paper but is lacking in quality. In these circumstances, the prospect that an application might end up being determined by Committee provide additional motivation for the applicant to engage more collaboratively with the community.

Our current constitution, alongside many other Council's, allow ward Councillors to call in applications for determination by a planning committee where they provide planning reasons.

We acknowledge this provision is used to ensure scrutiny of applications which are of local concern, in this circumstance it ensure transparency and provides reassurance to the community that their concerns have been taken on board. Where such developments are approved, it provides confidence that the process has run properly. But this isn't the full picture.

The provision is also often used to call in applications for committee determination where there is local support for an application, but where officers are recommending refusal. For example, where a minor applicant knows their application is supported locally but has received a negative pre-application response from officers they will often ask the ward councillor to call the application in and receive a more favourable consideration.

We do not agree that the current approach is correct. Authorities should be able decide on their own priorities and set rules locally to ensure the best outcomes, particularly for minor commercial and residential development.

Lack of certainty – Schedule 2

One of the main stated aims of introducing a national scheme of delegation was to introduce increased certainty on the determination route. The manner in which Schedule 2 is drafted delivers the opposite of this.

Under the current system each Council has a set constitution which defines the determination route for applications, which are often set with regard to the scale or nature of the application. While each Local Authority has its own constitution, each is clear and an applicant would know before submission if their application required a committee determination.

The drafting of Schedule 2 and the nominated officer/member approach delivers the opposite. It provides complete ambiguity. At submission and applicant would have no idea whether their application would be determined under delegated authority or by a committee, nor would they have any certainty at which point the nominated officer and member might meet to reach such a decision which would likely differ substantially between different authorities.

It is difficult to see how this delivers on one of the key aims.

Gateway Test - Nominated Officer and Nominated Member Approach – Regulation 5

This is the most worrying part of the draft proposals. It raises significant implications in terms of governance, risk of challenge/judicial review and challenges to the working relationships between officers and members.

We note that more than half of the respondent to the earlier consultations were against this proposal, providing significant valid reasons for this. Neither the Regulations nor the Guidance addresses the issues and the approach remains one which is fundamentally problematic and should not be pursued.

Additional governance and delay

The proposal effectively introduces an additional decision-making point, which involves a planning judgement on every single application within Schedule 2. That decision making point would need to be properly managed, recorded and the decision alongside the reasons published. These are all additional steps on the critical path to reaching a decision and with no guidance on when or how it should be taken (e.g. should the decision be taken early, or should it be taken late when all the facts and assessment are done), if it is taken late it will lead to a longer decision timescale.

Additional scope for delay and challenge

The introduction of an additional decision point also means there is an additional opportunity for the submission of judicial reviews. The decision about the determination route could be subject to an application for Judicial Review as well as the planning decision itself and there is no guidance about how to make the decision. This is simply an additional risk and delay that does not exist in the current system.

Gateway Test/Mutual Veto System

The gateway test is effectively a mutual veto system whereby both the Nominated Officer and Nominated Member must agree that an application warrants a Committee determination. But the roles of the Officers and Members involved and their influence over subsequent decisions isn't equal. Either party can force a delegated decision, but under a delegated decision the Chief Planning Officer bears the responsibility and has oversight of the decision.

The consultation appears to envisage a perfect relationship whereby the nominated officer and member largely, if not always, agree. Officers and Members at RBWM have a professional relationship with mutual respect and would work together to try and achieve the best outcome. However, this seems an interesting or naïve approach given the narrative of the approach seems generally to have painted elected Members as blockers.

Perhaps it is envisaged that in problematic Authorities, the Nominated Officer would regularly disagree with, or veto, the Nominated Member. It is difficult to imagine this happening unless it is clarified that specifying the Nominated Officers was an operational matter and the providing of the Chief Planning Officer role with similar protections to other Statutory Officers, such as the Head of Paid Service.

Dilution of public right to be heard

With the Regulations as currently drafted it is inevitable that few applications will be determined by Committee, even where applications have attracted significant public interest. The certainty that Schedule 1 applications will never be determined in a public forum together with the default presumption the Schedule 2 applications will similarly be determined by an Officer performing this function in private inevitably curtail the ability of members of the public to participate in the decision making, limiting this to written representation, removing the right to speak at a public meeting and the right to request their elected representative call-in an application.

The right to participate in planning decision is enshrined in international law, through Article 6 of the Aarhus Convention, and whilst it is for contracting states to determine national laws that enable this participation, these Regulations constitute an unprecedented dilution of these rights. Moreover, where a resident has a third-party interest in the outcome of an application to the extent that affects the resident's civil rights, Article 6 of the European Convention on Human Rights (Right to a fair trial) would be engaged also. We urge the Government to address specifically these international law matters in their response.

Question 2

6 Do you agree with our proposed approach to phased reserved matters applications? If not, do you think we should return to the original position of reserved matters on phased development being delegated in all circumstances or should we instead consider delegating certain types of phased reserved matters applications?

Disagree

Free text:

The approach makes no sense. It would place phased reserved matters applications into Schedule 2, whereas a non-phased reserved matters application which may raise more significant implications would be in Schedule 1.

Ultimately, whether a reserved matters application satisfies criteria A or B would be a matter of judgement which would depend more on the nature and scale of the reserved matters application than whether it is phased or not.

The correct approach would be to put that all reserved matters applications relating to a Schedule 2 outline application should fall within Schedule 2.

Question 3

7 Do you have any comments on the draft guidance?

Do you have any comments on the draft guidance?:

Paragraphs 13 – 21. These paragraphs appear to try and provide guidance on the operation of the gateway system. Overall, the level of guidance provided isn't adequate to address any of the legitimate concerns which were raised in your earlier consultation or outlined in question 1 of this response.

Paragraph 16. The majority of Local Planning Authorities will require such triage arrangement, but it will be important that they are clear and transparent. The paragraph should be updated to require the publication of any triage arrangements.

Paragraphs 20 and 21. These paragraphs provide more detail in relation to Criteria A and B. Paragraph 21 clarifies that the nominated officer and nominated member should jointly make the decision in relation to criteria B, whereas paragraph 20 is silent on criteria A. Is the difference intentional? Is it envisaged that officers could make a decision in relation to criteria A without referral to the nominated officer and member (e.g. as part of a triage process) or is the intention that the nominated officer and member consider criteria A and B together? If there is a clear view it would be helpful for the guidance to provide more clarity.

Paragraph 27 is helpful guidance in that it clarifies the minimum recording requirements for decisions of the nominated officer and member. However, depending on the nature of schemes it may be that some committees meet infrequently under the new system. The suggested text could be read to imply the committee should meet regularly simply to note these decisions even if there are no applications to be heard. This seems unnecessary and would be a waste of public resources. Surely the publication of the decisions on the website where the members of the committee can access them would be adequate in itself.