

**A Local Code of Conduct
For Councillors and Officers dealing with
Planning Matters**



1. Status of Code

- 1.1 This local Code of Conduct for Councillors and Officers dealing with planning matters has been adopted by the Council and is, therefore, binding on Members and Officers. Any investigation by the Ombudsman, or any internal investigation of a complaint will take compliance with this code into account.

2.0 Introduction

The aim of this code of good practice: to ensure that in the planning process there are no grounds for suggesting that a decision has been biased, partial or not well founded in any way.

One of the key purposes of Planning is: to control development in the public interest.

The role of a Councillor that is a member of the Council's Planning Committee is: to make planning decisions openly, impartially, with sound judgement and for justifiable reasons, taking into account all material planning considerations.

When the Code of Good Practice applies: this code applies to Members at all times when involving themselves in the planning process (this includes when taking part in the decision making meetings of the Council in exercising the functions of the Planning Authority **or** when involved on less formal occasions, such as meetings with officers or the public and consultative meetings). It applies as equally to planning enforcement matters or site specific policy issues as it does to planning applications.

If you have any doubts about the application of this Code to your own circumstances you should seek advice early, from the Monitoring Officer of the Deputy Monitoring Officer.

3.0. The General Role and Conduct of Councillors and Officers

- 3.1 Councillors and Officers have different, but complementary, roles. Both serve the public but Councillors are responsible to the electorate, while Officers are responsible to the Council as a whole. Officers advise Councillors and the whole Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors, and it follows that instructions may only be given to

Officers through a Council or committee decision. Any other system which develops is open to question. A successful relationship between Councillors and Officers can only be based upon mutual trust and an understanding of each others' positions. This relationship, and the trust which underpins it, must never be abused or compromised.

- 3.2 Both Councillors and Officers are guided by codes of conduct. The Members' Code of Conduct provides guidance and standards for Councillors and this must always be complied with.

Failure to declare a prejudicial interest might result in a breach of the code. Officers who are Chartered Town Planners are guided by the Royal Town Planning Institute's (R.T.P.I.) Code of Professional Conduct. Breaches of the Code may be subject to disciplinary action by the Institute. They are also bound by the local Code of Conduct for employees.

- 3.3 Whilst Councillors have a special duty to their Ward constituents, including those who did not vote for them, their overriding duty is to the whole community. Councillors should not favour any individuals or groups and, although they may be influenced by the opinions of others, they alone have the responsibility to decide what view to take.

- 3.4 This is particularly pertinent to Councillors serving on a planning committee or who become involved in making a planning decision (where full Council becomes involved in making the decisions). The basis of the planning system is the consideration of private proposals against wider public interests and the interest of West Lindsey as a whole. Much is often at stake in this process and opposing views are often strongly held by those involved.

Whilst Councillors should take account of those views, they should not favour any person, company, group or locality, nor put themselves in a position where they appear to do so. Councillors who do not feel that they can act in this way will consider whether they are best suited to serving on a planning committee.

- 3.5 Officers must always act impartially. In order to ensure that senior Officers do so, the Local Government and Housing Act 1989, enables restrictions to be set on their outside activities, such as membership of political parties and serving on another Council. During the course of carrying out their duties, Officers may be

offered hospitality from people with an interest in a planning proposal. If possible, such offers will be declined politely. If receipt of hospitality is unavoidable, Officers will ensure it is of the minimum level and declare its receipt as soon as possible, in the book kept for this purpose.

4.0 Declaration and Registration of Interests

4.1 The Code sets out requirements and guidance for Councillors, on declaring personal and prejudicial interests and the consequences of having such interests. The responsibility for this rests individually with each Councillor.

4.2 A register of members' interests is maintained by the Council's proper officer and any changes must automatically be notified by Councillors. Councillors who have substantial property interests, or other interests which would prevent them from voting on a regular basis, will avoid serving on the planning committee.

4.3 Where your interest is personal and prejudicial:-

- **Don't** participate, or give the appearance of trying to participate, in the making of any decision on the matter by the planning authority.
- **Don't** try to represent ward views, get another Ward Member to do so instead.
- **Don't** get involved in the processing of the application.
- **Don't** seek or accept any preferential treatment, or place yourself in a position that could lead the public to think you are receiving preferential treatment, because of your position as a councillor. This would include, where you have a personal and prejudicial interest in a proposal, using your position to discuss that proposal with officers or members when other members of the public would not have the same opportunity to do so.
- **Do** be aware that, whilst you are not prevented from seeking to explain and justify a proposal in which you have a personal and prejudicial interest to an appropriate officer, in person or in writing, the Code places limitations on you in representing that proposal. You may address the Committee but only to make a

presentation in the same manner that would apply to a normal member of public, after which you must leave the room whilst the meeting considers it (you may not remain to observe the meeting's considerations on it from the public gallery).

5.0 Development Proposals Submitted by Councillors and Officers, and Council Development

- 5.1 Serving Councillors who act as agents for people pursuing a planning matter within their authority will play no part in the decision-making process for that proposal. Similarly, should they submit their own proposal to the authority they serve, they will take no part in its processing nor should they seek to influence the assessment or recommendation.
- 5.2 Applications made by Councillors or Officers (or their immediate family), either as an agent or an applicant in their own right, will be referred to the Planning Committee for determination and not dealt with using delegated powers.
- 5.3 The Council's monitoring officer will be informed of such proposals.
- 5.4 Proposals for a Council's own development will be treated in the same way as those by private developers, in accordance with Circular 19/92, particularly in relation to Officers' advice.

6.0 Lobbying of and By Councillors

- 6.1 Lobbying is a normal and perfectly proper part of the political process and those affected by a planning decision will often seek to influence it through an approach to their elected ward member or to a *member of Committee*. Lobbying can however cause considerable public mistrust of Councils and, unless care and common-sense is used, lead to the impartiality and integrity of a Councillor being called into question. The following advice is given:
- 6.2 When being lobbied, Councillors and Members of the Planning Committee in particular, should take care about expressing an opinion which may be taken as indicating that they have already made up their mind on the issue before they have been exposed to all the evidence and arguments. In such situations, they will restrict themselves to giving procedural advice, including suggesting to those who are lobbying, that they should speak or write to the

relevant officer, in order that their opinions can be included in the Officer's report to the committee. If they do express an opinion, they should make it clear that they will only be in a position to take a final decision after having heard all the relevant evidence and arguments at committee.

- 6.3 A planning committee member who represents a Ward affected by an application is in a difficult position if it is a controversial application around which a lot of lobbying takes place. If the Member responds to lobbying by deciding to go public in support of a particular outcome – or even campaign actively for it – it will be very difficult for that Member to argue convincingly when the committee comes to take its decision that he/she has carefully weighed the evidence and arguments presented – perhaps in some respects for the first time – at committee. The proper course of action for such a Member is to make an open declaration and not to vote. This is, however, a severe restriction on the Member's wish, duty even, to represent the views of the electorate, and in most cases short of such high-profile, active lobbying for a particular outcome, it should be possible for a Member to give support to a particular body of opinion whilst waiting until the planning committee and hearing all the evidence presented before making a final decision.
- 6.4 It cannot be stressed too strongly that the striking of this balance is, ultimately, the responsibility of the individual Member, and that in doing so regard needs to be paid to the general rules laid down in the Members Code.
- 6.5 Given that the point at which a decision on a planning application is made cannot occur before the planning committee meeting, when all available information is to hand and has been duly considered, any political group meeting prior to the committee meeting will not be used to decide how councillors should vote.
- 6.6 With the exception in some circumstances of Ward Councillors, whose position has already been covered in the preceding paragraphs, Councillors will in general avoid organising support for or opposition to a planning application, and avoid lobbying other Councillors. Such actions can easily be misunderstood by parties to the application and by the general public.
- 6.7 Councillors will not put pressure on Officers for a particular recommendation.

- 6.8 Councillors who are unsure whether an interest should be declared will seek the advice of the Council's Monitoring Officer, although, as indicated above, the decision rests with the Councillor.
- 6.9 Elected Members should not lobby members of the Planning Committee.
- 6.10 Because of the interests involved the acceptance of gifts and hospitality from developers or objectors is likely to lead to allegations of impropriety. If a degree of hospitality is entirely unavoidable, ensure it is of a minimum, its acceptance is declared as soon as possible and registered in the Register of Interests where its value is over £25 (in accordance with the Members' Code of conduct).

7.0 Pre-Application Discussions

- 7.1 Discussions between a potential applicant and a council prior to the submission of an application can be of considerable benefit to both parties and is encouraged by the Audit Commission and LGA. It would be easy however for such discussions to become, or be seen (especially by objectors) to become, part of a lobbying process and additional safeguards therefore need to be introduced.
- 7.2 It should always be made clear at the outset that the discussions will not bind a council to making a particular decision and that any views expressed are personal and provisional and given without prejudice. By the very nature of such meetings not all relevant information will be to hand, neither will formal consultations with interested parties have taken place.
- 7.3 Advice will be consistent and based upon the development plan and material considerations. There will be no significant difference of interpretation of planning policies between planning officers. In addition, all officers taking part in such discussions will make clear whether or not they are the decision-maker.
- 7.4 An appropriate written note will be made of all meetings and telephone calls. At least one officer will attend such meetings and a follow-up letter will be sent confirming discussions. A note will also be taken of similarly significant telephone discussions. Where appropriate and subject to respecting confidentiality, all such letters and notes shall be included with appendices to reports.
- 7.5 Care must be taken to avoid any appearance of partiality. This equally applies to the local ward member where that member is also

a member of the Planning Committee and may be involved in making a decision if a planning application follows. In such circumstances care should be taken to ensure there is no grounds for appearing to have pre-determined any application by providing advice to applicants or potential objectors at the pre-application stage.”

7.6 In respect of presentations by applicants / developers:

- **Don't** take an active role in a planning presentation.
- **Do** ask relevant questions for the purposes of clarifying your understanding of the proposals.
- **Do** remember that the presentation is not part of the formal process of debate and determination of any subsequent application, this will be carried out by the appropriate Committee of the planning authority.
- **Do** be aware that a presentation is a form of lobbying and you must not express any strong view or state how you or other Members might vote.

7.7 A written record will be maintained of presentations held and those attending.

8.0 Officer Reports to Committee

8.1 Reports will be concise, accurate and balanced and cover, among other things, the substance of objections and a summary of the views of people who have been consulted.

8.2 Relevant points will include a clear exposition of the development plan, site or related history including any Section 106 Agreement requirements and any other material considerations.

8.3 Reports will have a written recommendation of action; oral reporting (except to update a report) will be extremely rare and carefully minuted if it does occur.

8.4 Reports will contain a technical appraisal which clearly justifies the recommendation.

8.5 If the report's recommendation is contrary to the provisions of the development plan, the material considerations which justify this will be clearly stated.

9.0 Public Speaking at Planning Committee

- 9.1 The Council has a formal system for Parish/Town Councils' representatives, objectors and supporters to speak on an application at the Planning Committee – this is set out in guidance on the Council's website here: <https://www.west-lindsey.gov.uk/my-council/decision-making-and-council-meetings/public-participation-and-questions-at-committee-meetings/public-participation-at-planning-committee-meetings/> :

10.0 Decisions contrary to Officer Recommendation and / or the Development Plan

- 10.1 The law requires that where the development plan is relevant, decisions should be taken in accordance with it unless material considerations indicate otherwise (Section 38 (6) of the Planning and Compulsory Purchase Act 2004).
- 10.2 This gives rise to two main issues. Firstly, all applications which are not in accordance with the development plan should be identified as soon as possible and if minded to allow they must then be advertised as such, in accordance with the requirements of Article 8 of the Town and Country Planning (General Development Procedure) Order 1995. Secondly, if it is intended to approve such an application the material considerations which lead to this conclusion will be clearly identified, and how they justify overriding the development plan clearly demonstrated. The application may then have to be referred to the Secretary of State for the Communities and Local Government, depending upon the type and scale of development proposed. If the Officers' report recommends approval of a departure, the justification for this will be included, in full, in that report.
- 10.3 If the planning committee makes a decision contrary to the Officers' recommendations (whether for approval or refusal), a detailed minute of the committee's reasons will be made. The Officer will also be given the opportunity to explain the implications of the contrary decision. The Courts have expressed the view that such reasons should be clear and convincing. The personal circumstances of an applicant will rarely provide such grounds. A notable exception is where planning policy allows for this, for example, a dwelling for an agriculture worker. In the case of conditions which Councillors wish to add or amend, an Officer will be invited to draft such a condition

and bring this back for approval at the subsequent meeting or be given delegated authority to approve following consultation with the Committee Chairman or Vice Chairman.

- 10.4 Members are required to take an active role in leading planning appeals where committee have made a decision to refuse planning permission contrary to officer recommendation.

11.0 Committee Site Visits

- 11.1 The Members' Code applies as much to site visits as to any other area of conduct.

- 11.2 Site visits can cause delay and additional costs and should only be used where the expected benefits are clearly identified.

- 11.3 Site visits will be carefully organised to ensure that the purpose, format and conduct are clearly established at the beginning and subsequently adhered to. The reasons for a site meeting being necessary will be recorded within the Planning Committee minutes.

- 11.4 A site visit is only likely to be necessary if: the impact of the proposed development is difficult to visualise from the plans and any supporting material including photographs taken by Officers or, there is a good reason why the comments of the applicant and objectors cannot be expressed adequately in writing; or, the proposal is particularly contentious.

- 11.5 The site visit will consist of an inspection by the committee, with officer assistance.

- 11.6 If accompanied the Applicant and Objector will have no right to speak but will merely observe and answer questions when asked.

- 11.7 A site visit will not be given delegated powers to decide the application; which will be reported back to the planning committee with a reasoned recommendation.

- 11.8 A written record will be made detailing the site visit and those present.

12.0 Regular Review of Decisions

- 12.1 The Audit Commission recommends that Councillors should visit a sample of implemented planning permissions to assess the quality

of the decisions. This is reinforced by the Warwick inquiry. Such a visit should improve the quality and consistency of decision-making, thereby strengthening public confidence, and can help with reviews of planning policy. Such visits will be scheduled as part of the annual planning training programme for committee members.

13.0 Record Keeping

- 13.1 So that complaints may be fully investigated and, in any case, as a matter of general good practice, record keeping should be complete and accurate. Omissions and inaccuracies could, in themselves, cause a complaint or undermine the Council's case. The guiding rule is that every planning application file will contain an accurate account of events throughout its life (note; files may be either in paper format, held electronically, or a combination of both).
- 13.2 It should be possible for someone not involved with that application to understand what the decision was and how and why it was reached. Particular care will be taken with applications determined under Officers' delegated powers, where there is no committee report. Such decisions will be as well documented and recorded as those taken by Members. These principles apply equally to enforcement and development plan matters. Monitoring will be undertaken regularly.

14.0 Political Group Meetings

- 14.1 Elected Members have an overriding duty to the whole local community and although they may be strongly influenced by the views of others and particularly their political group, it is their responsibility alone to decide what view to take on any matter before the Committee.
- 14.2 Although it is accepted that political groups may have a policy on particular types of development or on major schemes, group meetings prior to the Committee should **not** be used to decide how members vote.
- 14.3 Members must consider all applications in the light of the Development Plan and decide on the application's merits, taking into account only material planning considerations. The appearance of bias or predetermination can lead to a decision being quashed and costs awarded against the Council.

15.0 Disclosure of Information

- 15.1 Members will sometimes be given information or assurances by applicants which are not part of the formal application or be given information by objectors which is misleading, untrue or irrelevant. This may cause problems if Officers are unaware of any such submissions and are unable to advise the Planning Committee of their relevance or enforceability.
- 15.2 Any Member receiving a letter for or on behalf of an applicant or third party in connection with an application before the Planning Committee should establish whether the letter has first been submitted to the Council via the Planning Officer and, if not, declare the receipt of the letter prior to the decision being taken.
- 15.3 No Member should circulate any documents or information to the Planning Committee unless that information has been first submitted to the Planning Officer and forms part of the application or background papers.

16.0 Training

- 16.1 You should not participate in decision making at meetings dealing with Planning matters if you have not attended the compulsory training on Planning matters.
- 16.2 The Code of Conduct and any amendments will form part of this training. Copies will be provided for all new Members.

17.0 Complaints

- 17.1 The Council operates a formal complaints procedure, details of which are set out on the Council's website at: <https://www.west-lindsey.gov.uk/my-council/have-your-say/comments-compliments-and-complaints/>

Or can be provided on request from the Customer Services Manager, West Lindsey District Council, Guildhall, Marshall's Yard, Gainsborough, Lincolnshire, DN21 2NA.

17.2 Any Member or Officer who believes that any person subject to this Code is in breach of it should report the matter to the Monitoring Officer for consideration.

18.0 Review

A logical consequence of adopting a local Code of Conduct is to ensure that it fulfils its purpose. Consequently the Code will be reviewed at the end of its first year and as necessary in the future so that any amendments can be made to better secure its effectiveness.

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