

SECTION D4

PLANNING DEVELOPMENT CONTROL PROCESS

1. INTRODUCTION

1.1 Planning is not an exact science. It relies on informed judgement within a firm policy context. It is highly contentious because its decisions affect daily lives and private interests. The openness of the planning system invites participation. Planning decisions must be open, unbiased and transparent. These principles underpin good decision making, the planning system, the Local Government Act 2000 and the Human Rights Act 1998.

1.2 The planning system controls development in the public interest. The Council's role is to make the best decision (even if that takes a little time) taking into account the effect of the development on the environment and on the interests of the wider community. This, like many other decisions of the County Council involves balancing many, often conflicting, interests. Planning decisions must therefore be taken and be seen to be taken:

- openly;
- impartially;
- taking all relevant matters into account;
- ignoring any irrelevant matters;
- for justifiable and clearly stated reasons.

There must be no grounds for suggesting that a decision has been biased. Bias does not mean Councillors or Officers have been swayed by relevant factors. It means that an ordinary Member of the Public, with full knowledge of the facts, would reasonably conclude that Councillors or officers might have been swayed by irrelevant considerations, personal factors, or the manner in which the application had been dealt with.

1.3 Examples of circumstances in which a decision would be likely to be biased are:

- any voting member of the Committee has declared openly their position before the Committee meeting;
- either the applicant or supporters of the application or objectors have been given different levels of access to state their case to the Committee;
- the information provided to individual Committee members is not consistent;
- a member of the Committee has not declared a prejudicial interest;
- the Committee has not been made aware of all material considerations;
- the Committee or members of the Committee have not acted in the public interest;

- decisions, with respect to both conditions and reasons for refusal, are not supported by clear understandable reasons.

That is not an exhaustive list but illustrates the range of factors which can be seen as demonstrating bias.

- 1.4 A decision can be challenged for bias through a judicial review. The court could invalidate the decision, advising the Council to reconsider the matter properly. The costs of those affected in going through this process would fall on the Council. The Council may also be liable for the costs caused by delaying the decision. Delay may also severely affect the Council's own future plans.
- 1.5 Applicants for planning consent may appeal against a refusal or the content of conditions attached to an approval through planning appeal procedures. Similarly, appeals can also be lodged against enforcement action. The Council will incur its own costs of this process, and if it has acted unreasonably, may also have to pay the applicant's costs.
- 1.6 Bias could lead to a complaint to the Local Government Ombudsman, who might recommend payment of compensation; this would be recorded on the Council's Key Performance Indicators.
- 1.7 Bias caused by a breach of the Lincolnshire Code of Conduct could be dealt with under the agreed local arrangements for dealing with Standards complaints.
- 1.8 Dealing with such matters including appeals, Ombudsman's complaints and judicial reviews, is time consuming and costly. If challenges are upheld then the credibility of the County Council suffers.
- 1.9 The County Council has a code of conduct which deals with the issues that affect all Council business. Given the complexities, responsibilities and pressures of the planning system, it is sensible to have a code of practice, amplifying the code of conduct for dealing with planning issues. This code of practice is based on a national code, prepared by the Local Government Association and published as "Probity in Planning". It should protect Officers and Councillors from false allegations, and give the public confidence in the planning decisions of the Council.

2. THE GENERAL ROLE AND CONDUCT OF COUNCILLORS AND OFFICERS

- 2.1 Councillors and officers have different but complementary roles, both of which serve the public. Councillors are responsible to the electorate, while officers are responsible to the Council as a whole. Officers advise Councillors and the Council, and carry out the Council's work. They are employed by the Council, not by individual Councillors and instructions to officers come from the legally established decision taking mechanisms of the Council. Unless given clear delegations to act on behalf of the Council, Officers can only advise.

- 2.2 Both Councillors and Officers are guided by codes of conduct. The local Code of Conduct provides standards and guidance for Councillors. Employees are to be the subject of a statutory Employee's Code of Conduct. In addition, Chartered Town Planners are guided by the Royal Town Planning Institutes' Code of Professional Conduct.

3. GENERAL CODE OF CONDUCT FOR COUNCILLORS AND OFFICERS

3.1 Councillors:-

Code of Practice

- In making planning decisions, Councillors must make decisions on the basis of put the wider public interests of Lincolnshire as a whole as expressed in planning policy before those of their own locality and must be seen to do so;
- ~~And must be seen not to do so, remembering that "person" includes companies, and other organisations;~~
- Councillors should not try to persuade officers to alter their professional advice or put pressure on officers for a particular recommendation.
- Councillors must not put pressure on other Councillors for a particular recommendation;
- Councillors should receive training on how to approach planning matters: initial training when first serving on the Planning and Regulation Committee and regular updates to keep abreast of any changes which take place in legislation or procedures.

3.2 Planning Officers shall:-

- always act impartially, providing independent professional advice to the best of their skill and understanding;
- act with competence, honesty and integrity;
- advise and act in accordance with approved policies;
- observe the Officer's Code of Conduct (when adopted);
- observe the Code of Professional Conduct of the Royal Town Planning Institute.

4. HOSPITALITY

4.1

Code of Practice

- In making planning decisions, Councillors should refuse any gift and be extremely cautious about accepting hospitality. If the receipt of hospitality is unavoidable from persons with an interest in a planning proposal, it must be ensured it is of a minimum level.

5. DECLARATION OF INTERESTS

5.1

Lincolnshire County Council's Code of Conduct

Members must in all matters consider whether they have an interest, under the Council's code of conduct which they should register and declare.

6. LOBBYING OF AND BY COUNCILLORS

- 6.1 Lobbying is a normal and important part of the political process. However, such lobbying can, unless care and common sense are exercised by all parties concerned, lead to the impartiality and integrity of Councillors concerned being called into question.

Code of Practice

- Councillors on the Planning and Regulation Committee should restrict their advice to lobbyists to procedural matters and advise objectors and supporters of any proposal, to write to the relevant officer so they can be included in the officer's report;
- Councillors on the Planning and Regulation Committee must not openly declare which way they intend to vote in advance of the formal consideration of an application. If they have openly declared their position they shall properly declare their position at Committee and not vote on the application concerned;
- A decision on a planning application must not be taken before the Planning and Regulation Committee meeting, when all available information and views have been considered. Any group meeting before a committee meeting, must not be used to decide how Councillors should vote;
- Councillors on the Committee must avoid organising support for an opposition to a planning application, and avoid lobbying other Councillors (except when they are addressing the Committee).

Code of Practice

- Executive Councillors must not participate as members of the Planning and Regulation Committee in deciding applications by Executive or fellow Executive Members on behalf of the Council;
 - Local Divisional Councillors who are not on the Committee are allowed to speak. Only members of the Committee shall be able to vote.
- 6.2 Opinions, which are relevant to the determination, made by the applicant, agent, objector, to any member must be made known to the relevant planning officer, in order that they can be included in the officer's report to committee and therefore properly considered.

7. PRE-APPLICATION DISCUSSIONS

- 7.1 Discussions between potential applicants and the council, prior to the submission of an application, can be of considerable benefit to both parties and is encouraged by central government. However, it can be easy for such discussions to become, or be seen to become, part of a lobbying process. Pre-application discussions should, therefore, take place within clear guidelines. The guidelines are:
- 7.2 At the outset, it will be made clear that the discussions will not bind the Council to making any particular decision.
- 7.3 Advice given will be consistent with the development plan, government guidance and material considerations.
- 7.4 Officers involved in the discussions shall make it clear whether or not they are the decision-maker or advising officer to the committee concerned.
- 7.5 Written notes will be taken of all meetings and potentially contentious telephone conversations with applicants.
- 7.6 Care must be taken to ensure that advice is not biased (nor seen to be).
- 7.7 Members of the Planning and Regulation Committee should preserve their impartiality as decision takers and avoid pre-application or post-application discussions with developers or other interested parties regarding development proposals.
- 7.8 Where a particular planning application gives rise to widespread concern, the Chairman of the Planning and Regulation Committee in consultation with the Executive Director for Environment and Economy may arrange a public meeting to which the applicants will be invited to outline their proposals and the objectors express their concerns. All members of the Committee together

with Local Councillor(s) will be invited to attend. Relevant officers will attend and detailed notes taken of the meeting. The Chairman will make it clear to the meeting that members are in attendance to obtain information not to discuss the proposal.

8. OFFICER REPORTS TO COMMITTEE

8.1 Officers will provide clear unbiased professional advice. Reports will:

- set out the relevant development plan policies, site and relevant planning history, material considerations and the substance of objections and the views of people and organisations which have been consulted. Written representations are open to inspection by Councillors and the public;
- contain a technical appraisal of the relevant provisions of the development plan and other material considerations in relation to the application;
- advise on any relevant issues relating to Human Rights legislation;
- contain recommendations; and
- may be supplemented by oral updates in special circumstances which will be minuted.

9. PUBLIC SPEAKING AT COMMITTEE

9.1 Applicants, agents and persons wishing to express a view about a planning application that is being reported to the Planning and Regulation Committee will have a right to speak at the Committee subject to the following rules. Details of the scheme will be included in the acknowledgement letter to agents/applicants and the notification letter/site notices to neighbours. Details will also be available on the Council's website and from Council offices:

- a) Anyone wishing to speak must register in writing (including e-mail or fax) with the planning officer at least 2 working days before the meeting.
- b) A list of persons wishing to speak arranged in order of the agenda will be produced for the Chairman and members of the Committee.
- c) Any person who has not given notice will only be allowed to speak at the discretion of the Chairman.
- d) The Committee may hear speakers either only for the applicant or only for objectors provided all parties have been given the opportunity to speak and one party chooses not to exercise his/her right.
- e) The number of speakers will be restricted to a maximum of 1 in favour of an application and 1 opposing an application chosen by order of

notification of a wish to speak. In addition to local Councillors who have a right to speak on a matter affecting their division and adjoining divisions, up to 2 other Councillors who are not members of the Committee may also address the Committee upon each application.

- f) Speakers will be limited to 3 minutes each in respect of each application.
- g) Members of the Committee may ask questions of speakers. Such questions will be put through the Chairman.

10. TAKING A DECISION AT COMMITTEE

- 10.1 Planning decisions must be taken in accordance with the adopted development plan, unless material considerations indicate otherwise. Reason must be given for all planning decisions.
- 10.2 If the Committee makes a decision contrary to the officer's recommendation (whether approval or refusal), the Committee must give the reasons for that decision and a detailed minute must be made and a copy placed on the application file. The reasons must be clear and convincing. If necessary, the Committee should pass a resolution that it is minded to take this course of action and request a further report on appropriate conditions or reasons.
- 10.3 If the committee wishes to add or amend conditions, officers shall draft the condition for approval by the Committee at its next meeting or by the Executive Director for Environment and Economy in consultation with the Chairman of the committee.
- 10.4 Every meeting of the Committee will be attended by a senior legal officer to ensure that procedures are properly followed.
- 10.5 If the Committee makes a decision contrary to an officer recommendation and there is an appeal against the decision, those Councillors who made the decision may be required to be available as a witness at any subsequent Planning Inquiry or Hearing.
- 10.6 Where Members of the Committee wish to raise a substantive issue, or require additional information, they should give at least one clear working day's notice to the Head of Planning to enable a considered response to be given at the meeting. Longer notice is desirable, to allow a supplementary note to be circulated at least two days prior to the meeting and for that note to be a public record of the response.

11. COMMITTEE SITE VISITS

- 11.1 Site visits can give rise to accusations of unfairness by the Committee unless a clear protocol is agreed and followed.

11.2 A site visit should be made if:

- the expected benefit to the Committee of understanding the site, its surroundings and the issues relating to the application is substantial;
- a formal committee report on the application has been presented;
- further supporting plans or photographs could not satisfactorily enable members of the Committee to visualise the impact of the proposal.

11.3 Members of the Committee shall not go unaccompanied onto land about which an application has been made, as this exposes them to accusations of bias by objectors.

11.4 The reasons for a site visit shall be minuted.

11.5 Site visits must include officer assistance. In exceptional circumstances, representatives from statutory bodies may be invited to attend where they can provide detailed technical advice, for example, on highway sight lines.

11.6 Site visits shall be carried out under the guidelines used by the Planning Inspectorate, namely the site visit is to view the site and salient features. Neither the applicant nor objectors should be allowed to accompany the Members of the Committee on the site visit, except for safety reasons. The owner or applicant will, however, not be allowed to participate in any discussion which should, in any case be limited to purely factual information.

11.7 The officer present will set out the main issues relating to the application and point out the salient features and points on the site and in the immediate area.

11.8 No formal decisions of the Council will be made on site and where a site visit is held only those members of the Committee who have attended the site visit will be entitled to participate in the decision relating to that application.

12. REVIEW OF DECISIONS

12.1 In order to review the quality of decisions a random selection of sites will be reviewed each year by the Head of Planning and an external 'critical friend'. Members of the Committee will be taken to visit these sites.

12.2 An annual report will be produced on which permissions have been implemented and the quality of the development that has been carried out.

13. COMPLAINTS AND RECORD KEEPING

13.1 The Council has a robust system for dealing with complaints. The public will be made aware of the complaints system through the corporate complaint system. The Local Planning Charter sets out the system for investigating alleged breaches of planning control with respect to planning enforcement matters. The planning enforcement system will ensure:

- complaints are acknowledged within 3 clear working days;

- complaints are initially investigated within 5 clear working days;
- complaints are replied to within 15 clear working days.

13.2 The performance of the Council's development control function is monitored on a quarterly basis.

14. PLANNING OBLIGATIONS

14.1 Officers will negotiate with developers with regard to Legal Agreements.

14.2 Reports to the Planning and Regulation Committee may include Heads of Terms of Agreements.

14.3 Copies of any concluded Legal Agreements (Planning Obligations and Agreements under the Highways Acts) will be available for public inspection and placed on the statutory register.

14.4 Copies of Agreements will be forwarded to the relevant district and parish councils with the decision notice for the application.

15. REVIEW OF THE CODE OF CONDUCT

15.1 The operation of this Code of Conduct shall be reviewed annually by the Audit Committee.

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