Conflict of Interest Policy (March 2018)

1. Introduction

1.1 The work of the Planning Inspectorate includes national infrastructure planning under the Planning Act 2008 process as amended by the Localism Act 2011; processing planning and enforcement appeals; holding examinations into local plans and community infrastructure levy charging schedules. The Inspectorate also deals with a wide variety of other planning related casework including listed building consent appeals, advertisement appeals, and reporting on planning applications called in for decision by the Ministry for Housing, Communities and Local Government (MHCLG), or, in Wales, The Welsh Government. Other casework includes various compulsory purchase orders, rights of way cases and cases arising from the Environmental Protection and Water Acts and the Transport and Works, Act and other Highways Legislation.

1.2 It is vital that inspectors maintain principles of openness, fairness and impartiality and the Inspectorate will not allocate casework in circumstances where it is considered that the recommendations, decisions\(^1\) or advice\(^2\) given by inspectors might be influenced by their private or commercial interests or that an individual may be able to profit from information available to them through their work with the Inspectorate. In the context of this overriding framework, this policy provides a set of principles to guide inspectors in identifying relevant interests which must be disclosed to the Inspectorate and sets out the Inspectorate’s approach to allocating casework.

1.3 This policy applies to all inspectors. Although the Inspectorate’s staff are not required to disclose relevant interests they must have regard to this policy and raise any matters of concern to line managers before taking on administrative or advisory roles in relation to the Inspectorate’s casework which might prejudice or be perceived to\(^3\) prejudice fairness or impartiality.

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\(^1\) In some circumstances decisions are transferred from the Secretary of State to inspectors, for example decisions (with some exceptions) in relation to enforcement notice appeals under s174 of TCPA.

\(^2\) Advice in this context means advice given under s51 of the Planning Act 2008 (as amended) about applying for an order granting development consent or making representations about an application or a proposed application for such an order or advice in relation to development plans.

\(^3\) By a “fair minded observer” - R. (on the application of Ortona Ltd) v Secretary of State for Communities and Local Government [2009] EWCA Civ 863.
2. What is a conflict of interest?

2.1 A conflict of interest can occur when an inspector is put in a situation or circumstance that impacts their ability to apply judgement or act in their role, or could be, impaired or influenced by a secondary interest. It can happen in any situation where there is a possibility that an individual or organisation could exploit an inspector for personal or other benefit.

2.2 Even if the individual doesn’t actually benefit, a conflict can still occur if it appears a decision may have been influenced. The perception of competing interests, impaired judgement or undue influence can also be a conflict of interest.

3. Identifying potential conflicts of interest and allocating work

3.1 Inspectors must disclose all relevant personal, financial or other interests (as set out below at paragraphs 3 to 9) on first taking up work with the Inspectorate. These disclosed interests will be recorded by the Inspectorate to assist in the proper and efficient allocation of work. Before inspectors accept any casework or agree to act in an advisory role on any proposed DCO application or development plan, inspectors must review and update their disclosed interests and consider in relation to that particular casework whether relevant interests might put them in conflict with their duty (set out in the Inspectors’ Code of Conduct) to act fairly, openly and impartially.

3.2 The Inspectorate will not allocate work in the circumstances described below where an inspector might have (or be perceived to have) a personal or financial interest in the outcome of the decision making process relevant to the casework and it is considered that there is a real risk of an actual or perceived conflict of interests arising which would undermine impartiality. In all cases, the Inspectorate will take a proportionate approach on the facts available and having reasonable regard to relevant factors. Where necessary, the advice of the Director of Inspectors will be sought.

3.3 Relevant interests are not confined to the examples set out below. It is the responsibility of inspectors to identify and keep under review all personal, financial or other interests which may be relevant to the Inspectorate’s casework and to advise the Inspectorate accordingly. Should any conflict

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4 In connection with nationally significant infrastructure projects or development plan preparation.
of interest become apparent following allocation of casework inspectors may be required to:
- step aside from the case;
- abandon the interest (if practical to do so); or
- (where applicable) bring the matter to the attention of the parties and seek their views to enable the Inspectorate to consider whether it is appropriate for the inspector to continue working on the case.

4. Property interests

4.1 Inspectors must identify the full postcode of their home address and disclose the postcode location of any other property interests to the Inspectorate.

4.2 There is a risk that an actual or perceived conflict of interest may arise where inspectors live close to (or own property close to) the site of development which is the subject of an appeal, DCO application or application called in by the Secretary of State\(^5\) or close to land relevant to other casework\(^6\). Generally therefore inspectors will not be allocated to casework where the postcode of the inspector’s property is the same as the postcode of the development or land which is the subject of the casework or (if the postcode is different) the land is nonetheless relatively close to the inspector’s property.

4.3 Depending on the facts there may also be a conflict of interests where inspectors live or have property within the area of the local planning authority (LPA) whose development plan is being examined.

4.4 A proportionate approach will in all cases be taken on the facts of the particular casework. Relevant factors may include, for example, the size of the LPA area or the scale or geographical extent of impacts or topographical barriers between the land in question and the inspector’s property which would make it unlikely that an inspector could benefit personally from the outcome of the decision or be perceived as biased.

5. Financial interests

5.1 Inspectors must disclose to the Inspectorate financial interests\(^7\) in any entity\(^8\) which is involved in the procurement or construction of nationally

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\(^5\) Under s77 of TCPA.
\(^6\) Including for example consent for works on commons under s38 of the Commons Act 2006.
\(^7\) Including for example shares, bonds or options providing controlling interests or membership of pension schemes where inspectors have knowledge and control of where investments are made.
significant infrastructure or any other major development\(^9\). As soon as they are able to do so on the basis of available casework details inspectors must also disclose any financial interests in the appellant, appeal parties, applicant\(^{10}\) or interested parties\(^{11}\).

5.2 If an inspector has financial interests in the appellant or applicant it is considered that there is a risk that an actual or perceived conflict of interest may arise and inspectors will not generally therefore be allocated to casework in these circumstances.

5.3 In some circumstances an actual or perceived conflict may also arise where an inspector has financial interests in appeal parties or interested parties. However, a proportionate approach will be taken on the facts of the particular casework having regard to the extent of control which the financial interest might provide. In all cases it will be relevant to consider whether an inspector might gain (or be perceived to gain) a pecuniary advantage (as a result of that financial interest) in the outcome of the decision-making process relevant to the casework which would undermine impartiality.

6. **Concurrent work\(^{12}\)**

6.1 Inspectors must disclose to the Inspectorate any concurrent public appointments or concurrent paid or unpaid employment or business generally relevant to the Inspectorate’s casework\(^{13}\).

6.2 If an inspector is employed by or is carrying out work for\(^{14}\) the appellant, applicant\(^{15}\) or relevant local authority\(^{16}\) it is considered that there is a risk that an actual or perceived conflict of interest may arise and inspectors will not be allocated to casework in these circumstances.

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\(^8\) Here meaning any company or group of companies.

\(^9\) For example national house builders.

\(^{10}\) Here meaning a DCO applicant, an applicant for planning permission which application has been called in by the Secretary of State or an applicant for any other casework.

\(^{11}\) As defined by s102 of the Planning Act 2008 (as amended).

\(^{12}\) Some inspectors are employed on a part-time basis or on the basis of a contract for services and subject to the terms of those contracts may have concurrent work.

\(^{13}\) This would include for example work with national infrastructure providers, major developers, Government departments such as The Department for Business, Energy & Industrial Strategy, The Department for Transport or The Department for Environment, Food and Rural Affairs, statutory bodies such as Natural England and the Environment Agency, or non-governmental organisations such as Friends of the Earth or The Royal Society for the Protection of Birds.

\(^{14}\) Either personally or through their practice employer in a consultancy role.

\(^{15}\) Here meaning a DCO applicant, an applicant for planning permission which application has been called in by the Secretary of State or an applicant for any other casework.

\(^{16}\) Here meaning the local authority whose decision or plan is subject to appeal, call in or examination, local authorities as defined in s42 of the Planning Act 2008 relevant to the DCO application.
6.3 If an inspector is examining a development plan and has not yet made a recommendation to the Secretary of State an actual or perceived conflict of interest might arise if an inspector is allocated concurrently to casework where the development (which is the subject of the casework) falls within the area of the LPA whose plan is being examined. Inspectors will not generally therefore be allocated to casework in these circumstances.

6.4 In some circumstances an actual or perceived conflict of interest may also arise where an inspector is concurrently employed by or carrying out work for persons or organisations with close connections to the casework in question\(^\text{17}\). It is important that the Inspectorate is able to attract and retain inspectors with relevant experience and current skills and a proportionate approach will therefore be taken on the facts of the particular casework and the nature of the concurrent work. Relevant factors may include the size of the organisation for whom the inspector (or the inspector’s practice) is working and whether the work can be considered peripheral to the relevant aims and objectives of the organisation such that the inspector is unlikely to have any direct knowledge or involvement which might lead a reasonable person to conclude that a conflict of interests may exist.

7. Previous work and/or employment or other unpaid activities

7.1 Inspectors must disclose to the Inspectorate any previous public appointments or paid or unpaid employment or business generally relevant to the Inspectorate’s casework\(^\text{18}\) held or carried out within the past two years. The time period of two years is provided as a guide; where known views held or actions taken as a result of previous employment could result in a perceived or actual conflict irrespective of the time of the employment this should be disclosed too.

7.2 As noted above, inspectors must have relevant experience and skills and a proportionate approach will therefore be taken on the facts of the particular casework and the nature of the previous work. Relevant factors may include the size of the organisation for whom the inspector (or the inspector’s practice) worked and whether the work could be considered

\(^{17}\) This would include work with organisations whose principal purpose is connected to the casework in question including local authorities as defined in s42 of the Planning Act 2008, Government departments such as The Department of Energy and Climate Change, The Department for Transport or The Department for Environment, Food and Rural Affairs, executive agencies and statutory bodies such as Natural England and the Environment Agency or non-governmental organisations such as Friends of the Earth and The Royal Society for the Protection of Birds.

\(^{18}\) This would include for example work with national infrastructure providers, major developers, and Government departments such as The Department for Business, Energy & Industrial Strategy, The Department for Transport or The Department for Environment, Food and Rural Affairs, or non-governmental organisations such as Friends of the Earth or The Royal Society for the Protection of Birds.
peripheral to the relevant aims and objectives of the organisation such that the inspector would be unlikely to have gained any direct knowledge or involvement which might lead a reasonable person to conclude that a conflict of interests may exist.

8. Political Interests

8.1 Inspectors must disclose any representative offices to which they have been elected on a party-political basis and any national or local political activities.

8.2 If an inspector is an elected member of the relevant local authority or parish council it is considered that there is a risk that an actual or perceived conflict of interest may arise and inspectors will not be allocated to casework in these circumstances.

8.3 In some circumstances an actual or perceived conflict of interest may also arise where inspectors’ political affiliations might be construed as showing favour in respect of any particular issue or party undermining their impartiality. In reaching a decision about allocating casework relevant factors would include any publicly held views of the inspector and the extent of direct engagement in high profile political activities capable of influencing Government policy relevant to the Inspectorate’s casework.

9. Membership of Organisations and Societies

9.1 Inspectors must declare membership of any professional or social organisations or any non-government organisations whose aims and objectives are generally relevant to the Inspectorate’s casework.

9.2 In some circumstances an actual or perceived conflict of interest may arise where an inspector is a member of an organisation or society having direct involvement in (for example as an interested party) or with close connections to the casework in question. However, a proportionate approach will be taken on the facts of the particular casework having regard to the size of the organisation, any publicly held views of the inspector and any direct involvement with the activities of the organisation which might cast doubt on the inspector’s impartiality.

19 Here meaning the local authority whose decision or plan is subject to appeal, call in or examination, local authorities as defined in s42 of the Planning Act 2008 or relevant parish councils as defined in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 relevant to the DCO application.

20 Including for example the Town and Country Planning Association, The Campaign to Protect Rural England or Ramblers Association.
10. **Interests of family and close associates**

10.1 Inspectors must consider whether any family members\(^{21}\) or close associates\(^{22}\) have personal, financial or other interests relevant to the Inspectorate's casework (as identified above at paragraphs 3 to 8) and disclose them on first taking up work with the Inspectorate. As soon as they are able to do so on the basis of available casework details inspectors must review and update these interests.

10.2 If an appellant or applicant is a member of the inspector's family or is a close associate it is considered that there is a risk that an actual or perceived conflict of interest may arise and inspectors will not therefore be allocated to casework in those circumstances.

10.3 An actual or perceived conflict may also arise in circumstances where a member of an inspector's family or a close associate has a relevant property or financial interest or an association with persons or organisations with close connections to the casework in question\(^{23}\). However, a proportionate approach will be taken on the facts of the particular casework, the nature of the interest, the closeness of the inspector's relationship to the family member or close associate and whether the inspector's impartiality may be or perceived to be undermined by the relationship.

10.4 In all cases it will be relevant to consider whether a family member or close associate might have (or be perceived to have) a financial interest in the outcome of the decision-making process relevant to the casework.

11. **Gifts, Benefits and Hospitality**

11.1 Due propriety must be observed with regard to gifts and hospitality. Inspectors should not accept gifts or hospitality which may, or may appear

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\(^{21}\) Including partner, parents, partner's parents, children and partners of adult children.

\(^{22}\) Any individual whom a reasonable member of the public might think that inspectors would be prepared to favour or disadvantage in relation to the Inspectorate's casework, including for example friends or business associates.

\(^{23}\) This would include work with or membership (elected or otherwise) of organisations whose principal purpose is connected to the casework in question including local authorities as defined in s42 of the Planning Act, Government departments such as The Department for Business, Energy & Industrial Strategy, The Department for Transport or The Department for Environment, Food and Rural Affairs, executive agencies and statutory bodies such as Natural England and the Environment Agency or non-governmental organisations such as Friends of the Earth and The Royal Society for the Protection of Birds.
to, compromise their impartiality and must comply with the Acceptance of Gifts, Benefits and Hospitality Policy.

12. **Sanctions**

12.1 If interests are not disclosed and there is subsequent complaint or litigation on the grounds of impropriety, disciplinary action may follow.