



Corporate Consultation and Engagement Policy

Live from: January 2020

Live until: January 2021

Title	Corporate Consultation Policy		
Creator	Author(s)	Lorraine McDonald; Ann-Marie Johnstone	
	Approved by	Executive Member for Finance and Governance	
	Department	Commercial and Corporate Services	
	Service area	Performance and Partnerships	
	Head of Service	Paul Stephens	
	Director	Tony Parkinson	
Date	Created	June 2016	
	Submitted		
	Approved		
	Updating Frequency	Every three years or as case law / legislation require changes	
Status	Version: 4.0 – interim update prior to external review of consultation and community engagement due in 2020		
Contributor(s)	Ann-Marie Johnstone, Paul Stephens, Martin Harvey.		
	Legislation	Best Value Statutory Guidance	
Subject	Consultation		
Type	Policy		
	Vital Record		EIR
Coverage	Middlesbrough Council		
Language	English		

Document Control

Version	Date	Revision History	Reviser
1.0	Oct 2011	First version	Lorraine McDonald
2.0	Feb 2014	Revised to reflect new legislation	Lorraine McDonald
3.0	June 2016	Revision to strengthen link between consultation and engagement	Lorraine McDonald
4.0	January 2020	Interim update	Ann-Marie Johnstone

Distribution List

Version	Date	Name/Service area	Action
3.0	September 2016	LMT and Supporting Communities staff	Disseminate.
4.0	January 2020	Council staff	Disseminate

Introduction

Middlesbrough Council is committed to involving local people in shaping the town and the services they receive. Consultation and engagement is one of the key ways the Council interacts with and involves local communities, providing them with opportunities to have a say over the services that affect their lives.

The purpose of this policy is to set out when and how the Council will undertake consultations to ensure compliance with statutory and best practice requirements. It also sets out the Council's approach to engagement and signposts to further information.

Consultation

Consultation is the process of dialogue with citizens and stakeholders based upon a genuine exchange of views, with the objective of informing decisions, policies or programmes of action. It gives the local community a voice in the democratic process and helps elected members and officers understand and consider public views and concerns when making decisions about local public services. Consultation is finite, with a clear beginning and end, and so is different from engagement, which is ongoing.

CONSULTATION DRIVERS

The Council will consult when:

1. there are specific statutory provisions which state that a consultation *must* happen, and may also prescribe *how* this must happen e.g. within planning and environmental policy;
2. the doctrine of legitimate expectation (common law) applies i.e. we've previously promised we would consult, we have done in the past and / or the impacts of planned changes are clearly significant; or
3. where the legal rights of particular individuals, groups, or organisations may be affected e.g. a set out in the Equality Act 2010 or in Best Value Duty Statutory Guidance.

It does not need to consult where a change would have no impact on any individual, group or organisation.

Statutory obligations to consult

Some of the statutory duties in relation to consultation are in place which the Council must comply with include:

- **Best Value Statutory Guidance** to fulfil the Best Value Duty under Section 3(2) of the Local Government Act (1999), the Council has a duty to consult those who use or are likely to use services provided by the authority at all stages of the commissioning cycle, including the decommissioning of services. This includes specific regulations relating to consultation with the voluntary sector and SMEs.
- **Local Government Finance Act 1992 Section 65** The duty to consult representatives of non-domestic ratepayers on the Council's expenditure plans.
- **Local Government Finance Act 2011** Duty to consult the introduction of localised council tax reduction schemes.
- **Childcare Act 2006 (Section 5d):** Duty to consult before any significant changes are made to children's centre provision.
- **Children and Families Act 2014 (Section 19)** Duty to consult children, parents and young people in relation to reviewing educational, training and social care provision, when considering local priorities and outcomes as part of joint commissioning arrangement and EHC plans.
- **Planning and Compulsory Purchase Act 2004, Town and Country Planning Regulations 2009, The Statement of Community Involvement (SCI)** sets out the Council's policy for involving the community in the preparation of local development plan documents and in the consideration of planning applications.
- **Health and Social Care Act (2012)** - Duty to consult and involve patients, the public and representatives in the planning or commissioning of local health services.

- **Equality Act 2010, Section 149 Public Service Equality Duty (PSED).** Consultation may be required to comply with the Council's equality duty. Consultation with people with different protected characteristics can provide an evidence base to assess the impact of decisions on those affected. The need for consultation is dependent upon the relevance and proportionality of the anticipated impact.
- **Doctrine of legitimate expectation** (common law) where there is a reasonable expectation that consultation will be undertaken because previous decisions on similar issues have been consulted upon by the Council or there has been a formal commitment made to consult prior to taking a decision.

Non- Statutory consultation

The Council may decide to carry out consultations where there is no statutory requirement to do so, for example Residents are consulted regularly on the policies, strategies and services that affect their lives.

Gunning Principles

Once a decision to consult has been taken, the content of the consultation is governed by the common law duty of 'fairness'. The principles of 'fairness' have been decided by the Supreme Court and are known as the 'Gunning Principles'.

The Council's duty to consult is governed by a common law duty to act 'fairly'. The UK's highest court has endorsed the basic requirements of a 'fair' consultation; these are known as the Gunning principles:

- consultation should occur when proposals are still at a formative stage;
- should give sufficient reasons for any proposal to permit intelligent consideration and response;
- should allow adequate time for consideration and response; and
- there must be clear evidence that the decision maker has considered the consultation responses or a summary of them, before taking its decision.
- the degree of specificity regarding the consultation should be influenced by those who are being consulted; and
- the demands of fairness are likely to be higher when the consultation relates to a decision which is likely to deprive someone of an existing benefit.

The two last principles mean that in some circumstances, for a consultation to be considered lawful, the consultation document should not only refer to a 'preferred option', but also include other considered options and outline reasons why they may be unacceptable. For example when designing or making changes to the Council's Tax Reduction Scheme, it would be considered unlawful for the consultation document to be premised on the assumption that any shortfall would be met entirely by reductions in Council Tax Benefit and that there were no other options considered.

Examples of circumstances in which consultation may not be appropriate

- Changes tightly prescribed by legislation.
- For minor or technical amendments to regulation or existing policy frameworks.
- Where adequate consultation has taken place at an earlier stage.

CONSULTATION REQUIREMENTS

Unless there are statutorily prescribed procedures and subject to the above requirements of fairness, there is broad discretion as to how a consultation exercise should be carried out. Consultation requirements will vary from one consultation to another and should be assessed on an individual basis. An example of a consultation process is set out in a flow chart in Appendix 1.

When to conduct a consultation

In general terms consultation should be considered when there is a statutory duty, or where feedback from the public is needed to inform decisions. The decision whether to consult or not will depend on the issues, the nature and the impact of the decision.

The following list is not exhaustive, but consultation may be appropriate when undertaking the following:

- development/ review of policies/strategies/procedures;
- Council budget reductions/ investment proposals;
- service reviews;
- commissioning of services;
- quality assurance of services;
- actions to meet equality duties;
- ceasing payment to voluntary/community groups; or
- if the Council has, as a matter of practice, consulted on a particular decision in the past, that will give rise to a 'legitimate expectation'¹ that it will do so again.

The more serious or significant the impact, the more likely it is that the views and concerns of those potentially affected should be sought before a decision is taken.

Responsibility for consultations

Responsibility for service area consultations remains with the individual service area, with support from the Governance, Information and Strategy service who will provide advice upon request and facilitate access to the Council's online consultation portal. Consultations must be conducted in line with the Council's Consultation Minimum Standards (Appendix 2) and in line with the Council's values: Passionate; integrity; Creative; Collaborative; Focussed.

Non-compliance with this policy may result in a legal challenge, known as a judicial review being brought against the Council and could result in the decision being overturned.

Consultation duration

In addition to ensuring consultation is undertaken at a formative stage, careful consideration needs to be given to the length of consultation. Where there is a statutory duty, the minimum length is usually prescribed by that process. In that case consideration should be given to whether that is sufficient time to enable informed contributions to consultations. Where there are no relevant statutory duties, sufficient time must be allowed to enable consultees to make informed responses. The more vulnerable the groups affected by proposals and the more adverse the impacts, the longer a consultation is likely to require.

Consultation scope

Where proposed impacts are adverse, steps must be taken to ensure those particularly affected have the opportunity to contribute to consultation. Where proposals are to make minor changes to universal services it may be sufficient to undertake general consultation using avenues such as the Council's online consultation portal.

Consultation content

¹ 'Legitimate expectation' is based on the idea that members of the public can rely on public bodies to act in particular ways. A 'substantive expectation' applies to specific policies or decisions and 'procedural expectation' which applies to process. The principle has been set by case law.

When designing consultation content the Council will ensure that it provides sufficient information in order to allow consultees to provide informed responses, takes into account likely needs of consultees, for example, consultations seeking views from adults with learning disabilities should consider providing alternative consultation solutions such as face to face discussions, easy read consultation documents etc. All draft consultation proposals should be reviewed against the Gunning Principles and any specific statutory duties that are relevant.

COMMUNITY ENGAGEMENT

Community engagement is the on-going process of developing relationships and partnerships so that the voices of local people and partners are heard.

The Council works with partners to undertake community engagement where it deems it necessary to ensure that it effectively understands the needs and views of local communities. As evidence of a commitment to this, the Council has produced a series of 'Community Contact' sheets which outline the various community assets that exist at ward level, for example faith and voluntary sector groups, local businesses and other services, as well as key community contacts. These are intended to assist Council officers in carrying out meaningful engagement with a wide range of stakeholders that collectively form our local communities.

Further support and guidance in carrying out community engagement is available via the Community Engagement Toolkit on Middlesbrough Learns, the Council's e-learning portal. The toolkit has been developed as a guide for Council officers, highlighting the key stages from planning to evaluating community engagement.

Benefits of Community Engagement

The overarching benefit of effective community engagement is that it increases local communities' capacity for self-help and self-management, in turn supporting a wide range of public sector agendas. Other benefits include:

- reducing social isolation by giving people a voice;
- supporting individuals to exercise more control over their lives;
- unlocking the potential for mobilising community energy and resources;
- better informed decision-making about service design and implementation; and
- improving the democratic process by bringing decision making closer to the people it affects.

Community Engagement Triggers

There are a variety of points at which it will be appropriate to engage with a particular community or the broader community. Below are some examples where this might occur:

- when asking for comments on the effectiveness of an existing service – for example customer feedback
- where accountability to service users will be an ongoing issue, for example through the creation of service user groups
- where customers input into the design of a service is desired – known as co-production
- where communities may wholly or partly be asked to deliver a service.

CONSULTATION AND COMMUNITY ENGAGEMENT SUPPORT AND GUIDANCE

Support and guidance on consultation, analysis and publication of results to ensure compliance with the policy is available by contacting the Governance and Information Team (01642 729080).

To obtain Community Contact sheets please contact the Community Infrastructure Manager (01642 729254). The Community Engagement Toolkit can be found on Middlesbrough Learns, the Council's e-learning portal.

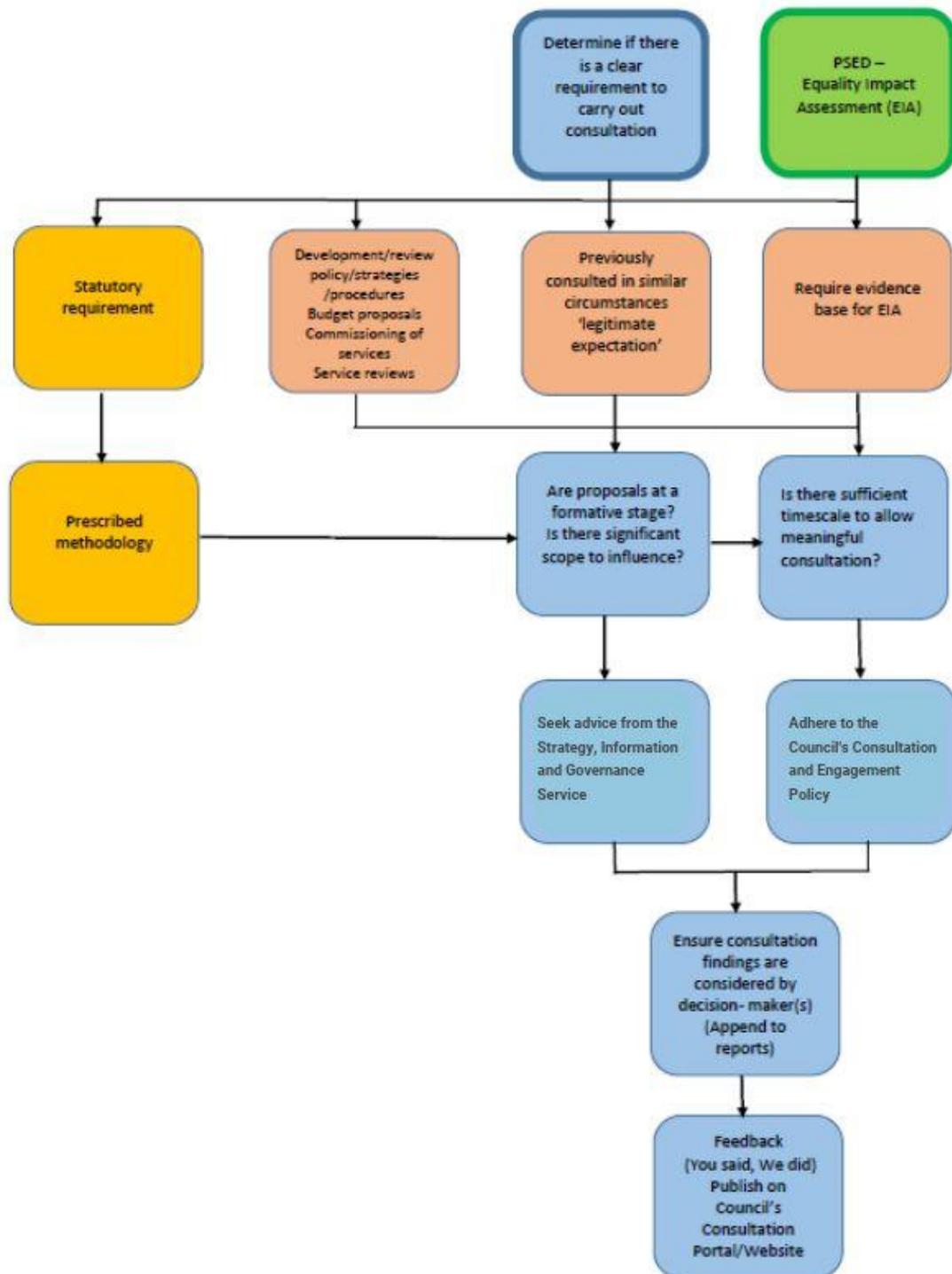
Review

This policy will be reviewed every three years, unless there is new legislation or amendments to the common law of 'fairness' which would require the policy to be updated earlier.

Supporting documentation

- **Appendix 1** – Consultation flowchart
- **Appendix 2** - Corporate Minimum Standard for consultations
- **Appendix 3** – Internal Questionnaire survey process note
- **Appendix 4** – Internal Guidance on GDPR considerations within consultations

Appendix 1



Appendix 2: Corporate Minimum Standard for Consultations

1. The following minimum standard takes into consideration both the 'Gunning Principles' outlined in the corporate Consultation and Community Engagement Policy and the Cabinet Office's Consultation Principles (2016).
2. Failure to adhere to these principles may result in the consultation process being deemed unlawful, decisions made utilising the consultation nullified and significant costs to the Council.

Consultation must have a purpose

3. Consider if there is a statutory or non-statutory requirement to consult. Do not ask questions about issues on which you already have a final view.

Consultation should be proportionate

4. The scale and scope of consultations must be proportionate to the significance or impact of the issue or proposal. The most appropriate consultation method must be used. These will depend on the issue under consideration, the stakeholders to be consulted and time and resources available.

Consultation must take place when the proposal is still at a formative stage

5. You cannot consult on a decision that has already been taken. Consultation should be undertaken when policies or proposals can be influenced and views genuinely taken into account.

Consultation must provide sufficient information to permit 'intelligent consideration'

6. Consultation should provide sufficient information to make intelligent choices and input effectively. Consultations should use Plain English and avoid acronyms. They should explain why the consultation is taking place, what respondents are being asked and how their views will contribute to the decision-making process. A decision-maker(s) can consult on a 'preferred option' and even a 'decision in principle', as long as the consultation document clearly states the alternative options. The demands of 'fairness' are likely to be higher if a decision may result in depriving someone of an existing benefit. If this is the case there may be a need to consult on alternatives to a preferred proposal to ensure that information provided to consultees is not misleading.

Consultation must provide adequate time for consideration and response

7. Unless statutory timescales are prescribed, there is no set period within which a consultation must take place. However, the period allocated should be proportionate and realistic. This will depend on the nature, complexity and impact of the proposal and typically may vary between two and twelve weeks. When decisions concern budget reductions that may impact on vulnerable groups, longer and more detailed consultation may be necessary. There must be a clear rationale for shorter timeframes e.g. prior engagement has already been carried out.

Consultation must understand who is responding

8. Consultations must ensure that appropriate equality monitoring is undertaken to demonstrate engagement across all relevant protected characteristics, in line with the Council's Equality Monitoring Policy.

Consultation feedback must be conscientiously taken into account

9. Consultation results must be formally presented in reports to the decision-maker(s) – the knowledge of an attending officer is not adequate. Decision-maker(s) must be able to demonstrate that consultation responses have been taken into account. Evidence that

careful consideration has been given to the option recommended will support the Council's position if a legal challenge arises.

Consultation must utilise corporate resources, where appropriate

10. The Council's Consultation Portal can be used to conduct online consultations. To find out more information about the Consultation Portal contact the Governance and Information Manager, Ann-Marie Johnstone.
11. In line with the Council's Customer Strategy, the Council adopts a digital-by-default approach to consultation, and as such the Consultation Portal should be used wherever practicable. However, it is recognised that additional methods (e.g. telephone, face-to-face) may be required to reach some groups targeted by the consultation.

Feedback

12. Feedback on the findings and outcomes of consultations must be provided, ensuring that consultees know that their input has been used constructively. The feedback provided will depend on the consultation issue, method and the target groups involved. Where applicable consultation feedback should be provided in the 'we asked, you said, we did' format and published on the Council's Consultation and website.

Contact

13. For support and guidance in conducting consultations, analysing and publishing results contact the Governance and Information Manager, Ann-Marie Johnstone.