

Consultation and Engagement Policy

Introduction

1. 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.
2. The Council already has a good track record on consulting and engaging local people as a normal part of service delivery. The purpose of this policy is to build on the good practice that already exists and set out 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.

Statutory obligations to consult

3. The Council must comply with the following legal duties to consult:

Local Government Act 1999, Section 3(2)

To fulfil the Best Value Duty, 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

The duty to consult on the introduction and revision of localised council tax reduction schemes.

Childcare Act 2006, Section 5d

The duty to consult before any significant changes are made to children's centre provision.

Children and Families Act 2014, Section 19

The 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

The duty to consult and involve patients, the public and representatives in the planning of 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.

4. The Council may also decide to carry out consultations where there is no statutory requirement to do so, but there is an ethical and / or value for money imperative.

Responsibilities

5. The Council's Corporate Strategy Team has responsibility for corporate consultations (including omnibus surveys) and the Council's Citizen's Panel. Responsibility for service-specific consultations remains with Outcome Areas, with support from the Corporate Strategy Team. All consultations must be conducted in

line with this policy and the Council's minimum standard for consultation and community engagement. Non-compliance with these standards may bring legal challenge to the Council, which if successful may result in the decision being overturned.

When to consult

6. Consultation *must* be undertaken where there is a statutory duty to do so, *and* comply with any statutory guidance handed down pertinent to that duty.
7. Outside of these duties, consultation may also be undertaken where feedback from local communities is needed to inform decisions. Consultation may be appropriate when undertaking the following:
 - the development and / or review of strategies, policies and procedures;
 - investment and / or budget reduction proposals;
 - the commissioning, quality assurance and review of services;
 - ceasing support to voluntary/community groups;
 - actions to meet equality duties; or
 - where the Council has consulted on a particular issue in the past, that will give rise to a 'legitimate expectation'¹ that it will do so again.
8. Conversely, it may not be appropriate to consult where the scope for respondents to inform the Council's approach is limited e.g.:
 - where proposed changes are tightly prescribed by legislation;
 - where proposed changes are minor or technical; or
 - where adequate consultation has taken place at an earlier stage.
9. The decision whether to consult will depend on the issues, and the nature and the impact of the decision. The more 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. This will be determined on a case-by-case basis, and must be justified in reports to decision-makers.

Guiding principles

10. 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 Gunning Principles

- consultation should occur when proposals are still at a formative stage;
 - consultation should give sufficient reasons for any proposal to permit intelligent consideration and response;
 - consultation 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.
11. Recent case law² has advocated two further principles:
 - 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.
 12. These two additional principles now 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 tax reduction scheme, it would be considered unlawful

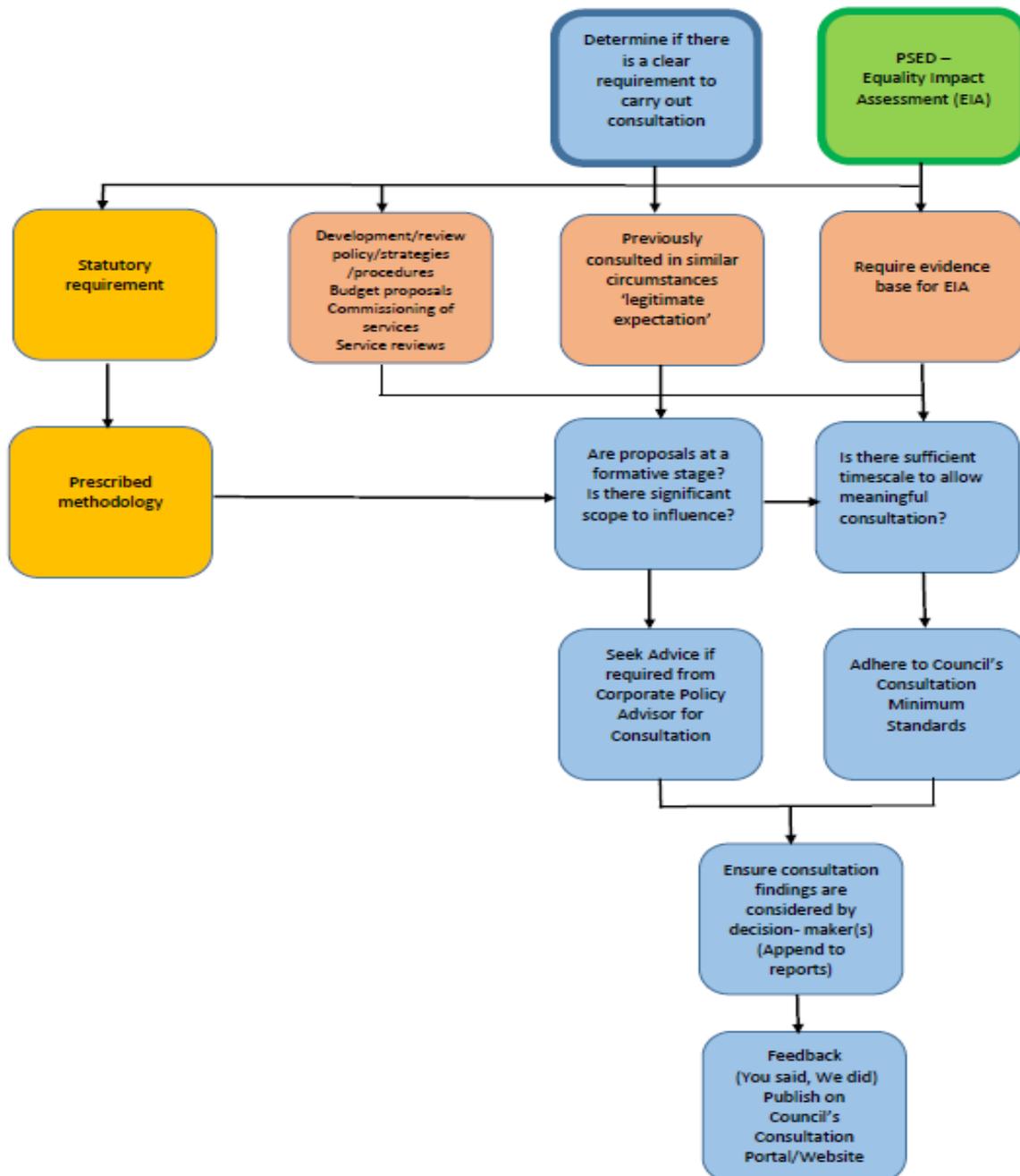
¹ Established by case law, 'legitimate expectation' is based on the idea that members of the public can rely on public bodies to act in particular ways. 'Substantive expectation' applies to specific policies or decisions, and 'procedural expectation' applies to process.

² (Moseley v London Borough of Haringey) Public authorities should be mindful of the need to consult on alternatives to their preferred proposal where it may be unfair not to do so and should ensure that information provided to consultees is not misleading.

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.

How to consult

13. Unless there are statutorily-prescribed procedures, and subject to the above guiding principles, consultation leads have broad discretion as to how a consultation exercise should be undertaken. Again, this will be determined on a case-by-case basis, and must be justified in reports to decision-makers.
14. A flow chart to assist in the development of consultation planning is outlined below, and an associated minimum standard for consultation and community engagement will be provided to senior managers. All consultations should be seen as projects and managed in line with the Council's Programme and Project Management Framework.



Community engagement

15. Community engagement is the ongoing process of developing relationships and partnerships with communities, so that the voices of local people and partners are heard. The principal benefit of effective community engagement is that it increases the capacity of local communities for self-help and self-management, in turn supporting a wide range of public sector agenda. 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.
16. Where appropriate, the Council will work with partners to undertake community engagement to ensure that it effectively understands the needs and views of local communities. 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; or
 - where communities may wholly or partly be asked to deliver a service.
17. The Council has produced a series of ‘Community Contact’ sheets which outline the various community assets that exist at ward level e.g. faith and voluntary sector groups, local businesses and other services, as well as key community contacts. These are intended to assist officers in carrying out meaningful engagement with a wide range of stakeholders that collectively form local communities.
18. 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 officers, highlighting the key stages from planning to evaluating community engagement.

Support

19. Support and guidance on consultation, analysis and publication of results to ensure compliance with this policy is available from the Corporate Strategy Team (01642 729231).
20. The Community Engagement Toolkit can be found on Middlesbrough Learns, the Council’s e-learning portal. To obtain Community Contact sheets please contact the Community Infrastructure Manager (01642 729254).

Review

- 21.** In line with the Council’s policy review schedule, this document 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.