

NORTH EAST DERBYSHIRE DISTRICT COUNCIL

RECORD OF DECISION TAKEN BY THE JOINT STRATEGIC DIRECTOR

8th November 2017

Consultation Policy

Authority for decision	Decision	Reasons	Alternative options considered and rejected	Conflicts of interest and any dispensation
9.2 To take all necessary action to achieve and implement the objectives and actions set out in approved policies, strategies, plans and decisions of Council or committees.	To clarify that consultation on all planning matters be undertaken in accordance with the guidelines set out in the adopted Statement of Community Involvement	This provision was not explicitly made in the Consultation Policy when formulated and approved in July 2014. At NEDDC work has begun on updating the Statement of Community Involvement (SCI) and this clarification has been requested by the JAD – Planning & Environmental Health	No alternative option considered. The SCI would take precedence over the Council's own Consultation Policy and so it is helpful to make this clear	None

Please complete the following where relevant:

Key Decision?	Confidential/ Exempt (if yes, please state paragraph)?	Do General Exception or Special Urgency Rules apply to this decision?	Consultation has taken place with the Section 151 & Monitoring Officer?	The Leader, Deputy Leader or relevant Portfolio Member have been consulted?
No	No	No	Yes	No

Authorising Signature: ...



...

Job title: .Joint Strategic Director.....

To be completed by PA to Director of Transformation:

Unique Reference Number: .. DD/115/17/LH.....

Date decision may be implemented following call in (if necessary):

Circulation to:

Chief Executive
Monitoring Officer
Section 151 Officer
Scrutiny Officer
Internal Audit

Consultation Policy

~~March~~November 2017



We speak your language

Polish

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Nous parlons votre langue

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CONTROL SHEET FOR CONSULTATION POLICY

Policy Details	Comments / Confirmation (To be updated as the document progresses)
Policy title	Consultation Policy
Current status – i.e. first draft, version 2 or final version	Final
Policy author	Information, Engagement & Performance Manager
Location of policy – i.e. L-drive, shared drive	S Drive
Member route for approval	Organisation Scrutiny Committee
Cabinet Member (if applicable)	
Equality Impact Assessment approval date	4/06/14
Partnership involvement (if applicable)	
Final policy approval route i.e. Executive/ Council /Planning Committee	Cabinet
Date policy approved	02/07/14 Reviewed March 2017 (Delegated decision DD/107/17/SB – 20/09/17)
Date policy due for review (maximum three years)	March <u>November</u> 2020
Date policy forwarded to Customer Service and Improvement (to include on Intranet and Internet if applicable to the public)	15/07/14 Reviewed document on 03/10/17

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Consultation Policy

1. Introduction

Consultation is the process by which we seek advice, information and opinions about our strategies, policies and services to inform our decision-making and design good services. This includes many familiar activities such as surveys, public meetings and user and resident forums. We make decisions influenced by the knowledge we have gathered through consultation.

Effective consultation can help us to:

- Target services at what people want and need
- Plan services better to give users what they want and expect
- Improve the delivery of services and take up of services
- Test options for service change
- Prioritise services and make better use of limited resources
- Set performance standards relevant to users' need

Local authorities are under a general Duty of Best Value to “make arrangements to secure continuous improvements in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.”¹

For the purpose of deciding how to fulfil their Best Value Duty, authorities are under a Duty to Consult² representatives of a wide range of local persons. Authorities must consult representatives of council tax payers and persons liable to pay non-domestic rates, those who use or are likely to use services provided by the authority, and those appearing to the authority to have an interest in any area within which the authority carries out functions.

When considering changing funding to local voluntary and community groups and small businesses the authority should include those organisations in their consultation.³ This should apply at all stages of the commissioning cycle, including when considering the decommissioning of services. Authorities should actively engage the organisation and service users as early as possible before making a decision on the future of the service, any knock-on effects on assets used to provide this service and the wider impact on the local community.

¹ Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007).

² Section 3(2) of the Local Government Act 1999.

³ Best Value Statutory Guidance September 2011.

It is important to note that whether or not a public body was required to consult, if it does so then the consultation must be carried out fairly and in accordance with the Gunning principles:⁴

1. Consultation must take place when the proposal is still at a formative stage;
2. Sufficient reasons must be put forward for the proposal to allow for intelligent consideration and response;
3. Adequate time must be given for consideration and response; and
4. The product of consultation must be conscientiously taken into account.

The consultation process must be substantively fair and have the appearance of fairness.

Equality and diversity are integral to the consultation process. We need to take on board the public sector equalities duties⁵ not to discriminate and to advance equality of opportunity when undertaking consultation exercises. The general duty requires public authorities to have an adequate evidence base for its decision-making. Consultation and engagement⁶ can assist with developing the evidence base. The specific duties go further and require listed bodies to publish information about the engagement they have undertaken with persons with an interest in furthering the aims of the duty, including the development of equality objectives.

2. Scope

This policy applies to all consultations undertaken by or commissioned by the Authority with employees, councillors, customers, residents, members of the public, businesses, visitors and other external stakeholders, for example, other agencies and contractors.

[Consultation on all planning matters, including planning policies, planning proposals and planning applications shall be undertaken in accordance with the guidelines set out in the adopted Statement of Community Involvement.](#)

A separate process led by Human Resources and Payroll exists for employee consultation in relation to pay and conditions.

The policy covers all statutory and non-statutory consultations.

⁴ As derived from the court case R v Brent London Borough Council, ex parte Gunning (1985) 84 LGR 168 at 169.

⁵ As contained within the Equality Act 2010.

⁶ Engagement is a broad term intended to cover the whole range of ways in which public authorities interact with their service users and their employees over and above what they do in providing services or within a formal employment relationship. It may be focused on a specific issue or on service delivery or workforce issues more broadly. (Engagement and the equality duty: A guide for public authorities – Equalities and Human Rights Commission).

3. Principles

The Government's guidance⁷ sets out the principles that Government departments and other public bodies should adopt for engaging stakeholders⁸ when developing policy and legislation. The principles apply to all public bodies.

The governing principle is proportionality of the type and scale of consultation to the potential impacts of the proposal or decision being taken, and thought should be given to achieving real engagement rather than simply following a process.

The guidance goes on to make a number of important points under the following headings:

A. Consultations should be clear and concise

Use plain English and avoid acronyms. Be clear what questions you are asking and limit the number of questions to those that are necessary. Make them easy to understand and easy to answer. Avoid lengthy documents when possible and consider merging those on related topics.

B. Consultations should have a purpose

Do not consult for the sake of it. Ask departmental lawyers whether you have a legal duty to consult. Take consultation responses into account when taking policy forward. Consult about policies or implementation plans when the development of the policies or plans is at a formative stage. Do not ask questions about issues on which you already have a final view.

C. Consultations should be informative

Give enough information to ensure that those consulted understand the issues and can give informed responses. Include validated assessments of the costs and benefits of the options being considered when possible; this might be required where proposals have an impact on business or the voluntary sector.

D. Consultations are only part of a process of engagement

Consider whether informal iterative consultation is appropriate, using new digital tools and open, collaborative approaches. Consultation is not just about formal documents and responses. It is an on-going process.

E. Consultations should last for a proportionate amount of time

Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the proposal. Consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses.

⁷ A revised set of government Consultation Principles were published in January 2016.

⁸ Refers to all parties who may have an interest in a consultation exercise or could be affected by the proposal being consulted on.

F. Consultations should be targeted

Consider the full range of people, business and voluntary bodies affected by the policy and whether representative groups exist. Consider targeting specific groups if appropriate. Ensure they are aware of the consultation and can access it. Consider how to tailor consultation to the needs and preferences of particular groups, such as older people, younger people or people with disabilities that may not respond to traditional consultation methods.

G. Consultations should take account of the groups being consulted

Consult stakeholders in a way that suits them. Charities may need more time to respond than businesses, for example. When the consultation spans all or part of a holiday period, consider how this may affect consultation and take appropriate mitigating action.

H. Consultations should be agreed before publication

Seek collective agreement before publishing a written consultation, particularly when consulting on new policy proposals. Consultations should be published on gov.uk.

I. Consultation should facilitate scrutiny

Publish any response on the same page on gov.uk as the original consultation and ensure it is clear when the government has responded to the consultation. Explain the responses that have been received from consultees and how these have informed the policy. State how many responses have been received.

J. Government responses to consultations should be published in a timely fashion

Publish responses within 12 weeks of the consultation or provide an explanation why this is not possible. Where consultation concerns a statutory instrument publish responses before or at the same time as the instrument is laid, except in exceptional circumstances. Allow appropriate time between closing the consultation and implementing policy or legislation.

K. Consultation exercises should not generally be launched during local or national election periods

If exceptional circumstances make a consultation absolutely essential (for example, for safeguarding public health), departments should seek advice from the Propriety and Ethics teams in the Cabinet Office.

The government Consultation Principles document does not have legal force and is subject to statutory and other legal requirements.

Consultation and legitimate expectations

Based on the Gunning principles a number of important points taken from legal sources⁹ are noted below:

Proposal at a formative stage

The decision maker cannot consult on a decision that it has already made. It would be unfair to do so but also pointless.

This principle does not mean that the decision-maker has to consult on all possible options of achieving a particular objective. A decision-maker can consult on a 'preferred option' so long as it is prepared to change course if persuaded to do so subject to the outcome of consultations.

Sufficient reasons to allow for intelligent consideration and response

Consultees should be made aware of the basis on which a proposal for consultation has been considered and will thereafter be considered. Those consulted should be aware of the criteria that will be applied when considering proposals and what factors will be considered decisive or of substantial importance at the end of the process.

Consultees must be given sufficient information to enable them properly to understand the proposal and respond to it.

If information provided to consultees is incorrect or misleading, or does not give the true reasons for putting forward the relevant proposals, then this may constitute a sufficient flaw in the consultation process to lead to a quashing of the subsequent decision.¹⁰

Although there is no general obligation to disclose unpublished internal advice or representations from other consultees, that remains subject to the overarching requirement to give sufficient reasons for consultees to be able to respond intelligently. If a proposal has been informed by private representations, those representations should be made available to consultees.

Adequate time for consideration and response

Unless statutory time requirements are prescribed, there is no necessary time frame within which the consultation must take place. If a decision-maker wishes to depart from its policy on time-frame (where it has one) then it should have a good

⁹ Consultation and legitimate expectations by Clive Sheldon QC, January 2012, Consultation by Jonathan Auburn, 4-5 Gray's Inn Square, London, 2012.

¹⁰ e.g. R v Brent London Borough Council, ex parte Gunning (1986) – a school closure case in which the consultation document was misleading on the question of cost.

reason for doing so. Otherwise it may be guilty of a breach of a legitimate expectation that the policy will be adhered to.

Decision-makers will have to form a judgement as to what period of time is appropriate for the consultation exercise in issue. Where there has been prior discussion about the issue then it may reasonably decide to limit the time for formal consultation. On the other hand, where the information to be disclosed is complex, or not well known to those consulted upon, it may consider that a greater period of consultation is called for.

The product of consultation must be conscientiously taken into account

The decision-maker must give genuine and conscientious consideration to the representations received. The product of the consultation exercise must be taken into account in finalising any proposals. The decision-maker must embark on the consultation process prepared to change course if persuaded by that consultation process to do so.¹¹

The decision-maker does not have to read personally every response provided in the consultation process. However, where a summary is provided, this will need to be comprehensive and accurate. It is always sensible to make available to the decision-maker all of the underlying materials, so that they can access them if they wish.

A set of key principles for consultation by the Authority, drawn from best practice and guidance, are included in Appendix 1.

4. Statement

Taking into consideration the above principles each year an Engagement Plan will be put together of the external consultation activity planned for the financial year. This information will be taken from Service Plans outlining the work planned by each Department within the financial year.

The plan will provide a centralised source of information for use by employees, partners and Elected Members. Consultations will be publicised on the website and on Ask Derbyshire (the online consultation hub shared by Bolsover District Council and North East Derbyshire District Council) as a way of raising awareness of upcoming consultation events and activities.

The plan will contain a mix of regular consultation groups such as the Disabled People's Joint Consultative Group and one-off consultations identified as being required within the financial year.

In spring each year service areas will be asked to consider their consultation requirements and to provide relevant details for the plan through their Service

¹¹ R v Brent London Borough Council, ex parte Gunning (1986).

Plans. Each autumn the plan will be reviewed and updated to reflect any changes to planned consultations and to provide evidence for completed consultations. At the end of each financial year the plan will be fully updated and evidenced.

The Improvement Officer (consultation lead) is available to provide advice at any stage of a consultation. It is advisable to seek advice early in the process and ideally before you start your consultation especially if you have not undertaken an exercise before. The Improvement Officer can help you design the consultation, develop questionnaires and provide practical assistance with running consultation events and all aspects of ad-hoc consultation exercises.

A list of regularly used consultation methods is contained at Appendix 2.

For a significant consultation exercise a working group approach is recommended which includes officers with relevant expertise. From a corporate perspective this is likely to include the Communications, Marketing and Design Manager and the Improvement Officer (equalities lead) as well as the Improvement Officer (consultation lead)¹². Putting together a consultation plan may be useful to ensure that all key principles have been considered and evidenced.

The Council is committed to consulting with key stakeholder groups and has in place a number of key corporate consultation mechanisms to make this easier:

Residents

The Council has a Citizens' Panel made up of approximately 500 residents who have agreed to take part in postal (or on-line) surveys. Some panel members have also expressed an interest in participating in face to face consultations and some have expressed interest in specific topics. The panel is broadly representative of the district's demographic profile (for over 18's).

Young People

The Council has links to local schools should you wish to involve young people in your decision making process. Contact the Improvement Officer (consultation lead) for advice on involving young people in your consultation. Additionally, Rykneld Homes, works closely with young people (aged 11-19) in the district through the Community Improvers group.

Older and Disabled People

The Council has a Disabled People's Joint Consultative Group which consists of a small number of people who have a specific interest in the support on disabled people within the district. The Group helps us to meet our statutory equality duties to involve and consult with individuals and interest groups. The Group has an important role in scrutinising some of our Equality Impact Assessments, which are

¹² Officers located within the Customer Service and Improvement Department

a tool for driving service improvements. They also provide feedback on their experience of our services.

The Improvement Officer (equalities lead) maintains a database of local voluntary groups which may be useful for identifying relevant stakeholders for some consultation exercises.

In addition the Council can utilise its local partnership mechanisms to raise awareness of consultation, and tap into established networks to widen stakeholder involvement and participation.

Partners

North East Derbyshire District Council's Partnership Team has established links with a range of organisations from the public, private, community and voluntary sectors, working with partners in a variety of ways including one to one liaison, and multi-agency strategic or operational groups to improve how services support local people. The Partnership Team are also responsible for maintaining the Council's engagement with the local voluntary sector infrastructure bodies and the advice agencies and do this through direct contact and monitoring reports.

Links Council for Voluntary Service (CVS)

Links is the CVS for Chesterfield and North East Derbyshire, funded by the Council and other local statutory sector organisations to provide advice, support and training to the local voluntary and community sector. A core role is to take positive actions to address discrimination and disadvantage; and whilst Links are not expected to provide a consultation route to local groups on behalf of the Council, they may be in a position to help publicise and signpost groups with interests in any Council consultation proposal.

Members

Elected Members have a role in both representing the Council and representing their community. As such it is important that relevant Cabinet Members are briefed by service areas about consultation events and activities within their remit and relevant Members are briefed about any consultation events and activities scheduled to take place locally in their ward. This will help ensure that relevant Members are suitably informed and enhance the public perception that the Council acts coherently. These information sharing discussions should begin early in the planning process.

Involving other Council Services

The consultation process has strong links with equalities – could the proposal potentially have any equality impacts and the implications for the consultation exercise as a result, the need to ensure that the consultation exercise is accessible to all through use of the equalities statement, practical consideration of venues and

paying for travel and other expenses are all relevant factors which may need consideration. Reference to the relevant corporate equalities documents is recommended.

Effective communication is also essential for a successful consultation exercise – clear and understandable information at each stage of the consultation process not only adheres to our principles but makes for a meaningful exercise which more people will hopefully participate in. This will require an effective communications plan including all relevant stakeholders both internal and external to the Council. It is advisable to inform the Communications, Marketing and Design Manager early in the process to maximise the benefits from communication.

Data protection considerations need to be taken into account also. If we are collecting personal information through a consultation exercise then we need to ensure that a relevant ‘fair obtaining’ notice is included notifying the consultee of how this information is to be used. The guidance on the use of fair obtaining notices contains further information.

5. Responsibility for Implementation

A good understanding of the policy will ensure that consultation exercises are carried out consistently and fairly throughout the Authority.

The Customer Service and Improvement Departmental responsibilities are:

- To provide advice and guidance on consultation matters to Officers, Managers and Elected Members.
- To co-ordinate, update and report on the annual Engagement Plan.
- To maintain a consultation listing through Ask Derbyshire for external and internal use.
- To deliver and manage the Citizen’s Panel.
- To deliver and support the Disabled People’s Joint Consultative Group.
- To support ad-hoc consultation exercises in conjunction with departmental service areas (subject to resources).
- To liaise with the Partnership Team over the use of the local partnership mechanisms (where appropriate).
- To accurately record responses to consultation exercises undertaken, to make recommendations based on those responses and to make available to decision makers in summary form and in full.

Departmental service area responsibilities are:

- To undertake consultation exercises and activity in accordance with the policy.
- To involve and inform relevant officers and members in the consultation planning process.
- For those undertaking their own consultation exercises, to accurately record responses to consultation exercises and to make available to decision makers in summary form and in full.

- To use the consultation results and comments to inform a decision, finalise a proposal or produce an action plan for improvement to service delivery.
- To publicise the results and the actions to be taken following the consultation exercise to the target audience.
- To inform relevant officers and members of the outputs and outcomes of the consultation.

Decision Maker responsibilities are:

- To give genuine and conscientious consideration to the representations received through consultation and to take into account when finalising any proposals and making decisions.

Improvement Group responsibilities are:

- To receive regular reports on consultation exercises undertaken and their results via Engagement Plan and Customer Service Excellence reporting.
- To share and learn from best practice.

6. Glossary of terms

Consultees/Stakeholders – Refers to all parties who may have an interest in a consultation exercise or could be affected by the proposal being consulted on. All those whom we need to ensure have an opportunity to participate in a consultation exercise.

Decision Makers – Those parties, who will be using the outcome of a consultation exercise together with other information to make a decision, finalise a proposal or agree actions for improvement. Decision makers will usually be senior managers or elected Members.

7. Appendices

Appendix 1 Consultation Principles

Appendix 2 Consultation Methods

Appendix 1

Consultation Principles

When consulting NEDDC will ensure that the following key principles are adhered to:

- When we have identified a need to consult we will consult early in the process when the issue is still under consideration.
- Raising public expectations of action or change by consulting on issues outside of the Authority's remit or control will be avoided.
- Resources allocated to the consultation exercise will appropriately reflect the potential impacts of the proposal or the decision being taken.
- The purpose and scope of each consultation exercise we undertake will be clearly communicated from the outset and the reasons why we are seeking views outlined. We will state if any aspects have already been finalised and will not be subject to change.
- Careful consideration will be given to which communities need to be consulted including 'seldom heard' groups such as young people, ethnic minorities and people with disabilities to ensure that a full range of stakeholders is included.
- We will provide information to stakeholders in an easily understandable format, use plain English, avoid jargon and clarify the key issues. Where appropriate alternative formats such as Braille, large print, and minority languages will be used.
- We will make available sufficient information to enable stakeholders to make informed comments.
- We will carefully consider how best to consult and use a range of consultation tools and techniques including informal ways such as on-line engagement and focus groups to ensure that the approach is appropriate for the consultation subject and intended audience.
- Consultees will be given sufficient time to respond to our consultation exercises. We will consider the nature and impact of the proposal and typically allow between two and twelve weeks depending on the complexity of the issue and diversity of interested parties.
- We will give genuine and conscientious consideration to the representations received through consultation. The outcomes of consultation exercises will be taken into account by decision makers when finalising any proposals and making decisions.

- Responses to consultation exercises will be accurately recorded and made available to decision makers in summary form and in full. They will also be kept for audit and inspection purposes in accordance with our corporate retention guidelines.
- Consultation participants will be given clear, accurate and timely feedback on the overall results of the consultation exercise to which they contributed and the actions or decisions taken.

Appendix 2

Consultation Methods

Corporate Consultation Mechanisms

Citizens' Panel

This is a panel made up of approximately 500 North East Derbyshire District Council residents who have agreed to take part in regular surveys. The panel is broadly representative of the district's demographic profile (over 18's). Panel members receive two questionnaires per year from the Authority in June and November. Additional surveys can be undertaken if required. We use a mixture of postal and electronic surveys to suit individual needs. Some panel members have also expressed an interest in participating in face to face consultations such as focus groups or workshops.

Disable People's Joint Consultative Group

The Council has a Disabled People's Joint Consultative Group which consists of a small number of people who have a specific interest in the support of disabled people within the district. The group meets each quarter and helps the Authority meet our statutory equality duties to involve and consult with individuals and interest groups. The Group has an important role in scrutinising some of our Equality Impact Assessments, which are a tool for driving service improvements. They provide feedback on their experience of our services and test some of our communications.

Common Consultation Methods

Surveys – Postal

Postal surveys involve sending out a paper based questionnaire to respondents who then complete and return it by a specified date. Paper based self-completion questionnaires, either postal or distributed in another way e.g. deposited at our offices, are one of the most popular survey methods available. They are flexible, easy to administer, relatively cheap and can often be successfully carried out in-house. Postal surveys are ideal when those you want to survey are widely dispersed across the district.

Surveys – on-line

Electronic surveys are similar to postal questionnaires but can include some 'routing' of questions so that respondents giving a different answer are led down another route and can skip questions that are not relevant. On-line surveys are ideal for respondents who have email (and so can be sent a link to the survey) and internet access and also for 'open' consultations where we are seeking views from anyone with an interest in the consultation proposal. They are also one of the quickest and least expensive methods of consultation.

Surveys – face to face/street interviews

Face to face surveys follow a similar format to other questionnaire based methods but in this case, rather than being self-selecting, the interviewer (or sample selector) chooses who to interview. This method can encourage those who would not normally complete a questionnaire to take part and the data collected is of a consistent quality, however, it can be more time consuming and expensive to conduct.

Focus groups and workshops

Focus groups are a qualitative research methodology where a small number of people (usually between 6 and 12) are brought together with a moderator to discuss a specific topic in depth. These are used with the aim of generating a discussion on a topic and collecting information on the preferences, attitudes and beliefs of the participants. Using a guided discussion rather than formal questions and answers allows for greater probing of views.

Street Surgeries

The ‘Street Surgery’ method of consultation involves councillors and officers visiting a local area and listening to the views of local people. In practice it means choosing a relatively small, defined area of the district to visit on a specific date and within specified times and publicising this in advance to residents and businesses locally. The session is essentially a “roving” surgery based on the concept of councillors’ regular surgeries but could include representatives from council services, partner organisations and Parish and County councillors as well as District Councillors. This group would be available to answer queries, give information, and take down complaints and most importantly to listen to the views of local residents. This method provides an opportunity for the council to get out and meet its customers, potentially reaching those that perhaps would not take part in more formalised consultation methods.

Surgeries allow the topics for discussion to be led by local residents rather than imposed by the Council, however officers could be briefed to ask about specific issues and the surgery could form part of an ongoing consultation programme where appropriate.

