
WIRRAL COUNCIL

Consultation Policy



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Introduction

Consultation involves listening to and learning from local people before decisions are made or priorities are set. The outcome of a consultation is one of many factors that Members take into account when making a decision. For example, other factors include having regard to legislative requirements, budget constraints and potential grant funding conditions.

Councils frequently have a requirement to consult with residents and this is especially true for issues such as planning and traffic regulation orders. Consultations are bound by legal requirements and can have strict rules as to how they should be conducted. If the Council fails to run a statutory consultation in line with those rules, then the Council could be vulnerable to legal challenges such as judicial review. It is vitally important then when preparing specific consultation plans, all legal requirements are met. Regardless of any legal implications, consulting with residents is simply the right thing to do.

Wirral Council is committed to listening to local people and enabling residents, partners, visitors and businesses to shape their neighbourhoods and the services they receive. The need to positively engage with, listen to and act upon stakeholders' views is becoming increasingly important across all public sectors. As a result, the Council needs to ensure that, when we consult or engage, we get it right first time and stakeholders have confidence that their voices will be listened to.

Effective consultation and engagement involves dialogue, respect, integrity, transparency and accountability. It also involves the ability to evidence how views were sought, considered and how they influenced the decisions made or shaped more detailed proposals. Effective and timely consultation can help target services towards what people want and need, improve the delivery of services, test options for service change, prioritise services, and make better use of limited resources.

The results of consultation are not a substitute for the democratic process and do not replace the legitimate role of elected representatives in decision-making.

Purpose

The overall aim of this policy is to ensure that when the Council consults with residents in respect to the services it provides, it does so in an inclusive, consistent and transparent manner demonstrating that understanding the needs of residents, customers and partners is fundamental to the decision-making process.

Within the Policy there are four key objectives:

- To **optimise involvement** for residents, customers, stakeholders etc.
- To **co-ordinate consultation** across council directorates and partners.
- To develop the council's ability to make **effective use of consultation techniques**.
- To endeavour for consultation to be undertaken according to **best practice guidelines**.

This policy provides guiding principles of how the Council will consult. It is not meant to be an exhaustive document encompassing everything the Council does, rather addresses why, when, how and who the Council consults.

Principles

Consultations

The Council will fulfil its statutory obligation and consult where it is obliged to do so. Fulfilling this obligation includes meeting any legal requirements regarding who to consult with, methods of consultation and/or timeframes for consultation. Example timeframes for recurring consultations are listed within **Appendix A** for information.

Non- Statutory Consultations

Where no statutory obligation exists and where it is proportionate and/or best practice to do so, the Council will consult on significant decisions, which meet one or more of the general criteria below (please note this list is not exhaustive):

- Decisions which are likely to have an impact of significance on a particular group of service users, residents or businesses, for example near a specific location
- There is or is likely to be widespread public interest

The Council will follow the “Gunning Principles” when undertaking consultations which are detailed in **Appendix A**. which also explains the Legal considerations in respect to consultations.

Timeframes for consultation will be proportionate and allow enough time for consideration and response. They will generally take account of holiday periods. Where there are no statutory consultation timeframes, consultations that are primarily focussed on the voluntary and community sector (VCS) will run for a minimum of 6 weeks but could typically run for a period of 12 weeks.

The Council acknowledges that some stakeholders might need more time to provide their response. Therefore, in appropriate circumstances, extra time may be taken to publicise and promote a consultation in order to raise public awareness.

The range of channels or ways to enable residents and stakeholders to be involved and provide feedback during a consultation will be specified and accounted for. This may include but not be limited to: face to face drop-in sessions with officers, the Council website, the use of video clips, online surveys, and paper formats which will be made available through public venues across the borough, e.g. Libraries and Leisure Centres.

The Council aims to ensure that everyone who wishes to have a say can do so. The form of the consultation will be proportionate and will depend on the issues under consideration, the scale of change and any required legal processes. Opportunities for co-production of consultations will be fully explored to give all residents an opportunity to participate in a way that suits them best.

Consultations will be communicated in plain English and will avoid the use of acronyms and jargon or alternatively explain the use of any acronyms or jargon if it is necessary. The Council will aim to ensure that the purpose of the consultation is clear and the questions asked will be easily understandable, to enable an informed response to be submitted. Consultations should consider the needs of people with learning disabilities, impaired sight or hearing or people whose first language is not English.

Ward members will be informed in advance of any consultations being undertaken, which affects their ward and communities.

Results of consultations will be reported factually by officers in sufficient time for Members to refer to them. When Members are making a decision, views expressed as part of a consultation are a consideration but not a determining factor.

The Council will generally publish on its website, after the consultation has closed, the number of responses received and summary information on the views collected. This information will usually be contained in the Committee or Officer decision associated with the consultation outcomes so that residents can easily track how their views have been both reported and considered.

In carrying out either a statutory or non-statutory consultation, the Council will work to ensure that other relevant legal obligations such as data protection, equalities legislation etc are adhered to.

Roles & Responsibilities

Elected Members

When making decisions, Members will give genuine and conscientious consideration to the representations received through consultations. They will have regard to the officer report which captures the consultation feedback to inform their decision making.

When speaking with residents or answering enquiries from residents in respect to the consultation process, Members will clearly communicate that whilst the Council wishes to hear the views of residents, the results of consultations are informative but not determinative of the outcome of a particular issue. In other words, it is up to members to determine what weight to attach to public representations/consultation responses when making a decision.

Officers

Directors will ensure that Ward Councillors are informed of any consultations affecting their wards at a formative stage. Further, Directors will give consideration to any feedback received from Ward Councillors prior to the launch of the consultation process.

When drafting Committee reports and recommendations, Officers will factually present the representations received and take these into account when finalising proposals and recommendations put to Committees.

Directors will ensure that consultations that are undertaken secure input from relevant corporate colleagues who have knowledge and understanding and are up-to-date with any legislative changes that impact on the need for consultation and any developments in case law which affect the subject matter of the consultation.

Directors will endeavour to ensure that consultation exercises and activity are carried in accordance with principles outlined in this policy. Where possible, a consistent approach will be applied in respect to the publication of the results and actions taken following the consultation exercises on the Council Website.

Legal Considerations

Whether or not there is a legal obligation to consult, if consultation takes place, it must be carried out fairly and comply with legal principles, known as the Gunning Principles (referenced in Appendix A).

Once a formal consultation is embarked upon, be it statutory or non statutory, legal requirements commence. Officers must be clear as to whether they are formally 'consulting'. The Council could be legally challenged and asked to demonstrate that the right questions have been asked and the Council has taken into account what people have said when decision making. Significantly, the Council could be challenged to demonstrate that there were elements of the proposal which were genuinely able to be changed as part of the consultation.

The Council must also work to adhere to the Data Protection Act 2018 and the UK GDPR which requires a legal basis for the processing of personal data. The Council must ensure that data collection processes are fit for purpose and that respondents have been advised accordingly. The use of a Privacy Policy for all data collection exercises is required.

Equalities Considerations

As a matter of public law, when the Council is proposing policy and service delivery changes, it is required to consider whether consultation is necessary. This is particularly important when changes are likely to affect any of the groups with protected characteristics or others. The Equality Act 2010 requires the provision of reasonable adjustments to meet the needs of a disabled person where they are different from the needs of non-disabled people to provide equal access and equal treatment. It is important to take this into account in consultation and to offer to make the consultation available in accessible formats on request.

It is important that any reasonable adjustments are made as early in the consultation process as possible to ensure that all views are sought and taken into account. Delays can result in consultations needing to be extended.

Implementation & Review

A training module for Elected Members and Officers will accompany the policy.

The Consultation Policy is an iterative document and will be kept under continuous review. Minor amendments to the policy will be delegated to the Director of Law & Corporate Services to undertake. Any proposed significant amendments to the policy will be submitted to the Policy and Resources Committee for consideration and approval.

Appendix A

Legal Considerations

On a fundamental level, consultation is about the acquiring of sufficient information for a decision maker to be able to make a good decision and where the Council considers that the acquiring of that information should or must involve consultation. Without any other duty, it is for the Council itself to consider whether or not a matter requires consultation. This is part of what is known as the decision maker's Tameside duty, which requires the Council in making a decision to ask itself the right question and take the reasonable steps to acquaint itself with the relevant information to enable it to answer it correctly.

In some cases there is a requirement to consult certain groups on certain issues. This may be a specific statutory requirement, such as on open space, and in others it is a matter of being caught by generic statutory provisions, such as the Public Sector Equality Duty (PSED) assessment or the best value duty under s.3 of the Local Government Act 1999. In others still it is a matter of legitimate expectation or of fairness, particularly where the prospective decision contemplates depriving someone of an existing benefit or advantage rather than when the claimant is a bare applicant for a future benefit.

There are a large number of statutory provisions which prescribe timescales for particular consultation exercises. Examples of these are as follows:

- Planning applications have a consultation period of 21 days.
- Public path orders have a consultation period of 28 days.
- Notice of intention to sell land comprising public open space requires advertising in a local newspaper for 2 consecutive weeks.
- Public Space Protection orders required a consultation period but the length of this process is not prescribed.
- Premises licence applications require a 28 day consultation period.

Cabinet Office Considerations

The Cabinet Office Consultation Principles provide guidance on how those issues should be addressed, but do not prescribe the requirements for a valid consultation. The message from Government is that:

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

Both the Cabinet Office Principles and recent case law emphasise that consultation requirements vary from one context to another and should be assessed on an individual basis. The burden is therefore on public authorities to decide how, when, with whom and how widely to consult. Difficult judgments need to be made on just what level of consultation is ‘proportionate’ to the purpose and objectives of a consultation exercise.

Gunning Principles

The Cabinet Office Principles augment but do not displace the general principles derived from case law as to how consultations should be conducted. Those principles, known as the Gunning Principles and were approved by the Supreme Court and are:

- That consultation must be at a time when proposals are still at a formative stage.
- That the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response.
- That adequate time must be given for consideration and response and,
- That the product of consultation must be conscientiously taken into account in finalising any statutory proposals;
- In the case of *Moseley v Haringey*, the Supreme Court endorsed the Gunning principles and added two further general principles:
 - In certain circumstances, that the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting. (The demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage than when the claimant is a bare applicant for a future benefit); and
 - Sometimes, particularly when statute does not limit the subject of the requisite consultation to the preferred option, fairness will require that interested persons be consulted not only upon the preferred option but also upon arguable yet discarded alternative options.

These principles have now been subject to a raft of case law and are a certain target for any challenge to a Council decision.

The Cabinet Office Principles and the subsequent cases confirm that, in considering whether and how to carry out a consultation, councils should give detailed thought to what length of consultation and what methods of consultation would be appropriate in all the circumstances. The underlying principle of fairness should be at the forefront of the process.

