



<b>Meeting of:</b>	<b>Date:</b>	<b>Agenda item:</b>	<b>Wards:</b>
New Homes Board	17 June 2020	2e	All

## **SUBJECT: New Build Team resident engagement during Covid-19**

### **1. Synopsis**

- 1.1 To note the practical issues resulting from Covid-19 and in particular guidance on social distancing and restrictions placed on groups gathering, in relation to the New Build Team (NBT) undertaking resident consultation in respect of proposed new build development projects.
- 1.2 Under S105 of the Housing Act 1985 the Council is required to ensure the participation of tenants in decisions which will substantially affect their homes. Failure to comply with S105 can render a decision made by the Council subject to judicial review and could ultimately result in the decision being quashed.
- 1.3 This report sets out the New Build Team's proposals for adapting its approach to resident engagement in order to both fulfil the Council's obligations under S105 of the Housing Act 1985, and to ensure robust and meaningful consultation with residents likely to be affected by the Council's new build projects.

### **2. Recommendation**

- 2.1 NHB are asked to note the contents of the report and provide comment on the proposals and/or suggestions for consideration.

### **3. Background**

- 3.1 The NBT have a well established approach to resident engagement. When a potential new build opportunity is identified and the decision made that new homes could be built, the NBT Project Manager will identify any stakeholders that may need prior notice/information/input about the proposals before a consultation with residents takes place. These include staff inside the council e.g. communities team, planning officers, tree officers etc. and external organisations and recognised resident groups e.g. TRA,

local charities using any of the sites that will be affected, community gardening groups etc. The number of stakeholders involved varies depending on the size of the scheme.

3.2 The current format of NBT consultation is briefly described below:

- If it is the first consultation on an estate we will write to residents saying we are considering building new homes on their estate, that it's very early days and we will invite them to a consultation event to discuss ideas and understand what they want/need and what the problem areas are e.g. ASB, lack of play areas etc. Where we are already in the process of consulting with residents we would send out a newsletter, a few weeks before the consultation event outlining where we are in the new build process, what has already been done and what the purpose of the upcoming consultation is
- About a week before the consultation event residents receive a flyer inviting them to attend the event, posters are put up around the estate and on any ENBs
- The PM will contact any stakeholders such as a TRA/TMO to notify them of the event
- The event is run by the PM and the architects. It usually last about 3-4 hours running from late afternoon to early evening as a drop-in event
- Feedback is collected at the event and via SURVS (online questionnaire). Usually around 3 weeks is allowed for the feedback
- Within a week of the event a newsletter and questionnaire is distributed to residents asking for their feedback and to ensure anyone who couldn't make the event can still feedback
- The information from the questionnaire is used to feed into the next stage of the consultation process and if this is not the final consultation event the process is repeated from stage 1.

3.3 Ward councillors and Councillor Ward are given advance copies of all correspondence before it is distributed to residents.

## **2. New Resident Engagement Approach**

4.1 Traditional resident engagement events which are typically organised in a venue local to the proposed development are not going to be feasible for the foreseeable future. The logistics challenges and Covid-19 risks around organising and managing a safe public gathering of this nature are considered too great at the present time.

4.2 What we are proposing to do:

- 'Virtual' face-to-face consultation ve.g. via Zoom or alternative digital platform suitable for resident participation and engagement
- Via paper and/or phone for all residents and not just those without internet access/digitally able
- Accessibly – providing flexibility to ensure all residents have reasonable opportunity to have their say, whether they are online or not

### **4.3 'Virtual' consultation**

Zoom (or equivalent) will be used to host a virtual consultation event with the NBT Project Manager and appointed architects. Proposed process outlined below:

- Attendees to pre-register so we have a virtual sign-in sheet
- Provide attendees the opportunity to pre-submit questions
- Invite attendees to 'join' at specific times so each event can be run to an agreed timetable e.g. design presentation followed by questions
- Consider the appropriate number of virtual sessions to allow people to join at various times. This will provide flexibility for residents as well as help us to avoid people joining a session late and potentially having to repeat parts of a presentation etc. Spreading out the number of participants will help ensure the sessions are more manageable
- A designated moderator with the ability to mute mics, monitor comments/questions and remove anyone acting inappropriately will 'manage' the session
- We will investigate what measures we need to put in place to allow the sessions to be recorded
- Newsletters, flyers and posters will be used to promote the consultation event and provide necessary joining instructions
- We will consider whether digital presentations should be hosted on the council's YouTube channel so they can be viewed outside of the consultation events for people unable to make the date and time of the event
- Staff from other departments will be asked to provide responses to any pre-submitted questions that may not be directly linked to the proposed development, such as repair or maintenance issues.
- We are liaising with other departments who have already trialled this type of format for feedback as to what works and what doesn't e.g. Planning and Licencing
- We will refresh the council's website to be clear about how we are running consultation events during the coronavirus outbreak

#### 4.4 **Printed materials, e.g newsletters**

We will continue to utilise a variety of existing methods to reach as wide a group of residents as possible such as:

- Produce a detailed newsletter and incorporate more of the information that would typically have been displayed at the consultation event
- An expanded newsletter will provide sufficient information about the proposed development to residents with limited or no internet access
- Offer residents the opportunity to sign up to an e-newsletter to receive all future comms by email as well as hand-delivered
- Provide all necessary contact details for residents to speak with the Project Manager
- Printed survey forms will be included with the newsletter as per the current approach

#### 4.5 **Gathering feedback**

- NBT will continue to ask residents for their feedback and suggestions at each stage of the process, so we can understand what works well and where we can make improvements or changes

- NBT will give residents a longer period to respond with their feedback and/or complete the survey e.g. 4 weeks instead of 3 weeks

#### 4.6 **Advantages of the new approach**

- We are hopeful that the new methods will be more inclusive and may help us reach a larger number of residents and provide us with a wider representation of views
- Adapting the approach now will help us to avoid delaying projects in the programme that have not yet concluded resident engagement prior to planning submission
- Trialling new ways of communicating with residents and stakeholders could lead to a long term, positive change in how we work and how we engage
- It is not always possible to find appropriate venues for holding resident consultation events within easy and accessible reach from the proposed development site and a 'virtual' approach could be the most appropriate way to reach residents regardless of Covid-19

#### 4.7 **Disadvantages of the new approach**

- It could be more time consuming with additional phone calls, production of more detailed newsletters etc.
- There may be cost implications of producing presentations for a digital format, expanded newsletters - though this could in part be offset against venue hire costs etc.
- We could miss out on people who may have attended an event but may not be willing or able to engage remotely
- We could get interest and feedback from people not directly affected by the proposals

### **3. Legal Implications**

5.1 If consultation is not carried out in accordance with s105 then the Council risks a challenge to a decision on the grounds of:

1. the decision being made illegally, e.g. the statutory consultation requirements were not followed, failure to take account of the Public Sector Equality Duty (see below); or
2. there is procedural impropriety; also referred to as breach of natural justice, which arises where in making a decision basic rules of natural justice were ignored, or where there was a failure to act with procedural fairness towards a person or to observe procedural rules that are expressly laid down by legislative instrument e.g. the council does not follow already published consultation arrangements.
3. The Court has not ruled previously on whether e-consultation is valid, but *Kendall v Rochfield District Council 2014* and *R v The Boundary Committee 2009* albeit on different statutory consultation requirements strongly suggest that it will not be sufficient alone. Although technologies have developed further since 2014 and specific groups can be targeted online, we would not advise relying on this form of consultation alone.

4. The Local Authorities and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales) Regulations 2020 (see below) means a virtual meeting would now constitute a public meeting so where we have already published consultation arrangements specifying public meetings these could proceed as virtual meetings provided we can put in place the necessary arrangements for participation. Protocols for planning meetings have already been devised using Zoom and the LGG has published some precedent guidelines for conducting virtual meetings.

5.2 The prospects of success for a claimant based on 1 and 2 above will vary on a case by case basis and how the Court responds to actions taken by councils at this time which is unknown. Where consultation is already under way and the arrangements have been published then they should not be departed from, other than by way of an extension of the response time. We can where necessary still begin s105 consultation, However, the extent to which we can make as much provision as possible to allow resident participation by a number of means such as virtual meetings, on line and hard copy questionnaires, project manager phone calls, hard copy mail outs will narrow our risk of challenge considerably but we cannot be sure at this time that it will completely remove the risk.

### 5.3 The Coronavirus Act 2020

On 25<sup>th</sup> March 2020 the Government made the above Act, which afforded power to the Government to introduce Secondary Legislation to address the issues raised during the Covid-19 pandemic. Following this *The Local Authorities and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority and Police and Crime Panel Meetings)(England and Wales) Regulations 2020* came into force on 4<sup>th</sup> April 2020 and is valid, subject to review until May 2021.

These regulations confirm that being 'present' at a meeting includes access to a meeting through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming. Where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person. As such, a virtual meeting would represent a public meeting.

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