

Democratic Services
Salisbury District Council
PO Box 2117
Salisbury, Wiltshire SP2 2DS

direct line: 01722 434253
fax: 01722 434478
dx: 58026 Salisbury
email: sagland@salisbury.gov.uk
web: www.salisbury.gov.uk

To All Members of the Council

Date: 23 July 2007

Dear Councillor

Council Meeting 25 July 2007 - Urgent Business - Monitoring Officer's Report

Further to the recent despatch of the agenda for the Council meeting on 25 July, I now enclose as urgent business, the Monitoring Officer's report on the Office Project Consultation, together with the letter of complaint made to the Audit Commission and Counsel's advice on the matter (summary version is open and full version is exempt). I have also attached the Consultation leaflet and cover letter, together with a summary analysis of the results which need to be considered in conjunction with the Monitoring Officer's report.

If Members wish to discuss the content of the full version of Counsel's advice, the Council would have to move into exempt business.

Full Council will need to consider the Monitoring Officer's report before the main Office Project report on the agenda.

Yours sincerely

Stewart Agland
Head of Democratic Services

Copy to Management Team
 Head of Financial Services
 Monitoring Officer
 Democratic Services

Urgent Business

Legal and Property Services
Salisbury District Council
PO Box 2117
Salisbury, Wiltshire SP2 2DS

contact: John Crawford
direct line: 01722 434607
fax: 01722 434539
email: jcrawford@salisbury.gov.uk
web: www.salisbury.gov.uk

Report

Subject : Monitoring Officer Report
Report to : The Cabinet and Full Council
Date : Monday 23 July and Wednesday 25 July 2007
Author : John Crawford

1. Summary:

To report to Members on a complaint that the Council has contravened the law with regard to the consultation on the Council's Office Project ["the Project"].

2. Background:

- 2.1. On 11.07.2007 the Council was notified by the Audit Commission that a complaint had been made to the Audit Commission that the leaflet and letter issued by the Council regarding the consultation process as part of the review of the Project may not meet the Code of Recommended Practice on local authority publicity ["the Code"] or the legal requirements concerning the issue of information.
- 2.2. A copy of the letter of complaint is attached at Appendix 1a and the consultation leaflet and letter is attached as appendix 1b .

3. The Code

- 3.1. The Code provides that publicity describing the Council's policies and aims should be objective as possible and where controversial issues are involved it should not over simply facts issues or argument. Publicity should not be liable to misrepresentation as party political.
- 3.2. The Code applies to any communication to the public at large or a section of the public.
- 3.3. The law requires that the Council is required to have regard to the Code at any time when it comes to a decision on publicity. This means that the Council must take account of the Code but in doing so the Council can exercise its reasonable judgement about how to do so.

4. The law:

- 4.1. The Local Government Act 1986 states that a local authority shall not publish any material which appears to be designed to affect public support for a political party.



Awarded in:
Housing Services
Waste and Recycling Services



- 4.2.** The common law position is that whether or not it is a legal requirement in any particular case if consultation is carried out it must:
- Be carried out when proposals are at a formative stage
 - Include sufficient reasons for each of the proposals to allow those consulted to give intelligent consideration and response
 - Allow adequate time
 - Be conscientiously taken into account when a decision is taken

5. The legal position with regard to the consultation:

- 5.1.** Counsel's advice has been sought on the subject matter of the Complaint. A summary of the advice is attached at Appendix 2. The full advice is a separate item in exempt business.
- 5.2.** The advice is that:
- there are potential flaws in the consultation process
 - notwithstanding the potential flaws the consultation process should be referred to
 - Members should take into account the potential flaws in the consultation process when deciding what weight to give the result of the consultation process

6. Consultation undertaken:

Head of Paid Service and Chief Finance Officer

7. Recommendations:

- 7.1. Members note the results of the consultation.
- 7.2. In reaching a decision on the Project Members demonstrate the weight given to the results of the consultation.

8. Background papers: The Code

9. Implications:

- Key decision: no
- Financial: No direct implications however the ultimate decision based on all advice and consultation types has material financial implications for the council, these are covered in the main report in open business.
- Legal: the Monitoring Officer is required by section 5 Local Government and Housing Act 1989 to report to Council on any proposal decision or omission which has given or is likely to give or would give rise to any contravention of the law having first consulted with the Head of Paid Service and the Chief Finance Officer so far as is practicable. The report must be sent to each Member of the Council and Council must consider the report not more than 21 days after the report has been sent to Members. Any decision in respect of the matter the subject of the report is suspended until the end of the first business day after the day on which the report has been considered.
- Human rights: none
- Personnel: none
- ICT: none
- Community safety: none
- Environmental: none
- Council's core values: communicate
- Wards affected: all

Our reference

Your reference

Date

11/07/2007

PRIVATE AND CONFIDENTIAL

Mr David Crook
Acting Chief Executive
Salisbury District Council

Dear David

Office centralisation - Consultation

I am aware that the office centralisation project has generated debate and publicity. My attention has been drawn to the attached publications, which consist of a leaflet and covering letter, issued by Salisbury District Council regarding the consultation process currently being carried out as part of the office centralisation review. I understand that the results of this consultation, along with independent financial and legal advice, will be considered as part of the review of the project by Members later this month.

Whilst there is nothing unlawful in the Council consulting its residents on an issue of local importance and interest, I am concerned that some of the material may not meet either the legal requirements regarding the issue of information or the provisions of the Code of Recommended Practice on Local Authority Publicity (the Code).

My particular concerns are as follows:

1. It could be argued that the covering letter fails to have regard to the Code, and that it is therefore in breach of Section 2 of the Local Government Act 1986. The letter clearly refers to political parties and promotes a particular point of view on a question of political controversy. It is also signed by the leaders of two political parties and, in the third paragraph from the bottom, appeals to 'our electors'. In my view the letter may therefore be in breach of Section 2 and may not show due regard to the Code. If this is the case, the expenditure incurred in producing and distributing the letter would be unlawful.
2. Whilst the leaflet is not overtly political, and it considers options in what appears to be a relatively balanced manner, it is short on detail, particularly in terms of the financial implications. The nature of the consultation, taking into account also the covering letter, may therefore lead to a response predominantly from those who hold a strong view on the issue. The Council will need to consider carefully the weighting if any it attaches to the overall outcome of the consultation.

Local authorities are required to satisfy themselves that any information they produce is factually accurate, balanced and designed to inform rather than persuade.

Our reference
Your reference
Date 11/07/2007
Page 2

I would like to invite your response to the above points. In particular, I would welcome your view as to whether you consider that the information issued by Salisbury in the attached documents complies with relevant legislation and the Code.

I am writing on behalf of your current DA, Brian Bethell (who is currently on annual leave), and have discussed this issue letter with your incoming District Auditor for 2007/08, Martin Robinson.

I would welcome your views as a matter of urgency.

Yours sincerely

Peter Brown

Audit Manager

Cc J Crawford, Monitoring Officer

Cc A Osborne, Head of Financial Services (S151 Officer)

DATE: July 2007

email: voice@salisbury.gov.uk
web: www.salisbury.gov.uk

Dear Resident,

COUNCIL OFFICES AT BOURNE HILL

We want to ask your opinion on an important local issue.

Following the election of 3 May 2007, the Liberal Democrat and Labour groups accepted the electoral mandate given to us and are together, leading Salisbury District Council.

A major issue at the election was the council office project. Both our parties expressed opposition to the current scheme. We feel that by voting for us, the people of south Wiltshire have shown that they do not support the office project.

However, because of the existence of binding contracts - signed by our predecessors - just days before the election - and the way that local government finance works, simply cancelling the project will not save us all of the £12million construction costs of the existing scheme.

So, the decision is not as straightforward as you might think.

At the moment, our options are:

- a) to cancel the project,
- b) to go ahead but with a modified design, or
- c) to carry on with the original project.

We will need to make a decision soon to avoid paying extra costs.

Whatever we do, some tough decisions are needed. Before making up our minds, we want to **listen** to what you, our electors, think we should do. Your views really matter to us.

Please read the enclosed leaflet, which sets out the options in more detail. Then let us know your views by completing and returning the enclosed postcard, or by visiting our website www.salisbury.gov.uk, **by 16 July 2007**.

This decision is vital to the future of the District Council. Please make your voice heard. We promise to listen to what you say and take your views into account when the final decision is made.



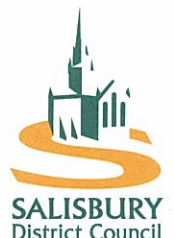
Cllr Paul Sample
Leader, Liberal Democrat Group



Cllr Steve Fear
Leader, Labour Group



Awarded in:
Housing Services
Waste & Recycling Services



Introduction

Salisbury District Council's office project was a very important issue in the May 2007 elections. Since the elections, councillors have decided to carry out an independent review of the project and to ask you, the voters and taxpayers of south Wiltshire, what you think of it.

This leaflet sets out the three options that we can see for the future of the Council House at Bourne Hill.

We would like you to read this leaflet and consider which of the options you think is best. At the end of the leaflet we tell you how you can get in touch and give us your views on this important local issue.

How do I know what is the best option?

We think that we should bear the following things in mind when deciding what to do next:

- Preserving the Council House. It is a Grade II* listed building, which means it is historically and architecturally important and the law requires us to look after it.
- Reflecting the results of the local elections in May 2007, in which the office project was an important issue.
- The impact of such a new building on the amenities of local residents.
- The loss of public parkland.
- Making sure that the council offices meet the legal standards for giving easy access to everyone, including people with disabilities.
- Providing efficient and up-to-date facilities for everyone who uses, provides, and pays for council services.
- Providing staff working conditions competitive with those offered by other employers.

Do you agree with these priorities? How would each of the options achieve these things?

Money matters

Finally, we also need to look at how each of the options would affect the council's finances. This is important because it could affect council services and future council tax rates.

When you are looking at the 'money matters' sections in this leaflet, remember that the numbers in option A show how much that option would cost, compared to option C (which is to carry on with the project as originally planned).

Salisbury District Council's Office Project -
your chance to have **your** say



option A TO CANCEL THE PROJECT

This option means completely stopping the work at the Council House and the building of the new office extension.

✓	<ul style="list-style-type: none"> • There would be no development of land that had not already been built on, such as the Secret Garden at the Council House. • The council would no longer need to pay the majority of the costs of the actual building and construction work. • The council would retain ownership of its existing office sites. • The council would be free to decide the future of the Council House.
✗	<ul style="list-style-type: none"> • The Council House would still need essential repairs. • The Council House would not meet legal standards for people with disabilities. • The council would still need to pay to ensure that the other existing council offices were upgraded to meet legal standards for both customers and employees. • The council would still need to pay £7m for the design work that has already been carried out and in compensation to the contractor, because a contract was signed days before the election. • Improved, efficient customer service would be compromised.

Money matters

We have employed independent experts to advise us on the costs of cancelling the contract. Their advice is that under local government rules, the money already spent on the Bourne Hill project, together with compensation to the contractor would have to be charged to the council's revenue account (paid from Council Tax, fees and charges etc).

We estimate these costs at £6.4m. (We cannot be certain because they are subject to negotiation). These costs will need to be paid off within 12 months, causing severe cuts to services.

As an alternative to charging the costs to the revenue account, we could ask the government for special permission to cover the expenses by borrowing. There is no guarantee that the government would agree, and if it did, we would have to repay the following, probably over 25 years. The first year's repayment is assessed at £577,000. This annual cost would also cause cuts in services, although less severe than if the whole cost is charged to the revenue account.

- Cancellation with no extension but with the Council House repaired and refurbished.



KEY

- 1 - Existing building
- 2 - Existing trees

option B TO MODIFY THE DESIGN

Option B is to modify the design, substantially reducing the size and changing the appearance of the proposed extension to the Council House.

✓	<ul style="list-style-type: none">• The council would meet its legal obligation to look after the Council House, which is a Grade II* listed building.• The Council House would meet legal standards for people with disabilities.• There would be no development of land that had not already been built on, such as the Secret Garden at the Council House.• Provision of an improved and efficient level of customer service.• Some staff would be provided with improved accommodation.• We would have to spend less money than if we went ahead with the full project.
✗	<ul style="list-style-type: none">• The Council House would not be able to accommodate the numbers of staff anticipated in the proposed scheme, although the council is committed to home and remote working and hot-desking and these practices could be increased.• The council would still need to pay to ensure that the other existing council offices met legal standards for both customers and employees.• This option falls short of total cancellation of the project, which many residents wanted to see.• The council would still need to spend money on making its other buildings compliant with legal requirements.

Money matters

We also asked our independent experts to look at the financial impact of modifying the current design to preserve The Council House but reduce the size of the extension at the rear.

Our experts advise that local government financial rules would allow us to charge all of the costs to borrowing, and there would therefore be no impact on the revenue account arising from the construction of a modified extension. This assessment is based on an estimate and would be subject to negotiation with the contractors.

- Modified scheme - this sketch shows HOW the modified scheme *might* look.

KEY

- 1 - Existing building
- 2 - Existing trees



option C TO PROCEED WITH THE ORIGINAL PROJECT

The other option is to continue with the project as originally planned, renovating the existing Council House and building the full-sized extension.

✓	<ul style="list-style-type: none">• The council would meet its legal obligation to look after the Council House, which is a Grade II* listed building.• The Council House would meet legal standards for people with disabilities.• Provision of an improved and efficient level of customer service.• The council staff would have a new building in which to work.
X	<ul style="list-style-type: none">• The current Secret Garden at Bourne Hill would be built upon.• Existing council office sites would be sold for development.• Money that could be spent on other projects would be spent on new offices.• Many people believe that the design is poor, the cost of the project is too high and the impact on the local environment is too great.

Money matters

If the existing design is constructed, there would be no additional impact on the revenue account, other than some increase in costs due to the delay, caused by the need to consult local residents.

- Project completed as approved.

KEY

- 1 - Existing building
- 2 - Approved extension
- 3 - Existing and new trees



Have your say

We want you to tell us what you think. Get in touch either by returning the attached prepaid postcard or by emailing voice@salisbury.gov.uk. Much more information on the project is available on the website www.salisbury.gov.uk

We need to receive your views on or before **16 July 2007**.

Please make your voice heard on this important issue.

Have your say

Please make your voice heard on this important issue.

Dear Councillors Sample and Fear,

I support the following option (please tick one box)

- Option A - to cancel the project
- Option B - to modify the design
- Option C - to proceed with the original project
- My comments are:
.....
.....
.....

Name:

Postcode:

You do not have to put a stamp on this card - but if you do it will cut our costs.



Office Project Consultation - Results (July 2007)

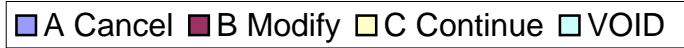
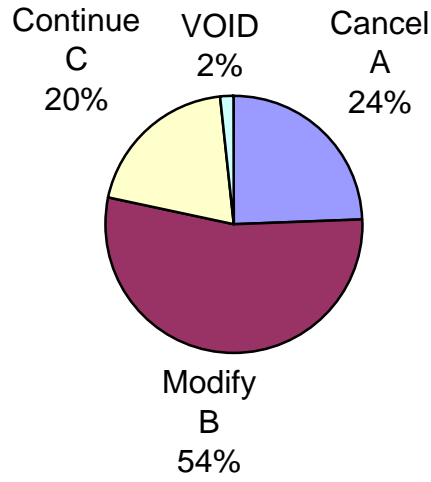
Postal Responses							
	A	B	C	VOID			
	Cancel	Modify	Continue		Total	Resp rate	
Total	2401	5285	1975	151	9812	20	49,000
Percentage	24	54	20	2	100.00	%	

Email Responses							
	A	B	C	VOID			
	Cancel	Modify	Continue		Total	% of total responses	
Total	163	405	288	78	934	9	%
Percentage	17	43	31	8	100	%	

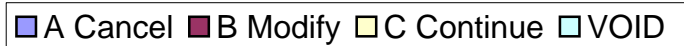
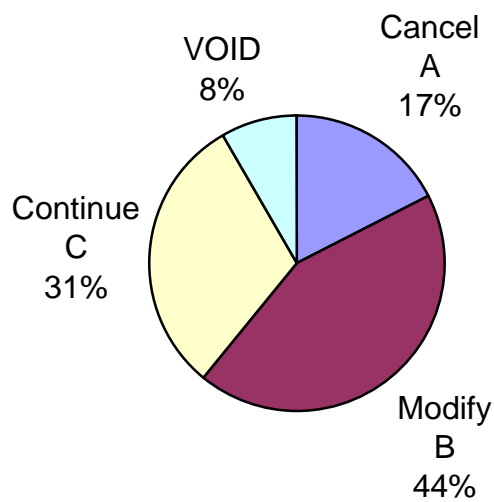
Total Responses

Total Responses (Postal & Email)							
	A	B	C	VOID			
	Cancel	Modify	Continue		Total	Resp rate	
Total	2564	5690	2263	229	10746	22	49,000
Percentage	24	53	21	2	100	%	

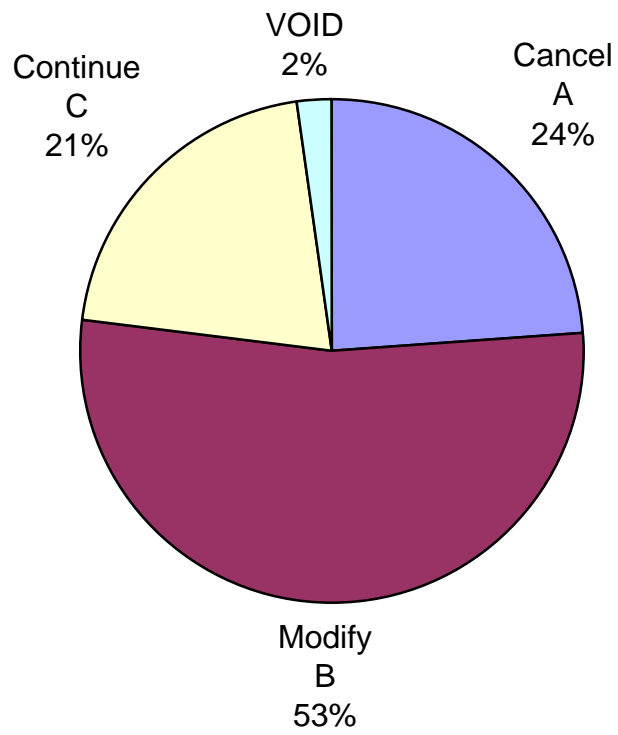
Postal Responses - 9812



Email Responses - 934



Total Responses (Postal& Email) - 10746



■ A Cancel ■ B Modify ■ C Continue ■ VOID

**IN THE MATTER OF SALISBURY DISTRICT COUNCIL AND A
CONSULTATION PROCESS RELATING TO THE COUNCIL'S OFFICE
REORGANISATION**

ADVICE

Summary of Advice

1. In summary, I would advise as follows:
 - 1.1. There are good grounds for arguing that the covering letter that was sent with the consultation document is in breach of the prohibition on political promotion in section 2 of the Local Government Act 1986 (the "1986 Act");
 - 1.2. There are also reasonably good grounds for arguing that the covering letter is in breach of the requirements of the Code of Recommended Practice on Local Authority Publicity (the "Code");
 - 1.3. There are reasonable grounds for arguing that the consultation paper was in breach of the common law requirements of lawful consultation;
 - 1.4. The results of the consultation process can and should be referred to in the draft Report to the meeting of the Cabinet and Full Council scheduled for 23 July;
 - 1.5. However, the Cabinet and Full Council can be advised that they can take into account the potential flaws in the process when deciding what weight to give the result of the consultation process;
 - 1.6. A claimant could apply for the usual judicial review remedies, but the most likely would be a quashing order or declaratory relief;
 - 1.7. I consider that there are reasonably good grounds to argue that the court should exercise its discretion so as to refuse a remedy, or at least to grant

declaratory relief which left the decision stemming from the consultation process undisturbed;

1.8. If a quashing order was granted, I consider that local residents would have a legitimate expectation of being consulted afresh;

1.9. However, I consider that there would be reasonable grounds to argue that it was not unfair to resile from that expectation.

DAVID BLUNDELL
19 July 2007

LANDMARK CHAMBERS
180 Fleet Street
London
EC4A 2HG
