

Wiltshire Council

Cabinet

11 December 2018

Questions

**Colin Gale – Representing Pewsey Community Area Partnership (PCAP),
Pewsey Parish Council (PPC) and the Campaign To Protect Rural England
(CPRE) statement regarding key decisions to Wiltshire Council’s Monitoring
Officer**

**To Councillor Richard Clewer – Cabinet Member for Housing, Corporate
Services, Arts, Heritage and Tourism**

Pewsey Community Area Partnership (PCAP), Pewsey Parish Council (PPC) and the Campaign To Protect Rural England (CPRE) wish to submit the following Statement in respect of a Key Decision to close the Everleigh Household Recycling Centre, taken at a Cabinet Meeting held on 9th October 2018.

Background

PCAP/PPC/CPRE submitted four Questions to the Cabinet Meeting held on 27th November 2018 and this Statement relates to the first three, which concerned whether Wiltshire Council had complied properly with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the Regulations), insofar as the making of information available to the public 28 days prior to a Key decision being made was concerned.

a). The first Question inquired whether the Council would acknowledge that non-compliance with the Regulations would be unlawful, to which the response was that, were there to be a failure to comply with the publicity requirements of the Regulations, then the validity of any relevant key decisions made by the Council may be affected. However, we understand the Council’s position is that, by producing a public four month document called the Cabinet and Council Forward Work Plan (the Plan), on a monthly basis, at the beginning of each month, the Plan is published 28 clear days before a matter is considered and a Key decision made and is therefore compliant. The Council also states that the Plan is the “document” that is required to be published in accordance with paragraph 9 (1) of the Regulations.

b) The second Question inquired what action Wiltshire Council proposed to take to recover the breach of the Regulations to publish the (i.e required) documents at least 28 days before the decision (i.e about Everleigh) was made, and that this failure, it was submitted, rendered the decision (i.e to close the site) void. The Council’s

response was that details of the report on the Consultation on the future of Everleigh to be considered by Cabinet on 9th October had been included in the 4 month Plan for October 2018 to January 2019 that was published on 10th September 2018, which was 29 clear days before the Cabinet meeting and thus met the deadlines contained in the Regulations. As publication of the Plan was in accordance with the Regulations, the decision made by Cabinet on 9th October was lawful.

c) The third Question commented that, from past experience of attending Cabinet meetings over a long period, it was possible that Wiltshire Council had not been observing the Regulations in the past with regard to publicity for Key decisions, possibly since they were enacted in 2012. and inquired what retrospective action Wiltshire Council proposed to take to identify and reconcile such decisions. The Council's response was that they had been aware of and had complied with the Regulations since they had come into force, and that, in summary, the inclusion of the report in relation to the Consultation of the future of Everleigh in the Plan, and the publication of the Plan, complied with the Regulations.

Statement

It is with concern that PCAP/PPC/CPRE find themselves in disagreement with Wiltshire Council over its interpretation of the requirements of the Regulations with regard to publicity for Key decisions. While it would appear reasonable, in general terms, to use the Plan as a basis for the "document" that is required under sub paragraph 1) of Paragraph 9 of the Regulations, we must point out that the whole of that sub-paragraph is very specific under all its headings a) - f) as to what the "document" should contain. We suggest, however, that the Council has significantly failed to respect those obligations in respect of one item, which in our view, is the most important of all (although there are others referred to later). We refer to item 9 (1) e which states:

(e) " a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made"

We suggest that there are no "ifs and buts" about this item and that it is a regulatory requirement, binding on a local authority, which has no discretion in the matter. Taken in conjunction with paragraph 9 (2) it is also mandatory that the list of documents referred to is made available to the public at least 28 clear days before a Key decision is made, either at the offices of the local authority, and on its website, if it has one.

Examination of the published Plan for October 2018 – January 2019, in relation to Everleigh, discloses relevant information under "Item and Meeting Date", that a Key Decision is to be made under "Purpose of Report", and that there has been consultation under "Consultation", but under the heading "Supporting Documents", which we suggest should have been completed under Regulations 9 (1) e. there is no information whatsoever.

The obviously missing documentation has to be the full Consultation report, plus its Executive Summary and recommendations, and there is no indication as to its

availability, or otherwise, in the Plan. Furthermore, apart from the requirements of the Regulations, the preamble to the Plan states, at the 7th bullet point of the details, that the Council will provide “Any documents relied upon in carrying out the decision”. Where were they in the case of Everleigh, especially as it was very clear at the Cabinet meeting on 9th October that, quite apart from any question of availability to the public, Cabinet Members themselves were relying heavily on the recommendations in this document in coming to a decision? Were individual Cabinet Members given enough time to come to an informed decision?

To the best of our knowledge and belief, the first time that the public could have had any intimation that the Consultation report was available was when the Agenda pack for the 9th October meeting became available on 1st October, which is acceptable under the Regulations for non Key decisions, but wholly wrong for Key decisions, and we assume that to be the case, unless and until the Council proves otherwise. We believe that the Council has no option but to accept that it failed to meet its obligations under paragraph 9 (2) (b) – website availability - of the Regulations (to argue that the position was covered by the heading “Purpose of Report” in the Plan would be disingenuous) while the situation remains unclear as to whether it would have been able to comply with paragraph 9 (2) (a) – office availability.

With regard to the latter point, the consultation ended at 15.29 pm on 3rd September, which left only four working days before the plan was published on 10th September. Absent any proof to the contrary, we would find it difficult to believe that a) all the results of the consultation process could, or would have been fully analysed by then, and b) the Consultation report and recommendations finalised and completed in such a short space of time. Consequently, we are obliged to reserve our position as to whether the information required to be made available to the public under the Regulations at paragraph 9 (2) within the 28 day time scale needed, was in fact available prior to the Plan being published, and if not, pose the question as to why Everleigh was placed on any Cabinet Agenda before that information was available.

What appears to have happened in practise, and we concede this is conjecture, is that although the relevant information may have become completed and available at some point AFTER 10th September, and was available ON or BEFORE the beginning of October, it was “rolled “ over into the Agenda pack before the Cabinet meeting on 9th October, and that this was the first time the public would have had had any opportunity consider it, or even become aware that it was available.

Such behaviour with regard to paragraph 9 (1) (e) and 9 (2) would clearly not be fully compliant with the Regulations and the impact of this failure needs to be assessed. Moreover, it is also noted that 9 (1) f was not correctly complied with, inasmuch as there is no address to be found on the Plan, in either Pdf form or screen form, from which copies of documents etc may be obtained. With regard to the latter, any common sense interpretation of the Regulations has to mean that, not only should the relevant documents on Key decisions be available to the public within the time scale required, but the public should be able to access them without difficulty. In the case of Everleigh, we suggest that the Council has failed on both counts.

Finally, we detect certain weaknesses in some of the Council's earlier responses, namely:

1) It is insufficient to claim the Regulations have been complied with merely by stating that a "document" was issued, when that self same document has a clear and obvious major flaw and thus does NOT comply with a specific requirement of the Regulations themselves. (See a) above i.r.o the first original Question). Furthermore, the Council's assertion that the Plan is published at the beginning of each month is inconsistent with the Council's response that the October 2018 - January 2019 Plan was published on 10th September (See response to the second original Question). Maybe the Plan is updated during any given month, but then that does not explain why the first notification to the public with respect to Everleigh did not occur until 1st October, when the Agenda pack for the 9th October Cabinet meeting was published.

2) The Plan manifestly contained no "details" of the Consultation report, in a manner that would comply with the Regulations (See b) above i.r.o the second original Question). This situation therefore has to bring into question whether the decision to close Everleigh was correctly taken in regulatory terms, and at this juncture, we are unable to accept that it was.

3) We also have general concerns about Wiltshire Council's interpretation, implementation and management of the requirements of the Regulations.

- a. **'Document'**: As identified in the background paragraph a) above, Wiltshire Council have advised that the 'Forward Plan' is the document that satisfies this regulation requirement. However, the regulation definition for the '**document**' is:

"document" means any report or background papers, other than that only in a draft form, taken into consideration in relation to an executive decision.

Therefore the '**document**' is not necessarily a single plan, report, paper etc; it is the combination of information that facilitates the executive decision. For the Council's Forward Plan to be the sole document, it would need to contain all the significant information extracted from the Consultation Report etc. Examination of the Forward Plan confirms that the plan did not contain the information required to make the executive decision. The Consultation Report containing the Executive Summary and Recommendation was not published until 1st October 2018. Therefore provision of the information to make the executive decision was not published and available to the public 28 days prior to the executive decision being taken..

- b. **'Forward Plan'**: Examination of the Forward Plan has confirmed, as advised by Wiltshire Council, that it is a rolling document that is re-issued every month on the first of the month and covers a 4 month period. However, there are at least 3 different versions of each monthly issue, which each contain varying information:

- i) Printed format
- ii) Screen version

iii) Hyper-linked screen version

The 'printed format' includes an Explanatory Note, Membership of the Cabinet, Representations/Public Participation and a table with each of the issues/items. Under the heading of 'Explanatory Note' it is stated : 'The Plan shows the following details for Key Decisions'. The list of details included does not directly correlate with the requirements identified in the regulation 9 (1) and (f) and so these are not satisfied.

The list of details does identify 'any documents relied upon in carrying out the decision' but the Consultation Report for Everleigh is not identified in the printed format of the plan.

The 'Membership of the Cabinet' is listed. However, this is not up to date as Cllr Pauline Church is not included. This is a significant omission as all of the Cabinet members are '**decision makers**' as identified in the Regulations.

The 'screen version' for 1st October to 31st January 2019 listed the 'Consultation on the future of Everleigh Household Recycling Centre as a '**New**' entry. The indication of '**New**' entries is not identified on the printed version of the forward plan. The screen version also identifies that 'Notice of Decision first published 10/09/2018'. This information is not included in the printed format. Since the entry of the Consultation on the future of Everleigh RC was first published on the 1st October in the 'Forward Plan' and there are no previous entries in previous Forward Plans, it is not evident where the Notice of Decision would be published on 10/09/2018 and advised to the public?

The 'hyper-link screen version' contains further additional information not included in the printed format. This Forward Plan version also includes an 'Issue History' page. It should be noted that the first entry is the inclusion of the Consultation on the future of Everleigh Household Recycling Centre on the 01/10/2018. There is no entry for the 'Notice of Decision on 10/09/2018'.

Both of the screen versions of the Forward Plan have been updated with 'Recommendation Approved' post the Cabinet meeting. This update does not appear to be consistently applied to other issues/items post a Cabinet decision.

c. Summary:

i) Wiltshire Council's interpretation and implementation of the Regulations via the Forward Plan does not comply with all of the requirements of the Regulations.

ii) The Forward Plan in varying formats with varying data does not provide the public with a single consistent document that provides all of the information required by the Regulations.

iii) The Forward Plan as a single document does not provide all of the key information to facilitate the decision makers to take an executive decision.

iv) The maintenance of the Forward Plan with respect to key information is not up to date. There is no apparent overall change management of the Forward

Plan with an amendment sheet controlling the rolling configuration of the document.

v) The Forward Plan does not satisfy the publicity requirement of 28 days for key decisions.

vi) As a consequence of all the instances of non-compliance identified above it is considered that the Cabinet decision to close Everleigh on the 9th October was unsound.

Colin Gale

Vice-Chairman PCAP