

# AGENDA SUPPLEMENT (2)

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**Meeting:** Environment Select Committee  
**Place:** Council Chamber, County Hall, Trowbridge  
**Date:** Tuesday 26 June 2018  
**Time:** 10.30 am

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**The Agenda for the above meeting was published on 18<sup>th</sup> June 2018. Additional documents are now available and are attached to this Agenda Supplement.**

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This Agenda and all the documents referred to within it are available on the Council's website at [www.wiltshire.gov.uk](http://www.wiltshire.gov.uk)

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8 **Wiltshire Council Waste Management Strategy (Pages 3 - 16)**

DATE OF PUBLICATION: 25 <sup>th</sup> June 2018
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24<sup>th</sup> June 2018

**Pewsey Community Area Partnership (PCAP), Campaign to Protect Rural England (CPRE) and Pewsey Parish Council (PPC) Statement to Wiltshire Council Environmental Select Committee, 26<sup>th</sup> June 2018, on the Consultation on the proposed closure of Everleigh Household Recycling Centre**

- PCAP/CPRE/PPC wish to draw the Environmental Select Committee’s early attention to the recently issued “Consultation on the Proposed Closure of Everleigh Household Recycling Centre.
- The public law to consult requires the key principle that the public authority should exercise fairness in carrying out a public consultation.
- The groups carried out two independent appraisals of the supporting document and consultation questionnaire. Both appraisals decided independently to use the legal framework identified by the Supreme Court to assess the complete consultation documentation package to determine if the consultation complied with the six requirements:
  - “a consultation must be at a time when proposals are still at a formative stage”
  - “the proposer must give sufficient reasons for any proposal to permit for intelligent consideration and response”
  - “adequate time must be given for consideration and response”
  - “the product of consultation must be conscientiously taken into account in finalising any statutory proposals”
  - “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”
- The direct benefit of this approach is that the acceptance criteria is clearly laid down as specific requirements and that there is also available interpretation guidance for each of the requirements. The full appraisals are provided as Supplement 2 to the agenda pack.
- In summary the appraisals identified that there is significant concern that the ‘Consultation to Close Everleigh HRC’ may breach most of the Supreme Court requirements and that the consultation as presented by the Council may not be in accordance with the Councils public authority duty to exercise fairness when conducting a consultation.
- The groups recommend that Wiltshire Council consider the PCAP appraisal and CPRE & PPC assessment information provided carefully with a view to withdrawing the consultation on the closure of Everleigh HRC as presented.

Colin Gale

PCAP Member

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**AN APPRAISAL FROM THE PEWSEY COMMUNITY AREA PARTNERSHIP  
(PCAP) FOR WILTSHIRE COUNCIL'S ENVIRONMENT SELECT COMMITTEE  
MEETING 26.6.2018**

**RE: PROPOSAL TO CLOSE EVERLEIGH HOUSEHOLD RECYCLING CENTRE**

**1). BACKGROUND:**

For practical and other reasons, this Appraisal is provided by the Pewsey Community Area Partnership (PCAP), but with the full support of the Campaign to Preserve Rural England (CPRE) and Pewsey Parish Council (PPC), collectively referred to hereafter as “the Group”. The Group wishes to bring to the attention of the Environment Select Committee, its profound concerns over Wiltshire Council’s (the Council) obvious determination to close this facility, to the detriment of the rural population it serves. This saga goes back to September 2015 and has been followed closely ever since by the Group.

The Group is greatly concerned that the lessons of the past with regard to how public consultations about Everleigh should be carried out, do not appear to have been learned by the Council. We refer generally to the first attempt to close the site which started in September 2015 (all more fully described in the History of Events compiled by the Group and dated 15<sup>th</sup> April 2018, a copy of which has been sent to the Cabinet Member for Waste, the Director of Waste and a number of local Councillors) but in particular to a letter dated 20<sup>th</sup> February 2017 which was sent by the Chair of PCAP to Councillor Toby Sturgis, who was the Cabinet Member responsible for Waste at the time. To that letter was attached a further letter dated 30<sup>th</sup> January 2017 from a London firm of solicitors, Bates Wells Braithwaite (BWB), a firm which specialises, inter alia, in local authority law and practice. PCAP had been provided with that letter because of concerns that a consultation organised by the Council on 8<sup>th</sup> January 2016 might still be used in an effort to close Everleigh, although Councillor Sturgis had announced in February 2016 that Everleigh would not form part of any budgetary proposals for 2016/17.

BWB’s letter was highly critical of the Council’s performance, concluding that were it to rely on the January 2016 consultation in any decision about Everleigh, such conduct would be unlawful, because a number of the Cabinet Office/Gunning rules, now enshrined in the Supreme Court (SC) decision in 2014 in the case of Moseley v London Borough of Harringey, had not been adhered to. BWB suggested that assurances be obtained from the Council that no use would be made of the January 2016 consultation, and these were given by Councillor Sturgis.

BWB’s letter set out in full what is required for a lawful consultation when one is needed, and it is against this background and the current consultation on Everleigh that the Group now wish to turn, together with other related matters.

**2). ASSESSMENT OF THE CURRENT EVERLEIGH SITUATION**

PCAP has not, as yet, felt it necessary to seek further legal advice and thus the opinions now expressed are based on its understanding of the advice contained in BWB's letter, and how it relates to various events that have taken place subsequently. Legal advice has, however, been retained in advance of this Appraisal and will be made available to PCAP, in the event of it being considered necessary to obtain the same. The Group's comments fall under three headings:

**A). The lawfulness of the current public consultation on Everleigh**

**a) SC ruling: "a consultation must be at a time when proposals are at a formative stage"**

The Group submits that a decision to close Everleigh has in fact already been taken, although it cannot determine at precisely what point. It believes that substantial circumstantial evidence of sustained intention to close the site is contained in the History of Events (HoE), covering the period from September 2015 to March 2018, a document that runs to some ten pages. The copy that was given to the Cabinet Member for Waste, and the Director for Waste prior to their meeting with CPRE and PCAP on 2<sup>nd</sup> May 2018 was supplied for information purposes. The Director for Waste subsequently challenged two points in the HoE, but neither were germane to a decision to close the site, and she has been invited subsequently to retract her comments on her first point, while her second has been refuted. The Group considers therefore that the Council accepts the HoE as an accurate reflection of what has taken place over the period concerned.

Further support that a decision has been taken is contained in the Minutes of a Pewsey Area Board meeting that took place on 5<sup>th</sup> March, at which the Director for Waste attended and spoke. Inter alia, it is minuted at No 89 that although she stated "any decision on the future of Everleigh would be the subject of a new specific consultation" this is seemingly overridden at a later point by "If the Cabinet decided that the Everleigh HRC should close, that decision would THEN (our emphasis) be the subject of a separate consultation".

The Council may wish to argue that no decision has been taken by Cabinet as yet, but the Group considers there has to be a strong possibility that a decision to close has been made, which is why a so-called "consultation" is being held now before submission of closure proposals to Cabinet. Meanwhile, the Director of Waste's comment about a consultation being held AFTER a decision is made by Cabinet, is manifestly at odds with the SC ruling.

The Group also wish to draw attention to the comments made at A) b) i below in relation to Question 11 of the consultation document, which it believes provides very significant further evidence that a decision to close the site has been taken before the current consultation began.

The Group submits that the combination of the circumstantial evidence in the HoE, combined with Director of Waste's comments in the Minutes referred to, and the ramifications of Question 11, cast very significant and substantial doubt on any claim that the current proposals have been made at a "formative" stage, and thus meet the requirements of the SC ruling.

**b) SC ruling: “the proposer must give sufficient reasons for any proposal to permit for intelligent consideration and response”**

**i) The Group submits that the Council’s case rests entirely on the claim that it is the smallest, least used and most expensive to run of the Council owned sites, combined with the necessity for capital expenditure to maintain the infrastructure, and in the supporting evidence states that closing Everleigh would save £100,000 in fixed operating costs in addition to avoided revenue costs (unspecified). There is no indication as to how the savings figure of £100,000 is reached, and no evidence that the Council has taken into account the additional facilities, certainly in terms of opening hours and possibly staff, that would be required at the three other sites offered, let alone the cost of disposing the over 2,000 tonnes of waste material annually, that would be required to be disposed of from the original Everleigh site. Until a full analysis of this saving costing is available, the Group does not believe it is possible for a considered answer to be given to Question 10 of the consultation document, which inquires “Having read the background information and options the council has considered, would you support the closing of Wiltshire’s least used HRC in Everleigh?”**

**ii) It is also noted the Council offer seven options in the supporting documents ranging from full restoration to closure, where similar criticism to that made above can also be made, but Question 11 of the consultation document, (which relates to the six options for maintaining Everleigh in one form or another) inquires “Do you have any comments to make on the other options included in the detailed background documents *that the council currently considers not to be viable* (our emphasis). What then, is the point of setting these options out, if the Council are seemingly unprepared to consider them? How can “intelligent response “be provided in such circumstances? Is this a case of the Council seeking to use undue and possibly, unlawful, influence to obtain the site closure it desires? Is it not reasonable to suppose that this consultation is simply a “going through the motions”, box ticking exercise, that will not be allowed to stand in the way of the Council’s ultimate objective, the decision having been taken already? The use of the “word “currently” in this context appears to be disingenuous in the extreme, given that the Council’s desire to close Everleigh has been obvious ever since September 2015 and thus reinforces the argument that a decision to close has been taken before the current consultation process began.**

**c) SC ruling: “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”**

**This ruling is clearly applicable in this case and there are several examples of unfairness towards Everleigh users in this consultation that the Group would wish to cite, but in the interest of brevity, will refer to only three and rather varied ones:**

**Invidious comparisons are made with other sites in terms of visitor numbers, which take no account of Everleigh being the most rural site in the County with a small population, as compared with urban areas such as Warminster and Trowbridge.**

**The claim that the majority of rural residents should be able to reach an alternative site in accordance with national best practice (i.e. 30 minutes) as set out by WRAP is based on the use of “SatNav” analogous software used by the Council, which the Group**

believes may no longer be relevant in the light of past and ongoing development, particularly at the alternative sites offered of Marlborough and Devizes, which towns appear to be becoming increasingly congested. The impression is given that the “30 minute” guidance in rural areas is “best practice”, when WRAP’s “preferred” limit is actually 20 minutes. Everleigh’s excellent communications with the Pewsey Vale and Tidworth area from which the majority of visitors to the site could be expected to come, are highly relevant in this context.

Reference is made to the need for a capital (initial investment) cost of some £102,500 to rectify the current defects at Everleigh, namely the replacement of a sealed drainage tank, the repair of a parapet wall and the installation of a sealed drainage system on the western side of the site. These simple figures, however, conceal a history of incompetence and mis- management by the Council and its predecessors (not revealed in the consultation

process) which extends back some twenty or so years in terms of failure to inspect and maintain the infrastructure of the site, and to ensure that the original drainage plans were complied with, which it now appears they were not, all of which was admitted by the Director of Waste at the Pewsey Area Board meeting on 5<sup>th</sup> March and/or in subsequent correspondence. It cannot possibly be “fair” for the Council to attempt to penalise local residents subsequently in this situation, by claiming now that they cannot afford the cost of rectification.

#### **B). Negligence**

In the light of the preceding paragraph, PCAP wishes to reserve the right to take legal advice as to whether negligence has taken place, and if so, what action could be pursued against the Council in the interest of the local residents.

#### **C). Costings**

Full and complete costings need to be supplied for all seven options in the supporting documents relating to the consultation, if proper transparency and information is to be observed and given.

#### **D). Summary**

The Group believes that on the above considerations alone, (and there are others). there is ample scope for serious legal criticism of the Council’s past and current approach to Everleigh. However, at this stage, it does not believe that legal involvement is the best way forward. It must make its position clear from the outset, which is that Everleigh should be restored to full working order under Option 1 and believes that a perfectly reasonable case can be made for this. We are very willing to work with the Council to achieve this.

The Group is not insensitive to the financial problems created for the Council by the withdrawal of substantial Government funding in recent years, rising costs and rising demands on many of its services, but where savings still need to be achieved, despite a significant rise in Council Tax for 2018/19, cuts must be properly targeted. In the case of Everleigh, the Group suggest that the Council has aimed at the wrong target, at the wrong time and for the wrong reasons, and that they have gone about it in a way that is



**potentially unlawful. Everleigh's problems can be solved by the capital expenditure of a little less than £150,000 (including new equipment) which represents just 0.43% of the surplus in the Council's current Capital Account. This seems a very modest amount in relation to Everleigh's value to the local community, and to repair years of neglect by the Council and its predecessors.**

**If a constructive outcome cannot be achieved, then it is with great regret that PCAP will feel obliged to take advantage of the legal advice that is available to them and will act accordingly, giving notice now that, inter alia, an immediate question will be raised as to whether the Council could legitimately continue with the consultation currently underway.**

**Colin Gale**

**PCAP Member**

**For and on behalf of the Pewsey Community Area Partnership**

**Supported by The Campaign to Protect Rural England and Pewsey Parish Council**

**19<sup>th</sup> June 2018**

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**An Assessment from the Campaign to Protect Rural England (CPRE) and Pewsey Parish Council (PPC)**

**for the Environment Select Committee, Wiltshire Council 26 June 2018**

**on the Consultation on proposed closure of Everleigh household recycling centre.**

**Aim:** CPRE and PPC wish to draw the Environment Select Committee's early attention to the recently issued "Consultation on the Proposed Closure of Everleigh Household Recycling Centre." The public law duty to consult requires the key principle that the public authority should exercise fairness in carrying out a public consultation.

**Background - Everleigh:**

There is a long fully documented history of events that details Wiltshire Council's attempts to close Everleigh HRC since September 2015.

The first attempt was by including the closure in a finance agenda item submitted to Wiltshire Cabinet without any prior public or Council consultation. A public outcry prompted the last minute withdrawal of the item. This was followed by a very well attended public meeting in December 2015 where WC agreed to withdraw the act of closure because of public pressure. In January 2016 a limited survey was conducted with questions that appeared to be biased. Following legal advice, this also had to be withdrawn with an assurance that the data would not be used.

Since then there has been a continuous flow of communications where statistical information has been challenged and found to be incorrect or misleading. At Cabinet on the 27<sup>th</sup> March 2018 the Chairman directed that the Cabinet Member for Waste should hold a meeting with local representatives to resolve the questions about Everleigh. The meeting was held on 2<sup>nd</sup> May and formal responses were received on 7<sup>th</sup> June. The timing was almost coincidental with the launch of the consultation on the proposed closure of Everleigh.

**Background – Legal:** When a local authority engages in consultation, it is under a duty to do so adequately and fairly. The Supreme Court has laid down six requirements for a fair consultation by a local authority. These were set out in the 2014 case of *Moseley v London Borough of Haringey*. They are:

- a) "a consultation must be at a time when proposals are still at a formative stage"
- b) "the proposer must give sufficient reasons for any proposal to permit for intelligent consideration and response"
- c) "adequate time must be given for consideration and response"

- d) “the product of consultation must be conscientiously taken into account in finalising any statutory proposals”
- e) “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”
- f) “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”

**Consultation Supporting Evidence:** The supporting evidence in the consultation document is provided under the headings of background, issues, consultation and options.

a) No identification of important criteria.

The background gives general information with no specific information about Everleigh. The basis for consultation and the basis for assessment of the consultation has to be defined and the supporting documentation should define clearly which factors are important when assessing the responses so members of the public are aware of what decisive factors will influence the decision. It seems these criteria have not been identified.

b) Omission of important information

The site infrastructure information fails to state that a problem has arisen because the drainage system was not installed according to the original drawings in 1996. As no maintenance work or inspections were carried out by the Council, this issue was not identified until 2017 when the site was surveyed before a change of operators.

c) No analysis of the data on visitor numbers and tonnage

The site usage and site performance data on visitor number and tonnage that the council uses to measure and compare household recycling centres are straight forward measurements. There is no further analysis, taking into account, for example the difference between an HRC that serves a wide rural area and one that serves a large town.

d) Lack of adequate information.

The consultation and options section contains 7 options. The limited details appear to be unsubstantiated and there is also limited cost data. The purchase of new equipment is identified as an annual cost without any specific information about what the new equipment is. This all makes it difficult for members of the public to be able to make a considered response. The various investment costs appear to be rounded up. They may be worst case figures but there is no supporting information to inform the reader. The savings costs vary according to the option with no detailed information to explain how the cost is arrived at.

**Consultation Document:** Questions 1 to 9 are basic information gathering questions.

Question 10 – *“Having read the background information and options the council has considered, would you support the closing of Wiltshire’s least used HRC in Everleigh? “Yes I would support this approach” or “No I wouldn’t support this approach”.*

This question has not been phrased in a neutral manner. A comment box is only made available if the person completing the questionnaire selects “No”. The space allowed in the box is very limited.

Question 11 – *“Do you have any comments to make on the other options included in the detailed background documents that the council considers not to be viable? No or Yes.”*

This question has not been phrased in a neutral manner and appears to suggest that the Council is not open to persuasion when it comes to considering alternative options. The “No” response is listed first and a comment box of limited size is only available if “Yes” is selected. Again, the box is very limited in size.

It is noted that the statement on page 3 reads, *“Before any decision regarding closure of the sites is made, we are holding a consultation to gauge potential mitigation actions that could be implemented. The consultation refers to options which have been considered as set out below”*

If read together it appears that the Council has already considered all the 6 options that cover keeping the site open (the 7<sup>th</sup> being closure) as set out in the consultation paper and found them not to be viable. It seems it is not a case of whether to keep the site open or not but purely one of finding possible ways of mitigating the impact of closing the site.

Question 12 – *“How would you personally be impacted by the closure of Everleigh? Significant impact – I will no longer be able to access an alternative site or –*

*Minor impact – It will cause an inconvenience as I will have to travel further to another site or*

*No impact – It will not personally impact on me.”*

Is the Council hoping for a minor or no impact response that shows the closure of Everleigh will have minimal impact on the surrounding rural population?

Question 12b (13 in the electronic version) – *“If you have stated that you would be significantly impacted by the closure of Everleigh HRC, do you have any suggestions that the council could consider which may help reduce the impact of the closure on you?”*

Does the Council expect many people to complete this question? Again the size of the response box is very limited.

**Consultation Assessment against the Legal Requirements:**

1. *“ A consultation must be taken at a time when proposals are still at a formative stage.”*

It seems evident that the consultation is not at a time when the proposal is at a formative stage. The background history demonstrates a previous long history of the Council's attempts to close the HRC. It is not at all apparent that the Council can be influenced by the responses to the consultation and this would appear to render the consultation both unfair and pointless. As already mentioned, in Question 11 the Council currently does not consider any of the options other than closure to be viable and question 13 asks “do you have any suggestions that the Council could consider which may help to reduce the impact of the closure on you?” This seems to point to the Council already having made up its mind about closure.

2. *“the proposer must give sufficient reasons for any proposal to permit for intelligent consideration and response.”*

The Council does not seem to have given sufficient reasons for closure that would allow members of the public to give a considered response. As mentioned above, the supporting document does not appear to identify the criteria that will be applied when the proposal is considered by the Council or the factors that will be important.

3. *“the product of consultation must be conscientiously taken into account in finalising any statutory proposals.”*

The Council appears to have constructed the consultation in such a manner as to limit the comments that can be provided and the need for any detailed analysis of the answers. This would seem to render the consultation both unfair and pointless.

4. *“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.”*

It seems the Council gave great consideration about who they were consulting, together with the potential outcome and the timing of the consultation. Instead of simply consulting the population areas directly affected by the proposal to close Everleigh HRC with the possibility of that not going the way proposed by the Council, the Council has decided to include Option 2 which states “*Full long term investment in the Everleigh site but with the council to close another household recycling site to fund the required works.*” And Q 10 “*Having read the background information and options the council has considered, would you support the closing of Wiltshire's least used HRC in Everleigh?*” In this way, the consultation has been opened up to the whole county. Could it be in the hope that those not directly affected by the proposal to close Everleigh HRC might respond in support of the Council's question 10?

The supporting document identifies under “Background” the introduction of the ID passport requirement scheme in April 2018 to restrict out of county use of the HRCs. Over a period of time this is expected to influence the individual HRC site numbers. It is expected that Everleigh HRC visitor numbers will increase.

It seems the Council may have acted unfairly in the selection of whom to consult in order to gain the outcome the Council appears to have decided upon and to have carried out the consultation at a time before the possible increase in visitor numbers might influence the argument the Council wishes to obtain.

5. *“The demands of fairness are likely to be somewhat higher when an authority contemplates depriving someone of an existing benefit or advantage that when the claimant is a bare applicant for a future benefit.”*

The Council’s use of evidence appears to be simplistic. Its insistence on comparisons of urban populations with widely spread rural populations seem designed to support the Council’s proposal to close Everleigh. Visitor numbers for an HRC in a city or large town where the population is 10 times the number of the area served by Everleigh are obviously going to be greater and so are the resultant tonnage figures for waste. There have been previous attempts by members of the public to balance this argument by demonstrating that the operating cost per population head served for each HRC shows that Everleigh is not the most expensive site to operate. The Council has disregarded this argument but has failed to do any analysis to disprove it in the data supplied in the consultation document. By comparing visitor numbers with the tonnage for each site it is possible to identify the average amount of tonnage each visitor takes to the HRC per trip. Everleigh has the highest amount of tonnage waste disposal per visitor trip. This suggests the rural community visit the HRC less frequently, possibly because they have to travel further, but deposit over 67% more per trip than the lowest HRC which is Purton. From an environment perspective, carbon footprint and the recovery of resources are important and a factor that the Council should be considering very carefully and promoting.

It does not seem that the Council has fulfilled the demands of fairness when contemplating depriving those living in the area served by the Everleigh HRC of their existing benefit.

**Summary:** The review of the Councils consultation on the proposal to close Everleigh HRC against the six requirements laid down by the Supreme Court have identified that the Council appears to have breached five of the requirements:

In the circumstances it can only be concluded that the current consultation, based on all the information available, appears to be unlawful and should be withdrawn by the Council.

List of legal requirements

“Consultation must be at a time when proposals are still at a formative stage”

“the proposer must give sufficient reasons for any proposal to permit for intelligent consideration and response”

“the product of consultation must be conscientiously taken into account in finalising any statutory proposals”

“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”

Charmian Spickernell  
CPRE Wiltshire Vice-Chairman

Curly Haskell  
Pewsey Parish Council Chairman

Supported by Pewsey Community Area Partnership