

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 Following legal advice, this also had to be withdrawn with an assurance that the data would not be used.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 27th 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 2nd May and formal responses were received on 7th 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 7th 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