

19 November 2018

Ms Dawn Wilson  
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Pewsey Community Area Partnership  
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By email: [dawnwilson917@yahoo.com](mailto:dawnwilson917@yahoo.com)

Dear Ms Wilson

### **Wiltshire Council: decision to close Everleigh Household Recycling Centre**

As you know from our previous letter of 30 January 2017, we act on behalf of a resident of Pewsey Vale, Wiltshire. We have been advising this individual in relation to concerns they have over the decision making process (including consultation) which led Wiltshire Council (“the Council”) to close Everleigh Household Recycling Centre (“Everleigh”). Our client has requested that we share with you, on behalf of and as the Chair of the Pewsey Community Area Partnership (“PCAP”), a summary of areas where the decision making was arguably deficient and could be improved in future. We have provided a summary of these points below.

Please note that the advice and opinion contained within this letter was provided specifically to our client based on the information that they provided to us. It is not intended to constitute legal advice to any other third party, including the PCAP, and should not be relied upon as such. Should you wish to rely on any of the content you would need to seek your own independent legal advice.

- 1. Lack of clear information for consultees.** In order for a consultation to be lawful, the consultation exercise must comply with a number of principles. One such principle is that sufficient reasons must be given for any proposal to permit for intelligent consideration and response by consultees. In our view, the consultation paper was unclear in several areas. In particular, the presentation of the various “options” (page 3 consultation paper) made it difficult to assess whether the Council would in fact be saving any money by closing Everleigh as against other options. It was not clear what new equipment was needed at Everleigh or why, and why this would be an annual rather than one off cost. An average saving of £135,500 was given for the closure of other sites, with no information about how this figure was calculated (and presumably the savings would have been greater in relation to some sites). These issues made it difficult for consultees to give properly informed responses. Such issues are particularly problematic given the Council’s conclusion that closing Everleigh “*generates the combination of the greatest annual revenue saving couple with the avoidance of additional in-year capital spend*”: it is difficult to work out from the information in the consultation paper how the Council reached this conclusion. The report to Cabinet and minutes of the decision of 9 October 2018 do little to clarify how the various savings were calculated, or the cost implications over a mid or long term period.



2. **Requirement for an open mind in decision making.** Whilst it may be permissible to have a preferred option when consulting, the arguable bias shown in a number of consultation questions might create doubt as to whether the Council would have had an open mind when making the decision. Question 10 of the consultation, asks consultees whether they would support the closure of Everleigh, “*Wiltshire’s least used HRC*”, arguably attempting to influence consultee’s answers. Question 12, asking how consultees would be impacted, required a choice between “*significant impact – I will not be able to access an alternative site*”, “*minor impact – it will cause inconvenience as I will have to travel further to another site*” and “*no impact – it will not personally impact on me*”. We understand that some consultees have highlighted that they considered the inconvenience of having to go to another site more than a “*minor impact*”.
3. **Regard to the public sector equality duty.** There was nothing in the draft minutes of the meeting of 9 October 2018 to demonstrate that the Council had due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic (such as disability) and persons who do not share it (section 149(1)(b) and (3) Equality Act 2010). Particular consideration may be required of the needs of disabled persons (section 149(4)). There was little evidence of a proper and conscious focus on the statutory criteria, and the Council certainly did not comply with best practice of referring to the public sector equality duty explicitly.
4. There were a number of other potentially problematic areas of the consultation and decision making process:
  - (a) For a substantial period of time, individuals wishing to submit their views were prevented from being able to do so meaningfully and in full, due to a low character count being imposed in the free text boxes for responses to some questions to the consultation online.
  - (b) In relation to consultation responses about an increase in the potential for fly tipping after the closure of Everleigh, the Council appeared to rely on existing data about fly tipping levels. It is difficult to see how this could provide an indication of the likely position once Everleigh closed (the closure providing an incentive to fly tip rather than to drive further to an alternative site).
  - (c) Paragraph 38 of the report to Cabinet dated 9 October 2018 was arguably misleading by stating that alternative facilities were within a 10 mile radius, when in fact the actual distances required to drive to alternative sites are much further.
5. Finally, we have recommended to our client that they check that the publicity requirements in relation to “key decisions” under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 were met.

Yours sincerely

*Bates Wells Braithwaite*

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