

A REVIEW DATED 23RD OCTOBER 2019 BY THE PEWSEY COMMUNITY AREA PARTNERSHIP (PCAP), PEWSEY PARISH COUNCIL (PCC) AND THE CAMPAIGN TO PROTECT RURAL ENGLAND (CPRE) collectively known as THE GROUP

of

THE FINAL REPORT OF THE PUBLIC CONSULTATIONS TASK GROUP

As presented to the Overview & Scrutiny Management Committee on 24th September 2019

(All references to a “Para” refer to the relevant part of the Report)

01. Para 2 (Background). This does not reflect the reality of what occurred at the Cabinet meeting on 9th October 2018, when the then Leader of the Council, Baroness Scott, made it clear to Cllr Wright that the Overview, Scrutiny and Management Committee (OSMC) should carry out a review with the purpose of improving the way the Council’s public consultations were carried out. The Cabinet Minutes do not make a specific reference to “improvements”, but rather “to assist the policy development in the Management Committee Forward Work Plan”. This somewhat ponderous wording does not seem to conflict, however, with the word “improvement”.

02. Para 4 (Background). This concerns the scope of the Public Consultations Task Group (PCTG) and specifically states that it should focus on:

The purpose of consulting the public on certain decisions

The amount of consultation conducted by Wiltshire Council and whether this was reasonable

The public’s perception of how their contribution would influence decisions

Para 5 (Background) notes that the remit of the PCTG aligns with the Business Plan 2017 – 2027 priority of “working with partners as an innovative and effective Council.”

Para 6 (Terms of reference) establishes the terms of reference (ToR) for the PCTG as endorsed by the OSMC. The ToR are as follows:

1. To investigate :

a) The quantity and scope of council consultations and the level of response

b) How the council determines when, and when not, to consult the public on proposals or potential service changes

c) How the council determines the best design and format for each consultation

d) The public’s perception and experience of council consultations

2. To make constructive recommendations for improvement if appropriate

All of which is entirely laudable, but in the submission of the Group, as the Report progresses, was little more than merely an expression of intent. In reality, the Report very

largely failed to focus on its intended scope, as stated in Para 4 (Background) and either partially, or in some cases, totally, failed to comply with its terms of reference as set down in Para 6.

With regard to Para 4, the Report is silent on the purpose of consulting the public on certain decisions. The question of the amount of consultations carried out by Wiltshire Council and whether this was reasonable is not addressed, other than by the perfunctory comment in Para 14 that of all the consultations carried out between July 2017 and January 2019, only 14% could be considered consultations (the remainder being “canvassing” or “engagement” exercises) and any further information, data, or recommendation is noticeably absent. The public’s perception of how their contribution would influence decisions is barely touched upon, except briefly in Paras 17 and 18, with no comment as to how the public could actually have any influence at all.

With regard to Para 6 (Terms of Reference), the Group wishes to comment as follows:

6.1.a) is barely addressed in the Report in terms of quantity, and not at all in terms of scope and the level of response.

6.1.b) is not addressed in the Report.

6.1.c) is not addressed in the Report.

6.1.d) as mentioned above, when commenting on Para 4, the question of public perception is addressed only very briefly in Paras 17 and 18.

For these reasons, the Group considers that the PCTG fell far short of the standards of thoroughness, and the depth of investigation and analysis, that the reader could reasonably expect from an inquiry of this nature.

03. A further reason for reaching the above conclusion lies in the list of witnesses shown as having given evidence to the PCTG in Para 8 (Methodology). There are 14 names given, and every one is, or either has been, a Councillor, Council officer or employee. There is no reference to any outside individual contributor or any organisation that could be said to be independent of the Council, and duly representative of the public. This situation does not fit well with Para 5 (Background) and the comment about “working with partners”, on the basis that, whether the Council or the public like it or not, they should, in fact, be partners, when it comes to public consultations, and the PCTG’s failure to recognise that, has meant that an opportunity was missed to engage with the public at a time when, on the question of consultations, relationships between the Council and the public are at an all time low.

Question: How did the PCTG comply properly with the “focus” referred to in Para 4, the PCTG remit as expressed in Para 5. and the Terms of Reference at Para 6.1. d) if no member(s) of the public, or any organisation acting on its behalf, was seemingly ever invited or consulted? With no independent public input, it is suggested that the PCTG’s view of public attitudes towards public consultations is unlikely to be anything like as comprehensive as it should have been.

04. Following on from 03, it is relevant, perhaps, at this juncture, to record that on 13th February 2019, PCAP on behalf of itself and the other Group members, sent a Memorandum dated 10th February 2019 to the Chairman of the PCTG, together with additional background

information (i.e. correspondence with a former Cabinet Member for Waste, including a letter from PCAP's solicitors, and the current Cabinet Member for Waste, all of which related to the closure of the Everleigh HRC).

That Memorandum contained comment about public consultations in general and the Everleigh HRC consultation in particular. It offered a number of options as to how the public might obtain better access to the consultation process, as a step towards overcoming the public apathy that currently surrounds it. The public perception of the Council seemingly ignoring overwhelming majorities in favour of a course of action contrary to the public's opinion was addressed by a proposal that, in the event of a majority of 75% or more being obtained by public response against a Council proposal, that the outcome should be decided by Full Council, rather than just by Cabinet. (The majority in favour of keeping the Everleigh site open was 94% and that of retaining the children's Special Needs schools in North Wiltshire was 76%, but in both cases, the Group submits that public opinion was insufficiently taken into account, and overruled by the Council.)

No acknowledgement of, or response to, this Memorandum was ever received.

Question: Why did the PCTG ignore this Memorandum? It is certainly not cited in any evidence list. While the PCTG was entitled to disagree with its content, its conduct does not appear to sit easily with the intent cited at 02 and the Question raised at 03.

In the interim, various other matters have come to the attention of the Group. It has been noted that the key document for interface with the public is the Cabinet Forward Work Plan (CFWP). The heading "Consultation" is not defined in the CFWP and in the light of Para 14 (Terminology), where this heading is completed at all, it is not always clear whether reference is being made to a public consultation, a survey, a canvassing operation or an engagement operation. Even when completed, this column can contain absurdities, such as the Issue details for the Community Funding Review, a Cabinet Agenda item for 8th October 2019, where the note under "Consultation process" simply states "TBC". This indicates consideration has already started, which conflicts with the rules. Both matters would seem to be symptomatic of a general lack of attention to detail in the Council's consultation process.

05. Para 11 (Evidence – Internal documents). This refers to internal documentation relating to public consultations being either out of date or not adhered to consistently – a comment upon which it is not possible to pass any judgment, as it is unsubstantiated, and must thus be taken at face value - while Para 12 (Evidence) refers to the retirement of the officer responsible for the management of the Council's public consultations, recording also that there are no immediate plans to recruit a successor, which raises the question of the integrity of the Council's management structure for public consultations. The PCTG also noted that it was important for the Council "to uphold its practise of carrying out public consultations in line with legislative duties". It is difficult to see how this could be achieved if the Council's internal documentation is out of date or not adhered to, and no proper management structure is in place.

The Council may argue that it is rarely, if ever, taken to Court over deficiencies in a public consultation, but this does not necessarily mean that all its public consultations are entirely lawful. The problem here is that any challenge is likely to come from members of the public, or an unfunded, possibly ad hoc, focus group, and litigation is usually far from their reach,

owing to the prohibitive cost thereof. Nevertheless, the Council cannot afford to be complacent about this, as recent events have demonstrated, namely the Group's legal intervention, twice, with regard to Everleigh and the furore over children with Special Needs, where there was talk at one point of a Judicial Review. Natural justice demands anyway, that all public consultations are carried out in an entirely lawful manner.

06. Reference is made in Para 12 (Evidence – The Business Intelligence Hub) and again in Para 13 (Evidence – The Business Intelligence Hub) to the BIH having an integral role to play in the Council's future public consultation process. In the meantime, individual service areas would be responsible for managing any public consultations. There is a strong hint that this would prove "challenging" due to the extra work involved for, as an example, the team leading the work on the proposed boundary review changes. With regard to the latter, it would be fair to ask who is going to oversee the team responsible for this in the interim?

But would this not apply equally to any service area tasked with managing a public consultation, not only in terms of the additional work involved, but a potential lack of expertise in the first place? It is clear that internal structural problems exist and with internal rules and procedures out of date, it seems obvious that difficulties will continue, pending the establishment of the Business Intelligence Hub. There being, as yet, no guarantee that this will solve all the problems, it would seem obvious that some kind of effective management structure for public consultations should be put in place in the interim.

07. Para 14 (Terminology) contains the interesting revelation that the PCTG concluded that between July 2017 and January 2019, 86% of all public consultations conducted by Wiltshire Council were examples of canvassing or engagement and only 14% were examples of either statutory consultations or recommended by Legal Services as per legislation from the Duty to Consult.

The Group reserves its position on this situation. Unfortunately, at the time of writing this review, there is no data to hand that establishes how many cases were involved, and into which category they fall. The omission of an Appendix to the Report on such an assertion appears strange, given the implications of this situation, some of which can be summarised as follows:

a) There is no way an independent assessment can be made at present to confirm the accuracy of the PCGT's assessment, when tested against the Public Law Duty to Consult. Such an assessment is needed, in the opinion of the Group, given the PCTG's own concerns about public consultations, as expressed later in this review.

b) The percentage of "canvassing" or "engagement" with the public seems astonishingly high – confirming the Group's belief that there is a need for an independent assessment as referred to above. If it is correct, then this would indicate a degree of incompetence on the part of the official(s) responsible, which clearly pertained far earlier than July 2017 (witness the January 2016 Everleigh consultation debacle) and very possibly for a considerable amount of time previously. This would indicate a woeful lack of management, expertise and familiarity with the Public Law Duty to Consult. Also, public funds could well have been wasted, which is implied at Para 16 (Terminology) which states "Secondly, when a form of engagement or canvassing is labelled a "public consultation" a larger amount of internal

resources become committed to the process” - which must mean more expense is incurred than necessary.

c) Following on b) what degree of certainty is there that the PCTG labelled many public consultations as “canvassing” or “engagement” when some may have actually merited being public consultations in the first place?

d) The position of Legal Services is interesting here. It seems evident that they were consulted, at least from time to time, but were they consulted on all, or any, of the “86%” cases, which the PCTG has found were not really public consultations at all? If so, it would seem that Legal Services, if they agreed that the “86%” cases were a matter for public consultation, are in conflict with the findings of the PCTG Report. Alternatively, if Legal Services were not consulted, and the PCTG is correct in its assessments, then service areas would appear to have organised “public consultations” on a basis that was unwarranted. The Group submits that, either way, there appears to have been a level of disconnect here that is unfortunate and unacceptable, and an examination needs to be made as to how this has occurred, especially if the situation continues to persist. It is noted that, apart from highlighting the percentages, the Report is otherwise silent on this point. If service areas did not take advice from Legal Services on the “86%” cases and simply pressed ahead with what they may, mistakenly, have considered was needed for a public consultation, can it truly be said, in retrospect, that the officers concerned had the expertise to do the job properly, the irony of the situation being that they were doing something that may not have been necessary in the first place?

e) As there is so little information available as to what happened in practise, the Group is making a formal Request to Cabinet to provide a list of all the cases reviewed by the PCTG between July 2017 and January 2019, together with the reasons as to how the PCTG reached the conclusion they did, in each case, so that an independent assessment can be made.

f) It seems that the official responsible for public consultations within the Council was the Census Liaison Manager, who retired in April 2019 – at least this would seem to be a fair assumption in the light of Para 12 (The Business Intelligence Hub). His credentials for the important task of being responsible for public consultations are unknown, but it is perhaps pertinent to ask what role he played in the cases that were investigated by the PCTG, presumably during his tenure, and what his experience and qualifications were that led him to that appointment.

08. At this point we come to some mention of the public.

Para 15 (Terminology) comments “ Primarily the words ‘public consultation’ have certain connotations and set the expectation that a respondent can influence the outcome of a specific decision. When such terminology is used to describe a form of engagement or canvassing, respondents therefore wrongly assume the purpose of their role, as well as their power of influence.”

This statement would seem to display a misunderstanding of public perception that is highly disturbing. The Group has seen ample evidence over the last three years that the public perception is that only very rarely does their response have any influence on the Council’s decision making process and that response to a canvassing or engagement situation is largely a waste of time. This latter perception may not be entirely fair, but overall, the pervading

public perception is one of disconnect between them, and the Council and its policies – a perception that is particularly strong in relation to Planning Applications, whether dealt with by Committee or under Delegated Powers.

It is noted that the Report does not elaborate on the “expectation” and “influence” referred to above in respect of public consultations, and makes no attempt to define the “purpose of their role” or elaborate “their power of influence” when it comes to responses to canvassing or engagement situations. The Group suggest that it would be helpful if, in future, guidelines were made publicly available by the Council as to what it expects of the public in all three situations, and what the public can expect from the Council in return.

09. Para 16 (Terminology). As already noted, comments on the additional resources required when a public consultation takes place. The PCTG heard that the canvassing and engagement activities should be managed by service areas and that such pieces of work are usually carried out by either Community Engagement Managers or through teams undertaking surveys independently. The PCTG offered no comment on the quality or effectiveness of these arrangements, which is surprising, given that 86% of the public consultations carried out over 2017/2019 were apparently of this nature. While the purpose of the Report may have been to improve public consultations, was an opportunity missed here not to look into improving the quality of canvassing and engagement matters as well, given that these are likely to be more frequent than public consultations, and was the PCTG’s remit and terms of reference deficient at this point?

10. Para 17 (Public Perception). The PCTG comments that through the use of incorrect terminology, the public’s expectation when participating in a Wiltshire Council consultation could be mistakenly raised (which to some extent is repetition of Para 15 (Terminology)). Para 17 also states that the PCTG “heard” that consultations should be set out in a manner that enables the respondent to understand what they are responding to, as well as to be informed of all the options under consideration.

11. Para 18) (Public Perception). The PCTG states that “When considering national guidelines on public consultations, it “understood” that consultations should only be undertaken when a decision is genuinely undecided and proposals are at a formative stage. This is indeed a perfectly correct statement of principle, but one all too often perceived by the public as not often put into practice. A perfect example of this was the attempt to close down the Everleigh HRC at a Cabinet meeting in September 2015 and the events that followed thereafter.

12. The above two Paragraphs, totalling eight lines in all, are the only ones that relate specifically to “Public Perception” in the entire Report. They embrace three of the principles of the Public Law Duty to Consult, but simply as statements, which the PCTG either “heard about” or “understood” existed. This would seem to indicate that the members of the PCTG were not as fully familiar with the Law, Rules and Court decisions surrounding public consultations as they should have been. If the intention was to improve public consultations (as indeed it was at Para 6 (Terms of Reference) at 6.2), then it would have been reasonable to expect that the Report would have provided far more significant comment on the Council’s current methods of holding public consultations, when set against the legal yardsticks mentioned. This, the Group suggests, the PCTG failed to do.

Question. Why were only three of the principles of the Public Law Duty to Consult mentioned, and then only in passing? Omitted was any reference to “adequate time being given for consideration and response (although to be fair to the Council, apart from isolated instances, this does not generally appear to be an issue), or that “ the product of a consultation must be taken conscientiously into account in finalising any statutory proposals” or “ the degree and specificity with which, in fairness, a public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting” or “ 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 full set of principles as established by the Supreme Court in 2014 are contained, with expanded comment, in a letter from the Group’s solicitors, Bates Wells Braithwaite, dated 20th January 2017, which was attached to a letter dated 20th February 2017 sent by PCAP to the then Cabinet Member for Waste, which related to the possible, and contentious, issue of the closure of the Everleigh HRC, which is listed in the PCTG Report as a case study (and the only one). The cursory manner in which these principles have been addressed in the Report, and the lack of any in depth comment on how the Council is, and should be, adhering to them, seems incomprehensible when it is understood that the purpose of the PCTG was not only to examine the public consultation process, but to seek to improve it. What appears to have happened is that the Report has come up with a series of largely general comments, with some of which the Group does not disagree, but there is a surprising lack of depth to the Report, given the PCTG’s remit. It would appear that the responsibility for making any real improvement to the Council’s public consultation process has been devolved to the Cabinet Member for Communications, Communities, Leisure and Libraries and rests on the eventual establishment of the Business Intelligence Hub, with a suitable complement of officials with the relevant knowledge and expertise. It is disappointing that a year has passed since the issue of improvement of the public consultations process was raised at Cabinet, and apparently so little, to date, has been achieved.

13. Para 19 (Conclusions). This states that the PCGT agreed that the underlying principles and foundations of the Wiltshire Council documents relating to public consultations were sound, and that any updating work would be marginal, That may well be the case, but on what basis? Principles are one thing, putting them into practise is another. The Group submits that there is an unwarranted degree of complacency here, in the light of events generally, but specifically in the case example of Everleigh. The failure to put principles into practise is clearly demonstrated by the way in which the Council got the January 2016 Everleigh consultation so wrong, to the extent that to have relied upon it in the decision making process would have been unlawful, while the 2018 consultation was described by the Group’s solicitors as “flawed” - something that the Council has never denied.

14. Para 20 (Conclusions). This comments that, with regard to the Business Intelligence Hub, “in order to capitalise on the opportunity for the Council to improve the way in which it conducts public relations, it would be fundamental for the Hub’s officers to be both well versed in consultation processes, as well as possessing the expertise to allow them to design consultations that would encourage responses that would be beneficial to the Council, when it comes to the final decision making stage”.

The Group acknowledges the need for expertise. However, if the Hub is to be relied on, the above is no more than a statement of the obvious. It is nevertheless, another tacit acknowledgement that improvement is needed, while at the same time, begging the question of where such officials will be found – a question that is not addressed. The phrase “beneficial to the Council” as used above, is perceived as having some ambiguity about it. Beneficial to the interests of County Hall, or beneficial to a Council seeking the best interests of the public? The Group notes that the Chairman of the Environment Select Committee was critical of the lack of neutrality in some of the questions posed in the 2017 public consultation on Car Parking Charges, which might indicate a bias by the Council towards the former interpretation, rather than the latter. A similar situation arose with regard to Question 8 of the January 2016 consultation that took place with regard to the Everleigh HRC.

15. Para 21 (Conclusions). Similarly, pending the establishment of the Hub, the Report comments that “additional expertise could provide valuable input into the Executive’s final decision about how the Hub should be organised”. Again, a sensible suggestion, but where such “additional expertise” should come from, and its nature, is not addressed. Nor is it simply a question of expertise – correct procedures then have to be applied.

Para 21 also expresses considerable concern about the risk of legal challenge to public consultations, “believing that the risk of adverse legal challenge is too great under the present arrangements”. This is yet another tacit admission that all is far from well within the Council’s consultation process. The Group agrees that the risk is there, and despite the comments made in 05, particularly exists when emotive issues arise, usually locally, rather than County wide, stimulating fund raising either from local individuals on a pro bono basis, or through such organisations as Crowd Justice.

Para 22 (Conclusions) and Para 23 (Conclusions) comment on ways of engaging more effectively with the public over public consultations, but it is suggested are somewhat bland and limited in their approach. The Group takes exception to the finding in Para 22 that the “average” resident can find it complex to see how their contribution has shaped Council policy. It is almost impossible for ANY resident to ascertain the effect of their contribution, however knowledgeable they may be about the workings of the Council, and however skilled they are at trawling through the complications of the Council website.

It will not matter, as far as the public is concerned, how much improvement is made to the Council’s public consultation process, whether in terms of internal procedures, greater understanding of the Public Law Duty to Consult, expertise, or anything else, unless and until the public willingly engage at a level well above its current apathy. As a start, the Group suggests that very significant improvements need to be made to the Council’s website, so that access to consultations can be made obvious, easy and simple. A second step would be to provide far more publicity to inform the public that a consultation is about to take place, or is in progress. Neither of these issues are addressed in the Report.

Thereafter, unless and until the Council can demonstrate that it has taken the public’s views fully and properly into account (accepting overwhelming majority views would be a welcome start), it will not be possible to overcome the high level of public apathy that exists currently towards consultations, canvassing, surveys, or any other kind of engagement. The overwhelming reason for this, in the Group’s experience, is the widely held view that “It doesn’t matter what we think. The Council takes no notice and does what it wants anyway”.

16. Para 25 (Recommendations). There are 9 Recommendations, most of which are to be expected in the light of the Report, but in certain cases, comment is needed.

Recommendation 3. is touched on in 13. and in the context of legal challenges states, in the interim pending establishment of the Hub, “ public consultations to continue to be managed by specialists” which begs the question of who these specialist are and where do they come from. How will such consultations be overseen, and is there not a case for the OSMC to be involved here? The general tenor of the Report is that there is very little specialist expertise within the Council which could be drawn upon, and some form of oversight and scrutiny would seem to be essential.

Recommendation 4. refers to corporate training so that officials can differentiate between public consultations and other forms of engagement, but makes no reference to the need for those that are engaged in public consultations to be fully trained in the requirements of the Law.

Recommendation 9. suggests that the Overview, Scrutiny and Management Committee “consider” receiving a report in approximately 12 months time about how any of the Recommendations accepted by the Executive have been implemented.” Given that a year has elapsed already since the matter of improving public consultations was raised at Cabinet, this seems an unduly generous time scale, especially in view of the legal concerns expressed in Para 21. Would not an interim report in say, 6 months time, from the Cabinet Member for Communications, Communities, Leisure and Libraries be more appropriate, so that momentum on this matter be maintained? It is noted that there does not appear to be any timetable for submission of the Report to the Executive. Given that the PCTG was essentially instigated originally by Cabinet, the Group inquires when it will be submitted.

17. Finally there would seem to be one obvious omission in the Report. The subject of “When to consult” is not touched upon at all, but this is fundamental to the whole process. Whether to consult or not (other than as a statutory obligation) is largely a matter of local authority judgement, but there is a common law principle that a local authority must act fairly in the exercise of its functions. The Group draws attention to the Cabinet Office Consultation Principles, and although these do not set out the requirements for a valid consultation, the message that the Government has attached to the Principles is that : “The governing principle is proportionality of the type and scale of consultation to the potential impacts of the proposed decision being taken, and thought should be given to achieving real engagement rather than following bureaucratic process”.

It is generally conceded that, on occasions, difficult decisions may have to be taken as to whether to consult or not, but if a decision to consult is taken, then clearly a local authority must take full account of the rules set down in the Gunning Principles and the Supreme Court judgement in *Moseley v Haringey*. However, there seems to be no consistency in time or content at present, and to take but one recent example, it seems remarkable that not a single potentially affected Parish Council seems to have been consulted at an early stage, about the possible effect of the Council’s bid in March 2018 to the Housing Infrastructure Fund for £ 75M for distributor roads to the East and South of Chippenham.

The Group is surprised that no mention of “When to consult” is made in the Report, despite its terms of reference at Para 6.1.b) and further comment may be forthcoming, once the list of cases referred to in the first paragraph of 07 is available.

18.Summary. The Group’s view is that this was a very disappointing and superficial report, that was carefully worded so as not to reveal just how serious some of the problems are with the Council’s public consultation process. It cannot be taken as a “Final” Report, as it does not answer or satisfy such a significant part of its own Terms of Reference. Recommendations for improvements are made in only very general terms. Inadequate attention was given to public perception at the street level. The Group members, all of whom attended the Cabinet meeting on 9th October 2018 were under the clear impression that it was the responsibility of the Overview, Scrutiny and Management Committee to come up with concrete suggestions for the improvement of the public consultation process, but it has done so only in very broad terms, and has delegated responsibility for improvement, in practical terms, to the Cabinet Member for Communications, Communities, Leisure and Libraries. There is an obvious reliance on the proposed Business Intelligence Hub to solve the current problems, and ensure better management of public consultations in the future, but currently, the Group considers that this is mostly hope over expectation, given that the Hub is not yet established, and there are seemingly no qualified staff available to man it in this particular field anyway. Altogether, an unsatisfactory situation, and one which the Group will continue to challenge.