

Wiltshire Council

Cabinet

19 November 2019

Questions from Colin Gale – on behalf of Pewsey Community Area Partnership (PCAP), Pewsey Parish Council (PPC), Campaign to Protect Rural England (CPRE) about the Final Report of the Public Consultations Task Group

Hereafter referred to as the “Report” and the “PCTG” respectively

Agenda Item 5 – Public Participation

To Councillor Allison Bucknell – Cabinet Member for Communications, Communities, Leisure and Libraries

Statement:

The Group notes that the above Report was submitted to the Overview and Scrutiny Management Committee on 24th September 2019. Subsequently, the Group has carried out a Review (the Review) of the Report and wishes to make the following comments.

While there are some aspects of the Report with which the Group are content, overall it has come to the regretful conclusion that the Report was generally demonstrably superficial, and that the PCTG failed in the task that was set before it. The Group believes that the Report gives rise to numerous questions. The most important of these, in the view of the Group, are listed below, and we request that they be answered, after taking into account the text of any comment in the Review, that text being specifically identified where appropriate.

Question 1

How can the Report be considered a “Final” Report, when the PCTG has failed significantly to comply, partly and/ or wholly, with both the scope on which it was required to focus and its terms of reference, as endorsed by the Overview & Scrutiny Management Committee? (c.f. Review 02)

Response

The Public Consultations Task Group (PCTG) has worked through their Terms of Reference (ToR) and has produced a set of conclusions and recommendations in relation to these. These conclusions and recommendations are all focussed on improving the way the Council's public consultations are carried out in the future to ensure that those decisions which the Council needs to consult on are carried out in an effective way according to the law.

The Overview and Scrutiny Management Committee (OSMC) has endorsed the work of the Task Group and has not suggested that there is a need for any further lines of enquiry to be investigated. It is worth noting that the [Localism Act](#) (2011) sets out that overview and scrutiny in local government is designed to be conducted by "lay" members (i.e. not technical specialists) and part of its purpose is to raise concerns with the Executive for potential further exploration on behalf of the public.

The Executive will now determine how to respond to the issues raised and whether these need to be addressed operationally by council officers.

Having said this, Overview and Scrutiny welcomes all public engagement with its work and will carefully consider the Group's feedback on this report for the purposes of continually improving its processes.

Question 2

Why was there complete absence of any engagement by the PCTG with the public? (c.f. Review 03)

Response

The Task Group's members used their experience of council public consultations and responses, as well as the significant correspondence that they have received from residents on the matter over a number of years. The Task Group also had evidence from experienced officers, versed in both the legal and practical requirements of effective consultation, as well as using lessons learned from cases involving other authorities and failures in their consultations.

This was considered to be sufficient evidence of the public's perception and experience on this matter. It is concluded that engagement with Wiltshire residents as a whole on the specific matter of consultations would, unlike issues of particular local concern, be unlikely to attract enough response to provide reliable evidence.

Question 3

Why was the Memorandum dated 10th February 2019 and sent to the Chairman of the PCTG on 13th February 2019 by PCAP/PPC/CPRE seemingly never taken into account? (c.f.Review 04)

Response

Unfortunately, the Task Group did not receive the Memorandum sent to the Chairman. However, if this could be circulated again and to officers, this will be circulated to all Task Group members.

Question 4

How did the PCTG come to the conclusion that between July 2017 and January 2019, 86% of all public consultations carried out by Wiltshire Council were examples of canvassing or engagement and only 14% were examples of either statutory consultations or recommended by Legal Services? (c.f. Review 07)

The Group requests that it be supplied with a complete list of all the cases reviewed by the PCTG, identifying in each case into which category it fell, and an explanation of the reasoning behind that decision.

Response

As referenced in the question, the 14% has been calculated using the general legal principles surrounding consultation. Essentially, this covers all consultations that were either statutory, i.e. required by law and it would be unlawful not to consult, or common law obligation to consult, and where Legal Services therefore recommended a consultation take place.

In the latter instances, Legal Services recommended a consultation because either an earlier commitment had been given to the public that a consultation would be undertaken, or to enable the ultimate decision-maker (Cabinet) to be fully informed on both the public's view and/or potential impact on any group with protected characteristics.

A list of the complete consultations is provided at Appendix 1.

Question 5

The Report, having commented on the use of the words "public consultation" and the public's expectations thereof, does not elaborate on the terms "expectation" or "influence" as far as public consultations are concerned, while in relation to the misuse of "public consultation" when referring to canvassing or engagement matters, does not attempt to define "the purpose of their (the public's) role" or elaborate on "their power of influence" in such matters. Why did it omit to do so? (c.f.Review 08)

Response

A task group's final report outlines an overview of the review and its findings, with more detailed information supplied, as necessary, to committee during the debate. The PCTG and OSMC considered that the terms referred to in the question were sufficiently clear and that the Task Group's review had considered 'd) The public's perception and experience of council consultations' (as outlined under

question b)). Recommendations five, six and eight provide further detail on this area of focus.

Paragraphs 14 to 16 are highlighting that there are different purposes, likely to be different methodologies and very likely to be differing outcomes, for three areas of communications with the public (canvassing, engagement and public consultation). If one term “consultation is used for three distinct areas, then there is likely to be confusion for members of the public as to purpose and outcome.

Question 6

The basis of any lawful and properly conducted public consultation has to be the Law itself. Although the Report touches on this, why were its references thereto incomplete, and conveyed an overall impression that the PCGT were not as familiar with the Law as they should have been, especially given the nature of their remit? (c.f. Review 12)

Response

The report was based on evidence and advice from experienced officers versed in both the legal and practical requirements of effective consultation, as well as using lessons learned from cases involving other authorities and failures in their consultations.

On considering the PCTG’s report, OSMC was satisfied that the Task Group had considered the topic in appropriate depth (in the context of Overview and Scrutiny’s specific role and its wider forward work programme). The Executive will now determine how to respond to the issues raised in the Task Group’s report and, if and how they need to be addressed operationally by officers.

Question 7

On what basis did the PCGT conclude that the underlying principles and foundations of the Council’s documents relating to public consultations were sound? (c.f. Review 13)

Response

This conclusion was reached after the Task Group considered and discussed the following with the Executive and senior officers:

- Wiltshire Council’s Business Plan 2017-2027
- Wiltshire Council’s Constitution
- Wiltshire Council’s Consultation Strategy

Question 8

The ambiguity of the word “beneficial” in the Report at Para 20 requires clarification. Is this terminology for the benefit of the Council, or the public? (c.f. Review 14)

Response

The word ‘beneficial’ refers here to the fact that consultations should elicit responses which are relevant to the final decision being made, so that there is maximum opportunity for the ultimate decision-maker to be fully informed of both the public’s view and the potential impact on any group with protected characteristics. The word therefore refers to both the council and the public.

Question 9

Why has the PCTG not recognised the importance of Cabinet Forward Plans within the list of documents considered, given that these are the documents that are required to satisfy a lawful consultation process and an important part of the interface with the public?

Response

The Cabinet Forward Plans form an important part of the Council’s Overview and Scrutiny function, with Select Committees taking a proactive interest in these plans and bringing items forward for discussion at committee. As a result, the Task Group did not consider it necessary to delve into the detail of these plans and instead decided to focus on case studies and more strategic documents, such as ‘The Council’s Consultation Strategy’.

The Cabinet Forward Plans are required by law on the basis of openness and transparency, as well as the public right to make public statements/ask questions, rather than under a specific duty to consult on every decision taken.

Question 10

The Report has failed completely to address one of the most important questions relating to public consultations, namely the matter of “When to consult”. Why was this not addressed? (c.f. Review 17)

Response

The Task Group concluded that this has been addressed through their consideration of the following:

- Case Studies: Flawed Local Government and Central Government Consultations (those successfully challenged in Court)
- Legal Services’ Internal Advice to Service Areas: The Duty to Consult
- The Market Research Society’s Code of Conduct

- Public Sector Equality Duty
- The Wiltshire Compact
- Wiltshire Council's Business Plan 2017-2027
- Wiltshire Council's Constitution
- Wiltshire Council's Consultation Strategy
- Wiltshire Council's Public Consultations from July 2017 to January 2019

Question 11

When will the Report be submitted to the Executive in accordance with Recommendation 9?

Response

The report has already been submitted to the Executive and the Cabinet Member for Communications, Communities, Leisure and Libraries, Cllr Allison Bucknell, responded informally to the conclusions and recommendations at OSMC's [24 September 2019](#) meeting. A formal response will be considered by OSMC on [3 December 2019](#).

The above list does not represent the totality of the Group's questions, comments and concerns. The Group therefore invites the Council to respond to, or comment on, Review items 05, (internal documents) - 06 (interim arrangements pending the establishment of the Business Intelligence Hub) - 09 (canvassing and engagement matters) - 15 (Hub expertise and legal challenges) and 16 (comment on Recommendations). The full text of the Group's Review is attached to this Statement.