

**Wiltshire Council**

**Cabinet**

**24 March 2020**

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**Question from Colin Gale on behalf of the Pewsey Community Area Partnership (PCAP). Pewsey Parish Council (PPC) and the Campaign to Protect Rural England (CPRE) collectively known as “The Group” about Wiltshire Council Public Consultations**

**Agenda Item 5 – Public Participation**

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

**Introduction**

Ever since Wiltshire Council attempted to include a report on the closure of the Everleigh HRC at a Cabinet meeting in September 2015 without public consultation ( a proposal swiftly withdrawn in the face of public and local Councillor outrage) the Group has concerned itself with Everleigh in particular, and subsequently with the Council’s ongoing and unfortunate approach to public consultations in general. Its inability to carry out public consultations properly within not only the requirements but, just as importantly, the spirit of the law, has been demonstrably compounded recently by the Council’s evident unwillingness for the public to become involved in any form of discussion as to how the Council’s public consultation process and accompanying engagement with the public itself, could be improved.

The Group has monitored the Council’s performance on some of the public consultations for the last four years and PCAP, on its behalf, now wishes to pose the following Questions to Cabinet.

**Question 1**

Does Cabinet realise what it has done? The whole consultation review was initiated due to the public’s dissatisfaction with the consultation process, and how the public’s views are taken into account. You have now completed your review of the Public

Consultations Task Group (PCTG) Final Report and endorsed a report that ignored any public input. Does Cabinet agree with this statement?

## **Response**

*The Public Consultations Task Group was established for a number of reasons; partly as a result of Cabinet's consideration of the detail from the public consultation on the future of Everleigh Household HRC, yet also, to examine the number, purpose and method of public consultations taking place in Wiltshire.*

*The nature and purpose of Overview and Scrutiny (as defined by the [Localism Act 2011](#)) means that the Cabinet should not dictate the evidence that a scrutiny review should consider in its work. However, it is noted that both the Public Consultations Task Group and Overview and Scrutiny Management Committee were satisfied with the Task Group's review and subsequently endorsed the Group's final report and recommendations.*

*For information, 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.*

*Cabinet's role is to formally respond to the recommendations that have been put forward by Overview and Scrutiny.*

## **Question 2**

Would Cabinet agree that there is room for input by the public [noted as the **Silent Majority** by the Overview & Scrutiny Management Committee (OSMC) at its meeting on 3<sup>rd</sup> December 2019] into how public consultations are handled, bearing in mind that the "public" bear the cost of these consultations via Council Tax, and eventually, invariably are the individuals most affected by any decision the Council may take?

## **Response**

*As noted in the 'Executive Response to the Public Consultations Task Group' received by Overview and Scrutiny Management Committee on [3 December 2019](#), future consultation exercises will consider how those in favour of the proposal can*

*easily indicate this preference, rather than requiring a respondent to complete the entire consultation.*

*When required to consult, the Council will seek to consult with all those who will, or who may be, affected by a decision. Depending on the circumstances, the Council recognises that it may not be sufficient just to consult existing service users and will consider the full range of people, business and voluntary bodies potentially affected by a decision, and whether appropriate representative groups exist.*

*The Council feels that this new approach will ensure that the public have the appropriate opportunity to comment on how specific decisions under consideration may affect them.*

### **Question 3**

Would Cabinet agree that, in the light of the Group's Review of the PCGT Final Report dated 23<sup>rd</sup> October 2019 as presented by PCAP to the OSMC meeting on 3<sup>rd</sup> December 2019, the time has now come for Cabinet to set up its own inquiry into its public consultation failings?

PCAP proposes to conclude this Statement and Questions at this point, because the time available for public participation is insufficient for a verbal explanation of the reasoning behind them. The reasoning is, however, contained in the background information supplied below, which forms an integral part of the Group's submission, and should be regarded by all Cabinet members as such.

### **Response**

*There are no plans for Cabinet to set up its own review into public consultations in Wiltshire. The recommendations from the Public Consultations Task Group put forward to the Cabinet are in the process of being implemented and Overview and Scrutiny Management Committee has requested that a report be provided in 12 months' time, which will be publicly available and will provide a progress update with how each of the accepted recommendations has been implemented.*

### **Background**

With regard to Everleigh, after PCAP's solicitors advised that to rely on a badly flawed consultation held by the Council in January 2016 would be unlawful, and PCAP subsequently informed the Council to that effect in a letter dated 20<sup>th</sup> February 2017, the Council deferred any further action concerning the site until it held a second public consultation between June and September 2018. The terms of this consultation were considered controversial by the Group, but legal advice taken by PCAP concluded that, although the consultation was "flawed", it was unlikely, in the prevailing judicial climate, that a Court would declare it unlawful. Legal discussion was therefore discontinued, although it was perceived by most observers among the public affected, that the Council had every intention of closing the site, regardless of the outcome of the consultation, which would have been contrary to the rules established by the Supreme Court. The legal comment obtained on the flaws in the second Everleigh consultation was, however, passed to the Council by PCAP, in a letter dated 20<sup>th</sup> November 2018, addressed to the Cabinet Member for Waste, but little heed appears to have been taken of this subsequently. The Group also made numerous representations as to why the site should not be closed, but at a Cabinet Meeting held on 9<sup>th</sup> October 2018, a unanimous decision was taken to that effect, and the site was closed in November 2018. The fact that 94% of those who responded to the consultation wished to keep the site open was discounted by the Council, as was the fact that the response was probably one of the largest it had ever received in respect of a local issue. This was due entirely to the efforts of local parishes, groups and individuals, for which the Council can take no credit.

It was noted, however, that the then leader of the Council, Baroness Scott, had concerns at the way the Council had handled the Everleigh 2018 consultation, and at the Cabinet meeting on 9<sup>th</sup> October 2018, the Group was encouraged by her direction to the Chairman of the Overview & Scrutiny Management Committee (OSMC) to carry out a review of the manner in which the Council carries out public consultations generally, and to report on how improvements could be made, to which the Chairman of the OSMC agreed. A Public Consultations Task Group (PCTG) was set up by the OSMC in January 2019. On ascertaining this, the Group, drawing on its long association with the Everleigh saga, in February 2019 submitted a Memorandum to the Chairman of the PCTG, offering comment on the prevailing situation and specific suggestions as to how the consultation process and engagement with the public could be improved.

No acknowledgment was received, and the fact that the Memorandum had not been circulated to the members of the PCTG was acknowledged by the Response to Question 3 of Agenda Item 5 for the Cabinet Meeting held on 19<sup>th</sup> November 2019 in the following terms:

*“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.”*

No explanation as to why the Memorandum was not circulated originally has been forthcoming, and although it was re-submitted by PCAP as suggested, there has never been any response to the proposals it contained, presumably because the PCTG had submitted its Final Report already and anyway, had no interest in input from the public, whether unfortunately belated or not.

The PCTG published its Final Report in September 2019., and it appeared as Item 7 on the Agenda for an OSMC meeting on 24<sup>th</sup> September 2019. It was carefully scrutinised by the Group, which came to the conclusion that the Report was seriously deficient, primarily on the grounds that the PCTG had failed largely to carry out its remit, with too many issues addressed only superficially, and with some not addressed at all, while responsibility for any improvement in the public consultation process seemed to have been devolved to the Cabinet Member for Communications, Communities, Leisure and Libraries. Such recommendations as were made appeared to be largely dependent on the eventual establishment of the Council’s Business Hub. Given that the issue of improvement to public consultations had been raised originally at Cabinet level, the Group therefore responded with a highly critical Review dated 23<sup>rd</sup> October 2019, which was attached to a Statement (with accompanying Questions) and Request to Cabinet submitted by PCAP to a Cabinet meeting held on 19<sup>th</sup> November 2019. Written Responses to the Questions were provided, as a result of which there was no discussion of the material submitted by the Group, and it appeared that Cabinet considered the matter should be dealt with by the OSMC. At the time of submission to Cabinet, PCAP also sent a copy of the Group’s Review to the Chairman of the PCTG, and requested the Cabinet Democratic Services Officer to distribute it to all Cabinet Members, with a further request that the Senior Scrutiny Officer listed as the author of the Report should distribute a copy of the Review to all OSMC members. The material submitted to Cabinet by the Group in November was listed as information at Agenda Item No 6 (PCGT Final Report) for an OSMC meeting held on 3<sup>rd</sup> December, and included the written Responses to Questions previously put to Cabinet. The Minutes perfunctorily record only some three of the criticisms of the Final Report made by PCAP on behalf of the Group, but they are simply recorded as flat statements, and there is no record of them being debated by the OSMC or accepted or rejected.

In the interim, the written Responses obtained from Cabinet were regarded generally as unsatisfactory by the Group, and accordingly responded to in a Statement, Questions and Invitation to Comment put by PCAP to the OSMC meeting held on 3<sup>rd</sup> December 2019. The Statement was published as part of the

information for the meeting, but no discussion thereof was minuted as such, and to date, no response has been received to the invitation to comment.

The unfortunate conclusion that the Group is obliged to come to in the above scenario, is that the Council is unconcerned as to what views its Council Tax payers may hold on this important subject, identified by the PCTG as a problem area for the Council in its Final Report. This is not acceptable, on an issue of this significance. It would seem that the Council is unaware of the way in which it has lost touch with its electorate, particularly in this instance. Apart from the general concerns about public consultations that arose from the Everleigh situation, the Group suggests that other consultation cases give cause for specific concern, for example:

The way in which another significant majority vote was discounted by the Council, when it was decided to concentrate the Special Needs school facilities on a single site at Rowdeford, resulting in the eventual closure of two current facilities in Wiltshire. The public consultation vote was 76% against this measure. One of the suggestions put forward in the Group's Memorandum of February 2019 to the PCTG was that the decision on any public consultation result of 75% or more that resulted in conflict with a Council proposal, should be taken by Full Council and not by Cabinet. It is unacceptable that there was no response to this suggestion, or any of the other proposals put forward.

The Group also has concerns that the Council's recent and successful bid for £75.0M from the Housing Infrastructure Fund for access roads to the East and South of Chippenham, may not have complied with the Public Law Duty to Consult, inasmuch as there was no public consultation beforehand. At this point, the Group believes it is relevant to refer to Agenda Item 6 of the OSMC meeting held on 3<sup>rd</sup> December 2019, which covered the Executive Response to the Final Report of the PCTG. The first (edited) response listed reads as follows:

*"Recommendation: During OSMC's debate on the final report on 24<sup>th</sup> September 2019, the Committee asked the Cabinet Member to provide detail in her Executive Response about how the silent majority is considered when the Council undertakes public consultations. The Reason for the Recommendation was that the Committee felt that it was important for the scrutiny review to address how the silent majority is catered for in public consultations, to which Cllr Bucknell provided the following Executive Response:*

*'Consideration will be given in future consultations to enable those in favour of the proposal to easily indicate this, rather than having to complete the entire consultation.*

*When required to consult the Council will seek to consult with all those who will, or who may be, affected by a decision. Depending on the circumstances, we recognise that it may not be sufficient just to consult existing service users and will consider the full range of people, business and voluntary bodies potentially affected by a decision, and whether appropriate representative groups exist.'*

At this point, the Group notes the obvious disingenuity of the first sentence of the Executive Response, given that public consultations are usually all about depriving the public of some kind of benefit or facility, but refrains from further comment at this point. With regard to the

second paragraph of the reply, it would seem clear that its terms have not been complied with regard to the issues surrounding the Chippenham access roads.

Other public consultations that have given rise to concern include:

The Parking Fees public consultation in 2017, which attracted comment from, among others, the Wiltshire Gazette & Herald in its 9<sup>th</sup> November 2017 edition with a front page headline "Parking fees fury" followed by comment about the lack of publicity for the public consultation thereon. It should be noted that there was significant criticism from the Chairman of an Environment Select Meeting held in 2017 that the questions asked were not neutral, which brought the validity of the consultation into question.

The Waste and Recycling Strategy public consultation that also took place in 2017, where it is known that once again, that there were concerns about the lack of publicity, the issue being raised at at least one Area Board (Pewsey), and again at Cabinet and in the local Press by individual residents.

In the light of the foregoing, the Group has to come to the conclusion that all remains far from satisfactory, not only as far as the Council's public consultation procedures are concerned, but also its relationship with the public. The situation can be summarised, perhaps, in two sentences, both of which relate to the PCTG and its Final Report.

"Filling out consultations, I have been left with the feeling Wiltshire Council was trying to fix it so the public were not properly involved". \*

\*(The Wiltshire Councillor for Salisbury, Fisherton and Bemerton, and a member of the OSMC and PCTG, as quoted in the Gazette & Herald on 29<sup>th</sup> September 2019, shortly after the publication of the PCTG Final Report)

“ The unfortunate, but clear impression has been given that the Council had no interest in any form of engagement with the public as to how consultations might be improved, and an opportunity that might have indicated some willingness on the part of the Council to start re-building some confidence in the consultation process, has been lost.” \*\*

\*\* (Final sentence of PCAP’s submission on behalf of the Group to the OSMC meeting held on 3<sup>rd</sup> December 2019)