

Wiltshire Council

Cabinet

PCAP Update Question/Response from Question on 13 July 2021 to Cabinet on 14th September 2021.

Agenda Item 5 – Public and Councillor Statements and Questions

Question from Colin Gale – Vice-Chairman of the Pewsey Community Area Partnership

To Councillor Ian Blair-Pilling, Cabinet Member for Leisure, Libraries, Governance, Faculties Management and Operational Assets

Statement

The Briefing Note provides Wiltshire Councils rationale and justification for continuing with virtual meetings post 6th May 2021 when the government legislation expired. Pewsey Community Area Partnership (PCAP) have read the briefing note but are struggling to understand the council's justification for Cabinet identified in paragraph 10 to continue with online meetings.

Cabinet is the de facto Governing Body of Wiltshire Council and is defined in the Wiltshire Council Constitution as the 'Executive' for the Council. The Councils, Forward Plans identify scheduled 'Key Decisions' and clearly state who the decision maker is and consistently list Cabinet as the decision maker. The fact that lower level decisions could be made under the delegated powers given to individual Cabinet Members in isolation does not provide the rationale for the requirement when collective Cabinet decisions are required and cabinet is the decision maker.

The justification provided in the Briefing Note for the Executive body of the Council not meeting in person to make 'Key Decision' which are the responsibility of the Executive is brought into question.

Question:

PCAP request that a complete rationale and justification is provided so that the public can be assured that 'Key Decisions' are being made in a legally approved manner.

Response:

Temporary government regulations allowed local authorities to hold all democratic meetings remotely during the pandemic, to ensure that the council could conduct essential business in a manner that was open to the public, without the need for physical attendance.

These regulations have since expired, however as the Executive of the council, the Cabinet is convened under different Regulations which allow more discretion over meeting location, and it was considered prudent to hold these meetings online until government restrictions on social distancing were lifted. Under the Regulations, there is also provision for all executive decisions (including Key decisions) to be made by individual Cabinet members, or the Leader, providing this is advertised, without the need for a public meeting either online or in person. However this council wishes to make decision making as transparent as possible, and holds all significant executive decision making at a public meeting where possible. The council's approach to decision making is on the basis of legal advice and decisions made by the Executive in this period are sound.

Public engagement at online meetings also worked very well, and there was strong public engagement in decisions made this way. The Cabinet is pleased to welcome the public back to in-person meetings now restrictions have eased, whilst also streaming these meetings online for maximum public engagement.

PCAP Response to WC Reply:

Disappointingly the response fails to answer the question. The question was specific and asked for "a complete rationale and justification". The response similar to the 'Briefing Note' does not identify the alternative regulation being used by the Cabinet to overcome the stoppage on the 6th May allowing virtual meetings. The response does not provide a quote from the alternative regulation which is being applied. Both of these elements are considered necessary to satisfy 'a complete rationale and justification'.

Please can you go back to the author of the response or the author of the 'Briefing Note' and obtain the required information to answer the question.

WC Further Response:

'The Leader of the Council has responsibility for all executive functions of the Council and decides how those powers are to be discharged. These are detailed in [The Local Government Act 2000 under section 9E – Discharge of Functions: General](#); [The Local Authorities \(Executive Arrangements\)\(Meetings and Access to Information\)\(England\) Regulations 2012](#). Part 2 of the Regulations details how the

meetings must be open to the public, unless confidential and exempt information is being considered. The Regulations do not specify where meetings should take place, as this is at the discretion of the Leader. However, the [Councils Constitution at Part 7 and Paragraph 6](#) – ‘Location and Frequency of Cabinet meetings’ specifies that ‘The cabinet will meet at least 11 times per year at times to be agreed by the Leader. The cabinet shall meet at the Council’s main offices, or another location to be agreed by the Leader’. In this case ‘another location’ can be interpreted as being virtual. As the Government restrictions were not being lifted until 19 July 2021 the Leader of the Council was able to extend the Cabinet’s use of virtual meetings until the restrictions were lifted in accordance with the Constitution and Regulations.’

PCAP Response to Cabinet – 14th September 2021:

Thank you for providing the regulation and interpretation/rationale for WC continuing to hold Cabinet and Committee meetings by virtual means beyond the 6th May when the government legislation was withdrawn. WC have acknowledged that the meetings must be open to the public ref:

“PART 2

Admission of public to meetings of local authority executives and their committees

Meetings of local authority executives and their committees to be held in public”

The key element in Part 2 of the regulation is “**to be held in public**” which infers physical attendance.

PCAP believe that the WC interpretation of use of ‘another location’ to justify the continuation of virtual Cabinet and Committee meetings beyond 6th May 2021 is tenuous at best. However, it is apparent that WC have not taken account of the High Court ruling on the 4th May 2021 which covers the meaning of “to be held in public”:

“Requirement for meetings under Local Government Act 1972 to be “open to the public” means members of public must be admitted in person: High Court rules”

<https://www.localgovernmentlawyer.co.uk/governance/396-governance-news/46971-requirement-for-meetings-under-local-government-act-1972-to-be-open-to-the-public-means-members-of-public-must-be-admitted-in-person-high-court-rules>

The High Court ruling also covers the Local Government Act 2000. As a consequence WC may have been acting unlawfully in continuing with Cabinet and Committee meetings by virtual means beyond the 6th May 2021.

PCAP request WC investigate the status and impact of the High Court ruling and advise and identify corrective action that may be required as a result of the ruling.

Response:

To be provided