

**Evidence to Scrutiny Committee April 23rd 2014
Travellers Sites : Author Tony Beddow**

1. My background

- Executive Director of West Glamorgan Health Authority from 1982 - 1996 (including 4 years as Chief Executive) undertaking similar consultation exercises on local health matters
- Senior Fellow at Welsh Institute for Health and Social Care (University of Glamorgan) 1996-2007 with experience of advising public bodies in aspects of public consultation
- Now Visiting Prof at University of South Wales with much experience of
 - a) assisting public bodies undertake such exercises
 - b) acting as a consultant to various bodies seeking help in responding to such consultations

For the record, my evidence and my observations in respect of the consultation process is as an informed member of the public. Many of you will know that I also have been active politically in Swansea since 1997 and in that capacity I have also been aware of other relevant matters. I do not intend to draw upon that experience today. However, if you feel that this might be useful, I am happy to try to assist at a further time.

2. Interests

2.1. I make clear I have no preference for one site over another. My interest is in seeing good public administration undertaken and my first enquiries about this process were on 1st May 2012 when I sought information about it from the Chief Executive. I have four inter-related concerns about the process witnessed from March 2010 to the present.

2.2. (I mention - but do not intend to concentrate further upon - a 5th area of concern which is the image that your scrutiny process has presented to the wider public. You appear to have found it difficult effectively to scrutinise a process largely shaped by the previous administration which, as the Opposition, may now be seen as the prime custodian of Scrutiny. It may be perceived therefore that there is some motivation for not unearthing too many skeletons (should they exist). The current administration too may have questions to answer, although it has stated publicly that the work done on the process used to select sites has, on its watch, been solely by officers without any political interference or guidance. If so, questions fall to officers to address.

2.3. Given 2.2. above, you may wish to ponder on whether topics of this kind would benefit from being overseen by an external / independent resource.

2.4. I turn now to the four inter-related aspects of this process upon which I wish to concentrate.

a) First I posit that the March 2010 Cabinet paper was a major plank in this whole process. In my view that paper correctly advised that work be done to rank sites that might be suitable to house further traveller pitches. Yet by August this was changed to a less robust approach.

b) Second, I examine the resulting (and less clear) process actually employed.

c) Third, I question whether the Council was ever clear about exactly what problem it was seeking to address or consult upon. My contention is that the less than clear process employed, and the imprecise definition of the question / problem posed, both stemmed from the change of approach between March and August 2010.

d) Finally, it has been claimed that the work done has been externally assured in two ways. First it was checked by a professional from outside the Authority who pronounced it sound. Second, I'm told that Council has external legal advice that the process met Gunning principles. I merely observe that given misgivings about the robustness of the process that emerged when the officer recommendations came to Council and Cabinet - and the rejection of the officers report - you may wish to probe further, the robustness of the assurances thus given.

3. Issues raised

3.1. March 2010 and August 2010 Cabinet papers

3.1.1. The Cabinets in March and August 2010 addressed the process whereby it would be decided where further traveller provision would be located.

3.1.2 The paper in March was clear and specific about the terms of reference of the proposed T&F group. It would carry out a study of all Council owned land with a view to determining the best place for further pitches. (There is a separate matter about whether looking only at Council owned land was too restrictive -and you are aware of this - but not looking more widely did not seem to be fully justified in the papers). Crucially, the aim was to RANK the best site options. The term "rank" is important¹. It implies that the different features - of several as yet unknown locations - would be compared and the locations placed in order of suitability. To do this, a common methodology that allows such comparison would be needed. One such methodology was explained in the critique of the process I prepared for Councillors on 11th October 2013. There are many current examples where such approaches have been employed - e.g. the recent consultations on re-locating hospital services in both South Wales and West Wales.²

¹ Various definitions of the term "rank" can be found. They commonly refer to "defining a relative position or degree of order in a graded group"

² See *Your Health, Your Future*, Hywel Dda Health Board, 2012 (and www.hywelddahb.wales.nhs.uk/Consultation) and *Together For Health : South Wales Programme, Towards a Preferred Option*, Opinion Research Services, April 2013

3.1.3. However, by August, the terms of reference changed. Instead of ranking locations, the revised paper merely promised to produce a report on options.

I make the following points in this regard.

3.1.3.1. Had a ranking process been followed - as I believe was correctly proposed at first - it would have needed a robust methodology requiring officers and / or politicians to be explicit about the significant criteria that would distinguish between different locations. Whatever criteria were chosen (cost, speed of delivery, extent of local opposition or support, resilience to future change etc) would be listed and weighted. If this had been done, a clear position would, for example, have been taken at the start of the process as to whether acceptability of a site to travellers was seen as more, or less, important than its acceptability to its prospective host community.

3.1.3.2. Quite apart from the fact that such an approach is a recognised way of doing these exercises³, what is equally important is that the officers choice of criteria would be made clear and these, and the weights given to them, would both form part of the consultation. The public would get to see what the Council thought was important and could suggest different criteria or different weighting of that criteria. (I return to this later when considering the Gunning principles).

3.1.3.3. For every site emerging as a front runner, how well it met each criteria would then be scored. Again, when consulted, the public might offer alternative views about the scores given.

3.1.3.4. In summary, such an approach demands that clear thinking is used to consider carefully the key factors that will shape a final decision - and how different sites compared.

3.1.3.5. I struggle to understand why a recognised methodology was not used and can think of only four reasons why this might be so. These are:

3.1.3.5.1. **A better approach was used.** I would find it difficult to discern any methodology that was applied - let alone one superior to that I've outlined.

3.1.3.5.2. **The task would be too difficult to do.** I would find this explanation unconvincing as it is inevitable that some kind of both qualitative and quantitative assessment would be needed and thus the issue is whether the task is to be done well / badly and overtly or covertly.

3.1.3.5.3. **Making clear the criteria being used would have been embarrassing.** For example, if at the beginning of the process officers had proposed that the greatest weight should be given to the views of travellers (as now appears to be the reality) one might predict the response of some consultees when this decision was placed alongside policies such as those relating to offering choices of location to people awaiting housing.

³ See for <http://www.dfpni.gov.uk/eag-the-weighting-and-scoring> method. Department of Finance and Personnel Northern Ireland, Guide to Expenditure Appraisal.

3.1.3.5.4. A clear comparative approach - explained at the outset of what was likely to be a process of learning and discovery - might provide a hostage to fortune IF a desired outcome had already formed in the minds of officers (or politicians).

3.1.4. I observe that fear of embarrassment and the possibility of a pre-determined outcome seem more likely explanations.

3.1.5. I would encourage you to be satisfied that you understand to the reason why such a methodology wasn't used and request that you satisfy yourselves on three aspects:

- What changed between March and August?
- Will you call for the background papers and officers notes used drafting these papers - and recall officers - so that you might understand why the change occurred?
- Did the officers propose such a change, and why - or was it a political decision?

3.2. Methodology used to compare

3.2.1. I have already alluded to the wisdom of having some methodology by which the different location or site options might be compared. IF the outcome of the search that started in August 2010 was unknown, there was every likelihood that the sites that came forward would have very different characteristics and some such methodology would enable robust comparison.

3.2.2. Some would be costly to create, some less so. Some would have high opportunity costs, some less so. Many, perhaps all, would be strongly opposed by local people or businesses and such opposition might be easily satiated - or not. Such characteristics might be described as "political" in nature and considered not easily measured by abstract metrics. However, I would contend that all such criteria could be weighted and then the sites scored as part of an open assessment process that was being consulted upon.

3.2.3. In her evidence to you on 6th March I recall Ms Owen listing the factors that were known to be relevant. These included availability, costs, and acceptability to potential users. It is not then a question of key criteria being unknowable at the beginning of the exercise. Likewise, how well the different sites were felt to fulfil the criteria (scoring) has also been described to you.

3.2.4. What is at issue is whether the subjective and opaque application of "judgement" was better than an openly described and quantified approach, or was indeed the only approach possible.

3.3. Lack of clarity of "the issue" that public is being asked to consider

3.3.1. Throughout the process, it was never clear (at least to me) precisely what was being consulted upon and, at different stages, what the public was being consulted about appeared to change. In the main the issue was framed

in terms of "seeking a second site". But it became clear that a second site might not, in some circumstances, meet "need". So I urge you to be clear that you know what the consultation was about.

Was it to choose one further location at which a finite number of permanent pitches would be housed?

Was it to choose one further location where both additional permanent and transient pitches would be created?

Or was it to decide how best to provide a number of permanent pitches sufficient to meet "need" - which could require several additional sites to be considered if current guidance on the maximum size of such sites was to be observed?

Or was it to decide a location to house further pitches that would be seen as the Council meeting its legal duty to provide more sites?

3.3.2. A precise description of the "problem" is important because - if a robust methodology is employed - how the problem is described will determine what criteria are used to compare different options. For example, if the aim is to provide enough capacity to meet future "need" on one additional site only, then one would expect a criteria along the lines of "The site must be able to house numbers higher than those predicted" to be applied and weighted. Another issue is the mixing of permanent and transient families. One might imagine that a site for a settled community only would interact differently with its neighbours from a site housing transient users as well.

3.3.3. The final matter concerning site selection relates to the concept of "need" itself. The consultation paper accepts that the mathematical forecasting of future need is an inexact science. What also became apparent during the process is that quite apart from predicting the movement / requirements of different families, it was not clear if families who had been offered, but declined, vacant pitches were still able to be deemed to be "in need". Finally, it was not clear whether the "currency" used to measure need was pitches, people or families. I would urge you to be satisfied that you understand clearly what "need assessment" meant in the evaluation process.

3.4. Gunning test and other external oversight-legal and independent

3.4.1. It is well established that public consultation has to meet certain standards commonly referred to as the "Gunning Test" or the Sedley principles⁴.

3.4.2. The essentials are that decision makers should approach consultation with care where a subject is controversial - as is the case here. While decision

⁴ For example see <http://www.adminlaw.org.uk/docs/18%20January%202012%.20Sheldon.pdf>

makers have discretion in how they undertake consultation, that discretion is not unhindered. Four tests are applied:

- a) the proposal must be at a formative stage OR, if a preferred proposal, the decision maker must still have an open mind
- b) sufficient reasons must be put forward to allow intelligent consideration and response about the issue and specifically those consulted must be aware of the criteria that will be applied when the decision maker considers the proposals and which ones are deemed decisive or important
- c) there must be adequate time for consultees to respond
- d) the feedback from the consultation must be taken into account.

Additionally, the Court may intervene if a reasonable option - the use of land in private ownership perhaps - had not been considered.

3.4.3. In respect of the four tests I have no concerns about the time allowed for consultees. I have some concerns about the extent to which responses were taken into account - partly because of the confusion about the roles of Cabinet and Full Council in making a decision. The confused paper (Item 11a) to Council in April 2013 was unfortunate.

3.4.4. However, I do have serious concerns about the process in respect of whether the public were given clear information about both the question being posed and the criteria that the decision maker would regard as significant. I contend that, largely because no recognised methodology was used, the final consultation paper was imprecise about the problem Council was seeking to address and thus was unclear about the criteria that Cabinet / Council would employ to distinguish good solutions from less good ones.

3.4.5. With this in mind, I am surprised that the three reviews of the process - one internal, one involving a senior officer from outside the authority, and one a legal opinion, all concluded that the process used was robust.

3.4.6. You are urged to acquire and test the advice that was given by the external assessor. I also ask you to call for the legal opinion and test that it explains in detail why my concerns about failure to adhere to the Gunning principles are baseless.

4. Conclusion

I have outlined my concerns about four aspects of the process used to address the shortfall in traveller pitches. These aspects are:

- a) the change in approach between March and August 2010 which in my view then
- b) led to a less than clear definition of the problem Council was seeking to address and thus to an inadequate process for addressing it, which
- c) created an approach which in my view did not meet the legal test implied by the Gunning principles.

d) Finally what I, and apparently Council / Cabinet deemed to be a flawed process, had nevertheless been signed off by two different external quality assurers.

I have urged you to pursue five things.

1. . You may wish to ponder on whether, in future, scrutiny of topics with this mix of challenges could benefit from external / independent oversight.

2. I wish you to understand and be satisfied with the reason why a recognised methodology wasn't used as indicated in March 2010 and request that you satisfy yourselves on three matters:

- What changed between March and August 2010?
- What was in background papers and officers notes used in drafting these papers - calling officers involved so that you understand why the change occurred?
- Was the change a political or officer decision?

3. I wish you to be clear about whether the consultation was :

- to chose one new location at which a finite number of additional permanent pitches would be housed?
- to chose one new location where additional permanent and transient pitches would be created - sufficient to meet future "need"?
- about how best to provide the number of permanent pitches that the travelling community will "need" - which might require several additional sites to be provided if guidance on the maximum size of such sites is to be observed?

4. I want you to be satisfied that you understand what "need assessment" meant and how it was used in the evaluation process.

5. I ask you to obtain and test the advice that was given by the external assessor about the robustness of the process and also ask that you see the external legal opinion clearing the process that could re-assure you that my concerns about its adherence to the Gunning principles are misplaced.