

Cheshire East Council Planning
Attn Paul Wakefield, Case Officer
C/O Delamere House
Delamere Street
Crewe CW1 2LL



Your ref: 23/4152M

9 April 2024

BY EMAIL ONLY Paul.Wakefield@cheshireeast.gov.uk

Dear Council

Poynton Pools Spillway Proposal Reference 23/4152M
Friends of Poynton Pools (FoPP) Mr Michael Ellison, Chair

1. We are instructed by Friends of Poynton Pools (FoPP) in relation to the above-mentioned application. Mr Michael Ellison, Chair of FoPP submitted a very full objection on 5 January 2024. However, they have noted omissions in documents put on the Council's planning portal (the "Portal"), and there are outstanding FOI requests of some longevity. These are listed in the enclosed schedule. Overall, FoPP consider a full and proper public consultation has not been carried out.
2. Some basic information (such as the application or where to inspect it) are omitted from the Portal, in contravention of the requirements for the consultation process under reg 15(7) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. Other documents, such as the new version EAR, have been placed on the Portal after the end of public consultation, but containing significant new information justifying comment.
3. We would remind the Council of its own statement of community involvement where it is stated:

"The Council is committed to engaging both individuals and the wider community in the decision-making process. The scale and scope of the consultation process will depend on the nature of the application and a balance needs to be struck between ensuring proposals are widely publicised, providing a reasonable opportunity for people to comment on applications, and the cost and speed of decision-making" (at para 6.2).

4. A statement of community involvement in which a local planning authority commits to consulting neighbours can result in the authority "...imposing upon itself, by its own adoption of the policy, a duty to go beyond what the statute requires and specifically a duty to consult neighbours": R. (on the application of Velayuthan) v Southwark LBC [2023] J.P.L. 1548, [16].
5. However, regardless of the legal basis of the duty to consult, if consultation is undertaken, "...then it must be done on a proper and fair basis", as stressed by the High Court in Purshue. The Court drew on R v North East Devon Health Authority, ex parte Coughlan [2001] QB 213, in which Lord Woolf observed that:

“It is common ground that, whether or not consultation of interested parties and the public is a legal requirement, if it is embarked upon it must be carried out properly. To be proper, consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the product of consultation must be conscientiously taken into account when the ultimate decision is taken...” [108].

and:

*“It has to be remembered that consultation is not litigation: The consulting authority is not required to publicise every submission it receives or (absent some statutory obligation) to disclose all its advice. Its obligation is to let those who have a potential interest in the subject matter know in clear terms what the proposal is and exactly why it is under positive consideration, **telling them enough (which may be a good deal) to enable them to make an intelligent response.**” [112] (our emphasis).*

6. In this case, the public consultation is clearly lacking in requisite detail and completeness. Missing documents or those of significant amendment posted after the consultation period have the potential to alter consultees' views of the proposal. The Council has failed to give consultees sufficient information to enable them to make a proper response to the proposals as they have evolved, and therefore failed to adequately consult. The duty is a continuous one, where the issues are material.
7. We would urge the Council to review the enclosed schedule of omissions and its Portal without delay and rectify the errors and gaps as a matter of urgency. Consultees, FoPP included, should then be given sufficient time to peruse the additional documents and make further submissions, if appropriate or necessary.

Yours faithfully



RICHARD BUXTON SOLICITORS