

Henbury Parish Council Complaint Regarding Discharge of Condition 17 on 19/3097M (and subsequently 21/4034D and 21/5295D)

Henbury Parish Council have serious concerns in the way that Condition 17 applied to 19/3097M has been discharged and wish to raise a formal complaint against CEC Planning. We argue that the discharge of this condition under delegated powers has shown to be in error and we request that the discharge is overturned, and the decision reverted to the SPB for committee consideration. This is a further example of the lack of openness and objectivity in CEC Planning's handling of the case. Specifically, Henbury PC have contacted Robert Law and David Malcolm directly on occasions on this proposed development, including on the discharge of this condition, yet rarely receive a satisfactory response and the comments are apparently usually ignored, despite being based on factual technical information pertinent to the application. We therefore feel that the Nolan principle has not been upheld by the aforementioned CEC employees.

We are prepared to take this to the LGO if we feel that the response is not adequate and are also taking legal advice on further actions, including possible JR.

Condition 17 documented in the 19/3097M decision notice, dated 30/4/21, is:

17. Prior to the commencement of development hereby permitted, a Materials Management Plan for the extraction and relocation of peat deposits within Cheshire East shall be submitted to and approved in writing by the Local Planning Authority. The Materials Management Plan shall include the following details:

- quantities and types of material to be excavated
- depths of excavation
- locations of storage for the different materials (and timescales for material to be stored)
- locations for re-use and quantities/nature of material proposed to be re-used
- quantities of material to be imported in total, type of material to be imported, source
- details of peat reinstatement on site
- details of vehicle movements associated with the relocation of peat and a vehicle management plan

The main concerns we have related to the discharge are as follows:

1. Site area

19/3097M is part of the original outline application area 17/4277M. The remaining area, 19/3098M, was refused permission at the SPB in March 2021. The Materials Management Plan assumes development across the whole area of 17/4277M rather than simply 19/3097M, and all calculations apply to the whole. As the decision notice applied specifically to 19/3097M this is therefore an error and CEC Planning should not have discharged it on this basis. We have raised this in our previous responses, with no impact. All results presented are therefore invalid.

2. Drainage at the North section

CEC requested that Bellway confirm that the existing peat deposits in the POS area at the north of the site are to remain wet, and the Materials Management Plan has confirmed that this is the case:

*Where peat is to be retained in the north-west and very northern tip of the development, the geological and hydrogeological conditions will remain unchanged with the areas being retained as largely permeable (excluding building footprints). Precipitation will be allowed to permeate into the soils with **no new drainage** to be installed to ensure maintained saturation of the peat soils. In the northern sector, the peat extends off site **and forms part of a seasonal pond, the continued presence of this feature** will ensure constant saturation of the peat soils ensuring there is no risk of 'drying' of the material.*

It is important to review the position of the 'seasonal pond' – which has been done using the currently available Google Maps satellite image. The landscape plan has been overlaid to show the position of the water in relation to the development. Water is clearly present within the footprint of the northern-most plot. It therefore appears that the continued presence of the 'seasonal pond' puts part of the site under water and some of the rest at risk of flood. It must also be expected that the Google image is not the worst-case scenario so an even greater expanse of surface water can be expected under more extreme conditions, further extending the flooded area. Planning should have been done for a one-in-one-hundred year scenario which is clearly going to be far worse than the current satellite image. It is also important to state that flooding occurs almost year-round in this area – so it is more than a 'seasonal pond' in reality.



Henbury PC highlighted the above in their response on Oct 20th, which was mailed to the Case Officer as well as then being uploaded onto the planning portal. Despite this, there was no mention

in any further decision notice and again the discharge should not have occurred with CEC knowing that there is a flooding likely to affect at least one property and probably far more. CEC Planning and the Case Officer should have challenged the developer accordingly, and not having done so could be classed as negligent bearing in mind the potential consequences.

3. Materials Handling

The condition required details on '*peat reinstatement on site*'. Ignoring the fact that the MMP refers to an incorrect site footprint, the details on the peat handling are completely insufficient. We commented as such in our Oct 20th response:

"The MMP does not fully address how the excavated peat will be used as an engineering fill in the areas for re-use on site considering its geotechnical properties and the hydrogeological aspects of the re-used peat.

No geotechnical design has been submitted in respect of the engineering feasibility of using 6970m³ of peat as fill in the POS area (MM7), an area of 2184m² in depths over 5 metres."

Again, this was apparently ignored yet is crucial information in understanding how the peat can technically be reinstated on site, at the large depths proposed in the POS area. Without this CEC has no evidence that what has been proposed is a practical solution, and this should have been acted upon prior to discharge.

4. MMP Document Control

There has been completely inadequate document control in terms of version labelling. The latest version (08346127 portal reference) is labelled as '12-718-R3-revB' dated 18/10/2021 on page 2 however the Quality Assurance section is dated 25/06/19. There is an earlier document (portal ref 08340260) which has exactly the same document version information, but different content, as it does not contain information on vehicle movements, amongst other things.

This demonstrates very poor document quality management by e3P and a complete lack of control by Cheshire East Planning; if, subsequently, Bellway do not adhere to their MMP, how will CEC enforce as it is totally unclear what is the approved MMP? CEC Planning should not have accepted documents without clarity on version numbers – having two documents with exactly the same references makes this legally weak.

In the Nov 12th decision notice on 21/4034D on 21/11 the following is stated:

"Condition 17 – Materials Management Plan

I can confirm that the revised Materials Management Plan referenced 12-718-R3-revB received by the LPA on 06/22/2021 is acceptable."

Therefore it seems that an old version of the MMP has been approved, ignoring the more recent versions. This raises serious questions on CEC's policy of allowing discharge of such important conditions by delegated powers. This error is completely unacceptable.

5. CEC Planning References

Reference 21/4034D was created to handle the discharge of several conditions including 17. In late October a new reference – 21/5295D - was created to then handle several conditions including 17. When HPC queried this change of reference with Planning we were told “21/5295D has now been submitted to address the part refused elements of 21/4034D” and yet the condition 17 discharge notice was provided on 21/4034D rather than 21/5295D and the most recent MMP was only uploaded to 21/4034D.

21/5295D has a decision date of 10/12/2021 although the condition has now been discharged.

This shows confusion in how the conditions are being tracked and is misleading.

6. Vehicle Movements

The CEC decision notice dated 5/11/21 contained the following requirement:

*“Please clarify the likely number of HGV movements to and from the site with respect to the movement of peat and material **to replace it** where necessary (the Construction Environmental Management Plan (CEMP) does not clarify)”*

The MMP with portal reference 08346127 contained:

“This analysis confirms ~6284m³ of peat material (equivalent to 739 wagon movements off site) will be stockpiled on-site prior to transferal ...”

There is no information provided on the activity related to material replacement. However, the MMP does state that:

“ In light of the above potential for retention and re-use, it is estimated that a materials shortfall will exist, therefore 20,000m³ of suitable engineering material will be required for importation to site to achieve the construction design elevation”.

It is clear that the developer had been asked to quantify vehicle movements associated with the above, yet this was not done, and the condition was still discharged, another example of due process not being followed. If the vehicle movements are in proportion to that regarding peat removal then this would represent around 2352 further movements, making almost 3100 in total. This number should have been established and discussed with Highways to understand the impact on the local road network, as had been discussed in the March SPB meeting.

7. Application Address

The planning portal is critical for the tracking of the planning applications and needs to be completely transparent and accurate to enable people to follow the progress.

The “Location” for 19/4277M is “Land Between Chelford Road And Whirley Road, CHELFORD ROAD, HENBURY”

The “Location” for 19/3097M is “Land Between Chelford Road And Whirley Road, Henbury”

The “Location” for 21/4034D is “Street Record, WHIRLEY ROAD, MACCLESFIELD”

For 21/5295D the “Location” is “Land Between Chelford Road And Whirley Road, CHELFORD ROAD, HENBURY”.

Therefore, 21/4034D has had an incorrect location applied (19/3097M has no boundary with Whirley Road) and this would have meant that many people would not have found this discharge application. This highlights an issue with openness and meant, for example, that Henbury PC had no visibility of the attempt to discharge the conditions until almost two months after the decision date. Henbury PC had received no notification of the discharge application despite the site being entirely within Henbury Parish.

8. Location of Peat Re-use

Condition 17 requested “*locations for re-use and quantities/nature of material proposed to be re-used*”.

The latest version of the MMP on the portal states that the peat will be taken to Cheshire Demolition at 72 Moss Lane as the location of off-site re-use of 6284m³ of peat. This, at best, can only be a transfer station prior to the peat being used elsewhere – as such the final location or type of re-use has not been specified despite being required, and yet still the condition has been discharged.

Summary

Henbury PC has detailed the reasons for raising a formal complaint about CEC Planning in the way that this critically important condition has been discharged.

We believe that the use of delegated powers in this case has highlighted a lack of technical competence, openness and objectivity within CEC Planning and that a condition has been discharged with inadequate scrutiny and control. It leaves CEC with vastly reduced enforcement capability since the document discharged is several iterations old.

We argue that this decision should be overturned and then scrutinised correctly, and with appropriate control and review, which means reverting the decision to the SPB and halting any site development until a satisfactory resolution is achieved.