

Mr Andrew Stokes
Chief Executive
High Peak Borough Council

By email

18th March 2024

Dear Mr Stokes,

Complaint under article 12 of the council's constitution and wider legal requirements.

We are writing to formally complain about the council's proposed changes to New Mills Leisure Centre and, in particular, the potential unlawfulness of the council's decision making processes in relation to those proposals. As a group of local residents and users of the leisure centre we are concerned that the council's approach is potentially at odds with article 12 of the council's constitution and, potentially, with wider legal requirements especially in relation to consultation and equalities. Our concerns are shared by many other people, including more than a thousand local residents and others who have signed petitions opposing the proposals.

We are thankful to the council for providing us with an opportunity to ask some questions in relation to this matter at its meeting on 21st February. We are also grateful to our local councillors in New Mills, Hayfield and Sett wards, some of whom have sought to raise this matter within their political group discussions and with relevant officers and cabinet members, and more recently to Councillor Greenhalgh for engaging with us on this matter. We are not, however, reassured by the answers we or our local councillors have received and consider that the promised engagement has amounted to little more than a tokenistic endeavour in which our views and suggestions have been dismissed without any real consideration. We are strongly aggrieved that the council's approach appears to be simply to seek to show that our suggestions are not viable, rather than seeking ways to either incorporate them into wider plans or to proactively consider how they might be made to work. We have been left with the impression that, notwithstanding due formal process, a decision has already been made and that the proposal will be implemented regardless, with no willingness to contemplate alternatives regardless of their possible merits, with critical information (including in relation to equalities and potential health impacts) being dismissed without due consideration and without consultation. This is, for the reasons outlined below, quite possibly unlawful.

The key context behind our complaint is an apparent failure to consider the impact the proposal will have on the local community's ability to access a diversity of opportunities to exercise. This is set out in more detail in appendix 1.

In overall terms we understand that the council's approach is seeking to ensure the long-term financial sustainability of the leisure centre which is, of course, important. However, the very limited information we have managed to elicit appears to suggest that financial sustainability is being pinned on increased gym subscriptions and income from NHS referrals, neither of which, whilst potentially guaranteeing income, guarantees any actual increased physical activity or subsequent health benefits. Whilst the council has refused to share any current or projected financial or usage data (under cover of commercial sensitivity) we understand from the current leisure centre management that it is, currently at least, profitable.

The proposal essentially seems to seek to replace facilities that can be used by people of all ages for a wide range of sports with facilities that are only open to adults and with a specific focus on the needs of a small part of the area's population. The impression is given that the council would be content to run a financially sustainable leisure centre regardless of how many people benefit from using its facilities, and regardless of the likely detrimental impact that would have on the health and wellbeing of the local population. It would be exceptionally shortsighted, indeed perverse, to seek to provide for those with pre-existing health conditions (no matter how necessary addressing those conditions may be) by means which increase the likelihood of a greater number of people developing such conditions in the future. This appears even less rational when seen in the context of (albeit High Peak wide) data which shows that a significantly lower percentage of children and young people (52%) are physically active than adults (72.5%)¹. Agreeing to such an approach would, on the face of the information available, be irrational, potentially to the extent of being unlawful on the grounds of being unreasonable.

A further issue arising from the proposal is that for current participants to continue taking part in the activities they currently benefit from they will need to travel to alternative facilities. This has ramifications in relation to carbon emissions; the council's declaration of a climate emergency in October 2019 included a pledge that the council will "*Ensure that all Council committees and scrutiny panels consider the impact on climate change and the natural environment when taking decisions and reviewing policies.*" This also has specific consequences for young people and others who do not have the ability to travel to alternative venues, which raises questions relating to equalities. We have seen nothing to suggest that such considerations have formed any part of the council's decision making on this matter; given the council's declaration of a climate emergency the public have a legitimate expectation that such factors are properly taken into account, a failure to do this may be capable of being considered unlawful..

Beyond the actual proposals we are significantly concerned that the council's decision making process has failed to meet the constitutional requirements the council has set itself and wider legal expectations with regards to due consultation. As such we consider that the council may, knowingly or otherwise, be at risk of making what could be an unlawful decision.

We believe that the public have a legitimate expectation of consultation being undertaken in relation to these proposals because:

- 1) article 12 of the council's constitution sets out in paragraph 12.2 that all decisions of the council will be made in accordance with 8 listed principles. Whilst all of the principles are relevant to this matter, those which refer to there being due consultation and a presumption in favour of openness give a direct indication that the public might expect consultation to be undertaken. A similar expectation might arise from the principle which says that due regard will be had to all relevant and material considerations - without undertaking consultation the council cannot claim to be aware of all such considerations;
- 2) the proposal amounts to the withdrawal of a benefit with significant impacts which should be considered; and
- 3) the leisure centre (including the sports hall and squash court) was originally built following significant fundraising efforts undertaken by the local community beginning in 1972 and continuing for more than a decade. New Mills' carnival has its origins in these

¹ See

https://fingertips.phe.org.uk/profile/physical-activity/data#page/1/gid/1938132899/pat/10163/ati/501/are/E07000037/iid/93014/age/298/sex/4/cat/-1/ctp/-1/yr/1/cid/4/tbm/1/page-options/car-ao-1_car-do-0

fundraising endeavours. It is our understanding that around a quarter of the overall build cost was met through the community's efforts. The community directly part-funded the facility and might therefore be considered to have a legitimate interest in determining its future.

Furthermore, it may be the case that the requirement to consult goes beyond being merely a legitimate expectation because of the potential effects on people who share protected characteristics set out in section 149 of the Equality Act 2010. The council should be able to demonstrate that they have had due regard to such potential effects before making a decision. Consultation, at the very least with groups representing those who share recognised protected characteristics, is an implicit statutory requirement arising from the duty. In response to a freedom of information request it has been confirmed that no specific analysis of equalities impacts has been undertaken to inform this decision; a failure to have done this at a point where a decision has seemingly already been made would be unlawful.

We are aware that the council has engaged with a small number of users of the sports hall, including a representative of one of the primary schools which regularly uses the facilities and who is also deputy chair of the board of governors at New Mills School. There is, however, no information in the public domain to suggest that any wider engagement has taken place with any other users or interested parties. Whilst such engagement is to be welcomed it falls far short of the consultation that the public, at the least, have a legitimate expectation of. Our complaint includes that the engagement is woefully inadequate because of the legitimate expectation and potentially statutory requirement to consult set out above. In any case, even if the engagement was taken to be consultation it falls substantially short of meeting the legally enforceable tests set out in the Gunning principles which provide the basis for determining the appropriateness or otherwise of consultation:

- *Gunning principle 1* expects that consultation must be at a time when proposals are still at a formative stage. No consultation has been undertaken. The engagement that has taken place was at a point when the proposals had seemingly already been drawn up and there has been seemingly no willingness to amend them to meet the critical and entirely reasonable points that were raised, including points which outline the significance of impacts (including in relation to equalities) that the proposal would likely have. Our complaint includes that the council appears to have fundamentally failed to meet the requirements of the first Gunning principle.
- *Gunning 2* expects that sufficient reasons must be put forward for any proposal to permit "intelligent consideration" and response. No reason whatsoever has been put forward publicly. Whatever reason members of our group have managed to otherwise elicit from the council appear flawed in their base assumptions around current use of the facilities. No opportunity beyond the seemingly tokenistic engagement outlined above has been provided for anyone to make a response. Our complaint includes that the council appears to have fundamentally failed to meet the requirements of the second Gunning principle.
- *Gunning 3* expects that adequate time is given for consideration and response. No time whatsoever has been given to the public, generally, to consider and respond to the proposals. Our complaint includes that the council appears to have fundamentally failed to meet the requirements of the third Gunning principle.
- *Gunning 4* expects that the product of consultation is conscientiously taken into account by the decision maker(s). As there has been no meaningful consultation, decision makers are incapable of taking its product into account. The product of the engagement that has taken place (noting that this engagement does not amount to consultation) has

not been taken into account, with a decision seemingly taken before that engagement took place and with the decision maker(s) seemingly unwilling to give reasonable consideration to the points raised. Our complaint includes that the council appears to have fundamentally failed to meet the requirements of the fourth Gunning principle.

To correct the situation and resolve our complaint we request that the council, within 15 working days of receipt of this letter, commit to:

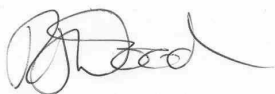
1. scheduling, at the earliest opportunity, a full-scale, Gunning principles compliant consultation on the proposals with users of the leisure centre, the local community more generally and any other interested parties;
2. (as part of that consultation if not sooner) setting out an appropriately detailed and evidenced analysis of the potential equalities impacts of the proposals;
3. (as part of that consultation if not sooner) making full details of the proposals, along with any plans and the supporting information and data that have informed them available to us (and any other key stakeholders with whom the council has undertaken engagement) so that we are able to properly understand the purported justification for the proposals; and
4. (as part of that consultation if not sooner) setting out an appropriately detailed and evidenced analysis of the potential climate change related impacts of the proposals.

Whilst there is no statutory or other legal basis under which it might be required, given the potential implications of the proposals we would also strongly encourage the council (as part of the consultation if not sooner) to set out an appropriately detailed and evidenced analysis of the potential health impacts of the proposals.

Whilst we hope that the council will give our complaint due consideration and meet our requests we reserve the right to take this matter further should satisfactory responses not be forthcoming. Given the nature of our complaints we would further request that, notwithstanding the strong indications that a decision may have already been made, no final, formal decision to proceed is taken until we have received a satisfactory resolution.

We are seeking legal advice on the matters set out above and are well informed of our rights with regards to raising a complaint with the Local Government and Social Care Ombudsman. We hope, however, that sense will prevail before any significant cost - either to ourselves or the council - is incurred. Such cost could be entirely avoided simply by the council following a process that adheres to the principles set out in article 12 of its constitution and ensuring it meets legal expectations in relation to consultation and equalities.

Yours sincerely,



Richard Wood

Names and addresses of 61 other signatories removed from this copy.

Copied to: Cllr Gillian Scott, Hayfield ward;
Cllr Alan Barrow and Cllr Ian Huddleston, New Mills East ward;
Cllr Jennifer Benzer and Cllr Simon Evans, New Mills West ward;
Cllr Peter Inman, Sett ward; and
Robert Largan MP

Appendix 1: key context behind our complaint.

The reduction in size of the sports hall, in particular, is likely to have a very significant impact on existing and potential future users, including making the existing, extensive use by schools no longer feasible. The hall is approximately the minimum size recommended by Sports England, possibly slightly smaller, but with 4 courts it is currently adequate to allow a wide diversity of sports and exercise opportunities for the whole community.

At present it is used frequently by pupils of all ages from all of the area's primary schools and older pupils from New Mills School. By reducing the size of the hall it will no longer be possible to accommodate two classes of pupils at one time. This would mean that an additional member of staff would be required to enable continued educational use of the hall because an additional cohort, left back at school, would be created. This would be likely to make using the hall financially unviable for primary schools. The high school in particular makes use of the hall throughout the school day for many of its regular PE lessons as well as for after school sports activities; this will no longer be possible and we understand that the school is seeking legal advice with regards to the contract it has for use of the hall. It will also no longer be of sufficient size for many of the school sports it currently accommodates; New Mills schools will no longer be able to host inter-school competitions for sports such as basketball or indoor football, with traveling to additional/replacement 'away' competitions likely to be cost prohibitive. Just this week the hall has hosted a primary school netball tournament with over 110 pupils from the area taking part; this would no longer be possible if the proposal was implemented. There are no alternative, equivalent facilities available within the local area. The long term health implications of this for future generations is very concerning but does not appear to be part of the council's considerations.

Beyond its educational use, the leisure centre currently provides a wide range of physical and mental wellbeing benefits through a diversity of sports which will either no longer be possible or would need to be reduced in scale.

There would be an absolute impact on squash facilities, where there is an active and long-established club with regular competitive, non-competitive and junior sessions as well as ad-hoc bookings involving, by conservative estimate, more than 200 people over a 3 month period. The squash court is a purpose built, specialist facility that was originally provided at great cost and cannot be easily replaced. That the proposals came to our attention in the week that squash was announced as a new Olympic sport from 2028 was particularly galling; its addition to the Olympic programme will undoubtedly lead to a rise in demand for use of squash facilities but that demand will no longer be capable of being met in New Mills. By way of comparison, the introduction of 3 x 3 basketball at the Tokyo 2020 Olympics (held in 2021) led to a reported increase in searches for information on how to get involved in the sport of more than 10,500%².

Sports such as basketball, netball and indoor cricket would no longer be possible as the hall would be too small to accommodate them, whilst others including badminton, pickleball and walking tennis, providing a diversity of opportunities for people of all ages to exercise, are already oversubscribed. A reduced facility would simply mean that fewer people are able to benefit from the physical and social wellbeing benefits that these activities offer. We have been informed that the sports hall is currently used for around 98% of the available time; the proposal would put the future of the sports hall itself at risk by making a large number of existing uses, including for educational purposes, infeasible.

² See <https://sports-insight.co.uk/news/sports-in-the-uk-soar-in-popularity-thanks-to-the-olympics-interest/>