THE STOCKS RESIDENTS ASSOCIATION
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Planning Control
Bolton Council
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By Email to: planning.control@bolton.gov.uk

cc. Members of the Planning Committee of Bolton Council

15 June 2018

Planning Application 02434/17
300 Dwellings, Land off Victoria Road, Horwich, BL6 5PH

Dear Ms Williams,

This is a further submission from the Stocks Residents Association (the 'SRA') in objection to Planning Application 02434/17 – 300 Dwellings, Land off Victoria Road, Horwich, BL6 5PH (the 'Site') (the 'Application') as submitted by Emery Planning ('Emery') on behalf of Peel Investments (North) Ltd ('Peel').

This submission is supplementary to, and should be read in conjunction with, the letters of objection submitted by the SRA on 22 January 2018, 13 February 2018, 9 April 2018 and 12 June 2018 (together the 'SRA Objections').

This further submission is made directly in response to the Delivery Statement submitted on behalf of Peel by Emery dated June 2018 which was uploaded to the Planning Portal on 13 June 2018 (the 'Delivery Statement'). We do not therefore propose to deal herein with any of the other issues raised in earlier objection letters.

The Delivery Statement

The SRA was interested to note the sudden appearance of the Delivery Statement in the documents available in the Planning Portal within a working day of the SRA's letter of objection dated 12 June 2018. The SRA notes from Paragraph 1.2 of the Delivery Statement that Peel has been requested by Bolton Council to provide a delivery statement.

The SRA is not at this time privy to the correspondence passing between the Planning Department and Emery and/or Peel but trusts that matters are being conducted on an independent 'arms length' basis and that the Planning Department is not giving Peel the advantage of being able to amend the basis of its Application to remedy any defects with it before it is determined.

The SRA must therefore reserves its position as to whether it considers it necessary to request disclosure (and/or make a Freedom of Information request) of all correspondence that has passed between the Planning Department, its officers and Peel and its consultants (including Emery and TTHC) in respect of the Application including but without limitation, the correspondence that has passed in recent weeks in response to issues that the SRA has raised in its letters of objection.

The Deliverability of the Site

The SRA is interested to note that Peel and Emery (and the same could be said for B.M.B.C.) have finally considered it necessary to engage on the issue of the deliverability of the Site which, given the timing of the publication of the Delivery Statement, is assumed to be a direct result of the contents of the SRA's letter of 12 June 2018 and originally raised 4 months ago by the SRA.

The SRA considers the fact the Delivery Statement attempts to address the issue of the deliverability of the Site, confirms that this issue which has been made consistently (and evidently ignored) over the last four months by the SRA is well founded and fatal to the Application.

The SRA notes that Emery has set out at Paragraph 5.1 of the Delivery Statement an extract of Paragraph 47 of the National Planning Policy Framework (the 'Framework') and Footnote 11 which was cited in the SRA's 12 June letter, which deal with the issue of the deliverability of housing and in particular within Footnote 11, clarification on what is considered to be 'deliverable'. To confirm, Footnote 11 provides as follows:

"To be considered deliverable, sites should be available now, offer a suitable location for development now, and be achievable with a realistic prospect that housing will be delivered on the site within five years and in particular that development of the site is viable. Sites with planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years, for example they will not be viable, there is no longer a demand for the type of units or sites have long term phasing plans."

Whilst Emery has attempted to demonstrate that the Site is to be considered 'deliverable' in accordance with the requirements of Footnote 11, it has focused on three aspects of the Footnote i.e. whether the Site is "*available now*", "*suitable*" and "*achievable*". With the greatest respect to this approach, it completely overlooks the key aspect of whether a site is to be considered 'deliverable' as provided for in Footnote 11 namely, that there must also be "*…a realistic prospect that housing will be delivered on the site within five years…"*.

The SRA considers this oversight to be deliberate on the part of Emery as it knows full well that it cannot demonstrate that the Application satisfies this fundamental and absolute requirement as there no prospect whatsoever of the Site being delivered within five years.

In this regard, it is important to note that there has to be "*realistic prospect*" that the Site will be delivered (i.e. the 300 house foreseen in the Application actually built) within five years, not simply marketed for sale, or sold to another developer who may then make a reserved matters application in due course, as Emery states in Paragraph 5.4.

The reason why Emery has taken this approach is that it knows full well that it simply cannot demonstrate that there is a realistic prospect of the Application being delivered as Peel does not have legal control over any part of the Site.

The ownership of the Golf Course

As previously set out in the SRA's submission of 13 February 2018, and confirmed in SRA's letter of 12 June 2018, the land comprising the golf course is the subject of lease dated 27 September 2012 between Peel Land (Intermediate) Limited, the Trustees of Horwich Golf Club and Horwich Golf Club Land Limited (the 'Lease'). The land that falls within the Lease holds title numbers GM975215 and GM842545 and whilst the SRA has previously provided the Planning Department with a copy of the Lease (which it obtained from HM Land Registry), the Planning Department can, of course, obtain copies of the title documents to the land itself from HM Land Registry if it has not already done so.

Emery does not even feel able to mention directly the existence of the Lease in the Delivery Statement and simply states that Peel 'owns' thirteen hectares of the Site. **This statement is deliberately misleading as it completely ignores the existence of the Lease and the fact that the applicant does not occupy the Site.** Furthermore, it is also noted that the Application has actually been made in the name of Peel Investments (North) Limited and such legal entity is not a party to the Lease (it being Peel Land (Intermediate) Limited which is party to the Lease) so it is not even clear whether the applicant is actually the owner of the land that comprises the Lease.

Furthermore, and even more disingenuously, it is stated at Paragraph 5.4 of the Delivery Statement that "*…(T)he applicant intends to serve notice upon the existing tenants following the granting of permission, and the development of the site can proceed without delay.*" The SRA was quite shocked to read such a statement given that the Lease does not expire until 31 January 2023 and there is no basis within the Lease for the landlord to serve notice to terminate the Lease before its expiry**. This statement is thus false and misleading.**

The SRA therefore requests the Planning Department to review the Lease for itself and it will note that there is no lawful basis upon which the landlord can serve notice on the tenants to terminate the Lease prior to 31 January 2023.

Indeed, as the SRA mentioned in its letter of 12 June 2018, it understands that Horwich Golf Course is actively seeking new members (who have annual memberships) and it would no doubt be of some surprise to such members that Peel considers that it can "*serve notice*" to surrender the Lease without any legal basis upon which to do so.

The ownership of the field

Regarding the remaining five hectares of the Site, Emery has confirmed that these are owned by the 'Bromilow family' and describes them as a "*willing land owner*". This confirms the fact previously asserted by the SRA in its submission of 13 February 2018, that Peel does not even own the field adjacent to the golf course. Whilst Emery confidently describes the Bromilow Family as a "*willing land owner*", it is clearly unable to say that Peel has reached an agreement with the Bromilow Family to acquire the field or even that Bromilow Family are "*willing sellers*".

The SRA understands that field is in fact owned by six individual members of the Bromilow Family (this is confirmed in the Application Form) and there is no evidence within the Application which confirms that each of the six individual members of the Bromilow Family are willing to sell the field to Peel. Again, the wording of the Application is clearly ambiguous, indeed it may well be duplicitous and is intended to mislead officers and the Planning Committee.

No realistic prospect that housing will be delivered on the site within five years

In the circumstances, Peel has provided no evidence whatsoever that any part of the Site is "*available now*" and that the development can proceed "*without delay*". These statements are therefore entirely disingenuous and consistent with Peel and Emery's approach to date in terms of the way information has been presented in an entirely self-serving manner.

In order to support these claims, Emery is left to rely simply upon the entirely vacuous statement that *"Peel has a strong track record of bringing sites forward for housing across a range of market areas and sectors"* (see Paragraph 5.3 of the Delivery Statement). This is self-evidently simply not a credible statement to make in the context of the requirement to demonstrate that there is a "*…realistic*

prospect that housing will be delivered on the site within five years…" and certainly not one upon which the Planning Department can lawfully proceed to recommend the Application for approval to the Planning Committee.

In fact, the only available evidence that exists is the Lease which confirms exactly the opposite, namely, that the land is not in fact "*available now*" and that there is no "*…realistic prospect that housing will be delivered on the site within five years…"*.

Sale to a developer

The SRA also notes with interest the following statement at Paragraph 5.4 of the Delivery Statement: *"…(O)nce planning permission has been achieved, the site will be marketed and sold to a developer, upon which a reserved matters application would be made."*

This confirms the suspicion that the SRA has had from the outset that Peel shall not itself develop the Site and that once it has secured outline permission, it will seek to realise maximum profit from the land by selling to another developer. This statement reveals exactly what is the Application is all about: Peel is not interested in the delivery of 300 houses in Horwich to assist in alleviating the shortfall in the five year housing supply in Bolton, but only in realising its investment in the golf course. This is perhaps why the Application is being made by Peel Investments (North) Limited which appears to be an entity primarily focused upon property investment and property trading which, according to its last filed accounts with Companies House, made a profit after tax for the period ending 31 March 2017 of £20,700,000.

It is therefore entirely unconscionable for Emery to extol the virtues of the benefits of the delivery of housing on behalf of Peel to support the Application, when by its own admission, Peel has absolutely no interest in delivering the promised houses as its clearly wishes to sell the Site at the first available opportunity (once it has actually acquired legal ownership of it).

It is respectfully submitted that it is not the role of Bolton Council to facilitate property developers such as Peel in the realisation of a financial return on land which has been purchased for investment purposes only and the application has intention to itself deliver housing to assisting the short term housing supply.

Moreover, if Peel has no intention of developing the Site itself, then how can any reliance be placed upon its predictions for the deliverability of the Site – it is simply not in a position to make any commitments in this regard for which it can be held to account. Indeed, it is clear that the process of marketing and sale of the Site (again assuming it can even acquire legal control over all of it), would also take time and this further undermines the claim that the development of the site could proceed "*without delay*" – this is self-evidently not a tenable position to advance.

The Application thus stands in contrast to others where permission has been granted in accordance with the presumption in Paragraph 14 of the Framework due to the shortfall in the five year housing supply. In particular, and as referenced in the SRA's submission of 13 February 2018, in the appeal relating to the land at Lee Hall, Westhoughton, (Ref: APP/N4205/W/15/3139219) dated 17 December 2017, the Planning Inspector noted the following at Paragraph 57 of the decision: "*(T)he appeal site would make a timely contribution to seeking to close the gap in supply.*" It being noted at Footnote 54 of the decision that the application was "*…a full planning proposal and the land is within the control of the appellant company who has confirmed they are ready to proceed with development.*"

It could not be any clearer therefore, that applications which are approved via the use of presumption in Paragraph 14 due to a shortfall in the five year supply of housing need to assist in alleviating that shortfall by being deliverable within a five year period.

As noted in the SRA's letter of 9 April and 12 June 2018, this point is supported by the clearly stated aims of Central Government which wishes to reform the Framework in order to lead to the quick delivery of housing. As previously noted, Paragraph 78 of the draft Framework indicates that authorities should only be granting permission where development can actually begin within two years. If such a condition was to be imposed on the Application, based on the available evidence, Peel would simply be unable to satisfy it.

Finally, the fact Peel would sell the Site if permission was to be granted, also supports the point previously made by the SRA that the Planning Committee can have no confidence whatsoever in any 'Section 106' commitments made by Peel as the subsequent owners of the Site who inherit these commitments, would inevitably seek to re-negotiate the liabilities on the basis they are no longer economically viable.

Conclusion

As it is Peel which is seeking to secure outline permission based upon the presumption in Paragraph 14 of the Framework on the basis that the Local Plan is out of date due to a shortfall in the five year housing supply in Bolton, Peel carries the burden of proof in demonstrating that the Application assists in alleviating that shortfall.

The test which it must satisfy in this regard is that that Application is '*deliverable*' within the meaning of the Framework. As noted above, the key requirement to determine whether a development is to be considered '*deliverable*' is set out in Footnote 11 and this requires there to be "*…a realistic prospect that housing will be delivered on the site within five years…"*. If this cannot be shown, then a development cannot be considered '*deliverable*' in accordance with the Framework.

Peel had been given the opportunity to submit the Delivery Statement in order to confirm its position on whether the development was '*deliverable*' in accordance with the requirements of the Framework. It is clear from the Delivery Statement and the above analysis, that Peel has singularly failed to demonstrate that the Application is '*deliverable*' – Emery can only rely upon its own self-serving statement that Peel has a 'strong track record' of bringing sites forward for housing. This is simply not good enough.

In this regard, the statement at Paragraph 6.1 of the Delivery Statement that the development would "*…make a significant contribution towards addressing the shortfall in the supply of deliverable housing land in Bolton, consistent with paragraph 47 of the Framework which seeks to boost significantly the supply of housing…*", is completely misleading.

The simple fact of the matter is that there is no "*…realistic prospect that housing will be delivered on the site within five years…"*. Consequently, the Site cannot be considered to be "deliverable" in accordance with the requirements of Footnote 11 of the Framework. The Application will not therefore assist in addressing the shortfall in housing in Bolton within the next five years.

As previously stated, in such circumstances, the Application cannot be approved on the basis that there is a 'presumption' to do so under Paragraph 14 of the Framework. This would be a misinterpretation of Paragraph 14 the Framework as the Site is not in itself 'deliverable' within the next five years and thus provides no immediate benefit to alleviate the five year housing shortfall. As set out in the SRA letter of 12 June 2018, based on the definition of '*deliverable*' in the Framework,

Bolton Council would not be permitted to include the proposed 300 houses in its own projected housing figures if the Application was to be approved.

The presumption in Paragraph 14 is not intended to apply in favour of sites which are not in themselves '*deliverable*'. Otherwise, Paragraph 14 would create a loophole for land owners to exploit whereby, due to a shortfall in housing supply, they could secure permission for sites which would not otherwise be approved (i.e. due to a conflict with the local plan), even though such sites do not assist in alleviating the very housing shortfall which enabled the application to be approved in the first place. This would produce a contradictory state of affairs and would defeat the entire purpose of the presumption in Paragraph 14. Consequently, as the Application is not '*deliverable*' it should not therefore even trigger the application of the presumption in Paragraph 14 of the Framework and to that extent, represents an abuse of process.

Even if the Application was deemed to benefit from the presumption in Paragraph 14 (which is denied), the fact that the development is not 'deliverable' is in any event fatal to its prospects of success as, when the 'tilted balancing' exercise is then undertaken, it is necessary for 'decision takers' to consider whether the "*adverse impacts*" of granting permission would "*significantly and demonstrably outweigh the benefits*" of the Application. As noted in the SRA Objections, on one side of the scales there are a multitude of material adverse impacts which would arise if the Application was to be approved and on other, there is no benefit arising from the Application in the context of the requirements Paragraph 14 (i.e. alleviating the shortfall of housing over the next five years) as there is no "*…realistic prospect that housing will be delivered on the site within five years…"*. Consequently, the balance is against the Application and the presumption does not apply, the Local Plan prevails and the Application must be rejected.

In such circumstances, there can only be one lawful outcome to the Application namely, its rejection. To approve the Application under the presumption under Paragraph 14 of the Framework (which is the only basis upon which it could even be considered for approval as it conflicts with the Local Plan) would thus be unlawful and subject to challenge by way of judicial review and the SRA must continue to reserve its position with regard to any steps it would be required to take in the event the Application was to be approved.

Yours faithfully

Malcolm Harrison
Chairperson