

**TOWN & COUNTRY PLANNING (SCOTLAND) ACT 1997**

**OUTLINE PLANNING PERMISSION FOR GOLF COURSE AND RESORT DEVELOPMENT  
ON LAND AT MENIE HOUSE, BALMEDIE, ABERDEEN ("the Application")**

**REFERENCE: CIN/ABS/001**

**RESPONSE ON BEHALF OF ABERDEENSHIRE COUNCIL TO SUBMISSION FROM ELLIS  
THORPE**

The Council has already made a response to the submission on behalf of Mr Agnew which is relevant to some extent to the matters referred to by Mr Thorpe and in particular the alleged legal tangle. For the reasons set out in the response to Mr Agnew the Council do not consider there is in fact any "legal tangle" particularly having regard to the position adopted by the Council on 24 April 2008 in re-affirming the decision of 12 December 2007. That submission is simply referred to and not repeated.

So far as the position in relation to the "call in" is concerned that matter was considered by the Scottish Parliament. It is not considered by the Council competent for the Chief Reporter to raise an action in the Court of Session.

The Council do not consider that Scottish Ministers have acted outside their legal powers. It is considered by the Council that notwithstanding the decision taken at the Infrastructure Services Committee on 29 November 2007 it was competent for Scottish Ministers to call in the application until such time as the decision of Infrastructure Services Committee had been communicated by the formal issuing of a refusal notice. Reference is made to Scottish Planning Law and Procedure (2001) para 11.46 and the cases referred to there. The only means by which the decision of Scottish Ministers could have been challenged accordingly in the view of the Council is by way of judicial review. No party has instituted such an action and in submission of the Council would probably be precluded from doing so by now on the basis of the legal principle of "*mora*".

For the reasons outlined above the Council do not consider there is any "legal tangle". Even if the "Nolan Report" was applicable in Scotland (and the Council is not aware that it is) it is not relevant in the present circumstances.