RSB WS/4

Town and Country Planning (Scotland) Act 1997

The Town and Country Planning (Notification of Applications) (Scotland) Direction 2007

Outline Planning Permission for Golf Course and Resort Development on land at Menie House, Balmedie, Aberdeen

PUBLIC LOCAL INQUIRY: Ref CIN/ABS/001

WRITTEN SUBMISSION RSB WS/4

of

RSPB Scotland

Scottish Wildlife Trust

Botanical Society of the British Isles

The impacts of the proposed development on the birds of Menie Estate (excluding effect on the SPA)

1. Purpose and Scope of the Submission

This submission summarises the bird interest of the application area and clarifies the probable effects of the development. We then consider the level of uncertainty over some of the impacts and proposed mitigation measures, and go on to present those aspects of the proposed mitigation measures with which we disagree. We contend that there are significant adverse effects on birds that will result from this proposed development, and that these effects should be viewed in addition to the other strongly negative impacts of the development - which are considered in our other written submissions and our precognitions.

2. Summary of agreed facts

2.1. **Breeding Birds**. We agree that within the application site, the breeding bird community includes a range of species typical of sand dunes and slacks. This community is of considerable value and we concur with the Applicant's' Environmental Statement (p.101) that the area is of near-SSSI quality for its breeding bird assemblage. The summary data tabulated in the Environmental Statement are substantively correct. Combining both seasons' surveys by the Applicant, together with the data sources cited by them (which includes RSPB and local Breeding Bird Atlas data), 66 species have been recorded in the breeding season, with the majority of these likely to breed.

2.2. Of these, 11 are 'red-listed' as Birds of Conservation Concern (RSB 67), as noted in Table 7.1 of the Environmental Statement and the subsequent 2007 survey (core document (G)6) and including the records of Grey Partridge and Tree Sparrow noted there. In addition, 23 of the species found are included in the 'amber-list' of 'Birds of Conservation Concern', though not all of these are listed because of breeding criteria. We agree with the Applicant's' lists of breeding birds in the two surveys and accept the estimates of breeding pairs.

2.3. The species breeding on the site of most significance are:

Skylark (up to 80 pairs present)
Linnet (a minimum of 14 pairs present)
Corn Bunting (One pair possibly present)
Reed Bunting (up to 12 pairs present)
Black-headed Gull (up to 19 pairs present)
Lapwing (up to 12 pairs present)
Redshank (up to 2 pairs present)
Shelduck (up to 9 pairs present)

2.4. **Wintering birds**. In general, we accept as accurate the assessment presented in the initial Appropriate Assessment report (October 2007) of the numbers of bird species using the whole estate in winter. 100 species were recorded and if survey work was continued over time this figure would rise. Over 5,000 birds in total were present during the survey period – again, a figure we do not dispute. It is important to note here that birds in winter are concentrated on the parts of the estate away from the dune system, indicating the potential impact of the remainder of the development away from the SSSI/SINS area. This is noted in the Appropriate Assessment.

2.5. The large numbers of Pink-footed Geese (at times an internationally important aggregation) were expected, and the further assessment in the Appropriate Assessment of May 2008 illustrates clearly that Menie is emphatically a part of the functional wintering area of Pink-footed Geese that use the Ythan/Meikle Loch SPA. The significance of this in relation to the Habitats Regulations is considered further in our Written Submission on that subject, but it is sufficient to note here that we agree with the numbers and usage patterns identified by the Applicant.

2.6. We accept the counts of the wintering waders (Lapwing, Curlew and Golden Plover) and the overall assessment of local significance – this whole area has been long known to be a favourite haunt of these birds. However, it is worth noting that the Golden Plover and Curlew numbers at peak were over half of the qualification level for national significance.

The wide range of waterfowl noted also concurs with our knowledge of the site, as does the occurrence of large flocks of Starlings and seed-eating birds such as Linnets.

2.7. We agree with the following assessment numbers of birds wintering on the whole survey site (AA report 2007):

Pink-footed Goose	3,500 peak: Internationally significant
Golden Plover	1,400 peak: over half of national significance level
Lapwing	1,241 peak
Curlew	646 peak

The assessment of international significance should be based on means of five (consecutive) winter peaks - data which are not available. However, we have no reason to suppose the number counted was not a fair reflection of numbers to be expected over a longer run of winters and so the comments on internationally/nationally important provide a useful, interim indication of the significance of the site.

3. Summary of agreed conclusions regarding likely impacts of the development

3.1. We agree with the following conclusions of the Applicant in relation to the likely impacts of the development on birds:

a) Loss of habitat during construction and operation of the golf courses and resort (core document (G)3: ES p. 110 - affects breeding and wintering birds)

b) Disturbance during construction and subsequent resort and golf course operation (core document (G)3: ES p.110 - affects breeding and wintering birds)

c) Potentially adverse effects on seven of the red-listed bird species, plus two species of raptor, three species of wading bird and a small Black-headed Gull colony (core document (G)3: ES, pp.110-115 - affects breeding birds).

d) Residual negative impacts after mitigation on most bird species breeding and wintering within the site, especially Skylark (breeding Bird Survey Report 2007), Pink-footed Geese and wintering waders (core document (G) 4 and T16: Appropriate Assessment Reports 2007 and 2008).

e) In particular, we agree with the assessment (T16: Appropriate Assessment 2008 p.14) that the principal effect of the proposed development on Pink-footed Geese would be the loss of the main feeding and roosting field, on which building is expected to take place. The roost pool may be retained, but would be subject to greatly increased human disturbance. There would almost certainly be a large, permanent reduction in the numbers using the Menie site.

4. Outstanding areas of uncertainty of significance to the decision

4.1. Wintering waders. The statement that the waders were generally outside the development site may have been true in the winter when work was carried out, but since wader use of farmland depends on a wide range of factors and varies seasonally, the development site proper could hold (and has held) similar number of these birds at times. It is important to note though that total numbers as well as usage of particular parts of the site can vary significantly from year to year. Therefore we consider that the appropriate number of birds likely to be affected by the development is the whole site figure, not simply those that happened to be within the notional development boundary at the time of survey. It is also important to note that the layout of the proposed development could easily change, as this is an outline application.

4.2. Mitigation uncertainty – it is claimed (core document (G)6: Breeding Bird Survey 2007) that initial habitat creation could commence in advance of the main works. However, given that there are plans for a second golf course and much of the rest of the estate is zoned for housing development, it seems highly unlikely that significant areas for 'advance habitat creation' can be identified that take account of likely iterations caused by amendments to the

necessary future detailed planning applications. The delayed start to allow habitat creation is not reflected in the proposed conditions. Any time lapse between starting habitat creation and loss of the on-site habitats is likely to be short-term so that, even if habitat creation is ultimately successful, a gap period is likely to arise. The effectiveness of habitat creation will also depend on whether any necessary habitats can be created and maintained appropriately.

4.3. Effectiveness of proposed Environmental Management Plan. It is not clear that MEMAG is likely to have sufficient influence over adequate areas of undeveloped land to allow for any meaningful compensation for the areas lost and this would lead to uncertainty over "medium to long-term positive enhancement" of the site's ornithological interest.

4.4. Cumulative impacts of development on wintering birds: (core document (G)4: AA Winter Bird Survey Report 2007) – it is claimed by the Applicant that there are no known developments that would add cumulatively to the effects of the application development but this needs to be set in a context of wider land use change, including the planned numbers of wind turbines, tree planting, urban expansion and other developments that are incrementally removing suitable farmland from the winter range of the wetland birds (geese, waders) that use the Ythan Estuary/Meikle Loch area. This is a complex area with many uncertainties.

4.5. Acquisition of land outwith the application site (T16: AA 2008 p.14). It is stated here that land could be purchased outwith the site to create goose feeding areas or a roost pool. There is no certainty that land would be available, or indication that the Applicant is actually willing to do this. Furthermore, it is not possible to impose a condition requiring the Applicant to acquire such land and the Applicant cannot include such an undertaking in a S75 agreement until such time as the land has been secured. Consequently, this offer is, to all intents and purposes, meaningless without specific areas being identified and acquired.

5. Areas of disagreement and additional points

5.1. We accept that the baseline bird information about the site is sufficient to allow an informed debate about the ornithological significance of the site and to facilitate the necessary assessment of likely impact. The debate revolves around uncertainty of impact and the likely effectiveness of mitigation measures. Here we set out those areas where we disagree with the conclusions and statements made by the Applicant.

5.2. Mitigation disagreement - general

a) The Proposed Environmental Management Plan is, in our view, likely to be insufficient and ineffective to deal with the scale of impacts that would result from the development. At best any mitigation or benefits would be cosmetic and small scale, relative to the degree of development incursion into existing bird habitats.

b) We do not agree that long-term positive impacts on birds would occur or (core document (G)3: ES, p.110) that the long-term impacts are likely to be lower.

c) We do not agree that it is helpful to distinguish between 'short-term' and 'long-term' negative impacts in this case. The scale of change proposed in this golf resort development is so large, with so much built development proposed both immediately and in later years, that the adverse effects on birds will be wide-scale and permanent, with only small-scale mitigation measures.

d) We disagree that "Bird-specific management could raise the bird interest above SSSI qualifying threshold levels." The losses would never be recovered and such a level of enhancement is in our view unachievable on the developed site (core document (G)6: Breeding Bird Survey 2007, s.5.3.4.1).

e) We disagree that slight-negligible negative impacts on any bird species are "within sustainable limits, national, regional and local' (core document (G)6: Breeding Bird Survey

2007, s.7.0). The impacts on the site would be considerable and there is no evidence to support the assertion that populations would be sustained. In any event, this argument could be repeated in innumerable cases, each asserting an effect below some theoretical threshold whilst the cumulative effect would be a decline. It is a fallacious argument, incapable of being demonstrated, because there is no way of calculating such a limit anyway.

f) We disagree that the following action - "in the short and long-term, ensure that key features such as wetlands, wet slacks and water bodies are given maximum buffer zones" (core document (G)3: ES p. 114) will have much practical effect. Given the spatial extent of the development footprint and the function of buffer zones, this is likely to be ineffective in a development of this kind, especially in relation to birds' usage of such areas.

5.3. In terms of the mitigation for permanent loss of habitat for birds (ES p.115), we consider these to be inadequate because:

a) Measures such as planting 0.97 ha of gorse scrub and 3.9 ha of wetland creation are small-scale and insufficient to compensate for the high level of habitat loss in a site with a large development footprint and significantly higher disturbance levels.

b) The proposed future golf and resort development may create habitat but this would be smaller scale and of far less value for birds when compared with the habitat losses brought about by their construction and development footprint.

c) Almost all the measures proposed are speculative and small scale and it is not clear to what extent they can be accommodated by the very demanding layout of the rest of the resort development.

d) In terms of residual impacts (core document (G)3: ES Table p.120), most measures fail to take account of the context in which they are being proposed. For example, Corn Buntings, if still present are unlikely to benefit from boundary features especially bearing in mind the

matrix of built development, the redesigned landscape and the increased level of human disturbance. The extent and location of any proposed compensatory wetland creation is also likely to be constrained by the demands of the rest of the resort developments.

e) In terms of the measures suggested in the AA and wintering bird report 2007 (8.2) (core document (G)4), with the possible exception of the retention of flight ponds none of the measures proposed will mitigate significantly the loss of winter bird habitat.

f) The creation of new grasslands is unlikely to be of sufficient scale or appropriate in nature to attract wintering waders due to the matrix within which they are set and due to the competition for land and amenity from the other developments within the resort.

g) The creation of any significant new water bodies will not be permitted by the CAA and positive management of wetland and riparian corridors will be more than offset by their losses.

h) In terms of the measures suggested in the AA (T16: (2008) p15), we do not agree that screening and buffering of the roost pool would be possible or effective in retaining roosting Pink-footed Geese and such a proposal does not reflect the species' likely behaviour.

6. Conclusions

6.1. The development proposals therefore not only damage or destroy part of a nationally important SSSI, but also bring about negative impacts on the overall bird interest of the wider estate. This additional negative impact should be taken into account in determining the application. We are strongly of the view that the development is misplaced, principally because of its impact on the geomorphology and habitats within the sand dune system (in particular the SSSI), but also because of wider impacts on the birds and other biodiversity of the area.