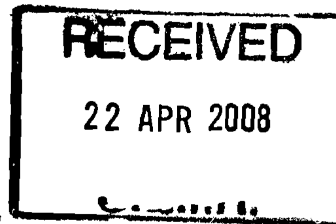
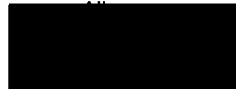
Chief Reporter,
DPEA
4 The Courtyard, Callender Business Park,
Falkirk FK 1 1XR.



Ellis & Ann Thorpe


21 April 2008.

Dear Chief Reporter,

Please find enclosed a copy of page 73 of the "Nolan Report". Paragraphs 286 and 287 are of particular relevance to the Trump application and the public enquiry. How can Aberdeenshire council present a case for approval? Planning officers have no locus to do this. The problem is the council has got itself into a "legal tangle" which can be decided only by the Court of Session and surely it is in the public interest for the Chief Reporter to raise an action before the public enquiry can go ahead. The case of Aberdeenshire council is "refusal of planning permission" which was the democratically held decision of the lawful planning committee. Were this to be upheld by the Court of Session then the legal position of the council and its planners is to present the case against the applicant. Also connected with this is the matter of the legality of a "refused" application being "called-in" by Scottish Ministers on the flimsy argument that a "decision notice had not been "sent out" by an administrator. If that is the law then it needs to be demonstrated and proved in the Court of Session but it seems a tenuous argument as it would logically need to include the applicant receiving the letter giving the decision notice. What if the letter had been lost in the post? No one can rely on a letter being delivered even if it is recorded. Clearly the proposition that a democratic decision of a legal committee of local government depends upon a letter being sent out and received is unreasonable. It is the duty of the Chief Reporter to raise an action in the Court of Session to rule on the second legal tangle. Because if Scottish Ministers have acted outside their legal powers and the "refusal of planning permission" stands as the lawful decision, then the first legal tangle falls. No public enquiry can take place until the applicant appeals which is the legally correct procedure that ought to have been followed in the first place. The only way to resolve the legal tangle is for the Chief Reporter to go to the Court of Session to get a ruling in the public interest.

Yours faithfully,

Ellis Thorpe.

with whomever they want: local democracy depends on councillors being available to people who want to speak to them. The likely outcome of a prohibition would be that lobbying would continue, but in an underhand and covert way.

> *'Not all decisions are **technical**. If they were, the human face of planning could be eliminated and no democratic discussion ever take place once policies were decided. Officers could just press the relevant computer key to make the decision.'* ***Chair of an English District Council Planning Committee, quoted in RTPI survey***

286. It should be firmly stated that there is nothing intrinsically wrong if planning committees do not invariably follow the advice of officers. Planning officers exist to **advise** planning committees, which are entitled to reach their own decisions by attaching different weight to the various planning criteria which are relevant to an application. If a decision is thought to be perverse, a planning officer should so advise the committee, but respect the committee's conclusion.

287. We understand that in some authorities, if a planning committee rejects an application against officer advice, and the applicant then appeals, there is some reluctance on the part of officers to act on behalf of the authority at the appeal: in some cases independent consultants have to be hired to do so. This reveals a profound confusion about the duties and responsibilities of a professional officer within an authority, as well as being a waste of taxpayers' money. Unless an officer believes that a planning decision is improper (in which case he or she should draw this to the attention of the council's solicitor or chief executive), the correct course of action is to provide the best planning arguments to support the council's case.

288. It is essential for the proper operation of the planning system that local concerns are adequately ventilated. The most effective and suitable way that this can be done is via the local elected representatives, the councillors themselves. Councillors owe their position to the electorate, and in the decisions they take they are, by and large, attempting to serve the community which elected them. More specifically, they cannot put out of their minds the plain fact that in order to be re-elected they have to secure sufficient votes from the electorate. Such considerations naturally lead councillors to be concerned for the particular circumstances of individuals, perhaps to be more sympathetic to those who have a good track record in the community, and certainly to be influenced by the strength of opinion in one direction or another, whether or not the strong local views are held for a good planning reason.

289. Councillors themselves may be influenced by feelings which do not derive from dispassionate examination of the planning issues. They may see themselves as leaders of local opinion rather than as judges, and they may even have been elected on a specific platform of opposing or supporting a particular development or type of development. In our view, if planning decisions by local authorities were to be regarded as quasi-legal decisions, in which councillors played a role similar to that of inquiry inspectors or judges, there would be no point in involving councillors in such decisions. They might as well be taken by planning officers, or by inspectors.