

## Precognition by Cllr Paul Johnston

as part of the case by Cllrs Ford, Johnston, Ross, and Storr

in support of Aberdeenshire Council's decision to refuse the application by Trump International Golf Links Scotland for housing, hotel, holiday apartments, golf courses etc. at Menie, near Balmedie, Aberdeenshire

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My name is Paul Johnston, I have been an elected member on Aberdeenshire Council since its formation in 1995. In all that period I have been a member of the Formartine Area Committee and the Council's Infrastructure Services Committee dealing with all the Council's adoption of planning policies since its inception.

My precognition relates to firstly, the decision of the Infrastructure Services Committee and what might have been brought about by negotiation on conditions; and secondly, those conditions that should be imposed in the event of any form of approval, partial or otherwise, that meets the purposes of controlling the development in the public interest that have been identified both by the Councillors at the meeting on the 29th November and by Belhevie Community Council.

### **1 Planning conditions**

1.1 At the outset I refer to SDD Circular 4/1998 The Use of Conditions in Planning Permissions (Production ISC 16) . The consideration of these conditions is against the six tests as laid out in the Circular.

“2. Conditions imposed on a grant of planning permission can enable many development proposals to proceed where it would otherwise have been necessary to refuse planning permission. While the power to impose planning conditions is very wide, it needs to be exercised in a manner which is fair, reasonable and practicable. Planning conditions should only be imposed where they are:-

- necessary
- relevant to planning
- relevant to the development to be permitted
- enforceable
- precise
- reasonable in all other respects.

The Secretary of State attaches great importance to these criteria being met so that there is an effective basis for the control and regulation of development which does not place unreasonable or unjustified burdens on applicants and their successors in title.”

- 1.2 The imposition of planning conditions at the outline stage, where issues of principle might be debated, is to be preferred to the use of planning agreements or to the later imposition of conditions on reserved matters, as it allows fuller consideration of objections and public perception.
- 1.3 Accountability is a vital consideration. This application has certainly raised many people's awareness of the planning process and I don't think it would be too controversial to say that it has done little to dampen public cynicism about the way planning applications are dealt with.
- 1.4 And while a number of items are best dealt with by the use of planning agreements as per Circular 12/1996 *The Town and Country Planning (Scotland) Act 1972 Planning Agreements*, the Circular also advises that in principle where they can be dealt with by a condition, it is to be preferred.

“6. When deciding to grant planning permission, planning authorities should wherever possible rely on planning conditions including, where appropriate, suspensive conditions, rather than using a planning agreement. ... The use of conditions rather than planning agreements should help reduce delays in the development control process although many authorities feel that agreements provide an alternative and more effective means of enforcement without the risk of having a condition overturned or modified at appeal. The Secretary of State's view is that the right of appeal should not be frustrated in this way.

## **2 Reserved matters**

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- 2.1 Turning to the list of reserved matters in condition number three suggested by Aberdeenshire Council in their report to the Formartine Area Committee special meeting on 20th November 2007.
- 2.2 **Master-plan for the whole development**
  - 2.2.1 I support the decision of the Formartine Area Committee to make the application subject to a Master Plan. However, in the circumstances of this application, there has been no further guidance as to how a Master Plan would be progressed.
  - 2.2.2 Neither the Council's Local Plan nor the North-East Scotland structure plan contains specific guidance on master planning exercises. There is no advice on consultation, timetable, method or reporting. So while the principle is accepted, further information as to what constitutes a master plan and how it would be progressed should be made clear.
  - 2.2.3 Such issues as phasing, drainage, access arrangements and design are all covered by other conditions. In what regard is a master plan related to these conditions? This

needs to be clarified by the Council.

2.2.4 It is not disputed that a master plan process for complex and large developments is a better way forward, if the master plan was to address all of the details set down in the outline development conditions. However this is not clear in the council's submission.

2.2.5 If the Council is to accept that all the detail of phasing, drainage, access etc are subject to the masterplan, its processes, consultation and involvement needs to be carefully clarified and recorded.

2.2.6 There are mentions within the conditions proposed by Aberdeenshire Council of an indicative master plan. It should be made clear that the master plan submitted by the applicants in support of their application is not the master plan referred to as a condition of the Council, but that the master plan required by the Local Authority to determine the detailed matters is one agreed in a new masterplanning process. It may or may not include elements already published in the applicant's indicative plan.

### **2.3 Details of all cut and fill operations in the construction of the golf courses;**

2.3.1 Overall, the maximum amount of cut and fill that should be allowed should be determined and limited by condition. This should be kept to a minimum.

2.3.2 There is an acceptance that this is difficult to calculate as the course design has changed. Also there is no figure that would allow a calculation as to what it would be if the course did not include the SSSI and the second course did not include the SINS or the southern sand dome.

2.3.3 An overall cap to the extent of cut and fill, imposed at the Outline stage, would inform designers well in advance of a key parameter that they would have to satisfy at the reserved matters stage. Such detail as to the nature of the cut and fill could therefore be left to the reserved matters stage.

2.3.4 However, any development permitted in a SINS site should respect the 'no species loss' principle, and exceptional low impact management. Golf need not be high impact grass monoculture. If it can use existing landforms, respect dune movement, allow for the dynamism of the place and be low density, then movement of sand as cut and fill could be very low.

2.3.5 It was clear to both the Formartine Area Committee and the Infrastructure Services Committee that only either deferral or a rejection of the application would allow time negotiation that would clarify what the maximum amount should be in order

to provide a guide for the detailed design. At this point, for the sake of clarity, the sum could be substantially less than that suggested by the applicant.

2.3.6 In summary, the Scottish Ministers should by the use of planning conditions at the Outline stage, provide guidance to this development. To satisfy Circular 4/1998 it should set a maximum amount of cut and fill. The Circular acknowledges that in the event of unusual circumstances such as in the construction process, such a condition can varied, but it would be clear that in matters of principle, public concern openness and accountability, the development would be properly controlled by the adoption of this proposal.

**2.4 A detailed levels survey of the site and cross sections showing proposed finished ground and floor levels relative to existing ground levels and a fixed datum point;**

2.4.1 There is no objection in principle to the condition as presently proposed. However, a further suggested condition would require the establishment of a datum point on the escarpment for the fixing of the total height of the development (Hotel, Holiday homes, villas, staff accommodation and housing) as request in another condition (see paragraph 2.7.3 below).

**2.5 Full details of the proposed means of disposal of foul and surface water from the development;**

2.5.1 The full details of surface water and foul drainage are best left in most circumstances to the detailed reserved matters stage. In the case of the proposed development by a Trump International the surface water would require sustainable urban drainage (SUDS) systems with the acknowledgement that the maintenance of this would be tied to the operation of the Golf Leisure resort.

2.5.2 While it is not accepted that 500 houses are at all desirable or possible in this location, should the Scottish Ministers be so minded to grant such an outline, it may well be best to indicate that the developer pays a capitalised maintenance payment of 15 times estimated annual cost of maintaining areas of public landscaping, and offer them for adoption by Aberdeenshire Council. This would be in line with landscape maintenance programmes and would remove from doubt the future maintenance of SUDS within any development that has been sold to individual private dwellings.

2.5.3 In respect of foul drainage, most details could be left to the reserved matters stage but the principle of on-site treatment of foul water should be established. A condition should be imposed which would inform the detailed reserved matters

stage that the provision, design and maintenance should be accommodated on site with no residual impact to the existing settlements.

- 2.5.4 The reason for this is to remove the unintended impacts on both amenity and future development of the neighbouring community of Balmedie.
- 2.5.5 Scottish Water have indicated a limited capacity in terms of the size of the Trump International Development, within their water treatment works at Balmedie. This limited capacity should be reserved to service development currently within structure and local plans, enabling social and economic development without further delay or expense because of capacity issues.
- 2.6 **A phasing plan incorporating the construction of the area of future golf for the proposed development;**
  - 2.6.1 There is no dispute on the need for phasing but refer to the comments on master-planning in section 2.2 above. It would be important for the public interest to know the nature of future development and its likely timescales, such vague ideas as "future golf development" should be further clarified for the public's benefit before permission of any sort is granted.
- 2.7 **The siting design and external materials of all buildings or structures;**
  - 2.7.1 The Council seek to deal with this in more detail in condition number 35 and 36 of their submission. While the relationship between these conditions and a master plan is not clear, it would be appropriate to set parameters at the outset for the nature of the development which would be worked on in detail in any process suggested by the Council.
  - 2.7.2 The process of design review should be informed by a condition restricting the height of the development relative to a datum point on the top of the escarpment. This relates specifically to public concerns regarding the prominence of the development as a landscape feature in the coastal area.
  - 2.7.3 From this established datum point on the escarpment, the Scottish Ministers may wish to restrict the height to 15 metres within 200 metres of the escarpment edge and 25 metres beyond 200 metres. The reason would be to protect the visual amenity of the coastal area and reduce the impact of the built landscape on the environment.
  - 2.7.4 It would be in the public interest not to have a continual debate on the outcome of a design review where objectors would have to make further representations at detail reserved matters stage on every aspect of the building because of the

principal of prominence or height.

- 2.7.5 The public perception is that there are a large number of proposed conditions relating to quite specific detail at the outline planning permission stage, while the issues of public concern are left to later stages to be agreed by process is not involved in the public domain until such times as they can make formal objection to the reserved matters. It would not be desirable to unnecessarily delay the detailed planning stage when this can be addressed by a condition on the outline.
- 2.7.6 Condition number 35 suggested by the Council requires these principle to items to be referred to the Formartine Area Committee. It should be clarified by the reporters that this Committee is able to refuse the detailed reserved matters being presented to it by the design review process, master plan or other mechanism. The Scottish Ministers should indicate if they are satisfied this does not require the approval of the entire Authority deliberating the application.
- 2.7.7 In relation to lighting, in principle the specific design, layout and purpose of lighting of streets and footpaths can be dealt with at the reserved matters stage and part of the masterplanning process. At the outset it would be helpful to inform this process of the good practice requirement to adhere to the basic principles proposed by the Campaign for dark skies, which seeks to minimise light pollution.
- 2.7.8 The reason for such a condition would be to maintain the amenity of the area, preserve dark skies and minimise the impact on the wild spaces along the coast. It is also to reduce the prominence of the night time and dusk, coastal view.
- 2.7.9 Notwithstanding the arguments that there is no requirement for enabling private housing development, it would be in the public interest to ensure the commercial elements of the development are fully completed before the possibility of housing is considered. A condition preventing the construction of the first house until the completion of the Holiday Apartments hotel and golf course is the best option. The reason is to ensure that complex and risky elements of this major development are completed prior to the establishment of general housing. It will allow the impact of the commercial development to be further assessed, and ensure sufficient time for services such as education, health, Leisure and road access to be integrated with the development.
- 2.8 Condition 5 Holiday Accommodation, and Separate Independent Dwellinghouses.**
- 2.8.1 Condition 5 of Aberdeenshire Council's recommendation uses the term "independent dwellinghouses" without further definition. Not all holiday accommodation is let, much is owned and there are no conditions regarding the

length of stay, occupancy for the use of apartments as holiday homes (sometimes referred to as second homes).

- 2.8.2 With homes being in private ownership as a possibility, there would be the desire for occupancy that come close to some public definition of dwelling house. It would be prudent to have a definition of holiday accommodation, for vacation homes all Golf villas that includes both maximum occupancy periods and condition on control and ownership.
- 2.8.3 In terms of the tests for the condition it is important to have the condition enforceable as well as appropriate. Control/ownership of the development and time periods of occupancy are two key elements to identifying an enforceable condition. There is a significant possibility that condition five fails to control the development as per the reason it was required: "Reason: In order to retain control over the occupation of these buildings."
- 2.8.4 The report to Formartine Area Committee on 20th November sought to place a limit on the maximum duration of occupancy for holiday accommodation. This no longer exists as a recommendation from Aberdeenshire Council to the inquiry. The Scottish Ministers should consider the ability of a condition to control the development. In this case the lack of any maximum period may undermine the ability of the authority to enforce the condition.
- 2.8.5 Control of the development in terms of ownership will be key to enforceability of conditions. A total of 950 holiday flats will create possible enforcement problems if they are in individual ownership.
- 2.8.6 The applicant has made it clear that this is a "real-estate" deal around a golf course which has tourism potential. If ownership and control of the holiday apartments are retained with the business of the golf course and hotel, effective control is maintained for the use of these villas and apartments as holiday accommodation. It also has benefits in other management of the development.
- 2.8.7 The Scottish Ministers should condition this development upon the decisions to tie the 950 holiday apartments, their control over their use and occupancy to the Trump International Hotel and Golf Course. Any rights, shares or agreements to occupancy to be marketed and used for the holiday apartments and golf villas should be with the prior written consent of the planning authority.
- 2.8.8 The Scottish Ministers should also prevent vacation homes being continuously occupied by clients through a condition that no single period of occupancy agreement can be more than six weeks.

2.8.9 The two conditions on these lines would meet the reason for condition 5 proposed by the authority and therefore should supersede it.

**2.9 Condition number 9 - the dune ridge:**

2.9.1 For this condition to be effective at the outline stage the condition should further stipulate this agreement before the submission of reserved matters or any design statement. The reason is to fix the extent of the development for the public interest along the dune edge at the earliest possible time.

**2.10 Condition 47 public rights-of-way**

2.10.1 The construction of new rights of way should not be restricted in this way, but the removal of existing rights of way notwithstanding the proposals as per condition 33 submitted in the access strategy, should be subject to the prior written approval of the planning authority.

**3 Environmental Conditions**

3.1 In relation to conditions 53, 54 and others; the complexity of determining species to be protected, areas to be conserved and the environmental management, are best left to a broad condition requiring the agreement at the detailed matters stage following environmental assessments and further design. However, outlined conditions can set the broad parameters by which all of this work must fall within.

3.2 The Scottish Ministers should seek for the public interest to place a broad objective in the management of the area.

3.3 There are exceptionally strong objections and policy grounds for the refusal of development upon the site of special scientific interest (SSSI). The Scottish Ministers would also note that the largest part of the remaining site is also of significant conservation value as a Site of Interest in Natural Science (SINS). Therefore there should be the highest of design standards outwith the S S S I which should be reflected at the outline stage by a suitable condition.

3.4 In determining appropriate conditions at the outline stage on environmental matters it would be pragmatic to look for achievable and verifiable rules of principle that can be used. Bearing in mind Circular 4/98 and the six tests such a condition needs to be reasonable.

3.5 Given that most detailed environmental work is at the reserved matters stage the public interest would be served by a condition that required the detailed work to have a "new species loss" policy.

- 3.6 Perhaps for sheer entertainment value reporters should read a submitted Vanity Fair article as it gives a fair interpretation of the arguments on both sides. On page seven of the online article at :  
<http://www.vanityfair.com/culture/features/2008/05/trump200805?currentPage=7>  
Alex Shoumatoff, the author, has a balanced conclusion indicating all of the dilemmas, suggests a “no species loss” policy is possible. Inquiries around Kyushu University suggests that a project of considerable size and complexity can be framed with in an environmental policy of water management and No Species Loss.
- 3.7 One of the tests for a condition is that it is enforceable. The imposition of a “no species loss” condition would require the applicant to demonstrate that the detailed reserved matters stage how they would achieve this with their plan. Should they be unable to demonstrate this to the satisfaction of the planning authority in consultation with Scottish Natural Heritage, the applicants would be asked to redesign.
- 3.8 Therefore the condition is both reasonable and enforceable. It is reasonable in that such a condition can be varied in the unlikely circumstances that full and detailed assessment revealed a species loss that could not be avoided or replaced.
- 3.9 The reason for a “no species loss” policy is to help protect the environment and biodiversity.

#### **4 Transport Conditions**

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- 4.1 Many objectors expressed concern about how the local roads network will be able to cope with the resort, some making reference to the need for a dedicated grade separated junction to the north of Balmedie to service the development. This leads to concerns about how events will be accommodated in principle. While detail of how the development will cope with a major event should be part of any master-planning exercise to be dealt with at reserved matters stage, the principle can be dealt with at the outset in the outline permission, to allay public concerns. Scottish Ministers should consider the principle of main access to the site as a matter for an outline condition.
- 4.2 The transport impact assessments as indicated to Aberdeenshire Council indicate levels of traffic on a routine basis that can be accommodated at peak hours on the upgraded A 90 along with a Western Peripheral Route.
- 4.3 Part of the justification for both the Aberdeen Western Peripheral Route (AWPR) and the upgrade of the A90 is that traffic growth will mean that the existing transport network will not be able to cope over the plan period envisaged in the

structure plan. The implementation of all developments within the Trump International resort would therefore further exacerbate the situation already requiring considerable investment by the Scottish government.

- 4.4 It should be noted that both the Aberdeen Western Peripheral Route and the duelling of the A 90 have been delayed by between 1 and 2 Years. Scottish Ministers would need to take into account this delay in respect of phasing of the Menie development and associated access arrangements - particularly during the construction periods.
- 4.5 All major events such as the British Open have significant impact upon the transport network. Again issues of principle can be dealt with at the outline stage , leaving only detailed matters to be addressed later.
- 4.6 The applicant has clearly indicated (reference the Vanity Fair article submission) the desire to develop the Menie Estate for the world's best links golf course, clearly linked to major event aspirations. Mr Trump identifies the importance of attracting such an event as a key element in the prestige of his project at Menie Estate.
- 4.7 The size and impact of these events in terms of their numbers of people, cars, prestige or economic impact is not disputed.
- 4.8 The impact of attendance figures well in excess of 200,000 presents considerable transport problems. The main access arrangements are through Balmedie village following the construction of the new dual carriageway. Alternatively some will find it easier to travel further to the next junction and return via the old A 90 to the resort.
- 4.9 Added to this would be the impact of full occupancy and access for all housing, holiday accommodation and hotel as well as services. This leads to a conclusion that the existing roads network is inadequate for the development and that while the proposed new roads network may accommodate normal peak hour traffic, major events are likely to have considerable impacts on the amenity and well-being of neighbouring properties particularly in Balmedie unless a dedicated, high-volume access is provided to the Trunk Road network. It is my understanding that Transport Scotland are aware of the possibility and have already considered the implications of the need for any grade separated junction.
- 4.10 There were a number of comments by those who supported the development but indicated the need for such a junction.
- 4.11 Given the aspirations of the developer for major events, and the concerns for both

the amenity and environment Scottish Ministers should impose a condition requiring the developer fund a grade separated junction to the north of Balmedie to service this development.

- 4.12 The reason is to protect the amenity and to accommodate the applicant's aspiration for major events.

## **5 Other considerations of conditions**

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- 5.1 Reference is made within the conditions to parts of the application which are opposed in other representations, such as condition 56 (regarding 500 houses); is taken that any agreement to not contest remaining conditions is based on the assumption that such conditions would be superfluous if the Scottish Ministers were so minded to accept arguments for the removal of the 500 houses from any permission, redesign to remove the development from the site of special scientific interest etc etc.

- 5.2 A Fire Station should be provided.

### **5.3 Major events.**

- 5.3.1 The EIA, and other assessments carried out by the Council do not consider the impacts of the development because of major events. Reference section

2.12- Impacts arising from Championship events – This is an outline application and as it is only an aspiration to hold an Open which would be at least 10 years away, it is considered inappropriate and unrealistic to address the environmental impacts at this time.

- 5.3.2 The Trump International argument relies upon an economic benefit derived from the tourism industry associated with the hotel and golf course. The Aberdeenshire Council submission makes several references to the benefits of a course partly based on the attraction of major international events such as tournaments including the British Open. This is mentioned in sections:

2.23 - In terms of the economic impact, the core features of the development could result in an expenditure of £ 643m and a requirement for some 9970 construction man years to complete the development during the construction phase and an annual expenditure of £ 99m and as many as 1180 permanent on site jobs associated with the ongoing operation. The overall net economic impacts include supporting 6230 jobs in Aberdeenshire, creating £ 205m additional economic output over the course of the build, with the ongoing operation supporting 1250 long term jobs in Aberdeenshire, these long term estimates associated with the operation could be significantly augmented by one-off events such as the Ryder Cup or British Open Championship and a number of potential

'softer' benefits such as increased economic diversification in the Aberdeenshire economy and the creation of employment for and up-skilling of local residents

6.17 - The creation of jobs during the construction and operation of the development will have clear benefits for the area as will increased training opportunities, international marketing and the potential to hold world famous events.

6.40 - It is well known from stewardship initiatives such as those run by the Royal and Ancient, and evidence from other golf courses and following on from major events like the Open Championship, which it is hoped to attract to Menie in due course,

- 5.3.3 It is unacceptable to argue, on the one hand, that there is no requirement for assessing the impact of major events and at the same time using the argument that major events are part of the economic reasons for granting the application.
- 5.3.4 If Scottish Ministers were to accept that there is an overwhelming economic case of national or local significance that justifies departure from the large number of policies included in the structure and local plans, they must also accept that it is the applicant's intention to have major events and that these events will have a significant impact on transport and the environment.
- 5.3.5 The assertion by Aberdeenshire Council that no assessment can be made because of the time in the future that such an event might arise should not be accepted. While details will undoubtedly change with time, there is no shortage of information on the problems and issues surrounding such large events at links courses. Experiences of St Andrews, Carnoustie and Royal Troon are just some amongst many that can be drawn on by the applicant.
- 5.3.6 Scottish Ministers should not consider granting this application until further assessment of the impacts of major golf championship events on transport, infrastructure and the environment have been carried out.

## **6 Economic conditions**

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### **6.1 Bonds**

- 6.1.1 Firstly, I would make reference to the representations from Belhelvie Community Council before it dissolved. They made specific representation regarding changes in economic conditions which might lead to the partial development of the site.
- 6.1.2 In relation to the provision of a leisure development there is an economic risk. That economic risk should not be offset by the assumption that having gained planning permission for one land-use, a presumption should be given to that use being

changed to a third use not before this inquiry.

- 6.1.3 From speaking to the former members of the Community Council it is clear that their concern lies in the restoration of the site should economic activity cease or substantially alter to the point where the original intention is undeliverable. Clearly not all of the site can be restored, but the expectation of some provision for mitigation or reinstatement should be accommodated.
- 6.1.4 The provision of legal agreements might properly be entered into, can accommodate small applications where alternative uses are possible or where the overall burden of restoration might not be complex or expensive. Circular 12/1996 *Town and Country Planning (Scotland) Act 1972 Planning Agreements*, advises that agreements may well be easier for local authorities but where a condition can be used it is to be preferred, being open to variation and appeal.
- 6.1.5 Effectively, if the development has a level of risk where it relies upon specific economic circumstances such as inward investment then the Scottish Ministers should consider the issues of alternative use and restoration as part of this inquiry.
- 6.1.6 Pragmatically while one can consider future use should the circumstances arise, the demise of the economic activity as a golf course should not presume economically to lead to a specific activity. By this I mean such things as the failure of holiday accommodation, automatically require them to be used as domestic dwelling houses. Similarly, land used for recreation purposes not specifically designated as open space having a presumption for development for other employment or housing.
- 6.1.7 The use of bonds to ensure restoration or at worst mitigation of the partial or redundant aspects of the development is preferable to a condition to any legal agreement.
- 6.1.8 The condition of the bond at the outline stage to be confirmed with the detailed reserved matters, access arrangements and Masterplan would be more robust and conform better to the guidance on conditions set out in Circular 12/1996.
- 6.1.9 The Council had previously recommended the provision of a bond for the restoration of the golf course area. The Formartine Area Committee had debated this and this was minuted as "the submission of a landscape bond" reference the committee minute of the 20th November decision.
- 6.1.10 At detailed matters stage the local authority might also request the lodging of a Roads bond for those parts of the development thought appropriate.

- 6.1.11 In this regard the development is sufficiently large and complex not to restrict the use of the bond in conditions to just landscaping. It should be for the provision at any particular point of the development process, where restoration and rehabilitation are required in the event of the development ceasing; of buildings services, roads as well as restoration of dune or other habitat.
- 6.1.12 A condition requiring agreement by for a bond to cover sufficient restoration and mitigation in the event that economic or other circumstances prevent the implementation of the development master plan or parts of the consent where the original intentions of the development are not going to be met. The bond to be used by the local authority in consultation with other statutory bodies and the developer and/or their successor to mitigate and restore such parts of the development to be laid out in a master plan.
- 6.1.13 The reason is to insure appropriate restoration or mitigation, for the avoidance of doubt and in order to comply with the proposals are submitted. In the interests of maintaining amenity and sustainability of the development. In the interests of protecting the environment from unplanned activity.

## **6.2 Economic case specific to the applicant**

### **6.2.1 I refer to the note of the pre-inquiry meeting which indicates:**

The law requires that the decision in this case is made in accordance with Section 25 of the Town and Country Planning (Scotland) Act 1997. Section 25 states that:

...the determination shall be made in accordance with the development plan *i.e.* *policies in the Aberdeen and Aberdeenshire Structure Plan and the Aberdeenshire Local Plan* unless material considerations indicate otherwise.

The council's committee reports identify the range of development plan policies that must be considered – the council's assessment is that some support the development, and that others do not. It is therefore the assessment of both the development plan and material considerations that will be critical to the recommendation and the decision on this outline planning application.

A material consideration should serve or be related to the purpose of planning – in other words it should relate to the development and use of land; and it should fairly and reasonably relate to the particular application in question. The identity of a prospective developer is not a material planning consideration because in law if planning permission is granted that permission runs with the land. It is for the decision-maker to assess both the weight to be attached to each material

### **6.2.2 it is my understanding that the development is clearly contrary to many key and important policies of the local and structure plans under which it should be considered according to section 25 of the Town and Country Planning (Scotland)**

Act. My colleague Cllr Storr addresses these in her evidence, which I am happy to adopt. The argument is that there are exceptional economic circumstances which justify an exceptional grant of consent in relation to this application. My colleague Cllr. Ross examines the economic case in his evidence, which I accept, and I wish to simply point out that acceptance of an exceptional economic case implies acceptance of an exceptional condition being attached to any consent that may be granted.

- 6.2.3 The economic case presented to Aberdeenshire Council, which formed the basis of the decision by the Formartine Area Committee and then the Infrastructure Services Committee, both in November 2007, was based on figures for exceptional costs with the ability to sell properties on an international arena at premium prices. The argument advanced was that this was possible because it was the prestigious Trump International brand involved. This was not treated as though it was a simple land-use planning issue but an exceptional circumstance partly due to the nature of the applicant.
- 6.2.4 The representations from numerous business interests (CBI, SCDI, Chamber of Commerce) specifically refer to the importance of the Trump application. Many would have been aware of other applications for golf resorts and housing in Aberdeenshire, but specific reference was made to the fact that it was Donald Trump and Trump International. I am sure reporters will be aware of the involvement of Jack Nicklaus in one of these other proposals.
- 6.2.5 The Vanity Fair article, indicates that the applicant understands fully the importance of the site plans believes that it is something which he, almost alone, is able to do.

The Thistle and the Bee

by Alex Shoumatoff May 2008

*Donald Trump is on the phone, and he is pumped. "Alex, my man. I bought the most beautiful piece of land in Europe: the Great Dunes, in north eastern Scotland." (Only the Donald, it should be pointed out, calls them "the Great Dunes." Not that they aren't great—they're fantastic—but they're actually called the Menie dunes.) "Fourteen hundred acres with 3.8 miles of beach-front, just north of Aberdeen, which is the oil capital of Europe. The dunes are considered to be S.S.S.I., which means scientifically important something"—a Site of Special Scientific Interest—"and that you sort of can't touch them. It's like going in and ripping down a landmark building in New York. But I'm going to build a world-class golf course in the dunes and another 18 holes on the property, plus a tremendous hotel with 450 rooms, 500 homes, 950 condos, and 36 golf villas. I'll know at the end of the month if I get the zoning. If Jack Nicklaus tried to do this he'd have zero chance, but they like what I've done, and because I am who I am and my mother is*

*Scottish—between you and me, Alex, I'm going to get it.*

- 6.2.6 The importance of building a prestigious golf course in order to sell the valuable real-estate is a point I would concede to Trump International. If in their own terms this is not one of the world's best golf courses, the result would be considerable difficulties in selling the properties and holidays at premium prices demanded by the business proposition.
- 6.2.7 While in terms of land use planning, permission goes with the property, in this case the argument is that what is proposed is of such benefit that one should lay aside the Structure Plan, Local Plan, and much of the national planning policy guidance, PANs and Circulars. Specifically it is because this particular developer has been attracted for inward investment. Scottish Ministers should therefore treat the application for the development as personal to the applicant.
- 6.2.8 There have been representations by Belhelvie Community Council amongst others of the risk of partial and incomplete development. The issue has already been raised with suggested conditions of bonds in section 6.1 above which would deal with the restoration should work cease by the Trump Organisation. However, as permission under the Town and Country Planning (Scotland) Act 1997 goes with the land, there is no impediment upon the applicant to sell on the property with outline permission or partially developed.
- 6.2.9 It would be difficult to see how the reason of economic benefit justifying the major departures from policy can be upheld without the significant anchor development. If the hotel and course require enabling development, should the process of development be divided between different developers, partial development may occur leaving elements of the development such as the golf course and hotel at risk. If one is to accept the applicant's own argument of their ability to deliver, all aspects of the development, it should be delivered by Trump International in order to secure the intended benefits.
- 6.2.10 The mechanisms available to Scottish Ministers are limited in this respect. Legal and planning agreements can be used, but again in terms of SDD Circular 12/1996 *Town and Country Planning Scotland Act 1972 Planning Agreements*, the use of a planning condition is to be preferred. Scottish Ministers have available to them the simple and effective condition of making the implementation of planning permission personal to Donald Trump and Trump International Golf Links Scotland.