

**Town and Country Planning (Scotland) Act
1997**

**Precognition of William Walton
BA MSc Dip Env Law LLM Dip Law MRTPI**

Against:

**Application for outline planning permission for
golf course and resort:
Land at Menie House, Balmedie, Aberdeen**

By

Trump International Golf Links Scotland

**Called-in by Scottish Ministers
Reference: DPEA: CIN / ABS/001**

1.0 Introduction

- 1.1 My name is William Walton. I was elected as a member of the RTPI in 1990. I have a BA in Geography and Politics from the University of Sheffield, an MSc in Town Planning from the University of Wales, a diploma in Environmental Law from De Montfort University, an LLM in Environmental Law from the University of Aberdeen and a Diploma in Law (CPE) from Northumbria University. Since 1993 I have taught town planning at the University of Aberdeen, first in the Department of Land Economy (1993-1999) and then in the Department of Geography / School of Geosciences.
- 1.2 I worked in professional planning practice 1988-1993 for Edward Erdman (London), Nottinghamshire County Council and then Grimply JR Eve (Birmingham). Since 1993 I have acted in a voluntary capacity for many third party groups and organisations in the northeast of Scotland and have presented evidence to several public inquiries. Included within these were planning appeal / local plan inquiries into new settlement proposals at Banchory Devenick, Blairs and Countesswells.
- 1.3 I have been giving planning advice on the issues concerned to Mr Donald Banks and others since October 2007. I was asked to present evidence to this inquiry shortly after the Minister announced that the application was to be called-in. I am familiar with the site and with the relevant planning policy. I am appearing at this inquiry in a voluntary capacity.

2.0 Scope of Evidence

- 2.1 The focus of my evidence is with respect to the proposals at Menie Estate, as shown in the indicative masterplan and described in the outline planning application, for 500 private houses, 950 holiday homes in four blocks and a staff block.

3.0 Planning Context

- 3.1 Section 25 *Town and Country Planning (Scotland) Act 1997* states that the determination of a planning application shall be in accordance with the development plan unless material considerations indicate otherwise.
- 3.2 The relevant statutory development plan comprises the approved Aberdeen and Aberdeenshire Structure Plan, *North East Scotland Together* (NEST) (2001-2016) and the adopted *Aberdeenshire Local Plan* (ALP) (2006).

4.0 The housing development proposal

- 4.1 As stated the outline planning application identifies two separate areas of land for the construction of 500 private dwelling houses at some unspecified point in the future. The sites are set within open countryside and can not reasonably be considered to be extensions of any existing settlements at Balmedie, Newburgh or Ellon. The proposal constitutes a very significant level of new housing and it was no doubt in large part because of its scale that the application was treated as a departure. In my opinion the proposal amounts to a new settlement which is a concept well understood in planning policy terms.
- 4.2 Unfortunately however there is no definition of a new settlement set out in national planning policy guidance (SPP3) or in the statutory development plan. I acknowledge the view of the planning officer (paragraph 6.24) that the proposal does not include such facilities as a school. However, there can be no doubting that it is a very large-scale housing development that would likely accommodate a population of circa 1,000 – 1,500 people. This would make it larger than many long established settlements in Aberdeenshire. In addition there are to be 950 holiday dwellings and accommodation for 400 workers. Indeed, it has been reported that consultants acting for the applicant estimate that nearly 5,000 people will be staying at the ‘Menie resort’ at any one time between April-September (Evening Express, ‘Population Boom’, 13/05/08 p.17). Thus notwithstanding the view of the planning officer I am of the opinion that the proposal should be regarded as a *de facto* new settlement. According to SPP3 new settlements can play a legitimate role in meeting the housing provision needs of an area but they should be promoted through the development plan preparation process. They should also be sited in a location that makes them accessible by a range of transport modes.
- 4.3 There is no provision in NEST for a new settlement for any location in Aberdeen / Aberdeenshire. In line with this there is no provision for a new settlement within ALP. Moreover, even if it were not accepted that the proposal constitutes a new settlement there is no provision within NEST or ALP for any large-scale housing development in the open countryside between Balmedie and Newburgh. It was because of these facts that the officers considered, *inter alia*, that the proposed housing is clearly contrary to policy. The applicants also acknowledged that the proposal is contrary to structure and local plan policy.
- 4.4 In seeking to identify sites for new development ALP Policy Gen\1 – Sustainable Principles, aims “...to ensure that all new development is as sustainable as possible”. It identifies a series of indicators against which development proposals will be assessed. Notably it seeks to ensure that new development is well related to existing settlements. The development proposal is not physically linked to any existing settlements. It also seeks to ensure that any new development reduces the need to travel by private car. It is difficult to believe that this development could achieve this more effectively than, for example, constructing new housing on the edge of Aberdeen’s urban area. It also seeks to protect character, environment and amenity of rural areas. Again, it is difficult to believe that a large housing estate in the middle of the

countryside and close to the coast can achieve this. Finally, the policy requires that the precautionary principle be invoked in cases where there is substantial doubt as to the possible impacts of a development.

- 4.5 The applicants argue, *inter alia*, that the housing proposal is required in order to make the whole development economically viable. Indeed, it has been reported in the press on several occasions that the applicant would not proceed with the proposal if the housing element were to be refused. To substantiate the economic case for the housing element the applicant instructed the well-known and respected management consultants Deloitte to undertake a financial appraisal of the proposal. Most unfortunately the applicant has not allowed a copy of the full version of the final report to be placed in the public domain (**PRODUCTIONS DB01-DB03**). However, an Executive Summary was released and is produced for this inquiry (**PRODUCTION DB04**).
- 4.6 To calculate the Net Present Value of the capital investment the consultant used a discount rate provided by the applicant of 10%. To quote from the glossary of terms the discount rate is the interest rate chosen by the investor to reflect the opportunity cost of investing money in a series of different projects. What the forecasts show is that the project would be economically viable both with and without the housing element. The project would yield a discounted return of £112m with the housing and a return of £21m without the housing. Whilst it is acknowledged that the housing element would reduce the risk to the applicant it is submitted that this can not be a legitimate ground for allowing the construction of a new town in clear and unambiguous contradiction to the policies of the statutorily approved structure plan and the statutorily adopted local. Risk is an accepted part of the free market world within which we live. It is not acceptable in my opinion for the applicant, in effect, to ask the wider community to underwrite the proposal by placing 500 houses in an area which is generally unspoilt open countryside. Even if the housing element were required to make the development profitable it is highly questionable to what extent this is a material planning consideration.
- 4.7 I note that Johnston Carmichael Corporate Finance has now produced a new financial appraisal of the scheme (**PRODUCTION T7**). The appraisal is based upon assumptions provided by TIGCS and the authors note that those remain the sole responsibility of the applicant. What is interesting is that – using what I assume is the same base information - this second appraisal concludes that the overall development proposal would not be viable in the absence of the housing element. The applicant has agreed to produce this document in full.
- 4.8 The finding of the Deloitte audit that the proposal would be commercially viable in the absence of any housing is extremely significant. It demonstrates beyond any reasonable doubt that the rationale for including the residential element is to make the development more profitable rather than to make it profitable.
- 4.9 In this context it should be noted that there are a number of other first class golf courses that have been constructed and opened in recent years in Scotland

without large amounts of attendant housing or commercial development. The best example is the links course at Kingsbarns on the Fife coast. It opened in 1999 and is widely regarded as one of the best courses in the UK. It has consistently been ranked as one of the finest golf courses in the world by the sport's leading journals such as Golf Digest, Golf World and Golf Magazine. For example, in 2005 Golf World ranked the course as 5th best in the world. Significantly it has no attendant development.

- 4.10 Like Menie Estate the site at Kingsbarns was almost self-suggesting for transformation into a links golf course. Those who have knowledge of golf and its historical roots in Scotland will know that the game was conceived by shepherds hitting stones between sand dunes with their crooks. The rationale for golf developers selecting links areas such as Menie is obviously because the land is 'ready made' for golf purposes. It does not require any significant and financially costly alteration and reconfiguration. It is for this reason that Kingsbarns has been so successful in the absence of cross funding from attendant and unrelated commercial development.
- 4.11 Whilst the new links courses at Archerfield in East Lothian and Macrihanish on the Mull of Kintyre have attendant housing development it is on an altogether far smaller scale than is proposed at Menie (paragraph 6.11). In short, it is not necessary to construct a new town simply to cross fund the creation of a world renowned golf course.
- 4.12 Given that a summary of the financial information was made available to the planning officers it is difficult to understand why the officer's report should conclude that the housing element was required to bring about the wider economic benefits that the development would create (paragraph 6.55) (**PRODUCTION DB01**). These wider economic benefits accrue from the golf course, hotel and holiday accommodation which, as stated, are considered to be commercially viable in the absence of the 500 dwelling houses.
- 4.13 The development, including the housing, will inevitably produce positive impacts for the wider economy. To this extent I do not disagree with the general findings included within the Fraser of Allander Institute Report May 2008 (**PRODUCTION T6**). I would question what appears to be the assumption that most / all of the hotel jobs would be taken by local residents (p.13). However, whilst acknowledging that development would probably produce overall positive economic impacts this does not provide sufficient justification in itself for the construction of 500 private dwellings in an open countryside location.
- 4.14 Finally with regard to the issue concerning the claimed economic justification for the housing it can not be said to be required to cross fund the restoration of any listed buildings at risk. Thus it is not possible to justify the housing element on grounds of what is usually referred to as 'enabling development' (in contrast to the position at Blairs where such an argument was made to, and accepted by, the planning authority).

- 4.15 The Aberdeenshire Council planning officials argue that the proposal is in line with the broad housing location preference expressed in the emerging structure plan being introduced to replace NEST (paragraph 6.30). However, the process of preparing a replacement structure plan is in its very early stages. There has been some very limited public participation to which community councillors and others with a day-to-day interest in the planning process were invited. Following this a Provisional Draft Structure Plan has been prepared (March 2008) and this can be found on the Marr area committee page (and possibly other area committee pages) of Aberdeenshire Council's web site. At the time of writing it has still not gone out to public participation.
- 4.16 The document identifies three strategic growth areas (SGAs) as the focus for long-term strategic growth up to 2030. One of these is the A90 Aberdeen–Peterhead corridor in which the Menie Estate proposal sits. However, it is important to note that the proposals at this stage are only very schematic. Notably, there are two sets of housing figures set out for each area for two separate growth scenarios. The Provisional Draft Structure Plan has not been subject to full public consultation nor a possible Examination-in-Public. At this stage other developers, landowners, community councillors and the wider public will have the opportunity afforded by statute for submitting representations to the local authorities and the Minister both with regard to the scale and the broad location of proposed development. It is my view that a development of the scale proposed at Menie Estate is premature to the determination of the final structure plan and could well prejudice the rights of other interested parties.
- 4.17 With the above point in mind the only grounds for bringing forward the proposed site at Menie Estate now rather than at a later stage through the normal development plan preparation process would be if there were a demonstrable shortage of housing land within the Aberdeen Housing Market Area. However, according to the most recent figures contained within the 2007 City and Shire Housing Land Audit there was more than a five year supply of housing land when compared against the structure plan requirement.
- 4.18 For the reasons set out above, i.e.: that there is no provision for a new settlement in the statutory development plan; that there is no provision for any large scale housing in the Menie Estate area; that the proposal offends overarching development plan policies promoting development in sustainable locations; that there is no financial requirement for housing provision to cross fund the creation of a championship standard golf course and associated facilities; that the proposal is not required to enable the restoration of a listed building at risk; that the emerging development plan has very little status; and that there is no demonstrable housing land shortage in the Aberdeen Housing Market Area, it is my opinion that the housing element of the application proposal should be refused.
- 4.19 Following the principle laid down in *Bernard Wheatcroft Ltd –v- Secretary of State for the Environment [1982] JPL37* the Reporter / Minister has it within their authority to refuse planning permission for part of the proposed development so long as it still fell within the original application site and did

not differ substantially from the original application. The test of whether a reduced proposal would be acceptable is whether the reduced scheme would be so changed as that it would in substance be no longer what was applied for and that to grant permission would deprive those who should have been consulted with the right to object. It does not seem to me that either condition would be violated. The focus of the development would still be the golf resort and nobody would have been deprived of the right to object.

5.0 The holiday blocks and staff block

5.1 I now turn to the proposal for 950 holiday homes and staff block for 400 workers. The holiday homes are to be constructed in what is described in the ES as four separate 'blocks'. Thus it would appear that there will be around 240 homes in each 'block'. These blocks are described in the officer's report (paragraph 2.10) as being sited on the escarpment overlooking the golf course. Unfortunately – and unacceptably given the sensitivity of the site - the application is only in outline and so nothing other than indicative details are shown in the ES. It is inevitable that each of these blocks will be several stories high. I have heard these blocks described on a television programme by one of the objectors as 'Benedorms', presumably a reference to the high-rise style of modern and rather ugly hotel and self catering tourist complexes typically found in some of the popular, and once scenically attractive, holiday areas along the south coast of Spain. The staff accommodation block would be located adjacent to the main road within the southern future residential area. Again, there are no details about the intended design of this block. By virtue of its capacity it is likely that this will be a significant sized building.

5.2 The Benedorm and staff accommodation elements of the development are particularly inappropriate in planning and design terms. By their sheer size and mass these Benedorm holiday blocks and accompanying staff block will irreversibly disfigure and destroy what is an essentially unspoilt and pristine stretch of coastline characterised by dunes and farmland. The indicative designs shown in the ES would appear to be contrary to most of the requirements imposed by ALP Policy Gen\2: The Layout, Siting & Design of New Development. Specifically it would appear to offend sub-sections a) since they would not respect the character and amenity of the surrounding area, b) by virtue of their inappropriate scale, massing, height and density, c) since they can not be said to respect existing natural features on and about the site, d) since they can not be said to respect the special characteristics of the surrounding landscape and, f) since they offend important public views. Indeed, in the reasoned justification for the policy it states "Otherwise unattractive developments with no respect for the surrounding area (and thereby harmful to the environment) will be developed".

5.3 What is ironic is that the applicant was attracted to the site and the area because of its truly outstanding natural qualities. The golf course designer

originally associated with the project, Mr Fazio, is quoted in the Officer's Report as wishing to embrace a minimalist philosophy and work with the landscape rather than against it. He wanted to capture the essence of courses like Muirfield. However, those that have played golf on Scotland's wonderful links courses will know that much of the undoubted pleasure of the experience is derived not just from the undisputed quality of the course itself but also from the wider environment in which it is set. Courses such as Tain, Cruden Bay, Montrose, Panmure, Monefeith, Carnoustie, St Andrews, Muirfield, Troon and many others are often bounded by farmland and intimately and inextricably linked to their adjacent eponymous historic towns. The golfer derives the pleasure of playing out of and back into the old town. For example, many of the back 9 holes at Tain provide lovely views of the townscape incorporating such timeless features as churches and villa style houses with variety in their size, colour and roof pitches. In sharp contrast, golfers playing the proposed course at Menie would have views of what can only be described as a rather vulgar Disney-style development.

- 5.4 Of course, I appreciate that it is not possible to create an old town at the Menie Estate. But it would be possible to incorporate holiday accommodation in the form of a far more limited number of modest sized, low-level houses built in traditional, vernacular styles and constructed from local materials. For example, it would be possible to construct steading-style developments constructed from a mixture of block and recycled granite with traditional tile roofs. Alternatively it would be possible to construct Scandinavian-style wooden chalets that could meld in with the landscape. Such developments as these would respect the wider landscape setting and demonstrate a genuine commitment on the part of the applicant to architectural quality. Indeed, it could even serve as a model for other developers in the north-east of Scotland to emulate.
- 5.4 Notwithstanding their 'outline status' it is clear that the proposed Benedorm holiday blocks breach a number of policies in NEST and ALP. As set out in the Statement of Case it is clear that the proposal is contrary to both NEST Policy 3 (Other Employment Opportunities) and NEST Policy 6 (Tourism). It is against Policy 3 as, in particular, its general location is not well integrated with the existing pattern of land use and it is not located close to an existing population. It is against Policy 6 as it can not in any way be said to 'safeguard and enhance' the built or the natural environment.
- 5.5 It is not clear whether the proposed Benedorm blocks are located within or outwith the Area of Landscape Significance identified in ALP (Formartine map) and stretching along the Aberdeenshire coast. However, it is acknowledged in the Officer's Report that the Benedorm blocks will be "extensively visible to a number of surrounding receptors including residents of nearby dwellings, users of the A90 trunk road and Balmedie Country Park..." (paragraph 2.51). It goes on to state that the proposal would be extensively visible throughout the 15km study area (being the 'Zone of Visual Influence'). It is my opinion that notwithstanding what is stated in the accompanying ES it is highly unlikely, to say the very least, that the Benedorm blocks could eventually be regarded as 'iconic structures'. Such a

form of wording appears to be a tacit admission in advance that they will inevitably be visually intrusive and probably highly controversial. Similarly, the suggestion that the buildings might eventually be regarded as ‘distinctive landmark[s]’ appears to imply that they might not be particularly widely welcomed.

- 5.6 For these reasons the proposed Benedorm blocks clearly breach Policy Env/5B – Areas of Landscape Significance, Policy Emp/3 – Employment in the Countryside and Policy Emp/9 – Tourist Facilities and Accommodation.

6.0 Conclusions

- 6.1 The proposal for 500 dwellings, 950 holiday homes in four Benedorm-style blocks and staff block are all contrary to fundamental policies in the statutorily approved structure plan (NEST) and the adopted local plan (ALP). Specifically they are contrary to the general principle that seeks to focus new development in existing urban areas. The proposal can be described as a new settlement for which there is no provision within either NEST or ALP.
- 6.2 It is evident from the financial appraisal undertaken by the management consultant Deloitte that the housing element is NOT required to make the proposed development profitable. This finding is, however, contradicted by the Johnston Carmichael Corporate Finance financial appraisal. But irrespective of whichever audit is most reliable it is highly questionable to what extent a need for cross funding can be a bona fide material planning consideration.
- 6.3 The emerging structure plan is in its infancy and has not yet been subject to any full process of public consultation. Other developers, land owners, community councils and members of the public will have the opportunity to express their views and promote / protect any interests that they have. Thus the identification of the A90 Aberdeen-Peterhead corridor as a Strategic Growth Area (SGA) is no more than provisional. Moreover, the plan does not propose any new settlements as would be required under national planning policy (SPP3) to justify the scale of development proposed at Menie Estate.
- 6.4 There is no shortfall in the 5-year housing land supply position that would justify granting planning permission for a large-scale housing proposal that is otherwise clearly contrary to statutory planning policy.
- 6.5 The Reporter has the authority in law to recommend to the Minister that planning permission be refused for the housing element of the scheme.
- 6.6 The four Benedorm blocks are shown in the ES as being located in an elevated position overlooking the proposed golf course. By virtue of their capacity they are likely to be very large buildings. The Officer’s report states that they will be visually intrusive over a very wide area. They will inevitably disfigure and cause irreversible damage to an Area of Landscape Significance. They are contrary to policies in ALP promoting good design and protecting amenity.

The staff block is also very significant in size and is likely to be visually intrusive to an unacceptable degree.

- 6.7 For the foregoing reasons I would advise that the Reporter recommends to the Minister that the application should be refused.