

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

**NOTE OF THE PRE-INQUIRY MEETING ON WEDNESDAY 26 MARCH 2008**

**1. Introduction**

The procedure meeting was held by the reporters to discuss the procedural arrangements for the public local inquiry called by Scottish Ministers to consider the outline planning application made on 27 November 2006 to Aberdeenshire Council by Trump International Golf Links Scotland Ltd. That application was called-in by Scottish Ministers on 4 December 2007, as it raised issues of importance requiring scrutiny at a national level.

The inquiry, which will commence on Tuesday 10 June at 10.00 am within the Aberdeen Exhibition and Conference Centre, will be held jointly by James McCulloch, Karen Heywood and Michael Cunliffe – each of whom is a reporter appointed by Scottish Ministers. The reporters will make a recommendation in respect of the application and Scottish Ministers will decide whether, or not, outline planning permission is to be granted.

**2. The decision making context**

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<sup>1</sup>. 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

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<sup>1</sup> The Town and Country Planning (Scotland) Act 1997:  
[http://www.opsi.gov.uk/acts/acts1997/ukpga\\_19970008\\_en\\_1](http://www.opsi.gov.uk/acts/acts1997/ukpga_19970008_en_1)

consideration and also whether individually, or together, they are sufficient to outweigh the provisions of the development plan.

There are more than 4,000 written representations concerning the development from concerned individuals and bodies and made initially to Aberdeenshire Council and subsequently to Scottish Ministers. All of these are before the reporters and will be taken into account in their report to Scottish Ministers, there is thus no need to appear in person at the inquiry to ensure that a view expressed in writing is taken into account. There is, in addition, a significant level of environmental information concerning the proposal and its likely effects contained in the environmental statement and the supporting documentation. All of the written material connected with the case will be placed on deposit, as indicated below at paragraph 10, in the Council's Ellon Area office and, additionally, may be referred to on the web pages of Aberdeenshire Council. A dedicated web site is being established and will be accessible at [www.aberdeenshire.gov.uk/menieinquiry](http://www.aberdeenshire.gov.uk/menieinquiry). It will be in place in time to host the publication of statements of case.

It is important that the inquiry is concentrated on the matters in dispute, This requires parties considering their evidence to be prepared to reach qualified agreements with others – including those whose position they oppose – concerning matters of fact. The reporters therefore encourage the production of agreed statements by parties as soon as possible. These could cover – as matters of fact - the development plan policy that applies; traffic generation; geomorphology; nature conservation; housing land supply etc allowing the inquiry to concentrate on the correct interpretation to be placed on those facts. This will allow the best use to be made of oral evidence so that formal cross-examination improves the reporters' understanding of the issues at stake. Where cross-examination is unlikely to have this effect it will be more appropriate to rely on parties' written positions.

Those parties sharing a common point of view should take the opportunity to group together under one spokesperson so that expertise is shared and repetition avoided. Repetition does not strengthen a case and will not be allowed. The opportunity for individuals and organisations to group together in this way will continue until May 5, the deadline for lodging statements of case. Please tell Colin Bell at DPEA of any such change in your circumstances – his contact details appear at paragraph 13 of this note.

### **3. The main issues requiring consideration by the inquiry**

The reporters have made a provisional assessment of the issues requiring further examination based on the material currently available to them. Besides the issues raised by the development plan and against which the developments must be tested, the disputed material considerations relevant to this development include:

- the likely impact on the SSSI – *parties are asked to explore the scope for an agreed statement establishing the factual position – if successful there may be no need for oral evidence*
- possible effects on the SPA – *the need for oral evidence is dependent on the position of SNH. If an effect of significance is held to be likely then oral*

*evidence will be required so that sufficient environmental information is available to Scottish Ministers to mount an appropriate assessment.*

- *mitigation of environmental effects – confirmation is requested from the applicants that the undetermined application for detailed planning permission for the Championship Golf Course is the development that represents the applicants' preferred method of mitigation - oral evidence will be required*
- *the significance of any residual effects – oral evidence required*
- *economic effects, including benefits to the economy and employment – clarification is requested from the applicants as to how they propose to deal with the issue of commercial confidentiality in assessing the economic effects - oral evidence required*
- *the need for the housing component and the financial cross-funding case underpinning it – oral evidence required*
- *the effects on the wider housing market – oral evidence required*
- *the outline planning application - clarification by way of a written submission is requested from the applicants concerning the exact scope of the outline planning application and the balance with matters that would be reserved – should outline planning permission be granted - for the subsequent approval of Aberdeenshire Council as planning authority.*
- *design, landscape and visual impacts – the likely visual impact of this development is essentially a matter of subjective judgement for the reporters and Scottish Ministers, it is difficult to see what benefit would be achieved by the cross-examination of witnesses. Further written submissions are therefore invited.*
- *effects on public access and recreation, amenity and local community facilities – oral evidence required*
- *traffic and surface transportation – dependent on the provision of further information by the applicants to Transport Scotland, the issues may be resolved or dealt with by written submissions*
- *ground water environment – dependent on the provision of further information by the applicants to SEPA, the issues may be resolved or dealt with by written submissions*
- *national planning policy and advice - written submissions are invited*

The reporters will give further consideration to these matters when statements of case are received.

#### **4. Sequence of evidence**

The applicants will present their case first, followed by those who support the development; the inquiry will then turn to consider the evidence of those who object.

At the opening of the inquiry an arrangement will be made for evening sessions. Two will be available: one for supporters, another for objectors – with the purpose of allowing local residents who do not wish to rest on written submissions to make their opinions known. This will not provide the opportunity for them to question other parties. The limited availability of objectors and supporters who can attend during the day but not for the duration of the inquiry will also be considered. A programme will be set on the opening day of the inquiry.

## 5. Participation

The Inquiries Procedure Rules<sup>2</sup> refer to “relevant persons” – organisations or individuals who will be playing a large part in the inquiry. The applicant and the planning authority are always relevant persons; if others represent the interests of a group or intend to make a significant case – then these organisations or individuals also may be made relevant persons. Annex 1 of this note indicates those parties, groups and organisations that have been made relevant persons following discussion and agreement at the pre-inquiry meeting. It also indicates parties’ intentions for calling witnesses and the likely duration of their case, together with their contact details.

The right to the status of a relevant person comes with significant responsibilities. Relevant persons must serve statements of case, documents and precognitions on all other relevant persons and the reporters in a structured way before the inquiry.

## 6. Pre-inquiry disclosure

### **Statements of case – to be exchanged by relevant persons by 5 May**

The statement of case must outline each of the arguments on which reliance will be placed. It is critical to proper prior disclosure, ensuring that other parties are not faced with surprises. The statement should list the documents that will later be produced; the witnesses that will be called, together with their specialisms, whether there will be legal representation and, for the council also, the suggested conditions and heads of terms for any legal agreement that has been agreed to be appropriate under section 75 of the Act.

### **Inquiry documents - to be exchanged by relevant persons by 12 May**

Parties are asked to co-operate in the identification of core documents (such as the environmental statement, plans and supporting information, structure plan, local plan, national and other relevant policies) – these need only be listed once and should not be produced as documents by each party wishing to refer to them. Parties are asked to be considerate in their use of paper and to refer only to documents that are essential to their case. The use of complete and relevant extracts is also encouraged so avoiding the circulation of many irrelevant pages. It is helpful for all to be pointed to the information that you want to be taken into account.

### **Precognitions and summary precognitions - to be exchanged by relevant persons by 19 May**

A precognition is a full statement of the evidence that a witness proposes to give to the inquiry. If that statement runs to more than 2,000 words then a summary is required; normally only the summary is read to the inquiry.

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<sup>2</sup> The Town and Country Planning (Inquiries Procedure) (Scotland) Rules 1997, as amended, <http://www.opsi.gov.uk/si/si1997/19970796.htm> and SODD Circular 17/1998 - particularly Annex A at <http://www.scotland.gov.uk/Publications/1998/10/circular-17-1998-root/circular-17-1998>

## **Rebuttal statements – to be exchanged by 2 June**

Rebuttal statements can assist in concentrating the inquiry by further refining the issues in dispute once additional written submissions and the precognitions of witnesses for opposing parties have been exchanged and read.

### **Legal submissions**

Should parties wish to challenge any aspect of these arrangements or any other matter, then notification is requested in writing and immediately the issue becomes apparent. Challenges should not be left to be made when the inquiry is opened.

## **7. Exchanging statements of case, documents, precognitions and rebuttal statements**

Each relevant person is expected to produce a statement of case; documents if additional to those on the core list; precognitions, together with summaries where necessary. The need for rebuttal statements will be determined by the nature of the case made and its relationship to the case made by opposing parties.

For each exchange:

- 3 paper copies are to be submitted to DPEA (1 for each reporter)
- 2 copies to Aberdeenshire Council (allowing 1 set to be placed on deposit)
- 1 copy to the applicants
- 1 copy to each of the other relevant persons

Should parties agree reciprocally, the exchanges between them may be made by e-mail or disk. In each case the reporters request that an e-version of statements of case; precognitions; and rebuttal statements is made available to them in Microsoft Word format.

Documents to be posted to the web should be sent to [menieinquiry@aberdeenshire.gov.uk](mailto:menieinquiry@aberdeenshire.gov.uk) in PDF format. It is the responsibility of the relevant persons to ensure that their statements of case, documents, precognitions and rebuttal statements are sent to this e-mail address for inclusion on the planning authority's website and parties should send confirmation to DPEA when this has been done. **Those sending data to the council to be posted on the internet must ensure** that personal information is excluded from the version of the document that they submit.

## **8. Parties leading oral evidence, but not as relevant persons**

It is not necessary to be a "relevant person" to give evidence at the inquiry. Individuals and groups wishing to amplify the arguments contained in their written submissions may do so, **provided** a precognition is produced in advance, by 19 May, so that all parties are fully aware of the cases that are to be made. If any documents are to be referred to these must, in common with all others, be produced by 12 May. Those wishing to lead oral evidence, but not as relevant persons, should let Colin Bell at DPEA know that this is their intention and ensure that all of the

material relevant to their case (i.e. documents and precognitions) are sent to him by the appropriate deadline for onward transmission to others.

## **9. Submitting further written submissions by 21 May**

Parties resting on written submissions need add nothing to those already submitted to ensure that these are taken into account. Any further lines of argument that parties wish to pursue in writing are to be submitted to DPEA by 21 May.

## **10. Reference to inquiry documentation**

The note of this pre-inquiry meeting will be posted at <http://www.scotland.gov.uk/Topics/Planning/Appeals>

Government policy and advice is also available from this source, together with the procedural guidance concerning cases proceeding by public local inquiry. <http://www.scotland.gov.uk/Topics/Planning/Appeals/Inquiries>

Aberdeenshire Council will place on deposit a paper set of all of the inquiry documentation, including representations. This will be available for reference at :

Planning & Environmental Services  
Aberdeenshire Council  
45 Bridge Street  
Ellon  
AB41 9AA

Tel:- 01358 726429  
Email:- [fo.planapps@aberdeenshire.gov.uk](mailto:fo.planapps@aberdeenshire.gov.uk)  
Office hours:- 8:45 am to 5:00 pm

Once the inquiry opens the inquiry documentation on deposit will transfer to the inquiry venue. In addition, the council's website contains information relevant to their consideration of the proposal as planning authority:

[http://www.aberdeenshire.gov.uk/planning/apps/detail.asp?ref\\_no=APP/2006/4605](http://www.aberdeenshire.gov.uk/planning/apps/detail.asp?ref_no=APP/2006/4605)

and, as indicated, the council will establish a dedicated web site for inquiry documentation: [www.aberdeenshire.gov.uk/menieinquiry](http://www.aberdeenshire.gov.uk/menieinquiry).

## **11. Timetabling the inquiry**

The inquiry will commence at 10.00 am on Tuesday 10 June and on subsequent days at 9.30. It will close each evening between 4.30 and 5.00 pm depending on the business in hand. There will be a break of 1 hour for lunch and short mid morning and afternoon breaks timed as necessary. The evening sessions will sit from 6.30 – 9.30 pm; there will normally be only 2 sessions per day, so that on the 2 days with evening sessions the inquiry will sit only in the morning or afternoon. The reporters will be making an accompanied site visit and will announce the arrangements at the inquiry.

## 12. At the inquiry

- only the summary of a precognition will normally be read to the inquiry by a witness
- this means that documentation before the inquiry is taken as read and the inquiry sessions are not the opportunity for parties to familiarise themselves
- new material must not be introduced at the inquiry. If, even so, a new matter is raised and it is relevant, the person introducing it may have to bear the costs of the inquiry considering it
- there will be the opportunity for questioning, or cross-examination, by opposing parties
- those on the same side will not be able to cross-examine each other, but will be allowed to seek clarification
- the reporters will also ask questions
- re-examination will be allowed
- there will also be the opportunity for closing submissions to be made – these set the context in which you wish your case to be viewed by the reporters – taking account of the concessions and the ebb and flow that has occurred during the inquiry. If a closing submission is made then a typescript will be required before it is read to the inquiry. This will become an inquiry document and thus be made available to Scottish Ministers for them to be able to see your case in the light that you choose, rather than as summarised by the reporters. Closing submissions are made in reverse order; the applicant goes last. The dates on which closing submissions are to be heard will be set during the inquiry.

Late submission of any of the material listed is unfair to other parties, it hampers proper preparation. The reporters may not be prepared to accept late material unless there are exceptional, unavoidable circumstances. Even if late material is accepted, there is the possibility of an award of expenses.

## 13. Contacting DPEA

Colin Bell  
DPEA  
4 The Courtyard  
Callendar Business Park  
Falkirk  
FK1 1XR

Telephone 01324 696 463  
Fax 01324 696 444  
e-mail [Colin.Bell@scotland.gsi.gov.uk](mailto:Colin.Bell@scotland.gsi.gov.uk)  
web <http://www.scotland.gov.uk/Topics/Planning/Appeals>

DPEA  
31 March 2008

## Annex 1 – Relevant persons and their contact details

Relevant person	Contacts	Likely number of witnesses	Likely duration of case - days
The applicants	Ann Faulds Dundas & Wilson CS LLP Saltire Court 20 Castle Terrace Edinburgh EH1 2EN Tel: 0131-200-7330 Fax: 0131-228-8888 e-mail: <a href="mailto:ann.faulds@dundas-wilson.com">ann.faulds@dundas-wilson.com</a>	Up to 10	Up to 4
Aberdeenshire Council	Sonya Galloway (Planner) Planning & Environmental Services Aberdeenshire Council 45 Bridge Street Ellon AB41 9AA Tel : 01358 726424 e-mail: <a href="mailto:sonya.galloway@aberdeenshire.gov.uk">sonya.galloway@aberdeenshire.gov.uk</a>  e-mail contact for website inquiry documentation:  <a href="mailto:menieinquiry@aberdeenshire.gov.uk">menieinquiry@aberdeenshire.gov.uk</a>	3	1½
Scottish Natural Heritage	Erica Knott Scottish Natural Heritage Battleby Redgorton Perth PH1 3EW e-mail: <a href="mailto:SNH-TIGLS-PLI@snh.gov.uk">SNH-TIGLS-PLI@snh.gov.uk</a> Tel: 01738-458674	Up to 6	3
RSPB/SWT (together with David Welch, and Aberdeen Friends of the Earth)	Anne McCall RSPB Scotland Dunedin House 25 Ravelston Terrace Edinburgh EH4 3TP Tel: 0131-311-6500 e-mail: <a href="mailto:anne.mccall@rspb.org.uk">anne.mccall@rspb.org.uk</a>	Up to 5	3

Mr Agnew (On behalf of Messrs Banks, Millen, Foote and Davidson – members of Sustainable Aberdeenshire)	Mr J A A Agnew Town and Country Planning Agent Kinnear House 33 Evan Street Stonehaven AB39 2EJ Tel: 01561-361364 e-mail: <a href="mailto:wagnew@tiscali.co.uk">wagnew@tiscali.co.uk</a>	3	1
Councillor Ford (together with Councillors Alistair Ross, Debra Storr and Paul Johnston and Belhelvie Community Council)	Councillor Martin Ford e-mail: <a href="mailto:cllr.m.ford@aberdeenshire.gov.uk">cllr.m.ford@aberdeenshire.gov.uk</a>	4	½
Ramblers' Association (together with ScotWays and Aberdeen Local Access Forum)	Helen Todd/Ian McCall Ramblers' Association Scotland Kingfisher House Auld Mart Business park Milnathort Kinross KY13 9DA Tel: 01577-861222 Fax: 01577-861333 e-mail: <a href="mailto:scotland@ramblers.org.uk">scotland@ramblers.org.uk</a>	Up to 3	½
Aberdeen and Grampian Chamber of Commerce (together with Aberdeen Hotels Association)	Geoff Runcie Chief Executive Greenhole Place Bridge of Don Aberdeen AB23 8EU Tel: 01224-343900 Fax: 01224-343943 e-mail: <a href="mailto:info@agcc.co.uk">info@agcc.co.uk</a>	1	½
<b>Position reserved meantime</b>			
Transport Scotland	Malcolm Forsyth Transport Scotland Buchanan House		

	58 Port Dundas Road Glasgow G4 0HF Tel: 0141-272-7386 e-mail: Malcolm.forsyth@scotland.gsi.gov.uk		
SEPA	Jim Mackay Planning Unit Manager Environmental Partnership Unit SEPA Dingwall IV15 9XB 01349-860315 Fax: 01349-863987 e-mail: <a href="mailto:Jim.Mackay@sepa.org.uk">Jim.Mackay@sepa.org.uk</a>		
Dyce and Stoneywood Community Council	Contact details available on request to this office		

The addresses of private individuals have been redacted to comply with the Data Protection Act 1998

<b>Individuals who attended the PIM and intend to lead oral evidence, but not as relevant persons</b>	Contact details available on request to this office		
Mr E Thorpe			
Mr A Heikkinen			
Mr A Andersson			
Mr K Bowman			
Ms N Seal			

<b>Individuals who did not attend the PIM but who intend to lead oral evidence, again not as relevant persons</b>	Contact details available on request to this office		
Dr Nick Littlewood			
Mr J Benton (Osprey Homes)			
Scottish Green			

Party			
Mr Ian Bell			
Mr James Noel			
Mr Nigel Dyer Sandtoft Roof Tiles Ltd			

## Annex 2 – Timeline for pre-inquiry disclosure and for the inquiry sessions

Date	Deadlines
March 10	Relevant notice
May 5	For the exchange of statements of case
May 12	For the exchange of documents
May 19	For the exchange of precognitions and summaries
May 21	For the submission of additional written submissions
June 2	For the exchange of rebuttal statements
Tuesday June 10 – Friday June 13, inclusive	Week 1 of the Inquiry which opens at 10.00 am on Tuesday June 10 and continues on subsequent days, starting at 9.30 am
Monday June 16 – Thursday June 19, inclusive	Week 2 of the Inquiry, note the exceptional start on Monday (June 16) in this week only, together with closure on Thursday, rather than Friday
Tuesday June 24 – Friday June 27, inclusive	Week 3 of the Inquiry
Tuesday July 1 – Friday July 4 inclusive	Week 4 of the Inquiry