

TOWN AND COUNTRY PLANNING (SCOTLAND) ACT 1997

## STATEMENT OF CASE

for

DONALD BANKS AND OTHERS  
OBJECTORS

against

APPLICATION FOR OUTLINE  
PLANNING PERMISSION FOR  
GOLF COURSE AND RESORT:  
LAND AT MENIE HOUSE,  
BALMEDIE, ABERDEEN

by

TRUMP INTERNATIONAL  
GOLF LINKS SCOTLAND  
APPLICANTCALLED-IN BY SCOTTISH MINISTERS  
REFERENCE: DPEA: CIN/ABS/001

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1. The Objectors referred to are; Mr. and Mrs. Donald Banks, West Lodge, Menie, Balmedie; Mr. David Milne, Hermitpoint, Menie Links, Balmedie; Mr. Michael Foote, Hatterseat Farmhouse, Hatterseat, Balmedie; and, Mr. Raymond Davidson, Mains of Foveran, Newburgh, Ellon.

2. The application site comprises some 452 hectares and is located some 8 miles north of Aberdeen City and east of the A90, between the settlements of Balmedie and Newburgh. The application site and surrounding land use is agricultural. There is a number of occupied single and grouped dwellings on and around the application site.

2.1 The application site lies on part of the land designated in the statutory Development Plan as undeveloped coast and an Area of Landscape Significance. The application proposes to construct part of the golf course on a designated Site of Special Scientific Interest (SSSI).

2.3 The development proposals are described in the application, plans, drawings and other accompanying documents lodged therewith. An indicative master-plan comprises two 18 hole links golf courses on Menie Links, Pettens Links and Blairton Links, a golf clubhouse, a golf academy, a golf maintenance building and caddy shack, a short game area and driving range, a 450 unit resort hotel, conference centre and spa, 36 golf villas, 950 holiday homes in four blocks, accommodation for 400 staff, parking areas, access roads and two future residential areas for 500 private houses.

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3. Under Aberdeenshire Council's Scheme of Delegation, the application was brought before the Formartine Area Committee for determination. The Officer's recommendation was for a delegated grant. The application was considered to be a departure from the Development Plan and could not be granted without being referred to the Infrastructure Services Committee (ISC). The Area Committee was minded to grant consent. The application was referred to the ISC. The application was considered to be a significant departure from the Development Plan and could not be granted without being referred to Scottish Ministers. The ISC met on 29th November, 2007 and resolved to refuse the application for the Reasons stated in the motion to refuse and recorded in the relevant minute.

3.1 The application was called-in by Scottish Ministers by notice served under section 46(1) of the Town and Country Planning (Scotland) Act 1997; the notice stated, inter alia, "This Direction is given in view (of) the proposal raising issues of importance requiring scrutiny at a national level."

4. Section 37(2) of the Town and Country Planning (Scotland) Act 1997 provides that in determining an application regard shall be had to the development plan so far as material to the application and to any material considerations. Section 25(1) provides that the determination shall be made in accordance with the development plan unless material considerations indicate otherwise.

5. 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).

#### 6. STRUCTURE PLAN - NEST

6.1 Page 8 of NEST refers to the plan's vision for the development of a "sustainable community" in the North East, the achievement of which will be firmly based on three principles; viz -

- \* responsible management of our natural, built and community resources;
- \* fairness in allocation of these resources between competing demands; and
- \* the need to benefit both existing and future generations.

These principles inform the Aims as set out on NEST page 9.

6.2 The Strategy concerning Core Strategic Land Use Objectives and Locational Objectives is set out on page 12 of NEST. This Strategy is set out having regard to the narrative under paragraphs 1.19 to 1.66, and informs the land use and development control Policies contained in NEST.

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6.3 NEST narrative, paragraphs 1.42 - 1.66 discusses the 'Function and Roles of Each Area', 'Development Requirements' and 'Into the Future'. From Table 1(p.16)it can be seen that if Balmedie is anything other than a rural village, it is no more than a 'Rural Service Centre' whose main functions are described in the Table, as are the main functions of the surrounding 'Rural Area' and of the 'Uplands and Coast' relevant to the application site and its surrounds.

6.4 Figure 1(p.17) - Strategic Diagram, shows that whilst the A90 is defined as a major communications and development corridor, the nearest Key Service Centre to the application site is Ellon which is materially unrelated to the site.

6.5 Policy 3 - Other Employment Opportunities, lays down criteria upon which proposed employment uses on unallocated sites shall be considered acceptable. The Objectors believe the proposals as applied for do not meet the Policy criteria having regard in particular to; a)- the proposal is not well integrated with the existing pattern of land uses; b)- insufficient information concerning access and infrastructure; c)- the proposal is not located close to existing population, to the degree required; d)- the proposal as a whole (as applied for)does not make use of derelict, despoiled, unused and under-used land and buildings where appropriate; e)- a proven economic need has not been demonstrated; f) - it has not been demonstrated that the impact of any pollution generated has been minimised.

In addition, Policy 3 states, inter alia, that proposals shall only be approved if benefits to the community are shown to outweigh adverse environmental implications of the development; this lays down a test of considerable severity and a requirement for demonstration of a considerable threshold weight of materiality in justification. The test has not been met.

6.6 Policy 6 - Tourism, states that tourism and related developments shall be encouraged where they are compatible with policies to safeguard and enhance the built and natural environment. The proposals as applied for do not comply with Policy 6.

6.7 Inasmuch as the proposals include major residential development, the proposals can find no support from Policy 7 - A Five Year Housing Land Supply, nor is the residential component justifiable under Policy 8 - Housing Allocations 2000 to 2005, nor justifiable either under Policy 9 - Housing Allocations, 2006 to 2010, or Policy 10 - Indicative Housing Distribution, 2011 to 2015; et seperatim, planning permission for sites which qualify under Policies 9 and 10 is contingent upon a structure plan review and site specific designation(s) in the Local Plan, based upon the capacity of settlements and in accordance with their roles as set out in Table 1.

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6.8 The scale and nature of the proposal for 500 houses is of strategic significance which requires that it be considered in the context of the Structure Plan review which is at an early stage. Even if an allocation of 500 houses was to be included in the approved Structure Plan, for one of the Main Service Centres (settlements), it is for the Local Plan to make site-specific designations. Thus, having regard to this and to what is under 6.7 above, it would be premature and prejudicial to the rights and privileges of other land owners, other developers, elected Councillors, Community Councillors and members of the public to due development plan process, to grant planning consent for the 500 houses proposed. It is the position of the Objectors that; a)- the 500 house part of the application is distinguishable and divisible from the other parts; and b)- the 500 house part of the application requires to be considered on its own merits only.

6.9 Policy 11 - General Housing Considerations, engages only where there is other Policy justification for a residential development proposal. It is the position of the Objectors that there is no other Policy justification in this case; et seperatim, the housing part of the application would not meet the Policy 11 criteria.

6.10 Policy 12 - House Building in the Countryside Beyond the Green Belt, provides for a presumption against house building in the countryside except where a proposal complies with one of the specific exceptions cited in the Policy. The proposed housing does not qualify under any of the exceptions cited. The relevance of Policy 12 to the residential proposal is that there is a strong Policy presumption against granting planning consent.

6.11 Policy 13 - Developer Contributions, engages where planning consent is granted subject to, inter alia, an appropriate Section 75 Legal Agreement being completed.

6.12 Policy 16 - Sport and Recreation Facilities. Insofar as this Policy is engaged in this case, the proposed development does not meet the criteria laid down in Policy 16, inasmuch as; it is not close to where people live, in fact and to the degree material to the Policy meaning; it will not reduce the need to travel; accessibility by a range of modes of transport is questionable; and, it will increase reliance on the use of the car.

6.13 Policy 17 - Countryside and Open Space Access, instructs Local Plans to encourage and protect responsible access to the open space, countryside, coast and inland water. The Objectors believe the proposals would restrict access as referred to and may, in some respects, restrict the lawful right of reasonable access to the foreshore.  
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6.14 Policy 19 - Wildlife, Landscape and Land Resources, aims to protect natural heritage from adverse impact caused by development. It addresses, in hierarchy, international, national and local designations, and includes 'everywhere else'. The application site contains part of a Site of Special Scientific Interest (SSSI) and a Site of Interest to Natural Science (SINS). The site is within an Area of Landscape Significance, as designated in the Development Plan.

There is no demonstrable justification for the proposals being sited within the SSSI. Any mitigation measures are designed only to lessen adverse impact, not remove adverse impact; et seperatim, it has not been demonstrated that mitigation is possible, in fact and to a material degree. It is important to observe also, that adverse impact upon a SSSI may arise from development outwith the SSSI. No case has been made that significant adverse impact can be clearly outweighed by social and economic benefits of national importance, concerning the proposals as applied for. A similar position exists concerning the SINS and concerning also the absence of any public interest which could outweigh the conservation interest.

Whilst it is accepted that golf courses can be fitted successfully into landscape forms, landscape designated as an Area of Landscape Significance presents a more severe test concerning landscape issues and the biodiversity, environmental quality and ecological status requires to be addressed concerning proposals for any undeveloped landscape.

6.15 Policy 20 - Built Heritage and Archaeology, aims to conserve and promote the built heritage as a valuable non-renewable resource. It follows that and damage to, loss of, or adverse impact upon the setting of, protected or otherwise valued, built heritage and archaeology, would be contrary to Policy 20 and unacceptable, in the absence of exceptional circumstances which do not exist in this case.

6.16 Policy 21 - Design, seeks improvement in the general standard of design and lays down criteria which should be promoted by local authorities. It is not clear, in this case, exactly what are reserved matters and what are not. It can be said however, that the layout proposed is not 'environmentally friendly' and the proposed mixed use development is not appropriate, having regard to the location.

6.17 Policy 22 - Water Management, lays down criteria which require to be identified and applied where appropriate. The main issues to be addressed are, areas at risk of flooding and Sustainable Urban Drainage Systems (SUDS). The former concerns a matter of fact and the latter is a requirement of most, if not all, proposed developments.

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6.18 Policy 29 - Coastal Planning, classifies the coastline around the North east as 'undeveloped coast' except for areas around larger settlements classified as 'developed coast'. The classifications are indicatively shown on Figure 4(p.55)and the Key Diagram(pp.64 & 65) of NEST.

The application site is within part of the coast designated as undeveloped where there is a presumption against new development except where social and economic benefits outweigh any detrimental impact and where there are no alternatives on previously developed land or in existing settlements. The Policy provides that development shall be prohibited on any parts of the coast that are identified as at risk from flooding or erosion; there is no provision for exceptions.

6.19 Policy 31 - Connecting Communities within the North East, provides that new development will: a)- be well related to existing settlements and avoid dispersed patterns of development; b)- be close to existing public transport services or deliver major improvements to public transport services; and, c)- together with the management of transport infrastructure, will maintain or enhance the vitality and viability of the economy, in particular Aberdeenshire town centres and Aberdeen City centre. The Policy provides also, that priority will be given to proposals that increase the proportion of journeys by public transport, rail and sea freight, walking and cycling, and help to reduce demand for private car travel.

Whatever else may be arguable, the development as applied for will not increase use of public transport, walking or cycling and thus it is, by the location and nature of the proposals, that private car travel will be increased.

6.20 Policy 33 - Sharing Responsibility for Transport, provides for developer contributions, by legal agreement, to mitigate any adverse travel patterns generated. This would include an appropriate Green Travel Plan. The Policy provides also a presumption against development whose travel demands will not be satisfied by measures concerning, appropriate car parking provision, existing or new public transport provision, cycling, walking and other non-car measures.

## 7. ABERDEENSHIRE LOCAL PLAN - ALP

7.1 ALP seeks to conform generally to NEST as required under section 11(5)(b) of the Town and Country Planning (Scotland) Act 1997. Thus the Objectives cited in NEST are incorporated into ALP as are NEST Policies incorporated and expressed in detail concerning development control.

## 7.

7.2 Policy Env/1 - International Nature Conservation Sites, states that development likely to have a significant impact on a site designated or proposed under the habitats or birds directives (Special Area of Conservation and Special Protection Area) or a Ramsar Site and not directly connected with or necessary to the conservation management of the site, must be the subject of an appropriate assessment for the implications for the site's conservation objectives. It will then only be permitted where the appropriate assessment indicates that: a)- it will not adversely affect the integrity of the site; or, b)- there are no alternative solutions; and, c)- there are imperative reasons of overriding public interest, including those of a social or economic nature.

The Environmental Statement (ES) (March 2007) (at 7.0, p.75) states there are two European designated sites nearby and these are identified in Table 1 (p.102) in the ES, which Table lists also the importance of all Known Nature Conservation Interest.

7.3 Policy Env/2 - National Nature Conservation Sites, provides that development that would have an adverse effect on a SSSI or a National Nature Reserve will be refused unless the developer proves: a)- any significant adverse effects on the quality for which the area has been designated are clearly outweighed by social and economic benefits of national importance; b)- the objectives of the designation and overall integrity of the area will not be compromised; **AND** c)- there is no alternative site for the development. The Policy provides also that, where development is allowed which could affect any of these designated sites, including beyond their boundaries, the developer must demonstrate that adequate measures will be taken to conserve **and** enhance the site's ecological, geological and geomorphological interest.

Part of the development proposal lies on part of a SSSI. It is plain that the use of the word "proves", in expression of the burden placed upon the developer in this case, in turn lays down a severe test, and it is the position of the Objectors that the test is not met, concerning the proposed development as applied for. It is noted that the ES admits of "significant adverse changes to the SSSI ..." (at 7.0, p.75) It is noted also that an element of sequential approach to site selection is required, as expressed in criterion "c)", having regard to the designated status of part of the application site.

7.4 Policy Env/3 - Other Recognised Nature Conservation Sites, provides that development that would have an adverse effect on a Site of Interest to Natural Science, a Local Nature Reserve, an Ancient Long Established or Semi-Natural Woodland, a raised peat bog, wetland or non-statutory Nature Reserve will be refused unless the developer proves: a)- its public benefits at a local level clearly outweigh the nature conservation value of the site; **AND** b)- there is no suitable alternative site for the development.

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It is plain that the provisions of Policy Env/3 lay down a severe test concerning a SINS, similar to the test laid down in the previous Policy concerning a SSSI. The ES admits of significant adverse changes to the SINS in this case, arising from the proposed development. It is the position of the Objectors that the test laid down in Policy Env/3 has not been met.

7.5 Policy Env/4 - Biodiversity, provides that development that would have an adverse effect on habitats or species protected under British or European Law, or identified as a priority in UK or Local Biodiversity Action Plans, or on other valuable habitats and species, will be refused unless the developer demonstrates: a)- the public benefits at a local level clearly outweigh the value of the habitat for biodiversity conservation; b)- that the development will be sited and designed to minimise adverse impacts on the biodiversity of the site, including its environmental quality, ecological status and viability; **AND** c)- that there will be no fragmentation or isolation of habitats as a result of the development.

It is the position of the Objectors that criterion "a)" has not been demonstrated. Inasmuch as it is proposed to site part of the development on a SSSI and SINS, and having regard also to the loss of, and otherwise adverse effect upon, habitat as discussed in the ES(chapter 7) it is the position of the Objectors that the provisions of Policy Env/4 have not been met.

7.6 Policy Env/5B - Areas of Landscape Significance, provides that development within or adjacent to an Area of Landscape Significance will not be permitted where its scale, location or design will detract from the quality or character of the landscape, either in part or as a whole. Where acceptable, in principle, development must conform to Appendix 1 and Appendix 5. The Policy requires, in all cases, the highest standards of design, in terms of location, scale, siting, aesthetics and landscaping.

Notwithstanding the importance of design, it is the position of the Objectors that the scale and nature of the proposed development are such that would detract from the quality, and adversely alter the character, of the relevant Area of Landscape Significance.

7.7 Policy Env/6 - Coastal Development, lays down criteria which require to be met concerning both development on the Developed Coast and the Undeveloped Coast.

The development proposals in this case require to be assessed against the criteria laid down concerning development on the Undeveloped Coast. The Policy

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states, development on Undeveloped Coast will be refused unless: d)- the social and economic benefits clearly outweigh any adverse environmental impact; e)- there is no suitable alternative site for the development; **AND** f)- it respects the character, environment and amenity of the surrounding area. In all cases: g)- development shall be prohibited on any parts of the coast that are identified as at risk from flooding or erosion.

Having regard to criteria "d)" and "f)" in particular, it is the position of the Objectors that the proposed development does not meet the criteria required for consent to be granted.

7.8 Policy Env/11 - Agricultural Land, provides that development that would cause the permanent loss of productive agricultural land will be refused unless it has been allocated for development in the Plan or the developer demonstrates: a)- its social or economic benefit clearly outweighs the agricultural value of the site; **AND** b)- there is no other suitable alternative site for the development. Where the agricultural classification of land is in question the developer must demonstrate its quality.

It is important to observe that the Policy refers to "permanent" loss of "productive" agricultural land. The parts of the proposals on agricultural land would, in the main, cause permanent loss. Irrespective of classification, the agricultural land in question cannot be held to be anything other than "productive", having regard to the mixed farming enterprises suited to the area, that is to say, inter alia, arable and livestock. Standing that, it is the position of the Objectors that the proposed development, in fact and degree, is contrary to Policy Env/11, having regard also to criteria "a)" and "b)" which, if demonstrated would allow for consideration to be given to setting aside the presumption against development as expressed in the Policy; et seperatim, the land in question is not allocated for development in the Plan.

7.9 Policy Env/15 - Aquatic Engineering Works, and Policy Env/16 - Water Catchment Areas.

It is accepted that where these Policies are engaged SEPA has a statutory responsibility, however it is important to observe that the provisions of both Policies engage also concerning, ecology, riparian habitat and protected species, which may be of concern to RSPB/SWT and SNH. The Policies are concerned also with water quality and flow rate which can have relevance in respect of nuisance and common interest.

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7.10 Policy Env/18 - Listed Buildings, provides that any works which would have a detrimental effect on their listed character, integrity or setting, shall be refused listed building consent and, or, planning permission.

Menie House is a category 'B' Listed Mansion House as referred to at 3.2 in the ES; the Mansion House appears on the Council's Sites and Monuments Record. The estate gatehouse is category 'B' Listed also.

Section 1(4) of the Listed Building and Conservation Areas Act 1997(LBA) provides that "listed building" means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and, for the purposes of this Act, the following shall be treated as part of the building -

- a) any object or structure fixed to the building, and
- b) any object or structure within the curtilage of the building which, though not fixed to the building, forms part of the land and has done so since before July 1948.

It is the position of the Objectors that the primary test of what is listed, is the circumstances of the site at the date of listing, however, clear words of limitation in the listing may in practice exclude from protection structures or objects which might otherwise be protected.

The significance of the List Description was considered in the House of Lords in *City of Edinburgh v Secretary of State for Scotland*(1997)(3 PLR 71). It was held that the list description does no more in law than provide an aid to its identification, and any features not noted in the description as also part of the listing. The importance of this is that applicants should, insofar as records allow, ensure that all objects and structures which existed at the time of listing are identified and noted.

The word 'curtilage' is not defined in the legislation. A widely cited definition of curtilage is to be found in the decision of the Lord Ordinary, Lord Mackintosh, in *Sinclair Lockharts' Trs. v Central Land Board*(1951 S.C.258 at 264):

"(G)round which is used for the comfortable enjoyment of a house or other building may be regarded in law as being within the curtilage of that house or building and thereby as an integral part of the same, although it had not been marked off as enclosed in any way. It is enough that it serves the purposes of the house or building in some necessary or reasonably useful way."

The relevance and importance of this is that in assessing the impact proposed development may have upon a listed building and its curtilage, the curtilage requires to be considered in the context of the location, type and purpose

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of the listed building and impact upon the "setting" of the listed building requires to be considered in like context. Thus it is, that a listed Mansion House on a country estate is likely to have a larger curtilage than a listed house in a town or city and the starting place for assessing the likely impact of the scale and type of the proposed development on the "setting" of Menie Mansion House and its curtilage is its current setting in an country estate and landscape associated with mixed agriculture and country sports.

For the avoidance of any doubt, nothing is implied or otherwise inferred, arising from what is stated above (at 7.10). It simply states the position of the Objectors that, in particular, the onus lies with the applicants to search beyond the 'list description' concerning what may be listed, insofar as it is reasonable possible.

7.11 Policy Env/19 - Archaeological Sites and Ancient Monuments, provides that development which would have an adverse effect on an Ancient Monument or other archaeological site of either national or local importance or their setting, will be refused unless; a)- there are imperative reasons of overriding public interest, including those of a social, environmental or economic nature; **AND** b)- there is no alternative site for the development.

It is accepted that 'adverse effect' on either an Archaeological Site or Ancient Monument is largely a matter of fact. The impact upon their 'settings' is a matter of fact and degree within which is to some extent subjective.

7.12 Policy Env/20 - Historic Gardens and Designed Landscapes, provides that development that would have an adverse effect on the character or setting of an Historic Garden or setting of an Historic Garden or Designed Landscape will be refused unless: a)- the objectives of designations and overall integrity and character of the designated area will not be compromised; **OR** b)- any significant adverse effects on the qualities for which the area has been designated are clearly outweighed by social, economic and strategic benefits of national importance; **AND IN EITHER CASE** c)- mitigation and appropriate measures are taken to conserve and enhance the essential characteristics, aesthetics, archaeological, historic value and setting of the garden.

It is the position of the Objectors that the setting within which an Historic Garden or Designed Landscape lies requires to be considered in much the same way concerning listed buildings as referred to in 7.10 above; that no benefits of national importance arise in this case; and, mitigation measures are relevant only where it is demonstrated that, as a matter of fact and to the degree required, they allow consideration to be given to consent for the proposed development.

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7.13 Policy Env/22 - Public Access, provides that development that would have an adverse effect on any existing or potential public access for walking, cycling or horse riding will be refused unless: a)- it retains existing or potential public access while maintaining or enhancing its amenity value; OR b)- it makes alternative access provision that must be no less attractive and is safe and convenient for public use. Encouragement will also be given to new access routes, which promote "green transport" while not adversely affecting the land concerned.

There are concerns that public access may be restricted by the development proposals in themselves or by management of the development. It is accepted that where lawful access is prevented or otherwise interfered with the law provides a remedy and planning permission is not a defence, in this or any nuisance arising from the development. That said, it is the position of the Objectors that any material loss of existing access would not be justified. Public access proposals or safeguards should be clearly explained. Proposals for new or improved public access should be incorporated into a section 75 Legal Agreement forming part of and conditional upon, any planning consent granted.

7.14 Policy Hou/1 - Housing Allocations 2000 - 2005. There is no support for the proposed development arising from this Policy. The Housing Allocations derive from NEST Policy 8 for named main settlements and unspecified other settlements for, in this case, the Aberdeen Housing Market Area. ALP Policy Hou/1 designated specific sites to accommodate the allocations. The allocations relevant to the Formartine Area are shown in ALP Appendix 10 and allocations relevant to Balmedie appear on page 424. These in turn are transferred to specific sites shown on the Balmedie Rural Service Centre Proposals Map on page 186. No housing allocation is shown on this or any other proposals map concerning the application site. Housing Allocation for the period 2000 - 2005 are identified on proposals maps by a single capital letter.

7.15 Policy Hou/2 - Future Housing Land 2006 - 2010, provides that applications for planning permission on land allocated for this period are subject to NEST Policy 9 and thus the allocations are subject to review when NEST is reviewed and permission will not be granted for development of these sites until that review is complete. The review of NEST is at an early stage. The designation fh identifies 2005 - 2006 allocations on Proposals Maps. No such designation is applied to any part of the application site.

In considering the period 2011 - 2015, the Policy provides that sites or areas of search for future land are indicated on some proposals maps ... Although indicative of likely direction of growth, in the meantime no development will be permitted in these areas that might either pre-empt or prejudice their future allocation. Sites/areas of search for this period are identified by fh\*(ALP Glossary p.340). No such designation has been applied to any part of the application site, but does appear on the Balmedie Proposals Map.

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7.16 Policy Hou/4 - New Housing in the Countryside(Part 1) provides a strong presumption against development of housing in the countryside, subject only to compliance with specific criteria. Criterion "e)" engages only there is compliance with criteria "a) to "d)". It is plain that the housing element of the application proposals does not comply with this Policy. Countryside is defined, for the purposes of ALP in the Glossary(p.338).

7.17 It is the position of the Objectors that the housing part of the proposals is: FIRST, distinguishable from the other parts of the application and requires to be considered on its own merits; SECOND, it derives no support from any housing Policy; THIRD, it cannot be held to be tourist related; FOURTH, there is no other Policy justification for housing part of the application; THUS, refusal is indicated concerning the 500 houses applied for as constituting, in themselves, a major departure from the Development Plan without supportable cause.

7.18 It is the position of the Objectors that a grant of planning consent for the housing element of the application would be unjustifiably prejudicial to the Structure Plan Review process now underway, and prejudicial also to the rights and privileges to other landowners, developers, members of the public, Community Councils, elected Councillors and Council Officers, concerning the proper process including due search, consultation, and the proper determination of housing strategy, allocation of housing numbers through the Structure Plan and site specific designation through the Local Plan.

7.19 Policy Hou/8 - Affordable Housing, in this case engages only as may be sought, as appropriate, either in provision of affordable units, or land, or a financial contribution, any of which would be incorporated in to a (s.75)Legal Agreement forming part of and conditional upon any planning consent granted.

7.20 Policy Emp/3 - Employment in the Countryside. Notwithstanding the provision of Policy Emp/9, Policy Emp/3 engages concerning issues arising from employment/rural economy related proposals outwith settlements. Insofar as it is engaged, the proposals would not comply with criterion "a)", or "b)" or "c)" in particular.

7.21 Policy Emp/9 - Tourist Facilities and Accommodation, provides that new or improved tourist facilities and accommodation will be approved, if: a)- they respect the character, amenity and scale of development in the surrounding area; b)- they are reasonably accessible by public transport where available, cycling and on foot, or would deliver major improvements to public transport services in scale with the development; c)- they are well related to existing settlements and would avoid dispersed patterns of development, unless the developer has demonstrated a locational requirement based on the need to be near specific tourist interest being exploited, and that the facility will not damage those interests; .....

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The aim of this Policy(as stated)is to promote tourism in locations where it would not damage one of the main resources on which it is based i.e. the environment. The Policy therefore ensures that development proposals do not have a significant impact upon the nature conservation, landscape character or amenity value of the area.

It is the position of the Objectors that the proposals, as applied for, in fact and to a material degree, contradict the aim of the Policy and are contrary to criterion "a)", criterion "b)" and criterion "c)" for reasons similar to those discussed hereinbefore. In addition, in respect of "b)", if the developer was to deliver major improvements to public transport services in scale with the development, this would be difficult to achieve/enforce outwith a section 75 Agreement; that said, given the scale and nature of the proposed development as applied for, it is difficult to accept that public transport would be used to a materially effective level, therefore it would result in increased car use by privately owned or rental cars.

7.22 Policy Emp/10 - Sport,Leisure and Recreation, provides that new or improved sport and recreation facilities will be approved, in principle, if: a)- it can be demonstrated that the sequential approach set out in Policy Emp/6 has been followed in regard to professional spectator sports; b)- they respect the character and amenity of the surrounding area; c)- they are readily accessible by public transport where available, cycling and on foot or would deliver major improvements to the public transport services in scale with the development in order to reduce reliance on the private car; d)- they are close to where people live and reduce the need to travel; **AND** e)- concerning Green Belt- which does not apply. The Policy provides also that, participation sports and recreational activities requiring unimpeded access to remote open country are exempt from requirements of clauses a), c) and d); - this would apply to shooting, pointer/retriever gun dog trials(grouse moors), hunting (mounted or on foot), will walking/mountaineering, orienteering, and the like, but it does not apply to the application proposals.

It is the position of the Objectors that the proposals as applied for do not comply with criterion b), c), or d). In fairness it is difficult to understand in what way, for example, tournament/championship golf, as a professional spectator sport, could comply with the sequential approach as intended and referred to in criterion a), with the exception that it is intended that professional spectator sports, including golf, should, by sequential approach, be in or adjacent to a main service centre,as currently applies to some golf courses in Scotland and elsewhere, in which case, arguably, the application proposals can be held to have failed the sequential approach.

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7.23 Policy Inf/1 - Roads and Access, provides that a new road or access will be approved in principle if the criteria set out in a) to d) are met. Compliance with this Policy concerns, mainly, compliance with Policy and Transportation requirements and standards which are largely matters of fact. That said, there are concerns regarding the impact on the character of the site and surrounding area and doubts in respect of safety and convenience for pedestrians and cyclists; in addition, the proposals as applied for would require access for all parts of the proposed development including 500 houses, realistically, accessed by private car

7.24 Policy Inf/2 - Parking, Servicing and Accessibility, provides that development will be approved, in principle, if: a)- it is well related to existing settlements, avoids dispersed patterns of development, and complies with parking standards; b)- it can be accessed conveniently by walkers and cyclists, and is close to existing public transport services, where available, or delivers major transport services in scale with development; c)- it is designed to be safe, convenient, resource efficient and cause minimal impact on the character of the site and surrounding area; d)- developer contributions are provided where required to mitigate development impact; AND e)- it can be safely and conveniently accessed by service, delivery and other goods vehicles as appropriate to the development.

It is the position of the Objectors that the proposals do not comply with criterion a), having regard in particular to the dispersed pattern of development which arises from the nature and scale of the proposals and the site is not well related to an existing settlement by its siting, scale and nature; compliance with parking standards is a matter of fact. In consideration of criterion b), the Objectors do not accept that it can be accessed conveniently by walkers and cyclists, with the exception perhaps of a very few dedicated cyclists and the Objectors do not accept that the A90, with the additional traffic generated, would encourage even a few of the dedicated cyclists; given the scale and nature of the proposals the Objectors do not consider that developer contributions would deliver practical, physical services and infrastructure to provide "major improvements" to public services in scale with the development; it is the position of the Objectors that any improvements required should be put in place by the developer in contradistinction to a financial contribution. The Objectors do not accept that the proposals would cause "minimal impact" on the surrounding area, as referred in criterion c). It is the position of the Objectors that the proposals, as applied for, do not comply with Policy Inf/2.

7.25 Compliance with: Policies:- Inf/3, Access for the Less Mobile; Inf/4A, Foul Drainage Standards; Inf/4B, SUDS; Inf/5 Water Supply; and, Inf/6B, Waste Management Requirements for New Development, are largely matters of fact concerning statutory and Policy standards and requirements.

16.

7.26 Policy Gen/1 - Sustainable Principles, requires all development to be assessed against sustainable indicators that relate to the local environment, community and economy and requires to accord with the criteria laid down from a) to n). The Policy states also that where assessment concludes that there is a significant uncertainty as to whether the proposed development would cause substantial harm the precautionary principle will be applied.

It is the position of the Objectors that the proposed development, as applied for, does not accord with the Policy, having regard in particular to; criterion b)- in that the development proposed is not well related to existing settlements and constitutes dispersed development; criterion c)- in that the development would not reduce the need to travel by private cars, nor allow safe, easy access by walking and cycling, thus leading to increased car travel; criterion d)- in that the proposals would not protect nor enhance valuable resources, including landscape and wildlife habitats or species; criterion f)- in that the development would have a negative impact upon the character including landscape character, environment and amenity of the surrounding area; criterion j)- in that it would give rise to nuisance having regard to the locational principle; and, having regard to the precautionary principle (as defined in ALP Glossary p.343) refusal is indicated concerning the development as applied for.

7.27 Policy Gen/2 - Layout and Design of New Development, provides that new development will be approved in principle, if it accords with the criteria set out under a) to i).

It is the position of the Objectors that the development, as applied for does not accord with Policy Gen/2, having regard in particular to criterion a)- in that it cannot be laid out to fit successfully into the site itself in order to respect the character and amenity of the surrounding area; criterion b)- in that the scale, massing, indicative height, and density are not appropriate; and, criterion d)- in that it does not respect the characteristics of the landscape in which it would be set.

7.28 Policy Gen/3 - Developer Contributions, is engaged only where planning consent is granted.

7.29 Policy Gen/5 - Landscaping Standards, provides that development will be approved in principle, if the provision of landscaping and for its subsequent maintenance conform to the requirements in Appendix 5.

7.30 It is important to observe that the phrase "in principle" is used throughout ALP to mean 'subject to compliance with all other relevant policies in the plan.' (Glossary p.343)



17.

7.31 Policy Gen/8 - Flooding, provides that development on land at risk of flooding, including any functional flood plain, will be refused unless a proposed development complies with criteria as expressed under criteria a) to h). The Policy invokes the precautionary principle in consideration of changes in climatic patterns.

Inasmuch as ALP defines "Functional Flood Plain" (Glossary, p.340) it is largely a matter of fact whether or not this provision is engaged, having regard to site and area history and SEPA's indicative flood plain map(s). However, Policy Gen/8 refers also to "land at risk from flooding" which can apply to coastal land itself and, or, engineering operations under coastal land, either or both of which can be below sea level; et seperatim, matters consequent may arise concerning pollution/nuisance.

8. The application proposals are such that the recognised planning concept of 'enabling development' cannot be invoked in this case.

8.1 The only averred justification for setting aside the provisions of the Development Plan in this case, is the alleged economic benefit(s) arising from a grant of planning consent.

8.2 An Economic Impact Assessment and Financial Review was lodged in support of the application proposals. The full version was treated as private and confidential "while the Planning Service has been dealing with the application. However, a summary of this has also been submitted and this is attached as Appendix 4 to this report." (Officer's Report to Formartine Area Committee of 18 September 2007 at 2.22).

8.3 The Summary, as referred to, is available on the Council's website and available also on the applicant's website. It is the position of the Objectors that the Summary is, de facto et de jure, in the public domain and is produced, by the Objectors, as a Document to the Inquiry.

8.4 It is plain from the Summary that the 500 houses applied for are not required to make the other parts of the application financially viable, but simply to increase the rate and amount of return on capital investment; therefore it is plain also, that the residential part of the proposals is not required to bring what economic benefit(s) may arise from the proposed 'golf resort'; et seperatim, the proposed residential development cannot be held to be 'tourist related'.

8.5 It is the position of the Objectors that it is plain from the Summary that what has been averred concerning economic benefit(s) arising from the development is lacking in specification and otherwise questionable, in fact and to a material degree, and cannot be relied upon nor given sufficient weight to over-ride the provisions of the Development Plan.

18.

REPRESENTATION

Mr. John Agnew, Town and Country Planning Agent, will appear and act for Mr. Donald Banks and Others as Objectors.

WITNESSES

Either Mr. Donald Banks or Mr. David Milne, depending on availability, concerning objections to the proposals as applied for.

Mr. William Walton, MRTPI, concerning Development Plan Policy and matters arising therefrom.

ESTIMATED TIME REQUIRED

Half a day to maximum of one day.

DOCUMENTS TO BE REFERRED TO


Core Documents.

Documents produced by other parties.

DOCUMENTS PRODUCED

Executive Summary(July 2007)(Deloitte) of Economic Assessment and Financial Review.

The Objectors reserve their right to add to or otherwise amend any part of their Statement of Case, upon receipt of Statements of Case for other Parties to the Inquiry or consequent upon other relevant matters arising, ad interim, de facto, and, or, de jure.



John A.A. Agnew  
Agent for Donald Banks & Others.

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33 Evan Street  
Stonehaven  
AB39 2ET.

5th May, 2008.

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