



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

PUBLIC LOCAL INQUIRY: Ref CIN/ABS/001

STATEMENT OF CASE

RSPB Scotland
Scottish Wildlife Trust
Botanical Society of the British Isles

1. Purpose of this document and background

1.1. This Statement of Case gives particulars of the case which the Royal Society for the Protection of Birds ("RSPB Scotland"), the Scottish Wildlife Trust ("SWT") and the Botanical Society of the British Isles ("BSBI") intend jointly to bring to a public local inquiry into an application for outline planning permission by Trump International Golf Links Scotland Ltd ("the Applicants") for development of two golf courses and a golf resort ("the Application") at Menie Estate, Balmedie. The inquiry is being held following the decision of Scottish Ministers on 4 December 2007 to call in the application (Ref. No./F/APP/2006/4605).

1.2. Our three organisations are preparing a joint case at the Inquiry and working together in order to assist the progress of the Inquiry, following a request from the Reporter at the Pre-Inquiry meeting on 26 March 2008.

1.3. The location for the Proposed Development overlaps with the Foveran Links Site of Special Scientific Interest ("the SSSI") and the Foveran Links Site of Interest to Natural Science ("SINS").

1.4. **RSPB Scotland** responded to the scoping request for the Environmental Statement on 10 November 2006 and submitted objections to the outline planning application (and subsequent application for full planning consent) in our letters to Aberdeenshire Council of 8 May 2007 and 13 August 2007 with further comments made in connection with the Appropriate Assessment Report on 9 November 2007.

1.5. The **Scottish Wildlife Trust** submitted objections to the full and outline planning applications in our letters to Aberdeenshire Council of 4th May 2007, 6th June, 23 August 2007 and 27 November 2007.

1.6. Objections were submitted on behalf of **BSBI** members to the outline planning application on 30 April and 22 May 2007, and a further document was sent to Aberdeenshire Council planners on 16 August 2007 as a rebuttal of the proposing consultants' response of July 2007. A further précis of the objections plus a suggested compromise was sent to the Government Planning Team on 7 Jan 2008.

2. The aims and remit of RSPB Scotland, Scottish Wildlife Trust and BSBI

RSPB Scotland

2.1. The RSPB is a registered charity incorporated by Royal Charter and is Europe's largest voluntary conservation organisation, with a national membership of over 1 million, and more than 77,000 members in Scotland and over 4,500 in the City of Aberdeen and Aberdeenshire. RSPB Scotland is part of the RSPB, the UK-wide charity working to secure a healthy environment for birds and wildlife, helping to create a better world for us all. We manage 75 nature reserves in Scotland, covering over 62,000 hectares of land, including five areas in North East Scotland, four of which are coastal sites. During the past 100 years in Scotland, we have gained considerable practical experience in the successful integration of conservation land management with wider rural land uses, including farming, forestry and other enterprises. We undertake biological and economic research to underpin our policy analysis and advocacy. We also have experience of environmental education and training for all ages. RSPB Scotland is the BirdLife International partner in Scotland

2.2. The principal objective of RSPB Scotland is the conservation of wild birds and their habitats. RSPB Scotland therefore attaches great importance to all international, EU and national law, policy and guidance, which assist in the attainment of this objective. The Society campaigns throughout the UK and internationally for the development, strengthening and enforcement of such law and policy.

2.3. RSPB Scotland is involved with over 400 planning and forestry applications each year. Our involvement in the planning system is endorsed by RSPB Council policy and guided by criteria agreed by Council and Management Board.

Scottish Wildlife Trust

2.4. The Scottish Wildlife Trust (SWT) was founded in 1964 to take all appropriate measures to conserve the fauna, flora, and all objects of natural history in trust throughout Scotland. Since then, membership has grown to 30,000 members and SWT has become the largest voluntary body working for all the wildlife of Scotland. The Trust has 21 voluntary local 'member centres' covering most of the country including a very active centre in Aberdeen and Aberdeenshire where several members are involved in local conservation activities. In total, there are 1399 people in Aberdeen and Aberdeenshire who are members of the Trust. Nationally, the Trust owns or manages 124 wildlife reserves including many coastal sites some of which contain sand dunes systems which we have many years experience of surveying and managing for conservation interest. SWT also works in partnership with the UK Wildlife Trusts.

2.5 As Scotland's wildlife comes under increasing pressure from development, SWT believes the Scottish planning system needs to be well informed regarding biodiversity issues and implemented in a way which ensures Scotland's biodiversity is adequately safeguarded and enhanced. We believe that the planning system should act as a guardian for wildlife and actively support and promote its conservation, enhancement, restoration and expansion.

2.6 SWT supports appropriately located and well designed development and only objects to planning applications which it considers will lead to unacceptable damage to nationally important habitats and species, including those which adversely impact on SSSIs.

Botanical Society of the British Isles

2.7 The society was founded in 1836 by enthusiasts keen to study British flowering plants. Its UK membership now exceeds 3000, with some 300 living in Scotland, and includes many professional researchers as well as amateurs interested in wild flowers.

2.8 At present, the basic aim of the society is the study of higher plants and their distribution within Britain and Ireland, with subsidiary aims of conservation and education. To fulfil these aims, the BSBI produces national atlases, local floras, a scientific journal and specialist handbooks.

3. Summary of the position of RSPB, SWT and BSBI over the application for golf course and resort at Menie Estate

3.1. Each of our organisations has objected to the proposed development. In summary, we consider that the likely adverse environmental impacts of this development on a site of national importance are unacceptable and not outweighed by any over-riding public interest. The damage to the integrity of the Foveran Links SSSI, and to biodiversity over the whole site, is so severe that we believe strongly the application, as submitted, should not be permitted. A grant of planning permission for the development as proposed would send negative signals about the ability of the planning system to protect the best of Scotland's natural heritage and the efficacy of national and local planning policy to safeguard nationally designated sites from damaging developments. In addition, the development would be contrary to biodiversity conservation policies both locally and nationally, and conflicts with adopted planning policies.

3.2. The development is not in accordance with the development plan, in terms of s.25 of the Town and Country Planning (Scotland) Act 1997 (as amended), and is not included in or an indispensable part of any strategic public policy framework or published economic strategy. Nevertheless, it is not the principle of the development of a golf resort or golf courses to which we object. It is a matter for the Scottish Ministers to decide, whether such a development, of the kind proposed, should be granted on an application without being promoted through the development plan system. The reason we object to it is the damage that would be caused to the SSSI and to the natural heritage in this location. We do not believe that leisure development of this kind should, or needs to, be at the expense of environmental assets of the highest value. That cannot be consistent with the principles of sustainable development to which we and, of course, the Government are committed.

3.3. We consider that the applicant has not explored adequately alternative layout solutions within the site that would eliminate or at least reduce the main adverse impacts of the proposal on the natural heritage.

4. The nature conservation designations and interest in the area covered by the application

4.1. The Menie Estate dune system is part of a continuous system of sand dune habitat extending from Bridge of Don in Aberdeen to Collieston, some 20 kilometres to the north – amongst the largest and best sand dune systems in Britain. To the north of the Ythan estuary the dunes make up part of the Sands of Forvie National Nature Reserve, and this area, together with the estuary, is designated as a SSSI under the Wildlife and Countryside Act 1981 (as amended), classified as a Special Protection Area under the EU Birds Directive (79/409/EEC), designated a Special Area of Conservation under the EU Habitats Directive (92/43/EEC) and listed as a Ramsar site under the Convention on Wetlands of International Importance, to

which the UK is a signatory. To the south of the Ythan Estuary, the Foveran Links SSSI stretches for some three km along the coast and includes the northern part of the proposed development site. The Foveran Links SINS includes both the Foveran Links SSSI and an area to the south, extending to Balmedie. The proposed development will compromise the integrity of the whole interconnected system of coastal habitats.

4.2. The Foveran Links SSSI / Foveran SINS area which will potentially be impacted by part of the application is of great value as part of an important continuous system of sand dune-dominated coastline subject to natural coastal processes. Several of the vegetation communities are of national or international importance, with five habitats reported in the ES as present that are listed in the EC Habitats Directive (92/43/EEC) as habitats of Community Interest, of which three are priority habitats. It is important to stress that the value of this site is not confined to the Foveran Links SSSI. Indeed, the whole stretch of sand dune and related habitats running the entire length of the site's coastal frontage is of high nature conservation value. As noted in the Environmental Statement accompanying the application, the ground outwith the SSSI (i.e. the SINS and area to the south at Balmedie) meets the criteria for selection as a combined geomorphological and ecological SSSI system according to Joint Nature Conservation Committee guidelines. It is also important to stress that the extent of certain dune habitats at Menie is significant in a national context: between 2 and 4% of the Scottish resource of bare dune sand, mobile dune vegetation and young dune slack is found here and is likely to be destroyed or irreparably damaged by the proposed development.

4.3. Within the application site, the breeding bird community includes a range of species typical of sand dunes and slacks, with large numbers of Skylarks plus some breeding waders, particularly Lapwings and Redshank. Eight other bird species breeding on the site are 'red-listed' as Birds of Conservation Concern. Overall, the breeding bird community here is representative of these rare coastal habitats; as observed in the Environmental Statement, the area is of near-SSSI quality for its breeding bird assemblage.

4.4. The area is of high biodiversity value for other plant and animal groups. The European Protected Species Otter and two species of bat occur on the site, with Otters frequent, and the invertebrate survey data for the area indicates the presence of numerous species of conservation value; at least 13 endangered or vulnerable species are already known to be present, despite the fact that survey effort has not been intensive to date. The vegetation communities on the dunes, both higher and lower plants, are already known to be of considerable importance, with at least 19 nationally important species of lichen and fungi recorded in recent surveys, together with one nationally scarce fern and nine nationally scarce higher plants. Moreover two of these nine species, plus one other Menie species, an orchid, are categorised as Priority Species in the UK Biodiversity Action Plan. One species also features in the SNH Species Action Framework 2007.

4.5. Whilst many of these species are nationally important in their own right, it is important to stress that the sum total of the species and their supporting habitat - the

whole 'ecological community' - is also rare in a Scottish, UK and European context and of high national and international scientific value.

4.6. Under Section 1(2)(a) of the Nature Conservation (Scotland) Act 2004, all public bodies and office holders must have regard to their duty to "further the conservation of biodiversity". We consider that the granting of planning permission for this development would be contrary to that general duty.

5. Summary of our grounds for objection: the potential adverse impacts of the application on the nature conservation interest of the area

Our objections are based on the following consequences of the development as currently proposed:

5.1. Severe adverse impacts on the geomorphological and ecological interest of the Foveran Links SSSI, including the destruction and fragmentation of a substantial part of the natural heritage interest of a site of national and international importance.

5.2. Severe adverse impacts on the integrity of the coastal sand dune complex formed by the Foveran Links SSSI, the contiguous Ythan/Sands of Forvie SSSI and the overlapping Foveran SINS.

5.3. Severe adverse impacts on the UK and Scottish resource of habitats and species listed in the Scottish Biodiversity List under Section 2(4) of The Nature Conservation (Scotland) Act 2004 and subject to the UK Biodiversity Action Plan, the UK Biodiversity Action Plan for Coastal Habitat and the objectives of the Scottish Biodiversity Strategy.

5.4. Severe adverse impacts on habitats listed as of Community Importance, including priority habitats in Annex 1 of Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora and Fauna (the 'Habitats' Directive).

5.5. Inconsistency with Scottish Planning Policies and guidance designed to protect natural heritage interest in Scotland.

5.6. Major departures from relevant Structure and Local Plan policies including those designed to protect natural heritage interest in Aberdeenshire.

5.7. The inability of any mitigation measures proposed to effectively reduce the severity of the adverse effects on nature conservation.

5.8. The lack of any strategic public policy framework or published economic strategy which contains this proposal, or of which the proposed development is an indispensable contribution, and which may justify the scale of likely damage to the natural heritage.

6. Summary of Scope of Evidence including witnesses

6.1. The RSPB, SWT and BSBI will be represented at the Inquiry by David Tyldesley MIEEM, FRTPI, FRSA. He will call, as witnesses, a representative of RSPB Scotland and a representative of the SWT to give evidence in respect of the grounds of objection set out in sections 4 and 5 above. The availability of witnesses is currently being investigated and we will advise the parties to the Inquiry as soon as possible. On the assumption that the applicants will lead evidence consistent with the information, analysis and conclusions of the Environmental Statement and supplementary environmental reports, RSPB, SWT and BSBI intend to use written statements to cover most of the detailed representations that we wish to make to the Reporters, in respect of the status and nature conservation (including geomorphological) interests of the SSSI and SINS, the effects of the proposed development on those interests and the scope and efficacy of mitigation measures proposed. The written statements will also indicate how the impacts of the development could be more effectively mitigated. It is expected that the points that the BSBI wishes to put before the Inquiry in addition to those to be put by the RSPB and SWT, can be effectively made in a written statement.

6.2. Precognitions and oral evidence are expected to cover:

- a). The RSPB and SWT view of the impacts of the development and the case for protecting the interest features of the SSSI and the SINS from the adverse effects of development.
- b). Clarification of the outstanding areas of disagreement or uncertainty about the impacts of the development and effectiveness of proposed mitigation measures, previously set out in the consultation responses of the RSPB and SWT.
- c). The involvement of the RSPB and SWT in the application and discussions with the applicants.
- d). The conditions that should be imposed in the event that the Scottish Ministers grant outline planning permission to this application.

6.3. In respect of d) above, whilst the RSPB, SWT and BSBI consider that planning permission for the proposals, as submitted, should be refused, because of the severe impacts on nature conservation, in the event that outline planning permission is granted by the Scottish Ministers, we will submit recommendations as to the conditions that should be imposed. These will relate to submission of further ecological information, the design and ecological management of the golf course and other mitigation measures to reduce the otherwise extensive harm to nature conservation interests.

6.4. Importantly, these measures should include a condition (or conditions) prohibiting development in the area of the SSSI and on the southern part of the SINS comprising the mobile dune system.

6.5. It is considered that imposing such a condition (or conditions) is within the power of the Ministers and would meet all relevant tests. The evidence will include an explanation as to why the RSPB, SWT and BSBI consider that an exceptional golf experience could be provided on a links course, at Balmedie, without affecting either the SSSI or the southern part of the SINS. It will also include an explanation as to how a golf course could be constructed on the remaining part of the SINS, on the estate, with less damaging consequences for the fixed dune systems and associated habitats and species.

7. Estimate of Length of Case

7.1. In light of the above, and normal Inquiry procedure, with only the summary precognition being read and supplementary oral evidence being given, RSPB, SWT and BSBI would expect their case to last approximately one to one and a half days including a reasonable estimate for cross examination by other parties, although the extent of cross examination cannot be forecast until the position of the Applicants and the Council is set out in their respective Statements of Case.

7.2. If the applicants' Statement of Case indicates departures from the Environmental Statement and supplementary environmental information, the RSPB, SWT and BSBI would need to consider submitting a wider scope of evidence, including more detailed evidence, in respect of the aspects of the impacts on nature conservation that have become the subject of dispute. It may be necessary to call an additional witness specialising in the subject that may become a matter of dispute. We will try to minimise the extent of oral evidence at the Inquiry, but should the case for the Applicant or the Council, either in the Statements of Case or precognitions, raise new issues or different conclusions about the impacts on nature conservation and mitigation, not previously expressed, we may need to respond by way of rebuttal precognitions or additional material to deal with any new areas of dispute.

8. Further Explanation of the Case

8.1. RSPB, SWT and BSBI may submit a supplementary Statement, if necessary, in response to the statements of case of other parties.

9. List of Productions to be referred to in evidence.

Documents

The following productions constitute the provisional list of those which will be referred to by RSPB Scotland, SWT and BSBI, in addition to core documents which it

is assumed will be produced by the Council and will include all relevant legislation, policy documents, development plan documents and guidance. In addition, we expect to identify further references as written statements and precognitions are prepared and these will be referenced appropriately and provided as productions to the Inquiry as necessary.

1. Buckland et al, 1990. *The Birds of North-east Scotland*. North-East Scotland Bird Club. Aberdeen
2. BSBI correspondence as detailed in section 1.6 above.
3. Cheffings, C. and Farrell, L. (Editors), 2005. *The Vascular Plant Red Data List for Great Britain*, ISSN 1473-0154 JNCC, Peterborough
4. Dargie, T.C.D. 1991. *Sands of Forvie, Gordon. Site report no. 45 to JNCC, Peterborough*.
5. Dargie, T.C.D. 1993. *Sand Dune Vegetation Survey of Great Britain: a national inventory. Part II: Scotland*. JNCC, Peterborough.
6. Doarks, C., Holder, C. and Radley, G.P. 1990. *Foveran Links, Gordon. Sand Dune Survey of Great Britain Site Report No.98*. JNCC, Peterborough.
7. Doody, J.P., Johnston, C. and Smith, B. (eds.) 1993. *Directory of the North Sea coastal margin*. JNCC, Peterborough.
8. Grampian Regional Council 1977. *Ecological Survey of the River Don to River Ythan Report*.
9. Grampian Regional Council 1989. S.I.N.S. – Sites of Interest to Natural Science. Study of Environmentally Sensitive Areas. Grampian Regional Council.
10. Gregory R D, Wilkinson N I, Noble D G, Robinson J A, Brown A F, Hughes J, Proctor D A, Gibbons D W and Galbraith C A, 2002. *The population status of birds in the United Kingdom, Channel Islands and the Isle of Man: an analysis of conversation concern 2002-2007*. British Birds 95:410-450.
11. Ing B., 1992. *A Provisional Red Data List of British Fungi*. Mycologist 6(3) pp124-128
12. Jackson, D.L. & McLeod, C.R. (Editors), 2000. *Handbook on the UK status of EC Habitats Directive interest features: provisional data on the UK distribution and extent of Annex I habitats and the UK distribution and population size of Annex II species*. JNCC, Peterborough. Also accessed, on 2 May 2008, at: http://www.jncc.gov.uk/Publications/JNCC312/UK_habitat_list.asp
http://www.jncc.gov.uk/Files/UK_SAC_data_20060331.zip
<http://www.jncc.gov.uk/default.aspx?page=4060>
<http://www.jncc.gov.uk/page-4064><http://www.jncc.gov.uk/pdf/Article17/FCS2007-2.2-Final.zip>
13. Jermy, A.C., Simpson, D.A., Foley, M.J.Y. & Porter, M.S. (2007) *Sedges of the British Isles*. BSBI Handbook No 1. Edition 3. BSBI, London.
14. Nature Conservancy Council, 1989. *Guidelines for the Selection of Biological SSSIs* (Nature Conservancy Council, Peterborough) and JNCC supplements <http://www.jncc.gov.uk/page-2303> accessed 2 May 2008
15. JNCC. Downloadable Spreadsheet of Conservation Designations for UK Taxa. <http://www.jncc.gov.uk/page-4>, accessed 1 May 2008

16. Letter from BSBI to Scottish Government Planning Team on 7 January 2008
17. Letter from M. Wood to RSPB Scotland re possible alternative golf course layout at Menie Estate, Aberdeenshire and accompanying plans.
18. Material from applicants submitted in March, April, May 2008.
19. Nature Conservation (Scotland) Act 2004.
20. NCC, 1977. *Guidelines for selection of earth science SSSIs*
<http://www.jncc.gov.uk/pdf/earthscienceSSSI.pdf> accessed 1 May 2008.
21. NCC, 1984. *Sands of Forvie & Ythan Estuary SSSI citation*
22. NCC, 1984. *Foveran Links SSSI citation*
23. North East Scotland Biodiversity Partnership, 2000. *North East Scotland Biodiversity Action Plan*
24. Ramsar Citation for the Ythan Estuary and Meikle Loch Ramsar site designated under the Ramsar Convention.
25. Ramsar Convention on Wetlands, 1971.
26. Ritchie, W. and Mather 1984. *The Beaches of Scotland*. Perth, CCS.
27. Ritchie, W., Smith, J.S. and Rose, N. 1977. *The Beaches of North East Scotland*. Dept. of Geography, University of Aberdeen. Commissioned by CCS.
28. Rodwell, J.S., 2000. *British Plant Communities. Volume 5: Maritime communities and vegetation of open habitats*. C.U.P., Cambridge
29. RSPB Parliamentary Briefing papers: post Council rejection decision and post Ministerial Call-in.
30. RSPB Council and Board papers establishing criteria for engagement with planning system.
31. RSPB correspondence to applicant of 14 April 2006, 15 November 2006, 21 August 2007.
32. RSPB correspondence as detail in section 1.4 above.
33. Scottish Biodiversity Strategy 2004.
34. Scottish Biodiversity List.
35. Scottish Environment LINK letter to John Swinney MSP, 12 December 2007.
36. Scottish Government, 2007. *The Government Economic Strategy*.
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37. Scottish Executive, 2004 *Scottish Biodiversity Strategy*
38. SGE: *Nature Conservation and Golf Course Development – Best Practice Advice*
39. SGE: *Landscape Guidelines for Golf Course Development*
40. SGE: *Environmental Issues in Golf Course Construction*
41. SNH Species Action Framework 2007.
42. SNH, 1994. *Special Protection Area (SPA) citation. Ythan Estuary, Sands of Forvie & Meikle Loch, Grampian*
43. SNH, 2005. *Sands of Forvie Special Area of Conservation (SAC) citation*
44. SNH, 2007. *Species Action Framework for Pyrola media*
<http://www.snh.org.uk/speciesactionframework/saf-wintergreen.asp>
45. SWT correspondence as detailed in section 1.5 above.
46. SWT papers establishing criteria for engaging with planning system.

47. UK Biodiversity Group, 1999. *Tranche 2 Action Plans, Volume V, Maritime Species and Habitats*
48. United Kingdom Government, 1994. *Biodiversity: The UK Action Plan* (Cm 3260), HMSO, London
49. UK Biodiversity Action Plan for Coastal Habitat
50. United Kingdom Government, 2005. *Securing the Future – UK Government Sustainable Development Strategy*
51. Wood M., 2008. Report to inform consideration of possible alternative golf course layouts at Menie Estate, Aberdeenshire. Unpublished report commissioned by RSPB Scotland
52. Woods R.G., & Coppins B.J., 2003. *A Conservation Evaluation of British Lichens*. British Lichen Society, London
53. WWF UK and RSPB vs Secretary of State for Scotland - 27 October 1998. *Judicial Review of decisions relating to the Protection of European Sites at Cairngorm Mountain, by Aviemore and proposals for construction of a funicular railway thereon*

The Royal Society for the Protection of Birds. Charity registered in England and Wales no 207076, in Scotland no SC037654.

The Scottish Wildlife Trust is a company limited by guarantee, registered in Scotland (registered number SC040247) having its registered office at Cramond House, Cramond Glebe Road, Edinburgh EH4 6NS. It is also a Scottish registered charity (charity number SC005792).

The Botanical Society of the British Isles (known as BSBI) is a charity registered in England and Wales (212560) and in Scotland (SC038675).