ABERDEENSHIRE
LOCAL OUTDOOR
ACCESS FORUM

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: CIN/ABS/001

CLOSING SUBMISSION FOR

THE RAMBLERS' ASSOCIATION SCOTLAND
SCOTWAYS (THE SCOTTISH RIGHTS OF WAY AND ACCESS SOCIETY)
ABERDEENSHIRE LOCAL OUTDOOR ACCESS FORUM

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Introduction

1.1. We wish to make the following submissions in terms of the above application.

1.2. The submission falls into the following categories:

A. the recreation interests on the proposed site, and the conclusions that in this respectful submission the Reporters should draw from such evidence;

B. further proposed conditions the Reporters should consider in the event of the application being approved;

C. a short summary of the law on liability as it applies to golfing and access in response to the Reporters' request that this is covered.

A. Recreation interests on the site, and the extent to which this determines how the application should be treated

2.1. Dealing with the issue of public access, this submission in terms of public access does not argue that, due to access considerations alone, it would prevent there being development within the site for two golf courses, housing and resort development at Menie. However, this submission argues that the current application is not compatible with current access uses of the site, or anticipated uses, and the outline application is unsatisfactory in its treatment of access to the extent that this current application should be rejected. An alternative layout and design of the site, perhaps with one golf course, would be more in keeping with recreation interests.

2.2. In terms of the application currently under consideration, it is regrettable that a development of this scale is being debated through outline planning consent, with elements of the location of key parts of the development and their character consequently missing. Our ability to understand the proposed development has also been hampered by the scale of the maps provided, the poor linkage of the maps to the topography of the site and confusion over different course layouts.

2.3. The evidence from the developer set out a broad company policy, but it was clear that Mr Trump could not provide any answers on the detail of the site. Whilst

that might be expected from the head of a large operation, that, combined with the fact that this is an outline application, has meant that there is a lack of understanding as to how the development will operate in a number of ways. This is particularly difficult when the site is such a sensitive one, as evidenced by its conservation status, its qualities as undeveloped open space and its recreation value. The absence of any witnesses from the developer's side who were able to speak with authority on the outdoor recreation aspects of this proposal was a further problem.

2.4. The submission of the Ramblers' Association, ScotWays and the Aberdeenshire Local Outdoor Access Forum is that there has been insufficient understanding, or scrutiny, of the recreation interests on site. This is borne out by Mr Trump's evidence on the first day of the inquiry that the role of the gatehouses is to restrict entry onto the site; although he later indicated that his company would 'abide by the law', the fact is that his evidence shows that access uses and implications of the site have not been properly taken into account in proposing this outline application. It raises a real concern that the development proposed is not in accordance with the basis by which the public take access to land in Scotland, particularly given that the site is of wild land quality, so close to a major city

2.5. We wish the following matters in terms of access to be noted. Firstly there is no doubt that access is a material consideration for planning applications. The question of the existing use of land for public access, and how future land uses should respond to public access, are intimately connected with the physical use of land. As Lord Scarman indicated in Great Portland Estates plc v City of Westminster [1985] A.C. 661 "the test, therefore, of what was a material 'consideration' in the preparation of plans or in the control of development … was whether it served a planning purpose … And a planning purpose was one which related to the character of the use of the land." Further, Scottish Planning Policy (SPP) 11 sets out that access rights are a material consideration in determining applications for planning permission (paragraph 22).

2.6. The Land Reform (Scotland) Act 2003 sets out a statutory framework for access rights in Scotland. The details of the Act are set out in John Mackay's precognition on behalf of ScotWays. However, the Reporters should bear in mind that, prior to the enactment of the LR (S) Act, there was access taken to the site; access is not a matter that has only arisen since the LR (S) Act came into operation.

2.7. SPP 11 provides a presumption against development of open space that is valued and functional (at paragraph 40). Although the planning authority should produce a strategy on the identification and protection of such open spaces, it does not need to cover every open space (paragraph 40). To overcome the presumption against development on open space, there must be evidence that (1) the development will not result in a deficit of open space provision of that type within the locality, (2) that alternative sites have been considered, and (3) that any community concerns have been properly considered. These are all matters on which the developer has a duty to satisfy that the tests can be properly met.

2.8. Aberdeenshire Local Plan Environmental Policy Number 22 demands that development that has an adverse effect on any existing or potential public access has to be refused unless (i) the development retains public access and maintains or enhances its amenity value <u>or</u> (ii) the development makes alternative access provision that must be no less attractive. Again, it is for the developer to show these tests are met.

2.9. It is clear from the evidence led before the Inquiry that little consideration was given to access to the land, particularly the dune area, in the planning of the application. The developers admit that no consultation was carried out with interested local or national groups with an interest in access or recreation. This is surprising, particularly given the direction in paragraph 42 of SPP 11 that planning authorities should consider the need for consultation with local and national interests appropriate for the type of open space being considered.

2.10. It is clear that this application is being considered without proper information and understanding of the current value of the space for recreational use. Although there is brief mention of recreational use of the site (at the Environmental Statement, Chapter 13 at page 269), it is clear that this was not done for the purpose of assessing the recreation use of the site.

2.11. Although Dr Hawtree gave evidence that there had been consideration given to the issue of public access, we would submit this evidence was unconvincing. It is clear that there will be significant numbers of residents on site. The Reporters are asked to resist any intention by the developers to promote an exclusive area for guests of the resort; unless the Reporters can be satisfied that public access

throughout the site can be secured on the information as provided, the application should be refused as it currently stands.

2.12. The Reporters should therefore prefer the evidence of, in particular, John Mackay, as to the use of the site for recreation. His evidence was that there was a "high level" of use of the site. Mr Mackay termed the developer's evidence as a "narrow snapshot" of the recreational use of the site. His precognition gave the details of access uses on site. The developer's evidence from David Bell on day 6 was that the survey producing recreation figures was done as a by-product of the point of the survey regarding bird life. It is also notable that the survey was done in winter and during the week. Dr Tom Dargie admitted in cross-examination (day 6) that he had not been asked to take account of the recreational impacts of people who wanted to visit the area. Therefore the developer's own evidence cannot show that there was proper information considered by them on the recreational use of the site prior to submitting the outline application.

2.13. Other surveys (sourced from the developer's information) were based on the use of Balmedie Country Park. Although this may have some relevance on the basis that some recreation users will start from or return to the Park, such surveys are of limited use in assessing the recreation value of the application site when compared to the Park area.

2.14. As one example of the lack of concern for public access and recreational use in the design of the course, we have no account taken of persons taking access in a north/south direction through the dunes. The extinction of the back dune path from Balmedie Country Park to the exit of the Blairton Burn onto the beach, through construction and use of Hole 4, illustrates the failure to design the courses in the dune area to meet public access needs. In the absence of information to the contrary it has to be presumed that this shows at least a desire for intended exclusive use of the site. This runs counter to the obligations on landowners, set out at section 3 of the Land Reform Act.

2.15. This absence of compliance with section 3 of the Act extends to the generality of the new design, in which little attention has been paid to the use of the back dune area for outdoor recreation. Holes 3, 4 and 14 in the revised design press hard on the dune front. These, in particular, need to be moved back, with implications also for adjacent Holes at the northern end: 13,15,16,17 and 18. It is our observation on

the ground (supported by Dr Hawtree's evidence) that blown sand extends further inland than the proposed area for the championship course, such that a links course could still be developed by moving landward. This would not only be good for maintaining a natural setting for open-air recreation in the dunes by the public and visitors to the resort, it would also be appropriate in terms of resource protection. Soft coasts of this kind are very vulnerable to storm or tidal surge events; by keeping the managed (and it is claimed, commercially essential) asset of the course back from the front of the dunes, it is thereby more secure for the future. There is also no temptation for the developer to introduce unsightly, costly (and ultimately futile) hard coastal edge protection should the dune front move into an erosive cycle or be undermined by storm events.

2.16. In summary therefore, we would submit the developers do not have a clear understanding or recognition of the recreational value of this site. The Environmental Assessment and derivative documents of Access Plan and Written Statement do not adequately assess this value. The precognitions of Ramblers Scotland and ScotWays do describe the site's significance in the regional and wider contexts, and they indicate what we think is important for the enjoyment of open-air recreation. In essence, we seek to protect the aesthetics of the coast and dunes, which rest on the natural qualities of the coastal zone, and the intangible qualities that people enjoy there. There is a progression northwards up the coast from the emphasis on family activities and play at the country park to a different kind of quiet enjoyment experienced at the northern end of the site, perhaps by fewer people seeking a solitary experience, but no less important as part of the diversity of how people enjoy the natural qualities of the coast. The site's proximity to Aberdeen, a major city, is a significant factor, providing such opportunities for very many people.

2.17. There are longer-term implications for the country park from the second course. The revised layout for the first course pushes southwards through the longer Hole 4, reducing the area of back dune land available, including land of the highest amenity value readily accessible from the adjacent country park. It is the case that public use of the park spills over onto the developer's land, but this has been a long-term phenomenon and apparent attempts by the developer to squeeze all such use back to the formal boundaries of the park are bound to be controversial. An indicative layout of the second course is needed to enable any sensible assessment in the proposed access plan of how best to integrate public and development interests at this end of the site. Nevertheless, there must be considerable doubts as

to the ability of this site to accommodate a second golf course when so much of this would be in close proximity to Balmedie Country Park, the most heavily used public access location for the dune system.

2.18. We would also make submissions in terms of the use of coastal land. Policy 6 of the Aberdeenshire Local Plan makes it clear that for development to take place on undeveloped coast, the social and economic benefits must outweigh any adverse environmental impact, there must be no suitable alternative site, and the development must respect the character, environment and amenity of the site. It is for the developer to show all of these points. The Objectors would, in particular, point out that there has been a lack of evidence by the developer to show that there is no suitable alternative site despite submissions by the RSPB/SWT/BSBI and others showing that alternative layouts of the site would be possible. In particular, Mr Morris gave evidence of drawing holes 3, 4 and 13-18 back from the dunes that might make the development more acceptable. Despite such alternatives, the developer himself made it clear that he was not prepared to consider alternative sites. The failure to consult with the Ramblers and others at any time before the opening of this public inquiry suggests that this developer is very poorly informed of how his proposed development might be integrated into the wider needs of outdoor recreation.

2.19. In summary therefore, the proposed development is incompatible with the safeguarding of outdoor recreation on the site due to the impact on the dune system by the application as currently proposed. The value of the site at present is of a wild area. The managed environment of a golf course, with artificially created fairways, tees and greens, along with a path structure to enable golfers to travel between the dunes is a strikingly different recreation experience to the present ‘pristine’ dune system. Accordingly, whilst this development is proposed within the first line of the dunes, it should be refused.

B. Proposed conditions on site

3.1. If the Reporters do not accept the above submission that the development, as currently proposed, should be rejected, then we would urge the Reporters to consider conditions on access according to the following principles.

3.2. Firstly, although it is unnecessary to state that public access to the site can be taken under the terms of the Land Reform (Scotland) Act 2003, consideration should still be given to providing, within the access plan in condition 5, an integrated approach to how the public will use the whole area from the Country Park to the northern boundary of the resort, for both local residents and visitors.

3.3. Secondly, a condition should be put in place that ensures that the detail of on-site design and consents on reserved matters are not used in a way that discourages or debars public access.

3.4. Thirdly, the resolution of problems arising from the interaction of access rights and the operation of the development should be through discussion and consensus, involving the Local Outdoor Access Forum, and where appropriate, national recreation bodies.

3.5. Fourthly, given the concerns regarding the decreased area available for recreation, an additional condition should be added which provides that there is no provision for development on the seaward side of the courses that impinges on or devalues quiet enjoyment and the quality of the experience enjoyed by people participating in quiet open-air recreation on the adjacent coast.

3.6. Fifthly, it is clear from the developer's evidence that the target market for the resort is overseas tourists, many of whom will be used to golf resorts with a more exclusive character. We would therefore press for a condition that would ensure that all golfers playing at the resort are informed of statutory rights of access and explains, in clear language, the need to take these into account when playing golf.

3.7. We would also suggest additions to existing conditions; we wish to suggest an addition to Condition 3 to ensure that the range of required supplementary plans and statements of construction, operation or design are sufficiently integrated with access considerations. Thus we seek an appropriate addition to condition 3 to the effect that:

- the detailed elements of design and layout of the site, proposals for landscaping, access routes, enclosures, parking and translocation of habitats shall be done in ways that do not impede accessibility for people exercising statutory access rights.

3.8. The present proposal shows gatehouses for both the resort and the southern proposed housing area. Condition 3 requires an addition to the effect:

- there shall be a presumption against gatehouses to any part of the development.

C. Liability for access takers

4.1. The issue of liability for the public has been raised. Presumably this arises in the context of there being some concern, not least by the developer, of the interaction of golf and the public exercising access rights.

4.2. The Objectors representing recreation interests would consider this to be somewhat of a red herring. In practice a wide range of recreation activities interact with a variety of land uses throughout Scotland on a day-to-day basis with few issues arising.

4.3. The short answer is that land-owner, land manager and recreation taker all have duties of care both towards others and towards their own safety. This was the same position prior to the enactment of the Land Reform (Scotland) Act. People having been using golf courses for recreation for as long as golf courses have existed, all the LR (S) Act did in establishing statutory rights of access was to make the law easier to understand. The LR (S) A (at s.5(2)) makes clear that the extent of the liability that owners have for people on their land (under the Owners and Occupiers (Scotland) Liability Act 1960) is not affected by the fact that statutory rights are being exercised.

4.4. Golfing does involve some hazards. The main risks, however, arise for other golfers rather than members of the public. Nevertheless, the risks can be properly managed, particularly if there is a separation between paths that the public are likely to use (being well designed and well thought out paths) and the areas where golfing takes place. The Land Reform (Scotland) Act 2003 does not permit exemptions for access to land solely on the grounds of land management reasons; rather, the land manager has obligations under section 3 of the Act to consider access takers' needs.

4.5. SNH has produced advice for landowners on access liability and its reviews on how countryside access and liability interact show that the law generally operates sensibly ("A Brief Guide to Occupiers Legal Liabilities in Scotland in relation to Public Outdoor Access").

4.6. We would also point out that the number of cases relating to countryside recreation is tiny, compared to the volume of participation. In considering any case involving a member of the public exercising their access rights, the courts would be bound to take note that people crossing courses should be aware of the risks and act prudently; likewise for golfers in the proximity of any member of the public.

Conclusions

- The development as currently proposed should be refused given its unacceptable impacts on recreation;
- which failing, additional conditions to safeguard access on site should be sought;
- it should be noted that liability issues are not a reason to downgrade access rights on site;
- and finally, an alternative development proposal, involving far less intrusion into the dune area, might prove a more acceptable form of development from an outdoor recreation perspective.