



PE1474/C

Our Ref: CE/CDM/LN/085
Your Ref:

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24 June 2013

Mr Andrew Howlett
Assistant Clerk to the Public Petitions Committee
T3.40
Scottish Parliament
Edinburgh
EH99 1SP

Dear Mr Howlett,

CONSIDERATION OF PETITION [PE1474](#)

I refer to your letter of 17 May 2013 where you requested Aberdeenshire Council's views on the issues raised in this petition and during its discussion at the Public Petition Committee's meeting of 14 May 2013. I note that the petition calls on the Scottish Parliament to urge the Scottish Government to hold a public inquiry into the way local government, Scottish Ministers and other relevant public bodies conducted themselves throughout their dealings with the Trump Organisation in relation to the Menie project.

There were two main areas of discussion during consideration of the petition relevant to Aberdeenshire Council. The first relates to elected members' conduct relative to the planning process for the Menie project with the second concerning the actual planning process itself. I would suggest that any such matters arising prior to and surrounding the call-in by the Scottish Government in December 2007 have already been exhaustively considered and debated. There was the Local Government and Communities Committee Report in early 2008 where the committee accepted the evidence that the decision making process of Aberdeenshire Council was appropriate and valid and that the decision of the Infrastructure Sub Committee, albeit highly controversial, was both competent and represented the decision of the council under its then scheme of delegation. There was then the related Local Public Enquiry in June and July of that year where, following a very detailed investigation, it was recommended that outline planning permission for the golf course and resort at the Menie Estate be granted. In addition the Standards Commissioner dealt with several complaints between July 2007 and April 2009 connected to the Menie Estate relating to the conduct of Aberdeenshire Council elected members

and in each case decided that there had been no contravention of The Councillors' Code of Conduct.

There is mention by the petitioner of new information becoming available from the film "You've been Trumped". In order to respond to any such new information in so far as it affects Aberdeenshire Council, I would require to have specific detail.

I note from the transcript that John Wilson, convener of the committee, commented that "a number of what might best be described as inferences have been made about public bodies." Following on from this, I would also require far greater detail in order to respond to any such inferences made in relation to the conduct of Aberdeenshire Council elected members. What I would say is that both officers and elected members of the council take very seriously any allegation that the rules detailed in The Councillors' Code of Conduct have not been followed, being fully aware of their importance particularly when elected members are exercising a quasi-judicial role in regulatory matters.

Councillor Paul Johnston mentioned during the discussion that in relation to a complaint made against him, the Standards Commissioner found that Aberdeenshire Council had erred and that recommendations to the council have never been implemented. This is not the case. There was no finding against the council and the recommendation made was simply that the council might consider how the terms of planning agreements might be reported to elected members where they are a pre-requisite to the granting of planning permission. It is detailed in terms of Scottish Government guidance, that planning authorities in reaching a decision on applications for planning permission should attach no weight to offers made to undertake works, donate monies, or provide other incentives if these do not meet the tests contained in the guidance for inclusion within a planning obligation. It is and has been Aberdeenshire Council's position that procedurally elected members are not provided with the detail of the planning obligation and financial contributions in order that there is clear autonomy in the process. I would add that as part of a wider council review of developers' obligations, the position is currently being considered here.

It is misleading to say that all bar the original application at the Menie Estate have been retrospective. I can further confirm that with reference to the applications for full planning permission for further development at the Menie Estate, due planning process was and is being properly followed by the council in accordance with the relevant statutory guidance and legislation. Furthermore, matters are not considered anew. One of the material considerations in determining these applications is the terms of approval of the original outline planning permission. Indeed, any relevant conditions attached to that outline permission are carried forward should full planning permission be approved. Also, where the council becomes aware of any breach of planning regulation which requires investigation, proper investigation is carried out with any appropriate follow up action taken. It is not the case that council officers are on site every week but only as required with reference to any statutory regulation whether in terms of planning or otherwise.

With regard to the economic grounds for the development, it was independently reviewed in terms of a precognition taken from an independent party who reviewed the economic information on behalf of Aberdeenshire Council as part of the local public inquiry. Questions were also raised during the discussion of the petition around the propriety of requiring a retrospective application be made to remedy a breach of planning control. Not

only is this the accepted practice of Aberdeenshire Council but is also very much in accordance with the Scottish Government's planning policy. Unauthorised planning developments were not allowed to continue unabated at the Menie Estate nor was an unusual or different process adopted with reference to planning developments there. In 2012 there were 175 retrospective applications dealt with by the council. This represents only 4% of all applications submitted and of the 175, only 5 (less than 3%) related to the Menie Estate. The requirement to make retrospective planning applications is a common and consistent approach taken by the council to remedy breaches of planning control.

With regard to some of the other points made during the hearing, I would explain that the clock at the entrance does have planning permission and there are a number of planning applications where the work is in accordance with the approved plans. The large marquee referred to was properly erected under the permitted development rights which allow for such structures to be in place for 28 days. The temporary clubhouse is in fact located as per the approved plans. It may be the case that reference is to its position indicated in the outline planning permission but that was only indicative which is perfectly competent. I can confirm that Aberdeenshire Council did previously investigate the use of the former Leyton Farm buildings and concluded that no unauthorised change of use of the buildings had occurred and that their use had been incorporated into planning permissions that had been approved. The council's planning service is currently seeking a retrospective application for an area of bund adjacent to Leyton Cottage. Although the car park and lighting were not constructed in accordance with the original approved plans, a retrospective application has now been granted for the works as they have been carried out.

There have been a number of complaints regarding outdoor access restrictions at the Menie Estate, only some of which are valid in terms of preventing access rights under statute. Our officers have met with a representative from the estate on a number of occasions and were working with the estate looking into various solutions which would resolve users' access issues whilst taking on the concerns of the landowner/estate in relation to potential security risks and vehicle access. Menie Estate has recently instructed agents to act in this matter and the intention going forward is to correspond direct with them.

In summary, I strongly believe that no further scrutiny is required of events leading up to and including the call-in by the Scottish Government and I can find no substance in any of the allegations made against Aberdeenshire Council during the subsequent period with reference to either elected members' conduct or due planning process.

Yours sincerely

Colin D Mackenzie
CHIEF EXECUTIVE