

8 OCT 2009

2

Menie Estate - CPO Paper

Ann Faulds o Christine. Gore, Christine.Gore

17/02/2009 08:20

 <elth.Newton

History:

Dear Christine

I understand that George and Neil have already raised the possibility of a compulsory purchase order in support of the Menie Estate development.

In advance of our meeting on Friday to discuss this, I thought it would be helpful to set out the legal and land use justification for the order. I have done this in the form of a draft Statement of Reasons, which is attached.

I have drafted the Statement on the basis of a report from you to Members, although I understand that, if you decide to proceed with the order, you may not use this approach. The Statement has 2 schedules;

Schedule 1:

We are still working on Schedule 1 which contains the list of plots which my client would like to be included in the order. In consultation with the master planners, we *are* doing a comprehensive review of all plots within the vicinity of the development site that are not within the control of the applicant. We are then assessing which ones are required to support the development. We shall bring a copy of Schedule 1 with us together with a plan showing the location of the plots.

Schedule 2

This schedule contains a more detailed land use justification for the compulsory acquisition - at this stage it centres on the Mill of Menie site -plots 7, 8 and 9. We will also bring along Gareth's preliminary masterplanning drawings to demonstrate the land use issues supporting the order.

I look forward to seeing you on Friday.

«PRACTICE #9438738-v1-CPO _Paper. DOC»

Regards

Ann

Ann Faulds
Partner
Planning and Transportation
Telephone: 01312007452

Statement of Reasons

Introduction:

1. In 2008 a proposal to develop a golf course and resort at the Menie Estate near Balmedie was considered at a public local inquiry. The Council appeared at the inquiry in support of the proposal. During the inquiry the relevant economic and environmental issues were scrutinised and the Reporters' recommended the grant of outline planning permission subject to conditions and the conclusion of a Section 75 Agreement. Following the conclusion of the Section 75 Agreement, the Scottish Ministers granted outline planning permission for the development on 16 December 2008.
2. One of the material considerations taken into account by the Council, the Reporters and the Scottish Ministers in their consideration and determination of this application was economic benefit. The Fraser of Allander Institute presented evidence to the inquiry on the national, regional and local economic benefits that would derive from the development. Their evidence was independently audited for the Council by EKOS.
3. In order to secure those economic benefits, the development must be of the high standard necessary to create a world class golf resort with a championship golf course. It is therefore necessary for the Council, as planning authority, to support, facilitate and control the development to ensure that it is of the requisite high standard to secure the predicted economic benefits for Aberdeenshire and Scotland.
4. One of the conditions of the outline planning permission requires the preparation of a masterplan for the whole development in advance of any applications for approval of reserved matters'. The Developer" has appointed Gareth Hoskins to prepare the development masterplan. The Director of Planning and Environmental Services and other officers have had a series of meetings with Mr Hoskins, including a site inspection and a preliminary meeting with Architecture and Design Scotland. That meeting was held to discuss the requirement for the developer to enter into a design review process with the planning authority in consultation with Architecture and Design Scotland.³ The design review process is another safeguard to ensure that the development is of the requisite high standard.
5. The Menie Estate extends to approximately 452 hectares and is in single ownership" However, there are other properties and areas of land located within or adjacent to the planning unit. These properties are listed in Schedule 1.

¹ Condition 3(i)

² Trump International Golf Links Scotland

³ Condition 5

⁴ Trump International Golf Club Scotland Limited

6. As part of the masterplanning exercise, it has already become clear that, notwithstanding the size of the Menie Estate, there are topographical and other landscape constraints affecting the site. It is therefore considered necessary to remove the adverse impact of those constraints and to manage the risk of current or future incompatible land uses within the vicinity of the planning unit, all of which would undermine the delivery of a development of the requisite high standard.
7. Accordingly, the Developer has asked the Council to exercise their powers of compulsory purchases to acquire the land, properties and rights in property listed in Schedule 1.

Legal Framework

8. Section 189 of the Town and Country Planning (Scotland) Act 1997 empowers a local authority, on being authorised to do so by the Scottish Ministers, to compulsorily acquire land in connection with development and for other planning purposes. This power relates to any land in their area which
 - a. is suitable for and is required in order to secure the carrying out of a development, redevelopment or improvement;
 - b. is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated.
9. This power is available even if a party other than the Council carry out the development or achieve the planning purpose⁶. This enables local authorities to make compulsory purchase orders to acquire land which will then be transferred to a third party for the purposes set out in paragraph 8 above. In such cases, the local authority will enter into a contract with the third party to ensure that the Council is properly indemnified for all costs associated with the compulsory purchase process and the acquisition of land and payment of compensation.
10. In this case, the acquisition of the land and property listed in Schedule 1 is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated. In other words, the proper planning of the development of the Menie Estate to create a golf resort of the necessary high standard to secure the predicted economic benefits requires control of each of the Schedule 1 properties.
11. In a recent case⁷ an order was made under the equivalent English provision⁶ which empowers a planning authority to acquire compulsorily land if it is "... required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated." The background was that British Airways (BA) obtained planning permission to develop a new head quarters near Heathrow but in the green belt. BA was required to create and maintain a public park as planning

⁵ Section 189 of the Town and Country Planning (Scotland) Act 1997

⁵ Section 189 (4) of the Town and Country Planning (Scotland) Act 1997

⁷ Hall v The First Secretary of State and the London Borough of Hillingdon (Court of Appeal (Civil Division), Ward, Chadwick and Carnwath L.J.J., June 28, 2007 [2007] EWCA Civ 612

⁶ Section 226(1)(b) of the Town and Country Planning Act 1990

gain. There was a scrap yard near the parkland although it was not included in either the park itself or the related 'landscaping works'. The order was made in relation to the scrap yard solely to improve the appearance of the area; not to be part of the parkland. The order was made by the Council and confirmed by the Minister. There followed a legal challenge on several grounds but the challenge failed and one of the conclusions of the court was that the Minister was entitled to conclude, on the material before him, that the CPO was necessary to achieve the planning objectives for the area. This case demonstrates that the power of compulsory purchase under Section 198 (1) (b) may be used to acquire land that is not necessarily part of the development but does affect the overall appearance of the area in which the development is taking place.

Justification:

12. In order to achieve the interests of the proper planning of the Menie Estate area, it is necessary to consolidate the Schedule 1 land interests and the Estate land. Schedule 2 contains a statement by Gareth Hoskins in support of the order in the context of the masterplanning exercise. In general terms, the order will achieve the following:
- a. It will minimise land and other constraints in the masterplanning exercise;
 - b. It will remove existing land uses which are incompatible with the proposed development and avoid a situation in which the need to screen such uses dictates the landscape strategy;
 - c. It will remove the risk of future changes of use, whether or not such changes constitute development, which could have an adverse visual impact on the development;
 - d. It will maximise the land take to support the masterplanning and design processes, which are fundamental to achieving the high standard necessary to secure the predicted economic benefits.
13. The undernoted description by a national journalist⁹ illustrates the possible visual impact of an existing use which is located centrally within the planning unit:
- "I was prepared for the sight of his settlement, but not prepared enough. The architecture is hard to define. The principal house is grey stone with a pitched roof, but may be newer than it looks. Across the track stands a flat roofed bungalow, painted yellow and possibly made of wood, named paradise. There are seven or eight outbuildings clad in rusting corrugated iron, one rusting outline of a salmon attached to a weathervane and another attached to a gate. Several cars and four wheel drives, some driveable; heaps of discarded tyres, trailers and tractor parts: a saltire flying from a flagpole; above a few crows and seabirds steadying themselves in a northern gale; and painted in capitals on what might have once been a barn, the words NO GOLF COURSE."
14. The Developer has attempted to acquire the land and property but it is known that views can be entrenched in this case and neighbouring landowners who oppose the development are unlikely to co-operate with the Developer on a voluntary basis.

⁹ Ian Jack The Guardian, Saturday 24th November 2007

Furthermore, it is in the interests of the Council's economic objectives to minimise delay in this project, where possible. This is even more important in the current economic crisis. Making this order now should allow the land interests to be consolidated by the time that the reserved matters' applications are ready for determination. Making the order now would not preclude further discussions between the affected parties to reach a voluntary agreement; indeed the order might focus such discussions.

Recommendation:

15. The Council should make the Aberdeenshire Council (Menie Estate) Compulsory Purchase Order 200- to acquire the land, property and property interests listed in Schedule 1 in terms of Section 189 (1) (b) of the Town and Country Planning (Scotland) Act 1997 subject to the following conditions:
 - a. The conclusion of a satisfactory Indemnity Agreement with the Developer to ensure that the Council is fully and properly indemnified against all costs and expenses arising from the process for this order and the consequential acquisition of land and payment of compensation, including any such payments or costs arising from the successful service of any blight or purchase notice;
 - b. Referral to the District Valuer to report on the market value of the listed properties and the likely compensation payable to the affected owners pursuant to this order;
 - c. A requirement for the Developer to maintain lines of communication with each of the landowners to negotiate a voluntary acquisition where possible and practicable.

The Director of Planning and Environmental Services

March 2009

**The Aberdeenshire Council (Menie Estate) Compulsory Purchase Order 200-
Statement of Reasons**

Schedule 1

Plot	Description	Owner/Occupier	Note
------	-------------	----------------	------

The Aberdeenshire Council (Menie Estate) Compulsory Purchase Order 200-

Statement of Reasons

Schedule 2

In reviewing the Outline Masterplan, as part of the initial stage of developing the Detailed Masterplan, a number of issues have become apparent that are important considerations both in terms of the ability to successfully operate the type of world class resort envisaged for the site and in relation to the way in which the proposals are integrated within the existing landscape.

Access

The Outline Masterplan indicates a single access route to the resort site running around the Northern edge of the immediate grounds around Menie House. Upon further site investigation, it would appear that establishing an access route of the scale required for the main arrival to the resort would present several difficulties in this location in terms of topography, existing mature tree belts and the relationship to the existing walled garden. In addition to these siting issues, the access, servicing and emergency vehicle requirements for a resort of this scale would require more than one single point of access as shown in the Outline Masterplan. Whilst the original route could with some repositioning, accommodate a smaller scale of secondary service access, the main access route would have to be brought across the site via a different route. Due to the site boundary constraints and the location of the mature grounds around Menie House, the only viable alternative for this main access route is to skirt along the Southern boundary of the grounds of Menie House, and to then approach the resort along the eastern edge of the grounds. Not only would this provide a more practicable means of access in terms of topography and impact on the existing grounds, but would in our opinion provide a more planned and 'picturesque' arrival sequence to the resort. In addition, this rerouting of the main access route would also provide the ability to create better access and linkages through the site and surrounding areas. A wide strip of land would be required for the construction of this main access route, running between the tree belt marking the eastern edge of the grounds around Menie House and plots 7, 8 and 9 to accommodate the necessary turning radii to meet the appropriate roads standards.

Operation and use of the 2nd Golf Course

The Outline Approval indicates a 2nd course to the west of the main championship course. The provision of this 2nd course is a fundamental aspect of the tourism offer and economic viability of the resort. The omission of plots 7, 8 and 9, as currently shown within the Outline Masterplan layout, results in a dislocated arrangement between the 2nd course, the main course and the support facilities required to service it. The current arrangement would result in an extremely disjointed and poor quality of course that has to work around this 'omitted' land and with considerable distance between the clubhouse and the tees. This presents difficulties in terms of achieving a course of the standard and layout that would be expected within a resort of this quality, a poor experience for those using the course which would eventually impact on its popularity and operation, and the ability to maintain and service the course due to the dislocation of facilities. The need to work the 2nd course around these plots present considerable difficulties in creating a course of the required standard due to the incompatible nature, use and appearance of this site and the health and safety issue presented by the proximity of a 'private' area to areas of play. The inclusion of the plots within the available site for the 2nd course would allow the creation of a coherently planned course that

could be linked directly to the other course and facilities to provide an operation of the appropriate standard for the resort.

Environment and Landscape

Due to the omission of plots 7, 8 and 9 and the configuration of the site boundary, the Outline Masterplan shows approximately half of the 2'd Golf Course being accommodated within the dunes and Balmedie Dome at the southern end of the site. The inclusion of these plots within the available land for the course would allow not only the formation of a higher standard of use and operation, but would enable the course to be pulled back from the dunes. This would allow the creation of a 2'0 course with a distinctly different character to the main championship course. Importantly this would also allow a fundamental change to the proposal in terms of reducing the environmental impact to the existing dune landscape and maintaining public access to the beach via the established routes from the Balmedie Country Park via the Balmedie Dome.

Cumulative Impact of Plots 7, 8 and 9

The omission of plots 7,8 and 9 as shown within the current Outline Masterplan has significant consequences in terms of the ability to create an operable resort of the quality envisaged. The inclusion of these plots would create significant benefits in terms of:

- creating the standard of course required within a world class resort and the ability to support and operate this appropriately
- providing a viable access route to the resort
- reducing environmental impact within a sensitive existing landscape and maintaining public access

Gareth Hoskins

12 February 2009