

# **LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

Wednesday 16 January 2008

Session 3

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## LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

### 1<sup>st</sup> Meeting 2008, Session 3

#### CONVENER

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

#### DEPUTY CONVENER

\*Kenneth Gibson (Cunninghame North) (SNP)

#### COMMITTEE MEMBERS

\*Alasdair Allan (Western Isles) (SNP)

\*Bob Doris (Glasgow) (SNP)

\*Patricia Ferguson (Glasgow Maryhill) (Lab)

\*Johann Lamont (Glasgow Pollok) (Lab)

\*David McLetchie (Edinburgh Pentlands) (Con)

\*Jim Tolson (Dunfermline West) (LD)

#### COMMITTEE SUBSTITUTES

Robert Brown (Glasgow) (LD)

Rhoda Grant (Highlands and Islands) (Lab)

Tricia Marwick (Central Fife) (SNP)

Margaret Mitchell (Central Scotland) (Con)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Robert Brown (Glasgow) (LD)

Patrick Harvie (Glasgow) (Green)

#### THE FOLLOWING GAVE EVIDENCE:

Alan Campbell (Aberdeenshire Council)

David Ferguson (Scottish Government Planning Directorate)

Jim Mackinnon (Scottish Government Planning Directorate)

Stewart Maxwell (Minister for Communities and Sport)

Alex Salmond (First Minister)

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

#### CLERK TO THE COMMITTEE

Martin Verity

#### SENIOR ASSISTANT CLERK

Jane-Claire Judson

#### ASSISTANT CLERK

Ian Cowan

#### LOCATION

Committee Room 1



## Scottish Parliament

### Local Government and Communities Committee

*Wednesday 16 January 2008*

[THE CONVENER *opened the meeting at 09:01*]

### Decision on Taking Business in Private

**The Convener (Duncan McNeil):** Good morning and welcome to the Local Government and Communities Committee. The first item on our agenda this morning is a proposal to take item 4 in private. It relates to the committee's discussion of evidence and the possible contents of the draft report at the end of our evidence-taking session today. Such discussions are normally held in private. Do I have the committee's agreement to take that item in private?

**Members** *indicated agreement.*

## Glasgow Commonwealth Games Bill: Stage 1

09:02

**The Convener:** Item 2 on our agenda is stage 1 evidence on the general principles of the Glasgow Commonwealth Games Bill. I welcome Stewart Maxwell, the Minister for Communities and Sport, who is supported by his officials Ian Campbell, David Thompson and Beth Elliot.

Minister, do you wish to make an opening statement?

**The Minister for Communities and Sport (Stewart Maxwell):** Yes, if I may, convener. However, before I do that, I pay tribute to the Scottish cycling champion Jason MacIntyre, who died tragically yesterday. Jason was one of our finest athletes, and represented Scotland at the highest level on the international sporting stage, including at the 2002 Commonwealth games in Manchester, and his death unfortunately robs Scottish sport of an incredible talent. I pass on the Scottish Government's condolences to his wife and twin daughters.

**The Convener:** I am sure that the committee concurs with those remarks and sentiments.

**Stewart Maxwell:** Thank you, convener.

I know that the committee has a busy morning, so I will try to keep my opening statement brief.

**The Convener:** There are one or two items ahead.

**Stewart Maxwell:** I believe so.

I welcome the opportunity to come before the committee to discuss the Glasgow Commonwealth Games Bill. I am grateful for the work that the committee, the Finance Committee and the Subordinate Legislation Committee have undertaken so far. As the committee is aware, the bill meets the bid partners' commitments to the Commonwealth Games Federation and is one of our first steps in delivering a Glasgow Commonwealth games of which the whole country can be proud.

The federation places a number of requirements on host cities, including the requirement to ensure that legislation is in place to prohibit ambush marketing, eliminate street vending and control advertising space around games venues. It also requires that measures be put in place to prohibit ticket touting. The bill fulfils those obligations and other commitments that were given in the candidate city file. It creates new powers to secure ownership of land that is needed for the games and ensures that the games transport plan is

developed and implemented. It also gives the Scottish ministers the power to provide support to the organising committee, including the Government's share of financing for the games.

We consulted widely on the draft bill over the summer of 2007. The bill that has been introduced to Parliament reflects that process and has been improved by responses that were received during it. My officials are also considering the responses that the committee has received to its consultation.

The political consensus behind Scotland's bid played a large part in securing the games for Scotland. I am here not only to answer any questions but to hear how we can work towards achieving a similar consensus on the bill. I am grateful to the committee for agreeing to take this evidence on such a busy morning and I am happy to take any questions.

**The Convener:** A general question has arisen to do with the composition of Glasgow 2014 Ltd. How will the organising committee be made up, and how will it be held accountable to local government, given the amount of public money that will be going into it?

**Stewart Maxwell:** The organising committee will be made up from the Government, Glasgow City Council, the Commonwealth Games Council for Scotland and the Commonwealth Games Federation. It will be important for all those partners to ensure that our interests are best served during the development of the games.

**The Convener:** Concern has been expressed—real or imagined—about projects, schemes and plans that could go awry and be affected by cost overruns. This committee is interested in knowing how we can scrutinise the organisers and hold them to account. A lot of public money will be invested.

**Stewart Maxwell:** The Glasgow 2014 strategic group will oversee the organising committee, and Parliament and its committees will also have a clear role in scrutinising development work over the next six years or so. I am happy to reaffirm our commitment to provide an annual progress report to Parliament. I will be happy to update committees and the spokespeople of other parties if situations arise between the annual reports.

**The Convener:** The annual reports will be useful to the committee and to Parliament, as will any in-between reports.

**Stewart Maxwell:** It will be important to have a fixed annual report, to ensure that we address the issues and do not allow them to drift. However, we will also carry on briefing Opposition party spokespeople and we will ensure that Parliament and its committees are fully informed of progress between the reports. If issues arise that have to be

addressed, I will be happy to discuss them with the committee and with parliamentary spokespeople.

**The Convener:** I welcome that assurance.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** The Commonwealth Games Federation places certain requirements on host cities, as is reflected in the bill. However, I am surprised that, even at this stage, local authorities such as North Lanarkshire Council have expressed concerns. For example, businesses that currently trade at Strathclyde country park may not have the opportunity to so do during the games, and there will be limitations on advertising by the council and by the organisations that rent space from it. Have you discussed such issues with the council? Have you been able to allay its fears?

**Stewart Maxwell:** I certainly hope so. As regulations develop, we will continue to discuss them with the parties involved, including North Lanarkshire Council. I am aware of the council's submission to the consultation and of its concerns about the triathlon in Strathclyde country park. However, the triathlon is a single event on a single day, so the impact should be minimal.

Clearly, we have to protect the games and their good name, but we will be happy to discuss with North Lanarkshire Council and other relevant parties any concerns that they have during the development of the regulations.

**Patricia Ferguson:** North Lanarkshire Council has viewed the staging of the triathlon at Strathclyde country park as an opportunity, but it might now view the bill as taking away that opportunity because of the restrictions that will be placed on venues. Others may have similar concerns, so how will you address them?

**Stewart Maxwell:** It is clear that there have to be some restrictions in terms of protecting the games. You should be well aware of that stream of work given your previous role as Minister for Tourism, Culture and Sport. At the same time, there are massive opportunities for councils throughout the country, particularly those around Glasgow, such as North Lanarkshire Council—which covers Ravenscraig, where new sports facilities will be developed—South Lanarkshire Council and Renfrewshire Council. Councils can make high-profile bids for training camps and can ensure that they maximise the benefits of people coming to live in their areas during the games and of tourists using their areas as local bases for visiting the games. Businesses are also in a good position to maximise their opportunities. We are more than happy to engage with various commercial interests to ensure that we create the maximum possible benefit for them, their employees and the areas surrounding Glasgow.

**Patricia Ferguson:** Obviously, there is a potential for such benefits, but I am concerned about the fact that, currently, North Lanarkshire Council does not seem to be aware of either the restrictions or the opportunities.

As you know, I am interested in the legacy of the games. Would you like to comment on yesterday's announcement about the future of the chairs of the Scottish Institute of Sport and sportscotland? Do you believe that it will have any impact on the legacy of the games? The situation in relation to Julia Bracewell, for instance, could have an impact on the legacy not only of the Commonwealth games but of the 2012 Olympic games.

**Stewart Maxwell:** I do not believe that the announcement will have any negative impact on the opportunities that we are faced with as a result of the 2014 Commonwealth games and the 2012 Olympic games.

Last week, I announced that a new organisation will result from the merger of the Scottish Institute of Sport and sportscotland, and that it will have a single board. Yesterday, I discussed with both chairs the process by which that will be taken forward. Clearly, we want to ensure that the chair of the new organisation is able to drive forward the necessary improvements and changes, particularly in terms of decentralisation. As you are aware, both chairs will be standing down on 15 February and we will immediately start the process of recruiting a new chair. That new chair could be a new person or one of the current chairs, if they wish to apply for the post—the public appointments process is completely open and they are absolutely entitled to apply.

The situation will have no impact on the games. The elite end of the institute's programme will remain in Stirling and will have the flexibility to operate as it has done in the past. The institute has been guaranteed that. During the consultation process, I spoke with the chief executive officer and the chair of the institute, which was why I made it clear in my announcement that that operational flexibility will be retained in relation to the elite end of the programme.

In relation to the Olympic games, the Scottish Government will have representation on the nations and regions group and on the London Organising Committee of the Olympic Games and Paralympic Games. A person will be appointed to those posts in due course.

**Patricia Ferguson:** Although I have not discussed this matter with the chairs, I suspect—based on what the minister has said—that he does not think that either of them could take forward his vision for sportscotland.

**Stewart Maxwell:** I did not say that.

**Patricia Ferguson:** The implication of your comments, minister, is that it is unlikely that either of them would wish to apply for a post from which they have already been sacked. It is concerning to all of us that the person who has represented us on the nations and regions group for a considerable amount of time—Julia Bracewell—will no longer be able to do so.

You mentioned that you discussed matters with the chair and the chief executive of the SIS prior to your announcement last week. Can you clarify that, as it seems to fly in the face of public statements that the chair has made? Also, do you think that it might have been more appropriate to make the announcement that you made yesterday during the course of your statement to Parliament last week?

**Stewart Maxwell:** The facts are that there was communication between the SIS and the Government in a variety of ways: written correspondence, e-mails, telephone calls and face-to-face meetings at a high level between the institute and the Government—

**Patricia Ferguson:** Why did you not say that during your statement last week?

**Stewart Maxwell:** I am just coming to that point. That communication involved senior officials in the institute, the chief executive officer and the chair. I met the chair and chief executive officer in December to discuss their view of the future of the institute and its role in the future of sportscotland. There was correspondence and a number of contacts between the Government and the SIS. There is no reason to suspect that the institute's views were not widely known by both the Government and officials—its views were taken on board.

In my statement to Parliament last week, I made clear that the institute must have the flexibility to operate in the way in which it has operated for a number of years. I did not think that it was appropriate to discuss the future of individuals in the statement before I had a chance to speak to them face to face. I asked both the individuals concerned to meet me yesterday. Julia Bracewell was available and Dougie Donnelly was not, but he said that he would be happy to discuss matters over the phone. That discussion took place yesterday.

09:15

**Jim Tolson (Dunfermline West) (LD):** Patricia Ferguson asked you about the implications of yesterday's decision for our long-term aspirations following the games. It is vital that you, the committee, people working on the Glasgow Commonwealth Games Bill and organisations outwith the Parliament, including the Scottish

Institute of Sport and sportscotland, work together to give us the best chance of success at the Commonwealth games. What chance is there of such success, given that you have pulled the carpet from underneath the institute and sportscotland by sacking their heads?

**Stewart Maxwell:** I do not accept your interpretation of the events that have taken place. Last week, we announced that a new organisation would be established, merging the Scottish Institute of Sport and sportscotland under a single board. A chair of that organisation must be appointed. The clear result of the decision that has been made is that both chairs will stand down. There is an open, transparent public appointments process that we must follow when appointing the new chair. It is open to any individual with suitable qualifications and experience to apply for the position.

I do not accept that the rug was pulled from under any organisation. The new organisation will have a joined-up approach, from grass roots right through to the elite athlete programme. The institute will remain in Stirling and will have the same staff and the same ability to operate flexibly. However, it will not have an extra board through which it must report—it will now report directly to the board of sportscotland, through the organisation's chief executive officer, rather than through a board and a chief executive officer to another board. We have removed a layer of bureaucracy from the process. Many organisations and individuals from a number of sporting bodies, including swimming and golf bodies and the Scottish Institute of Sport Foundation, welcomed last week's announcement. I do not accept the member's interpretation of what the announcement means for sport in Scotland.

**Jim Tolson:** I will not labour the point—the minister and I will have to agree to disagree on a number of issues, including on whether sportscotland is a new body or an existing body with the same name and responsibilities.

My substantive question relates to the enforcement provisions in the bill. Are you aware of the concerns of a range of police organisations regarding the extensive powers of enforcement officers for which the bill provides, which are said to be greater than the powers of police officers? If so, how do you respond to those concerns?

**Stewart Maxwell:** We have responded to the concerns that the police expressed in the consultation and have tightened up considerably the definition of who can be an enforcement officer. Originally, the police expressed a number of concerns about the definition, but now only persons such as trading standards officers can be enforcement officers. Such individuals have the necessary qualifications and professionalism,

because their day-to-day work is to enter commercial and other premises to seek problems of the sort to which the bill refers. Their work for the games will just be an extension of that. We have also ensured that police officers will have the final say in the case of a forced entry: a constable will have to accompany a trading standards officer in that eventuality. I hope that our changes to the bill will allay the fears that the police expressed in their consultation submission.

**Kenneth Gibson (Cunninghame North) (SNP):** Good morning, minister. At 8.30 this morning, we received the Finance Committee's report on the financial memorandum for the Glasgow Commonwealth Games Bill, paragraphs 17 to 22 of which are dedicated to the lottery. Paragraph 22 states:

"the Scottish Government is not now precluded from making a policy decision to try to offset some of that public commitment by seeking lottery funding, allowing more money to be invested in grass-roots sport development in Scottish communities."

Will the Government pursue lottery funding?

**Stewart Maxwell:** There are two points. First, we will not pursue lottery funding to pay for the physical infrastructure and facilities for the games. However, there is a view in the Government, which I think is shared by a number of people, that we should pursue lottery funding to try to retain the money that the Westminster Government unfortunately intends to remove from good causes and sport over the next few years. The figures have been widely discussed in the press following the debate in the House of Commons last night.

We will pursue the United Kingdom Government on the basis of our view that the £150-plus million should be retained in Scotland for good causes and the £13.1 million should be retained for sport. Over and above that, and in light of the Finance Committee's contribution this morning, I am happy to confirm that we will engage with the lottery distributors in the hope of getting them to contribute to grass-roots sport over the next few years. There are therefore two separate issues: the retention of the money that is going to be taken away, and our intention to pursue the lottery for funding for grass-roots sport over the next few years. However, that funding would not directly contribute to the games infrastructure; it would be for building up grass-roots sport and the legacy.

**Kenneth Gibson:** Just to clarify—although I am pretty sure that I know what you are saying—you will not seek UK lottery funding moneys from the UK pot that might currently go to, for example, Devon, Yorkshire, Northern Ireland or Wales; you will simply seek to retain moneys that are currently allocated to Scotland but which are likely to head south to help fund the 2012 Olympics. Is that right?



**Stewart Maxwell:** No. There are two things. One is that we intend to continue to pursue the retention of the money that will be lost over the next few years, which is the £13.1 million for sport and the £150-plus million for good causes. In addition, we will engage with lottery distributors to ascertain whether they are willing to contribute money for the development of grass-roots sport in Scotland over the next few years, in order to build a legacy from the games. We will not pursue money for the construction of games facilities.

**Kenneth Gibson:** I think that that point is clear. However, if your Government is arguing that money should not come from other parts of the UK to help fund the London Olympics, surely we should make it clear that we would not seek resources from other parts of the UK to help fund the Glasgow Commonwealth games.

**Stewart Maxwell:** Absolutely. It is right and proper that we discuss with the lottery distributors whether they are willing to contribute over the next few years. Their money is allocated up to 2009 at the moment. Beyond that, the issue is what post-2009 money they would be willing to contribute to sport over the next few years. That is about the pot of money that they will have to spend and how they will distribute it; it is not about persuading other parts of the UK that money should come from there to Scotland.

**Kenneth Gibson:** If money does come to the Commonwealth games, can you confirm that it will be additional to money that has been allocated by the Scottish Government to the Glasgow games and that it will not displace investment that will be made regardless of whether lottery funding is provided?

**Stewart Maxwell:** Clearly, we do not know yet whether they are willing to contribute additional money or whether we can retain the money that is about to be lost. However, the budget is in place for the games and any other money would be about investing in building the legacy.

**Kenneth Gibson:** Indeed.

**Alasdair Allan (Western Isles) (SNP):** My questions are on a similar point, so I will be brief. To what extent have you planned for contingencies for the legacy of the games—for the different possibilities that relate to lottery money being forthcoming? How does lottery funding affect the legacy?

**Stewart Maxwell:** As we promised, we will publish a legacy consultation document within the first 100 days—the intention is to do so in about mid-February—and we will reply to the consultation in the summer of 2009. There are several opportunities. Up to 1,200 net jobs might be created—more than 1,000 could be in Glasgow—and the net economic benefit might be

about £81 million. We can build up several legacy benefits by ensuring that we achieve the target of 15,000 volunteers working for the games. We can also leave a legacy for the greener agenda—the games can produce an environmental exemplar. The regeneration of the east end of Glasgow and of the wider Lanarkshire area, which is part of the Clyde gateway work, is another benefit. Much work that is going on does not rely absolutely on the games.

If we succeed in retaining lottery funding and achieving additional investment in sport from the lottery in the run-up to 2014, that money will be invested in building the grass roots of sport. That is the intended legacy. One element is widening participation and another is increasing the standard of athletes in our country. Money for sport should be spent on that, which I believe would have the knock-on benefit of creating role models for young people and improving health and physical activity rates in the next few years.

**Johann Lamont (Glasgow Pollok) (Lab):** Minister, I am sure that you agree that last week was not the finest for your area of responsibility. Your Executive had to make a U-turn on its position on sportscotland, you had to apologise to Parliament and, in at least one other case, one might argue that your officials briefed the press on questions that you did not answer in the chamber. However, it was agreed that the right decision was made. People in the sporting field felt that retaining sportscotland was a significant gain from that difficulty, yet it now seems that sportscotland will not be retained and that, instead, a new organisation with the same name will be created. You have made that distinction clear.

**Stewart Maxwell:** I made that clear last week.

**Johann Lamont:** Well—

**Stewart Maxwell:** I did—if you check my statement, you will find that that is exactly what was said. The new organisation will be formed from the merger of the Scottish Institute of Sport and sportscotland. It will have a single board and a new, decentralised structure and the headquarters will relocate to Glasgow. That was announced in the statement last week.

The accusation seems to be that we undertook a consultation, listened to sporting bodies throughout Scotland, listened to expert opinion and based a decision on the evidence and the consultation responses that we received. I am happy to plead guilty to listening to expert opinion and ensuring that we get the structure right for sport. That was the intention and that is what we did.

**Johann Lamont:** The difficulty is that you have muddled the waters again. You said last week that you listened and that sportscotland would be

retained, but we are now being told that only the name will be retained. After the announcement, you sacked the chairs of the boards of sportscotland and the Scottish Institute of Sport. One chair has said that you sacked him, but you did not say that you were planning to do that. That is different from having a transition process.

How do we ensure certainty in change when we lack clarity about sportscotland? Instead of dealing with the matter last week, which would have allowed people to concentrate now on the Commonwealth games, we have had a further week of damaging headlines and comment, which is not helped by the minister's explanation. You are trying to do two things at once. You are trying to say, "Don't worry—the organisation's being retained and I have listened to you," and that a new organisation is being created. Surely that dual line is unsustainable.

**Stewart Maxwell:** I am happy to answer the question, but I am not sure how it fits in with the Glasgow Commonwealth Games Bill.

**Johann Lamont:** The question is about confidence and certainty in change.

**Stewart Maxwell:** As I said last week, we will have a new organisation. Clearly, there will be a single board. At the moment, we have two boards. Having a single board will have a knock-on effect on the appointment of a chair to take matters forward. The discussion took place yesterday with both chairs. Frankly, attempts to distort the events of the past few days are an irrelevance.

**Johann Lamont:** So you did not sack them.

**The Convener:** Order.

**Stewart Maxwell:** Last week, I announced the new organisation. As it is right and proper for me to do, this week I spoke to both chairs on how we are taking forward the single board. The process will be open and transparent. It comes under the guidelines that are laid down in the public appointments process for the appointment of a chair, which is perfectly proper and reasonable. That is what happened. I make no comment on what individuals have said in the press. They have expressed their views. I disagree with those views, but I will not comment further on them.

09:30

**The Convener:** I disagree with you on the relevance of the question. That said, members have had an opportunity to question the minister on current affairs and so forth. I sympathise with the minister on the point that, if we continue to take evidence on the matter, it will dominate this session, which is primarily on the bill. We should move on. Members have been given an opportunity to ask questions, and I am sure that they will raise further questions.

**Stewart Maxwell:** On a point of information, convener, the committee may be unaware that I am to appear before the Health and Sport Committee next week to discuss the issue. That is the relevant committee and it is the time to have a full and frank discussion on the issue.

**The Convener:** That, of course, is your opinion, minister. My opinion is that the questions were relevant and that there was an opportunity this morning to discuss the issue. That said, I believe that enough has been said on the matter. I seek the committee's approval to move on. We should focus on the bill. I have no further bids for questions from committee members. I call Robert Brown MSP, who is at committee today. You have the last question, Robert.

**Robert Brown (Glasgow) (LD):** I seek clarification on the timescale. I think that everyone agrees that the disruption of the process is an important issue. When will the new chair be in place? Have you any comment on the observations that Dougie Donnelly made last night? In effect, he said that the disruption over the whole period is an issue. I appreciate that my questions are on the same matter, but it is important that we know the answers.

**The Convener:** If you want to answer the questions, minister, you can do so, although I expected a question on the bill. If you object to answering the questions, that is fine.

**Stewart Maxwell:** I said that I was happy to answer the last question. That said, I doubt the relevance of the questions to the bill that is the subject of the evidence-taking session.

I have nothing to add to my previous comments. I have made it clear that I do not intend to comment on the comments that Mr Donnelly and Ms Bracewell have made on the process. They have their opinion. I disagree with it. We are moving forward. The position is clear. The public appointments process is laid down in guidelines. That will now kick in. It will take its normal course.

**The Convener:** There are no further questions for the minister. Thank you for your attendance and co-operation this morning, minister.

## Planning Application Processes (Menie Estate)

09:35

**The Convener:** We move to the third item on the agenda. The committee will take evidence on the process surrounding the planning application from the Trump Organization in relation to the Menie estate in Aberdeenshire. I formally welcome Robert Brown and other MSPs who are not members of the committee but who gave us notice that they would be here today. Robert Brown is here and will remain with us, and Patrick Harvie has indicated that he will join us for the witness session with the First Minister. I remind members that, if they have any registrable interests that they wish to declare, they should do so at this point.

**Jim Tolson:** For clarification, and with due respect to you and other committee members, convener, I would like to make a short statement. In my role as the shadow minister for communities and sport, I was contacted in August by Neil Hobday, who represents the Trump Organization. In that role, I agreed to have a meeting with Mr Hobday here, in my office in Parliament, and we discussed the Trump application. No decision was made at that time—no promises or assurances were given to Mr Hobday—and that remains the case today.

**David McLetchie (Edinburgh Pentlands) (Con):** That is very apt. I am a member of the cross-party group on golf in the Parliament. At one of our meetings prior to any decision being taken in Aberdeenshire by the area committee, never mind the infrastructure services committee, a presentation was given to the members of that group on the application, and a discussion followed it. As in Mr Tolson's case, that was purely an information session, but I was present at the meeting.

**Patricia Ferguson:** I suppose I should put on record the fact that I am a member of the cross-party group on golf. However, I was not at the meeting to which Mr McLetchie refers and I am not aware that I have had any dealings with anyone from the Trump Organization on any other occasion.

**The Convener:** As there has been an outbreak of declarations, I should mention that I, too, am a member of the cross-party group on golf. However, I did not attend that meeting and I have not met any members of the Trump Organization to discuss the application in any way.

I welcome Alan Campbell, the chief executive of Aberdeenshire Council. Mr Campbell has indicated that he wishes to make a very brief—I

underline the word brief—statement. We have received an extensive written submission and additional information from Mr Campbell, and our time is limited.

**Alan Campbell (Aberdeenshire Council):** Thank you, convener. You will be pleased to hear that my statement will be a lot briefer than my written submission. I have been the chief executive of Aberdeenshire Council since its inception in 1995. For four years prior to that, I was the chief executive of Grampian Regional Council. As declarations are in the air, I should declare that I do not play golf.

My career in local government started with the former Aberdeen County Council legal department, nearly 40 years ago. That was before the advent of the North Sea oil and gas industries. At that time, the traditional industries—farming, fishing, textiles, granite and paper—were all somewhat in decline. I have worked in the north-east throughout those 40 years, and have been involved in unprecedented levels of activity and development. There have been lots of challenges, but they have been good challenges because they have been challenges of growth. The population of what is now Aberdeenshire has increased by 50 per cent over that time—no other part of Scotland has seen such an increase—yet we have managed to retain the quality of life. The economy has been transformed and the unemployment rate is 0.6 per cent, which is the lowest in Scotland.

As far as the Menie estate application is concerned, I have set out in my written submission a summary of the process that the council followed. Detailed reports and minutes have also been circulated so that the committee can follow the story. I trust that you will agree that council officials recognised from the outset that the application raised significant issues of national importance. It was also likely to be highly controversial: the council recognised that and ensured that resources were deployed to ensure that the application was dealt with thoroughly, efficiently and transparently.

It was also because of the national issues that the council involved the chief planner from the outset. Again, it was recognised that the application was in the category of applications that are, potentially, decided at national level—that was always a distinct likelihood. No planning application in the north-east has ever stirred such strong emotions, both for and against the proposal, or had global publicity.

The reason why we are here today—the trigger—is the decision-making process. Aberdeenshire Council has six local area committees. The Formartine area committee, which has 11 councillors, took a decision to grant outline permission with 62 detailed conditions,

which was in line with officials' recommendation. The council's infrastructure services committee was required, as is the normal arrangement, to consider the matter because the area committee decision involved a departure from planning policy. On 29 November, the infrastructure services committee, on the casting vote of the chair, went against the area committee decision and the officials' recommendation and refused the application.

I emphasise that that was done properly, constitutionally and legally, and all in accordance with the law and the council's rules of procedure. However, the aftermath was entirely without precedent. Immediately after the decision, it became clear that a large number of councillors from all political parties and independents were incensed by the decision. In less than 24 hours, it was clear to me that those councillors constituted a clear majority of the 68 on the council. They made it clear to me in no uncertain terms that they proposed to take steps to have the decision overturned or, at least, reopened and reviewed. It was clear that a special meeting of the council would be called to consider the matter. I need to make it clear to those who are not local that the public and media reaction, particularly locally, was near hysterical and almost overwhelming in the days following 29 November. The matters that the committee is considering unfolded against that background.

**The Convener:** I have some general questions about your written submissions before we move on to questions from members. You sent the committee the council's scheme of delegation, which we have ploughed through. Can you confirm that everything that was carried out complied with the scheme of delegation and that there was nothing untoward?

**Alan Campbell:** That is correct.

**The Convener:** You sent us a copy of the standing orders. Can you confirm that everything that was done in the decision-making process complied with the standing orders?

**Alan Campbell:** That is correct.

**The Convener:** Controversy arose about the role of the chairman of the infrastructure services committee and his use of the casting vote. Can you confirm that what happened there was all within acceptable procedures?

**Alan Campbell:** I confirm that those processes were all carried out correctly.

**The Convener:** No rules were broken.

**Alan Campbell:** No.

**The Convener:** Why are we here?

**Alan Campbell:** We are here for the reasons that I stated. Although all the rules were followed as they stood then, the controversy that ensued was completely and utterly unprecedented. There was a feeling in the council that the decision was wrong—as I said, the vast majority of councillors felt that. There are 68 members on the council, 14 members on the infrastructure services committee and 11 members on the Formartine area committee. As a result of what has happened, the council has taken steps to change its scheme of delegation—although the process was carried out in accordance with that scheme. It was the public outcry and the outcry from councillors that was the problem. That is why we are here.

**The Convener:** Section 1d of your written evidence states:

"Reference was also made to the fact that should the Council be minded to approve the application, it would require to be referred to the Scottish Executive."

Why were you so confident that that would be the case?

**Alan Campbell:** That was because the point was made that if there was development on the site, it would be contrary to the structure plan, both in terms of the site of special scientific interest—

**The Convener:** Are you talking about an old structure plan?

**Alan Campbell:** No—I have the structure plan in my briefcase.

09:45

**The Convener:** In my constituency, I have come across structure plans that are 10 or 20 years old, but the structure plan in question was not that old. When was it drawn up?

**Alan Campbell:** It was drawn up in 2002. It is the structure plan for 2001 to 2016.

**The Convener:** So it is a current plan.

**Alan Campbell:** It is the current structure plan. The development plan also included the current local plan. Two proposals were contrary to the plans: the proposed development's intrusion on the SSSI—countryside policies were involved—and the application's housing element. It was recognised at the outset that the existence of those two issues meant that there was a strong likelihood that the matter would be determined at national level.

**The Convener:** A Scottish Parliament information centre briefing paper says that planning authorities in Scotland deal with more than 40,000 planning applications each year, but the Scottish Government called in only 18 such applications last year. If the development had been agreed to, would you have expected the application to be called in?

**Alan Campbell:** If we had agreed to the application, we would have had to refer it to the Scottish Government, because it was contrary to the plans. I think that 22 planning applications in Aberdeenshire have been called in since 2002. The application raised matters that we had not come across before in Aberdeenshire, so I thought it likely that it would be decided centrally.

**The Convener:** I have one more general question, on the SSSI designation. I readily confess to not having an in-depth knowledge of the detail of the matter. Did the SSSI have a UK or European Union designation? What impact does the designation have on consideration of a planning application?

**Alan Campbell:** I do not have detailed knowledge of the SSSI, but I believe that it was of UK—

**The Convener:** You mention it in your report.

**Alan Campbell:** I believe that the site was of UK rather than EU importance.

**The Convener:** You are not certain.

**Alan Campbell:** No. I will have to check that. That is the information that I have.

**The Convener:** That is fine. You can come back to us on that.

**David McLetchie:** Good morning, Mr Campbell. Thank you very much for your comprehensive summary of the chronology of the events connected with the application to date.

In paragraph 2y of paper LGC/S3/08/01/1, you say that had the council's

"Infrastructure Services Committee been minded to approve the application, this would have been done in the knowledge that the proposal would have been notified to Ministers as a significant departure from the Structure Plan, with the potential for the application to be called-in always being a possibility."

Was it regarded as a possibility that the application would be called in following its rejection by that committee? Did you ever think that what happened would be a likely outcome?

**Alan Campbell:** I suppose that we expected that if the council turned down the application, it would be the subject of an appeal. That was probably the more likely scenario that we envisaged.

**David McLetchie:** In your preliminary statement, you mentioned your extensive experience in local government. Did you or your officials ever contemplate that the decision that was taken to call in the application during the legalistic window of opportunity would be taken?

**Alan Campbell:** That was not one of the things that we thought was likely to occur.

**David McLetchie:** I refer to paragraph 3g of your submission. The convener referred to the use of the casting vote in the infrastructure services committee. You rightly said that it was perfectly competent for the chairman of that committee, Councillor Ford, to use a casting vote. Is there any convention in Aberdeenshire Council relating to how a casting vote should be used?

**Alan Campbell:** There is no such convention. It is interesting to speculate on that because some organisations hold that the convention in use of a casting vote is to vote for the status quo. However, that raises all sorts of questions about what the status quo would have been. Would it have been the Formartine area committee's decision? Would it have been to allow no development, because that is what is currently on the site? Sometimes it has been assumed that the officials' recommendation might be the one that would be approved. Even if there was a convention, it would be quite difficult to have applied it in this context without there being some element of controversy or review. There is no such convention.

**David McLetchie:** The physical status quo would be to have no development, so maintaining the status quo of the look of Aberdeenshire suggests that a casting vote should be cast against the proposal, otherwise you are going to change the environment in which you live by approving an application.

**Alan Campbell:** That is one interpretation.

**David McLetchie:** So in that respect, the much-maligned Councillor Ford was doing no more than adhering to a perfectly reasonable convention.

**Alan Campbell:** As I said, he was completely in order to do what he did.

**David McLetchie:** Thank you. I move on to look at the legal situation in which the council found itself and the opinion that it took from senior counsel about whether it could revisit the decision that had been made by the infrastructure services committee. When was senior counsel's legal opinion commissioned?

**Alan Campbell:** Immediately after the infrastructure services committee on Thursday 29 November it was clear that we had a major difficulty in that the expectations of the wider council had not been reflected by the committee's decision. That was made clear, almost within minutes of the decision being announced. As a result of that, I was receiving phone calls and visits from senior councillors from all parties and it was clear that a special meeting of the council was going to be called. I therefore called together the appropriate legal and planning officials that afternoon and the following day to examine the council's standing orders, the scheme of delegation and the law to see how we might

proceed in accordance with what appeared to be the desire of the council. We were almost instantly on to drafting an opinion and also speaking to a legal agent in Glasgow who assists the council on planning matters. I have found that it is helpful to have an external person go over such issues. We were on it almost immediately. I was quite anxious to ensure that the council could find a way forward in accordance with its wishes.

**David McLetchie:** So, you were on the case and seeking an opinion from Friday 30 November.

**Alan Campbell:** Yes, we were doing so from Friday 30 November. Subsequent meetings and discussions took place on the Monday and Tuesday of the following week. On Tuesday 4 December in particular, we had extensive discussions about the possibilities that might be open to the council. We did not get the opinion until 5 December, but by 4 December, it was becoming clear that all the possible ways forward that we were thinking about were open to challenge, which obviously concerned me.

I had been Grampian Regional Council's director of law and administration for seven years, so I was quite keen to find a way forward. However, I was also conscious that, if we got into a situation that exposed the council to further challenge somewhere down the line, it would be very tricky, so we tested out all the theories that were proposed about how to take the matter forward.

**David McLetchie:** Did the Government's chief planner and other officials, councillors, council officials and MSPs—people who had an interest in the matter—know on Friday 30 November that the council was seeking an opinion?

**Alan Campbell:** I do not think that they would necessarily have known. We had a discussion on the matter with the chief planner on 29 November—certainly on 30 November—and I made it clear that we would be seeking a legal opinion. I think that I said who the Glasgow agent was to whom we would be going because he is well known in planning circles. I also made it clear to the leader of the council that we were seeking counsel's opinion on the matter as well as looking at it ourselves, but I do not think that anything was widely known other than that we were examining the matter very carefully because we knew that we were getting a requisition notice for a special meeting of the council. That was being talked about widely on Friday 30 November and we knew that one of the questions that would be asked at that meeting would be, "What can the council do?" Against a deadline that we did not know then but which turned out to be 12 December, we were leaving no stone unturned in examining what had happened and looking forward.

I must explain that the council's scheme of delegation had been changed some four years previously. At one point before that, if there was a division in a committee such as the infrastructure services committee, the matter would be referred to the council. However, because a number of controversial but, in a sense, routine matters were being referred to the council, the council deliberately took the decision to change the scheme of delegation to avoid that possibility. Some people who had been on the council for a while recalled the old system and were concerned that it had not been put into play. There were also people who wanted to suspend standing orders or do various other things.

**David McLetchie:** So the Government, in the form of the chief planner, knew that you were taking and awaiting legal opinion from, say, 30 November, and you got your opinion from senior legal counsel on 5 December. Is that correct?

**Alan Campbell:** Yes—but we had discussions in the interim with our Glasgow agent in relation to that opinion, so we were aware of the general thrust. It was a kind of evolving opinion in that we put forward various other aspects to be taken into consideration.

**David McLetchie:** You did not receive your definitive opinion until 5 December.

**Alan Campbell:** No—but that was the bit of paper, if you like. Discussions on what senior counsel was saying were on-going.

**David McLetchie:** So senior counsel, in a sense, gave you a heads-up.

**Alan Campbell:** There was a developing argument and our Glasgow agent was having discussions with us regularly. It was helpful to have him do that, because he is well versed in the procedures. He took our standing orders, admin scheme and the law away and considered them afresh, which was helpful.

**David McLetchie:** I understand that.

In the course of your conversation with the Government's chief planner on 4 December, did you indicate to him what opinion was coming from the solicitor in Glasgow to whom you refer and the senior counsel whom you were consulting? Was he aware that it was now the definitive opinion that the infrastructure services committee's decision was the end of the road?

**Alan Campbell:** On 4 December, which I remember extremely well because, apart from anything else, it was my birthday—I have had better—

**David McLetchie:** I am sure you have had happier ones.

10:00

**Alan Campbell:** Yes.

I was still very keen for the council to resolve the matter, although it was becoming increasingly clear to me that the council would be unable to resolve it in a way that was unchallengeable. I was probably 90 per cent clear at that stage that that was the case. We were still trying to see whether there was some other way of doing things, but I indicated to the chief planner in the first of the conversations that we had that afternoon that it looked as if we could not resolve the matter in a way that was unchallengeable. That was the problem. For all sorts of reasons, I wanted the council to be able to resolve the matter.

We had not received counsel's opinion but, in a sense, I knew what it was going to say. The way things were turning, it was looking like we could not get out of it. We had not received the actual physical document at that stage.

**David McLetchie:** You had a phone conversation with Mr Mackinnon on 4 December, in the course of which you asked the representatives of the Trump Organization to leave the room. Why did you make that request?

**Alan Campbell:** The phone call came in from Jim Mackinnon. I had some people in the room with me. There were people in the room all the time that day in connection with the business. I put the phone on loudspeaker and I said who the people in the room were: they were colleagues from the planning service and the legal service. Jim Mackinnon advised me that he had with him representatives of the Trump Organization, George Sorial and Neil Hobday. I said that I was not prepared to have the discussion about the options that were available to the council with them present, so Jim Mackinnon arranged for them to leave immediately.

**David McLetchie:** Is that because you would have regarded it as improper or irregular to have such a conversation in their presence?

**Alan Campbell:** Yes, I would have regarded it as irregular to have had such a conversation with them there. I wanted to explore matters official to official. Those representatives would in no sense have been bound by any code of conduct or any other code in relation to their publicising the conversation, so it seemed to me that they should definitely not be present when we had that discussion.

**David McLetchie:** You have said that it was "irregular". Why, in the final sentence of paragraph 5j of your submission, do you state:

"While such planning matters are not routine or everyday, the Chief Executive did not regard the process which the Chief Planner followed as being irregular in the way in which some observers have suggested"?

It clearly was, in your opinion, irregular to have that conversation with Jim Mackinnon while the Trump representatives were present.

**Alan Campbell:** In paragraph 5j, I am referring to the call-in, rather than to the process that was involved. However, it would not have been normal for those representatives to be in the room, so Jim Mackinnon immediately asked them to leave.

**The Convener:** I call Alasdair Allan, to be followed by Johann Lamont.

**Alasdair Allan:** I seek clarification that no pressure was applied at any stage as to who was in the room at any time—or was it?

**Alan Campbell:** I am not sure from where you mean such pressure would have come.

**Alasdair Allan:** You have clearly said that you were able to resolve the situation regarding who was or was not in the room. I take it that there was no pressure as to who should or should not be in the room, and that you were entirely a free agent in all that.

**Alan Campbell:** I am sorry. I am still not clear what you mean.

**Alasdair Allan:** You have mentioned who was in the room, and you have mentioned how the situation was altered. Can I take it that you felt under no obligation or pressure, and that things were done in an entirely regular or proper fashion as regards solving the question of who should or should not be in the room?

**Alan Campbell:** When I raised the matter there was no issue or debate and they left immediately. In no sense did that become an issue.

**Alasdair Allan:** So no argument ensued.

**Alan Campbell:** Not at all.

**Alasdair Allan:** The other point that I wanted to raise has been mentioned. You conclude your submission by saying:

"Given the wide powers available to the Scottish Government the decision to call-in the application was considered to be properly within the powers of the Scottish Government ... the Chief Executive did not regard the process which the Chief Planner followed as being irregular in the way in which some observers have suggested."

In evidence, you said that you felt that the council would not be able to resolve the question and that it was almost inevitable that central Government and the chief planner would be involved. Is it fair to say that throughout the process there was a sense of that inevitability, given the national scale and scope of the application?

**Alan Campbell:** As I said in my written submission and in my introductory remarks, there was a sense that, given the scale of the

application and the fact that a couple of elements were contrary to the structure plan, it was almost inevitable that the application would end up being determined in Edinburgh.

**The Convener:** I have made a mistake. I said that I would bring in Johann Lamont after Alasdair Allan, but I should bring in Patricia Ferguson first. I call her now—she will be followed by Johann Lamont.

**Johann Lamont:** Just as well.

**Patricia Ferguson:** Thank you, convener. Mr Campbell, given that the planning function of local authorities is quasi-judicial, in your experience was it unusual that the decision made by the committee on 29 November—a rejection of the application, as it transpired—had not been signed off by 4 December, so there was no indication that the formal process had been followed?

**Alan Campbell:** Are you referring to the fact that the decision notice had not been issued?

**Patricia Ferguson:** Yes.

**Alan Campbell:** As I think that I explained in my note, I understand from consulting widely with colleagues in planning that when such decisions are being sent out it normally takes at least a couple of weeks to detail all the directions, because it is extremely important in relation to appeals, expenses and so on that everything is included in great detail. It is not always possible immediately to pick up the detail from the committee's decision, which has to be translated into policies in the structure and local plans. Therefore there was nothing untoward about a delay between 29 November and 4 December. Such a delay is perfectly normal.

**Patricia Ferguson:** In your experience, is it usual for the local authority to revisit a decision made by a committee that has delegated powers and to take matters forward in the interim period, given that if the decision had been signed off there would have been no scope for the Scottish Government to call in the application?

**Alan Campbell:** The decision notice was vital in relation to that, because if it had been issued no call-in would have been possible.

The council's unhappiness—that is an understatement—with the decision is unprecedented in Aberdeenshire Council's history. That is quite clear. I do not think that we had ever before held a requisitioned special meeting—the meeting that is called when a quarter of councillors sign a requisition. I believe that the requisitioned special meeting was the first one that the council had had, so it was unprecedented.

**Patricia Ferguson:** Given that by requisitioning such a meeting the full council decided that it was

in effect taking on a quasi-judicial function of the authority, were all members of the council furnished with copies of all paperwork that related to the application, including the financial and environmental impact assessments and copies of notices from objectors and supporters, prior to the special meeting on 12 December?

**Alan Campbell:** You raise a couple of points. It was only the council's aspiration to take over the quasi-judicial function. In recognising that aspiration, and following the requisitioning of the meeting, which was to consider the planning application, the council said—I have the council notice here—"The following papers are therefore circulated." The papers included the outline planning permission report by the director of planning and environmental services, which is the report that went to the infrastructure services committee; an extract from the minute of the meeting; and other papers. Therefore, the council was furnished with all the papers that had gone to the infrastructure services committee plus an extract from the minute of its meeting.

All that information was made available to the council in anticipation of the fact that taking over the quasi-judicial function might be an avenue that was open to it. Of course, given the passage of time, we also sent out the call-in direction of 4 December, which was received from the chief planner's office. The council had all the papers and the call-in direction. The issue was whether there was any way in which the council could resist the call-in. The legal advice that it got was that the call-in had been properly issued and that it could not be resisted.

You will understand that there was a mood among some people that the council should resolve the issue. Some people thought that the council had got itself into that position and that it would be desirable for the council to get itself out of it. However, the legal advice was clear; we also had external legal people at the council in case the matter was explored in detail. In the event, the council accepted the advice that had been given.

The council then took an unusual approach to the matter. It said, "We cannot judge the application as the planning authority because we are no longer the planning authority. In our role as an enhanced consultee, we want to make our view clear to the Scottish Government. Basically, our view is that we whole-heartedly support the application subject to the 62 conditions that the Formartine area committee agreed to." That was in line with the recommendation from officials. The recommendation was put to the council and carried unanimously. The council's position as an enhanced consultee was agreed at the meeting on 12 December.



**Johann Lamont:** I want to check on the process. When the area committee referred the matter to the infrastructure services committee, that was done not in the expectation that the second committee would rubber stamp things for the first committee but because the first committee had concerns about the application. Is that correct?

**Alan Campbell:** Under our scheme of delegation, the area committee is required to refer the matter to the infrastructure services committee if the recommendations in the report involve departing from some of the weighty plans.

**Johann Lamont:** So such a referral was the norm. It was done on the understanding that there were reservations and concerns about the application.

**Alan Campbell:** Well, the committee had a division on it, but the point is that it was always known—and this was pointed out in the officials' report—that the application would require to be referred to the infrastructure services committee.

**Johann Lamont:** There were issues to do with the fact that the housing might not be affordable, that it involved cross-subsidy and that it would be built in the countryside. Those were all reservations.

**Alan Campbell:** There were lots of reservations. They appear in the minute.

**Johann Lamont:** There was a departure from an up-to-date development plan. Those are all normal reasons why a committee would ask somebody to consider something further. It was not a happy picture, or a straightforward case.

**Alan Campbell:** Well, I do not know whether the word "happy" is the appropriate one. The issue was complex, and it was going to go to the infrastructure services committee.

**Johann Lamont:** That was what might have been expected. Was there ever at any stage any suggestion in discussions held in either of the committees or in your discussions with the chief planner prior to 29 November that one of the options available to the council would be central Government coming in between the decision to refuse the application and a letter going out to call it in? You said to Mr McLetchie that it was not likely. Was the option discussed at all?

10:15

**Alan Campbell:** No. That was never part of the consideration.

**Johann Lamont:** So the council went through the process and came to a view that many members were unhappy with. As you know, the protection in the planning legislation against

planning authority decisions that others have reservations about is the first party's right of appeal. Surely you must have expected the first party to exercise that right. Even at the beginning of the process, if you had envisaged that some people might have regarded the situation as a bit of a pickle and were jumping up and down with concern, you must have discussed the fact that there was always the protection of the first party's right of appeal.

**Alan Campbell:** Correct.

**Johann Lamont:** Therefore you would have expected the matter to come to the Executive either through your notifying it of the situation or through the first party making an appeal. Regardless of the local authority's decision, both options would have been available. Is it right to say that the matter would have come to the Executive without it taking any action because of the developer's right of appeal and because of the possibility that the local authority would take such a decision?

**Alan Campbell:** Correct.

**Johann Lamont:** So the problem does not lie in the local authority's internal processes. After all, it is reasonable to expect that a developer committed to a development that has been turned down by a local authority would exercise their right of appeal.

**Alan Campbell:** That would be the normal course of events.

**Johann Lamont:** And it would be unusual for the developer not to exercise that right of appeal if they were continuing to express concern that their development was not being progressed.

**Alan Campbell:** The developer had not received the decision notice.

**Johann Lamont:** But they knew what the decision was.

**Alan Campbell:** Yes, but they had not received the notice.

**Johann Lamont:** Even if they had received the poorest legal advice in the world, they must have known that they had the right to appeal to the Scottish Executive.

**Alan Campbell:** I am sure that that would have been known to them.

**Johann Lamont:** Having been the chief executive of the authority for a long time, you will know that any developer who is committed to a development knows that they have the right of appeal and will exercise it if the local authority advises them—and the legal advice confirms—that there is no other option and that nothing else can be done to assist the proposal.

**Alan Campbell:** That would be the normal course.

**Johann Lamont:** You seem to be suggesting that, as an enhanced consultee, the local authority can express any view that it likes. However, as you will understand, any view taken in its role as planning authority is distinct from that. One major issue that arose with regard to the Planning etc (Scotland) Act 2006 was local government interest in matters and the concern that a local authority might wish to support or give a fair wind to an application that might bring benefits, despite the fact that, as the planning authority, it was also charged with being transparent. The view was expressed that a local authority ought not to take a corporate view on a planning application, but to consider it on its merits. Is that right?

**Alan Campbell:** As you will see from the deliberations of the Formartine area committee and the infrastructure services committee, that is indeed what the council did.

**Johann Lamont:** With regard to confidence in the process, would it be reasonable for you as chief executive to say that elected members not involved in the planning process were insisting that the local authority's own procedures be overturned to ensure that a planning application was agreed because, instead of fulfilling their responsibilities and being transparent with regard to the planning matters in question, they had in effect taken a corporate view that the development was a good idea? Indeed, you have said that the planning matters were significant as they represented a departure from up-to-date structure and development plans.

**Alan Campbell:** Yes, but you have to remember that the councillors called the special meeting for 12 December in the hope that they could maintain themselves as the planning authority and review the infrastructure services committee's decision. Of course, in the event, those councillors were not the planning authority at the 12 December meeting and were in effect the authority that represents the people of the area.

It was the authority that would have to decide on detailed planning matters, such as design, further down the line, if the Scottish Government approved the application in due course. It was not playing a quasi-judicial role on 12 December.

**Johann Lamont:** The point that I am trying to make is that it is insufficient for you to argue that, because people were unhappy with a decision, you needed to get legal advice in order to find a way out of the situation, given that a legal option was available to the developer, which had the right of appeal.

**Alan Campbell:** You must realise that the wish of the overwhelming majority of elected

councillors, as I discerned it, was to review the decision, presumably with a view to changing it.

**Johann Lamont:** Evidence that that was councillors' view can only be anecdotal, because at that stage the council was not operating as a planning authority.

**Alan Campbell:** That is correct.

**Jim Tolson:** My first question to Mr Campbell relates to press statements. As you are well aware, on 13 December, the issue of the call-in was raised at First Minister's question time here in the Scottish Parliament. After the exchanges in the chamber, Aberdeenshire Council issued a statement about the telephone calls that had been made between you and the chief planner. Was the council then contacted by the Scottish Government and, if so, by whom?

**Alan Campbell:** A couple of matters arose. Two press statements were made on the day in question. I will go over each of them and explain what happened.

The communication office received a call regarding uncertainty about phone calls from the chief planner's office on 4 December. A statement was prepared and put out at 1 o'clock on 13 December. It said:

"Aberdeenshire Council can confirm a phone call took place between its Chief Executive and the Scottish Government's Chief Planner during the afternoon of Tuesday 4<sup>th</sup> December 2007.

When Aberdeenshire Council's Chief Executive was informed that members of the Trump Organisation were in the Chief Planner's room and were listening to the conversation, Aberdeenshire Council's Chief Executive asked to terminate the call until the Trump Organisation left the room.

The Chief Executive was informed of the intention of the Government to call-in the application after the Trump Organisation had left the room."

Once the statement had been put out, a phone call was made to our communication office to the effect that the statement was misleading, because it could easily be interpreted as meaning that there was just one phone call. I did not draft the statement, but I approved it, so I take responsibility for it.

I then sat down and wrote a further statement, which went out about an hour later. It said:

"Alan Campbell, Chief Executive of Aberdeenshire Council wants to make it crystal clear that he had two phone calls with the Chief Planner on the afternoon of Tuesday 4<sup>th</sup> December 2007.

The first call was about the procedure which Aberdeenshire Council are likely to adopt at their special meeting. It was in that context that the Chief Executive was informed by the Chief Planner that members of the Trump Organisation were in the Chief Planner's room. The Chief Executive asked that they leave the room.

It was a couple of hours later in the afternoon that the Chief Executive received a further call from the Chief Planner. That call related to the call-in and was the first time the call-in had been referred to.

There was no question of the Trump Organisation being with the Chief Planner at that time."

Those were my exact words, and they reflect the position.

After checking times and cross-referencing information with people, I realised that the second call was made less than a couple of hours after the first, but the essence of the statement is that the second phone call was quite different from the first. The first statement was certainly ambiguous, so I am happy to put it right.

**Jim Tolson:** You made a clear and corrected statement in the second press release that there were in fact two calls. The committee has evidence from the cabinet secretary—

**Alan Campbell:** I mentioned two calls in order to differentiate between the call that was made when the Trump Organization was in the room and the call that was made when it was not in the room. There were in fact four or five calls. The first call, about council procedure, was when the Trump Organization was asked to leave the room. Some time later, the chief planner phoned and said, "Look, we're thinking about call-in here." That was the first time that call-in had been mentioned, and it came as a bit of a surprise. He called back about quarter of an hour later and said, "The decision has been taken to call it in." That was a third call, if you like. However, he alerted me in that second call to the fact that call-in was a possibility.

**The Convener:** I am sure that you are trying to be helpful, Mr Campbell, but I would appreciate it if you would allow the member to complete his question before you come in.

**Jim Tolson:** I thank Mr Campbell for that information—it provides some clarification. We can move on to another point. Have you ever discussed the Trump application with Alex Salmond?

**Alan Campbell:** As you know, Alex Salmond is the MSP for Gordon. After the landslide in Pennan, we had a couple of public meetings there. Alex Salmond was at one of those meetings, at the beginning of October, in his capacity as MP for Banff and Buchan. He asked about the Trump application. He always made it clear that he was talking as local MSP and not as First Minister. He said that he would not be involved if the matter ever became a Scottish Parliament matter. He talked about lots of constituency business. By the time of the meeting in Pennan on 8 October, the business had been the subject of a report and there had been a site visit.

**Jim Tolson:** I do not want to get into the detail of the many conversations on many different subjects, but will you tell the committee roughly how many times you discussed the Trump application with Alex Salmond?

**Alan Campbell:** I vividly recall a call from him on Thursday 29 November, later on in the day of the infrastructure services committee meeting. He asked what had happened at the meeting and what the options were at that point. That was the day the decision was made. He called again on Monday 3 December in relation to what the council was doing. He had heard that there was to be a special meeting of the council on the options open to it.

**Jim Tolson:** In your conversations with Mr Salmond around that time, did he express any opinion—as he is entitled to—about the merits of the application?

**Alan Campbell:** Rather than discussing the merits, at the time everyone was talking about what the council could do, whether the matter could be resolved by the council, and what was going to happen at the council meeting.

**Jim Tolson:** You are saying that, in your conversations with him, Mr Salmond did not express an opinion to you about the merits and outcome of the application.

**Alan Campbell:** No, but he made it clear that he was speaking as the local member of the Scottish Parliament—as others did at the time.

**Jim Tolson:** More specifically, do you know of any other times when you spoke to him between 29 November and 4 December? You mentioned two discussions. Were there any other times when you spoke to him about the application?

**Alan Campbell:** No—and it was certainly 3 December, the day before the discussions with the chief planner.

10:30

**The Convener:** The question that has been running throughout this session is whether the First Minister was acting as a constituency MSP or as the First Minister. When you took the calls on 29 November and 3 December, did he have your direct line? Did he phone you directly?

**Alan Campbell:** Yes, I think that that was the case. He knows where I am.

**The Convener:** Is that how it worked on that day? I recall from my own experience that, when his private office called, someone would phone me and say, "The First Minister wishes to speak with you. Are you available?" I would say, "Of course, I am." Is that what happened? When the call came through to your secretary, or directly to you, was it

from the First Minister's private office, from his constituency office or directly from Mr Salmond himself?

**Alan Campbell:** I do not recall.

**The Convener:** You do not recall?

**Alan Campbell:** It would have been intercepted by my secretary.

**The Convener:** Do you realise how important it is whether you got a call from the First Minister or from Alex Salmond the constituency MSP?

**Alan Campbell:** Not particularly. He made it clear to me that he was speaking in his capacity as the local member of the Scottish Parliament for Gordon. He would not be involved in anything else—

**The Convener:** So, you do not remember whether he phoned you directly or through your secretary or whether it was to your mobile phone or your office phone.

**Alan Campbell:** No. You must realise that lots of people were in touch with me on that day. I do not recall—

**The Convener:** You do not recall.

**Alan Campbell:** Correct.

**The Convener:** Fine.

**Kenneth Gibson:** I am sure that you will agree that the most important thing is the capacity in which Mr Salmond contacted you. If he was in Edinburgh, he could not have been expected to drive all the way up to Gordon in order to phone you as the local MSP. That is a rather strange issue.

I want to go back to the issue of Councillor Ford. Are you aware of any political factors external to Aberdeenshire that influenced the removal of Councillor Ford as chair of the infrastructure services committee?

**Alan Campbell:** The matter was on the council's agenda for 12 December, when a notice of motion from a councillor was supported. The matter was entirely for the councillors to decide.

**Kenneth Gibson:** Sure, but are you aware of any external influence on those councillors that may have persuaded them one way or the other?

**Alan Campbell:** As I said, there was an unprecedented level of hysteria both for and against the development.

**Kenneth Gibson:** So, if there was any influence, it was likely to come more from voters—constituents—than from anyone else.

**Alan Campbell:** Yes. However, as I said, instantly the decision was taken, councillors were

on to me—before the press. It was a spontaneous feeling, but the matter was decided in the council. The point was made repeatedly that the concern was not in respect of something improper having occurred at the infrastructure services committee. The concern was expressed not in relation to Councillor Ford's integrity, but in relation to how he could represent the council on similar issues in the future. That is the point that was made.

**Kenneth Gibson:** That is what I want to lead on to. What effect do you think that Councillor Ford's removal will have on other committee conveners in Aberdeenshire Council—and, indeed, beyond—when they consider future planning applications?

**Alan Campbell:** I do not think that, as the chief executive, I am well placed to answer that question. You would have to ask them about that. The council proposes to appoint a new chair to the infrastructure services committee tomorrow.

**Kenneth Gibson:** Indeed. You do not think that it will mean—

**Alan Campbell:** It will obviously be a big issue in the mind of the person who takes over.

**Kenneth Gibson:** Of course it will. It is obviously a concern if conveners have to watch their backs all the time; I am sure that our convener would agree.

I realise that we are running over time, but what impact do you think that this debacle has had on Aberdeenshire's and Scotland's overseas image as a place in which to live and invest?

**Alan Campbell:** There are two ways of looking at that. First, in relation to the oil and gas community's desire to diversify into tourism, there was a lot of local concern that the council had failed to grasp a big opportunity. That was the first view that was presented and it was very strongly held indeed.

The second view that came through, possibly slightly subsequently, represented the more environmental agenda and was that Aberdeenshire had stood up to a big developer against a kind of development that we could do without.

Those were the two conflicting views with which the council had to cope. So the council's endorsement of the application on 12 December, albeit as an enhanced consultee, showed that its main concern was about diversification from the oil and gas economy and the encouragement of tourism, which is an industry that has not done particularly well in the north-east of Scotland. Although we have a lot of good natural assets, we have not been able to develop them because there has not been a lot of investment.

**Kenneth Gibson:** I have spoken to senior businesspeople who were in the United States when the decisions were being discussed and Aberdeenshire and Scotland were being castigated by the American media. It made Scotland look somewhat parochial and backward when it comes to major investment, compared with places such as Ireland and other European nations.

**Alan Campbell:** I accept that position.

**Bob Doris (Glasgow) (SNP):** Could you confirm that, since the infrastructure committee's decision to turn down the planning application, the council has taken extensive legal advice?

**Alan Campbell:** Yes.

**Bob Doris:** Did that include legal advice on whether it was possible to resist a call-in from the Scottish Government?

**Alan Campbell:** Yes.

**Bob Doris:** At the council meeting on 12 December, there was overwhelming support for the developers, which it was possible to indicate as the council was no longer directly involved in the planning process. Is there a feeling that the reason for attempting to resist the call-in was that the Trump development would be more likely to go ahead if you found a legal way of pushing the issue to a vote of the full council than if it were left to the Scottish Government?

**Alan Campbell:** No. We were looking at resisting the call-in because there was a desire in the council to resolve the matter. That was the real issue. The council was considering whether it could resist the call-in to see whether there was an opportunity for it to make amends—as some would say—for what had happened.

**Bob Doris:** But we now know that on 12 December the council intimated its strong support for the development.

**Alan Campbell:** Yes.

**Bob Doris:** So it would seem to follow that, had the council found a legal avenue by which it could refuse the call-in and take control of the Trump development, it would have approved the development at the meeting on 12 December—or on whatever date a meeting was held. The call-in was seen as a more impartial way of judging the Trump development. The council obviously had a vested interest, as Ms Lamont has said, in taking a corporate decision on the development.

**Alan Campbell:** In reality, the council did not have the opportunity of considering the development as a planning authority. It had the opportunity to make its views known, but not as the planning authority.

**Bob Doris:** You said that the council is now looking at the scheme of delegation in some detail, with a view to reforming it. The current scheme states that the council may vary, add to, recall or restrict any delegation. Does that mean that the council perhaps missed a trick? Had the council had the foresight, and had it thought about the matter in advance, could it have referred the matter to the full council instead of to the infrastructure services committee? Did such powers already exist?

**Alan Campbell:** No. Under the terms of the scheme of delegation, the application had to go to the infrastructure services committee. No direction to vary the scheme had then been made. At its meeting on 12 December, the council took a decision on a report—which I think is among the committee's papers—to change the scheme of delegation so that planning matters of regional or national significance, as certified by various officers of the council, would have the right of recourse to the council.

The second part of the process of changing the standing orders—it is a two-meeting matter—will be before the council tomorrow. I imagine that it will be approved, because approval was unanimous at the meeting on 12 December.

**Bob Doris:** I want to be clear about this. Had it chosen to do so, the council had the power—at the very beginning of this process—to give direction to vary.

**Alan Campbell:** Yes. With the benefit of hindsight—which is always 20:20—we could have changed the scheme of delegation at the outset. We have now changed it so that matters of regional or national significance are reserved to the whole council. Had we made the change earlier, the final point of reference for this matter would not have been the infrastructure services committee, but the full council.

**Robert Brown:** Thank you, Mr Campbell, for the document that you have provided and for your answers. I want to draw out one or two points.

You said that people were aware from an early stage of the national interest that there would be in the proposals. You also said that you had close contact with the chief planner, who had a site visit and was keeping a “watching brief”, in your words, throughout the process. What papers would the chief planner have had at the time of your conversations with him on 4 December?

**Alan Campbell:** I understand from our director of planning that, when the matter went to committee, the chief planner was sent the papers. I did not send them directly to him, but he would have received the papers that went to the Formartine area committee and the infrastructure services committee. I am not conscious that I sent

him any documents pertaining to the minutes of the ISC, but they would have been only in draft form anyway. However, the chief planner obviously heard about the decision.

**Robert Brown:** You have said that you had contact, in various ways, from the chief planner and from Alex Salmond as the local MSP. What about the Trump Organization, from 29 November in particular? I presume that it was in some sort of contact with the council.

**Alan Campbell:** To familiarise myself with the site, I went on a site visit at the end of 2005, when the matter was being talked about. My next contact with the Trump Organization was at the site meeting that both the Formartine area committee and the infrastructure services committee went on at the end of September 2007. We walked round the site on a bracing north-east day. That is when I met George Sorial, who was then the senior representative of the Trump Organization.

I did not go to the Formartine area committee meeting, but representatives of the Trump Organization were present at its deliberations and they were also present at the infrastructure services committee meeting. I was not at that meeting, but I was in the building. The Trump representatives asked for a meeting with me early in the evening, I think, of 29 November. They were then in contact on 30 November and certainly on Monday 3 December. They were obviously considering their options on where to go from there.

10:45

**Robert Brown:** I assume that you would have given them your full co-operation in terms of what the council decision meant and all of that.

**Alan Campbell:** Yes.

**Robert Brown:** Did they know what the council's opinion was?

**Alan Campbell:** They did not know that, but they knew that the council was looking at what it might do. Certainly, by 3 December they would have known the council's opinion, as it was by then public knowledge that a special council meeting was to be held where the requisition was to examine the available options.

**Robert Brown:** So, not to beat about the bush, they were pretty close to the council. They were in constant contact at all the meetings, and were taking advice from you on the options, and so forth.

**Alan Campbell:** Sure, but they were applicants. We were helpful while keeping a certain distance.

**Robert Brown:** Absolutely. As far as the call-in is concerned, I think that you said that that was not really in contemplation before the conversation at 3.45 pm on 4 December with the chief planner. Do you know of any call-in of that sort having taken place after a committee decision and before a letter is issued? Prior to these events, were you aware of that possibility?

**Alan Campbell:** At some point, I suppose that I was aware that that was a possibility, although it had never featured in any conversation. As I said, we had anticipated that the council would review the matter or that there would be an appeal. We had anticipated those situations. In any case, if the council had resolved the matter by approving the application, it would have to have been referred to Edinburgh.

Because I was looking to find a way forward for the council, I was not looking for any kind of interim solution. Of course, when we checked the position, legally and independently, we came to the view that the situation was legal and regular, although it was not within the normal experience. Indeed, the whole planning application was not within the normal experience.

**Robert Brown:** Just to be clear, you had no previous experience of that happening.

**Alan Campbell:** No. That is correct.

**Robert Brown:** I have a couple of other points, convener. I will make them quickly. The first is on your conversation with the chief planner on 4 December. You have now indicated that four or five telephone exchanges of one sort or another were made on that day.

**Alan Campbell:** I will summarise the position. On the first call, the Trump Organization representatives were asked to leave the room; on the second call, Jim Mackinnon said that he was contemplating a call-in; and, on the third call, he said that ministers had agreed the call-in. The next couple of calls were about getting the notice faxed to me. We had scheduled a press conference to set out the council's latest position on the application. I saw no point in going to the conference and being unable to tell the press what had happened, but I was also not prepared to give the information without having a faxed copy of the direction notice. It was 5 o'clock before the notice came through. The press conference was scheduled for 4.30 pm; we kept the press waiting for half an hour. I wanted to have the notice in my hand before I went into the room.

**Robert Brown:** Can you indicate the length of the calls—not the later ones, but those at 3 pm and 3.45 pm?

**Alan Campbell:** The call at 3 pm would have been the longer one. The one about the call-in

was brief and the one on the call-in direction having been agreed was also brief, given the business of getting the letter prepared.

**Robert Brown:** Approximately how long was the 3 o'clock call?

**Alan Campbell:** It might have been 5 minutes. It was a continuation of previous conversations following the meeting of 29 November. I think that it was around 5, 6 or 7 minutes.

**Robert Brown:** I turn to the issue of the letter of refusal, which I think you said was not imminent. I assume that that was made known to the chief planner.

**Alan Campbell:** I think that that was never a part of the discussion.

**Robert Brown:** In that case, what was the 3 o'clock discussion about?

**Alan Campbell:** It was about where the council was on the process that it could follow on 12 December.

**Robert Brown:** But was the issue of the letter not relevant to the discussion?

**Alan Campbell:** I am sorry, but are you referring to the call-in letter?

**Robert Brown:** No, I am referring to the letter that the council would have issued to say that the application had been refused and in which it would have set out the reasons for refusal.

**Alan Campbell:** It would have been, but I assume that both Jim Mackinnon and I knew that those things take some time.

**Robert Brown:** Right.

**Alan Campbell:** I think that the letter was not referred to in the 3 o'clock phone call.

**Robert Brown:** Finally, I turn to the business of the Trump people being asked to leave the room. You mentioned that you wanted to have a more confidential conversation with the chief planner. Given the perceived need for impartiality and so forth, were you surprised that he had the Trump people in the room?

**Alan Campbell:** Yes.

**Robert Brown:** Was that part of the reason for seeking to have them removed from the room?

**Alan Campbell:** Yes.

**Robert Brown:** You wanted to restore the independence of the situation, as far as you were concerned.

**Alan Campbell:** Yes.

**The Convener:** I thank Mr Campbell for his attendance at committee today and for his co-operation. I wish you a safe journey home, Mr Campbell.

10:51

*Meeting suspended.*

10:54

*On resuming—*

**The Convener:** We will now take evidence from Jim Mackinnon, the Scottish Government's chief planning officer. He is accompanied by David Ferguson, the head of planning decisions. Welcome to you both, gentlemen. Following my exchange of correspondence with the permanent secretary about your appearance, the committee agrees that, if there are questions that are put to you that would more appropriately be answered by politicians, you should feel free to state that—we will accept that and raise the issues with the politicians. We are running behind time. Mr Mackinnon, you have not indicated whether you wish to give a brief statement but, if you do, I hope that it will be very brief, to allow us to try to get back on track.

**Jim Mackinnon (Scottish Government Planning Directorate):** I would like to make some opening remarks. The statement by Mr Swinney on 20 December, along with the answers to 54 parliamentary questions, made public the Government's actions in relation to the handling of the golf resort development at the Menie estate, but I would like to offer some observations that I hope will be helpful to the committee, and some comments about my accessibility to members of the Scottish Parliament.

I have been the chief planner since November 2000. I hold a first-class honours degree in geography from the University of Edinburgh although, when I joined the former Scottish Office, I was reminded that geography degrees end where other degrees begin. I hold a diploma with distinction in town planning and I have been a member of the Royal Town Planning Institute since 1974. In my experience in the Scottish Office, the Scottish Executive and the Scottish Government since 1979, I have dealt with international planning, legislative development, policy advice, casework and research.

I have been a practising planner for 33 years. I estimate that, during my career, a million planning applications have been determined in Scotland. Never though, in my professional experience, have I been aware of a development—widely reported as a billion-pound development—in relation to which a local authority resolved to refuse planning permission but many councillors who had been excluded from the decision-making process wanted the decision to be reversed. In addition, a broad cross-section of public opinion had expressed significant concerns about the way in which Aberdeenshire Council handled the

application. The circumstances of the application for the Menie estate were, literally, one in a million. No circulars or internal procedure notes cover the circumstances.

As you know, Mr Salmond telephoned me on 29 November to ask about the consequences of the infrastructure services committee's resolution to refuse planning permission. During the evening of 29 November and the morning of 30 November, I sought to ascertain from Aberdeenshire Council whether the case could be reconsidered. It appeared not, but independent legal advice was being sought. I called Mr Salmond on the afternoon of 30 November to update him on the procedural options. Over the course of the weekend, I thought further about the options. In particular, it struck me that it would be a very strange appeal by the Trump Organization, with the council formally refusing planning permission but supporting the development at the appeal. There has been much talk about the integrity of the planning system. I could not see how the appeal scenario that I have outlined would present the system in a good light, while the uncertainty about the council's options raised concerns about the way in which the system operated. The simplest approach, which would give certainty to all parties and interests on the process to be followed, was to call in the application.

Let me be clear: there was a clear expectation that, by virtue of their nature, scale and location, the proposals at Menie estate would have to come before the Government, either as a notified application or as an appeal. Call-in would introduce certainty to a confused and confusing situation. It was not as if the Government was proposing to intervene in an application that raised entirely local issues. Moreover, the effect of call-in would be to ensure some form of public examination of the proposals by an inquiry reporter. If those making representations on the case were seeking an opportunity to be heard and an open and transparent process, call-in would certainly guarantee that.

Early in the morning on Monday 3 November, Mr Swinney telephoned me from New York for an update. I explained that I had become increasingly convinced that early call-in would provide certainty to all the parties. Following the meeting with the Trump Organization on the afternoon of 4 December, and the virtually 100 per cent confirmation from Alan Campbell that the council's standing orders did not allow for the application to be reconsidered, I decided to recommend call-in immediately. Why immediately? Simply, if Aberdeenshire Council had issued a written decision, call-in would no longer be possible. My considerable experience, my understanding of planning law in the area and a specific example involving the IKEA store at Straiton almost 10

years ago convinced me that we should proceed forthwith to call-in. In the Straiton case, Scottish Office ministers had agreed to issue a direction calling in the application, but Midlothian Council pre-empted that course of action by issuing a decision to grant planning permission.

Prior to the start of Cabinet on Tuesday 4 December, I phoned Mr Swinney with my recommendation that the application be called in for determination by the Scottish ministers and, following discussion, he agreed with that recommendation. I make it clear that the decision to call in the application by the Trump Organization does not carry with it a presumption for or against the proposals.

11:00

I will deal briefly with questions about my accessibility. I have been surprised and disappointed by some of the assertions that have been made. I make it clear that I am happy to take a telephone call at any time from any MSP, whether or not they are a member of the Government. Over the years, many MSPs have contacted me directly and I see nothing inappropriate or untoward in that. I am mindful, though, of the guidance that advises MSPs that they should contact, initially, the relevant senior official, who will make a judgment call on how best to handle the inquiry. On planning, I would expect the first port of call to be me, and I would endeavour to respond as promptly and helpfully as possible.

I am happy to provide the committee with examples of my accessibility to MSPs, including the facts around my alleged unwillingness to visit the Rosyth waterfront.

In summary, the circumstances of the planning application at the Menie estate are, in my view, unique. I was under no pressure, far less an instruction, from any minister to act in a specific way. I applied my long experience and professional judgment to the handling of the case. The advice that I gave was precisely the advice that I would have given to any minister in the circumstances.

I am happy to offer further explanation but, of course, we have to observe the proprieties of what is still a live planning application.

**Alasdair Allan:** Much—or, at least, some—of the earlier discussion focused on why the Government did not sit back and wait for an appeal to be forthcoming rather than calling in the application. Why did you not just wait for an appeal?

**Jim Mackinnon:** On the Monday, there were press reports that the Trump Organization was



minded not to appeal, and its representatives confirmed that when they met me in the afternoon.

Be that as it may, I ask you to think of the consequences of an appeal. It was clear that if Aberdeenshire Council had issued a decision notice to refuse planning permission but then, on 12 December, decided that it wanted to support the proposal, that would have ended up in a strange situation in an appeal. Further, we would have found ourselves in a situation involving an award of expenses. A circular from 1990 makes it clear that a planning authority is likely to face accusations of unreasonable behaviour if it is unable to defend its decision at an appeal.

My view was that the appeal situation was not tenable because the position that Aberdeenshire Council looked like it was heading towards had serious implications for the integrity of the planning system—which, I think, would have been made to look farcical—and because I thought it likely that the costs of the appeal, which would involve hundreds of thousands of pounds arising from legal fees and planning consultants' fees, could have been awarded to the Trump Organization. I did not think that that was a sensible option to pursue. Equally, I thought that the other option, which was for the council to pursue in relation to its standing orders, was also fraught with difficulty. I am happy to explain that further.

**Alasdair Allan:** So, to clarify, you felt that the situation with the system that was used by Aberdeenshire Council was so odd and would have produced such a convoluted situation that there would have been an unreasonable expense for the taxpayers in Aberdeenshire.

**Jim Mackinnon:** I thought that the taxpayers in Aberdeenshire would pick up a hefty bill if the reporter and ministers agreed to sustain the appeal. However, the other scenario is that, as Alan Campbell has outlined, the council had quite strong reservations about where it would go, legally, if it wanted to proceed with the application.

In my experience, politicians do not always accept advice from officials, whether it is professional planning advice or legal advice. However, Aberdeenshire Council could have decided—as a council—that it wanted to grant planning permission. I think that that decision would have been made on quite a difficult legal basis, but it could have come to us, as an application, on that basis.

I am not a lawyer—although I think that Mr McLetchie and Mr Brown are—but I think that, if the council had made public the fact that it wanted to grant permission, that would have caused a problem in terms of the need to justify the position legally, because it would have been considering a planning application that it had already signalled

that it was minded to approve. Neither of those scenarios seemed to me to be plausible or defensible. In any event, any of those scenarios would have involved the application coming to the Scottish ministers.

My view was that we should call in the application immediately, to end the uncertainty. Alan Campbell has talked about the febrile atmosphere in Aberdeenshire surrounding the issue; calling in the application would provide certainty and clarity. The other option was clear: the Trump Organization could walk away at any point.

My view was that the application was always going to come to the Scottish Government in some form, because of its scale, nature and location, and that we should call it in immediately to produce a clear, certain process. I wanted to recommend that course of action to ministers before there was any prospect of a decision notice going out. Had such a notice gone out, it would not have been possible to call in the application. I did not want an even more farcical situation in which a decision notice was going out just as the Scottish Government was issuing a direction. That would have been the worst of all possible worlds.

**Alasdair Allan:** So you think that although—or, perhaps, because—it was a very unusual situation, the motivations that propelled the process throughout were based primarily on planning considerations that you thought were important, rather than on anything else.

**Jim Mackinnon:** As Alan Campbell indicated, there was always an expectation that the Government would examine the application closely. That is why I began to look at it from the end of 2005, when I was asked to meet Neil Hobday from the Trump Organization. I participated in a meeting in January 2006 and visited the site, accompanied by the local authority and the Trump Organization's consultants.

It was always expected that the Government would examine the application, because it raised difficult issues and was significantly contrary to the development plan. The application was not just for a golf course development; it included major ancillary development. Some of that—the hotel and lodge development—was related directly to the golf course, but there was also provision for 500 houses. The application was significantly contrary to the housing policies in the structure plan. It also involved development on a site of special scientific interest, which is a national designation. It is nonsense to suggest that the Government could regard the process as an entirely local issue, in which it should in no way intervene.

**The Convener:** Calling in an application is not a risk-free option. In the previous evidence-taking session, it was mentioned that there was a great deal of damaging global publicity at the time. It was said that Scotland is not a place in which to do business. The Trump Organization threatened to walk away and refused to lodge an appeal, which it was free to do and which was expected. What options are available now? What has placated the Trump Organization and led it to welcome the call-in? What is its expectation? As I understand it, we can turn down the application, agree to hold an inquiry or do something in between that shortens the process. Why has the Trump Organization welcomed the call-in when in all its public statements it said that it was refusing to appeal and was walking away, and that Scotland was not a place in which to do business?

**Jim Mackinnon:** You will have to put some of those questions to the Trump Organization. My understanding is that the organisation was seeking clarity and certainty in the processes that were to be followed. There was considerable uncertainty about whether it would pursue the Aberdeenshire option. For reasons that were never clear to me, it indicated that it was not minded to appeal. It appeared to find the appeal process confusing. I think that it became confused because for many Americans—I have mentioned my experience in international planning—an appeal is directed to a court. I am not sure to what extent the Trump Organization understood that any appeal would be based not on points of law or procedure but on the merits of the application. It is difficult to explain to people the role of inquiry reporters, which are an almost unique feature of the UK planning system.

Calling in the application gave the Trump Organization certainty and clarity about the process. The organisation has indicated that it is happy to rest on the report of Aberdeenshire Council's officers. The council has asked for there to be a hearing, and the Government must now decide whether to deal with the matter through written submissions, an oral hearing or a full public inquiry. Mr Swinney has still to make that decision.

**The Convener:** I am genuinely puzzled that the Trump Organization could be confused about planning law. It has been involved in the process since 2003, with the advice of Jenkins & Marr, which has offices in Aberdeen, Glasgow and Edinburgh. When you took a call from the organisation's legal adviser during those crucial days, did that adviser express confusion about planning law?

**Jim Mackinnon:** You mention Jenkins & Marr, a very experienced and long-standing firm of planning consultants. Its strengths are in areas such as master planning and urban design. It was responsible for handling the technical aspects of

the planning application. It is interesting that, as a result of the resolution of Aberdeenshire Council's infrastructure services committee, the Trump Organization felt it necessary to speak to Ann Faulds, one of the leading planning lawyers in Scotland, for advice. The organisation knew that the circumstances were strange. It had never come across them before—and I very much doubt that Jenkins & Marr had come across them either. We are talking about areas where some sort of advice and experience of planning process and procedure are required.

I have known Ann Faulds for many years. She has phoned me from time to time on planning issues, and I saw nothing improper or untoward in my phoning her up. I just wanted to be clear about her understanding of the Trump Organization's reluctance to appeal. She herself was not entirely sure, but the Trump Organization did not feel that it wanted to pursue an appeal. During the course of the phone call with Ann Faulds, I asked what her understanding was of the position with Aberdeenshire Council's standing orders, as advised by the Trump Organization. Her understanding was that it did not look likely that the application could be dealt with in that way. She was aware that there was another route: ministers' general power to call in.

**The Convener:** No one is suggesting that your phone call to Ann Faulds was questionable in any way, given that we were looking to find a solution to the matter. The surprise that I am expressing is at the fact that a global organisation such as the Trump Organization was surprised about the process following the failure of the application and the complications that arose, some of which might have been expected, and did not understand the planning law at that stage. I find it incredible that such an organisation could have all these legal and other consultants at its behest at great expense, yet the chief planning officer had to explain planning law to its representative.

**Jim Mackinnon:** I have mentioned my work in international planning. I have done a lot of it. We try to explain how the planning system in Scotland works, and that is quite difficult. It is always difficult to explain the appeals procedures. We think that we understand them, as well as the role of inquiry reporters, who are appointed by, but are independent of, ministers, and who consider the arguments for and against. That is quite unique and distinctive. You will not find anything like that in most parts of continental Europe.

It was clear that many of the people who had made comments on the planning application and procedure did not themselves know about the details of planning law. As I said, the exercising of a call-in at that stage in the process is something that we have not done before, so it would perhaps

be too much to expect a lot of people to know about it.

The Trump Organization had come to Scotland, had tried to submit a planning application and had carried out sustainability appraisals, environmental appraisals and transport appraisals for a year. A year was spent discussing the planning application with Aberdeenshire Council. Then, the intricacies of area committees and infrastructure services committees were entered into, followed by those of standing orders. I think that the organisation was looking to people who were experienced in the operation of the planning system at the national level to explain how the system worked and what the options were.

**The Convener:** You are offering a service to 40,000 applicants in the planning process. How can you have the capacity to give the level of support that you have given to the planning application that we are discussing to all other applications of equal or smaller significance throughout Scotland? That is 40,000 applications a year. People who enter the planning process, as I am sure you would agree, need to be treated fairly. They expect to get the service that can be provided.

**Jim Mackinnon:** That is an absolutely fair question. It would be impossible for us to provide planning advice on 40,000 or 50,000 planning applications a year. Planning is a local authority function. However, in the case of major developments, over the years I have been asked to participate in discussions about process and procedure. In the case of the Royal Bank of Scotland's world headquarters, I was asked by the City of Edinburgh Council and the bank's agents just to get involved and to listen to what was happening. I did not think that there was anything untoward or inappropriate in that. I was asked to advise on the Caltongate development—the redevelopment of the New Street bus garage in Edinburgh. I helped people on the Whiteness development east of Inverness at Tornagrain. I make judgment calls about what it is appropriate for me to get involved in. Sometimes it is perfectly appropriate for me to get involved; at other times, my officials get involved. It depends on the case.

People do not ask us about dormer extensions in Greenock or hot food shops in Macduff; that is not what we get involved in. Planning authorities are much more aware of how to deal with such planning applications and there is no expectation that such applications, with which planning authorities deal daily, would ever come to us.

11:15

**David McLetchie:** You referred to a telephone conversation with Ms Faulds, of Dundas & Wilson. Did that take place on 30 November?

**Jim Mackinnon:** No, it did not. It took place on the afternoon of 4 December.

**David McLetchie:** So there was no contact between you, or any of your officials, and any consultant, adviser or lawyer to the Trump Organization between 29 November, when the decision was made, and 4 December.

**Jim Mackinnon:** None whatsoever.

**David McLetchie:** Had Dundas & Wilson been acting for the Trump Organization prior to 29 November, or was the firm commissioned after the decision was taken by the infrastructure services committee?

**Jim Mackinnon:** You would have to ask Dundas & Wilson. However, my clear understanding is that the firm was commissioned after the decision was taken. My understanding is that the Trump Organization appointed Jenkins & Marr to act as planning consultants to progress the planning application but that, in the unique circumstances that arose as a result of the resolution of the infrastructure services committee, the organisation thought that legal advice was needed. The organisation had discussed the issues with the council, and Ann Faulds regularly comes up as one of the most respected planning lawyers in Scotland. The organisation thought that it needed advice of such status and standing.

I am not aware that Dundas & Wilson was appointed before then, but you could ask the Trump Organization or Dundas & Wilson about that. I think that my first understanding of that came on the afternoon of 3 December, when we were trying to fix a meeting and the Trump Organization said that it was meeting its lawyer in Edinburgh. I am sure that it said then that the lawyer was Ann Faulds, but it might not have done—I certainly knew it was Ann Faulds on 4 December, when the telephone call was made.

**David McLetchie:** Was Ann Faulds one of the few legal experts in planning law who knew that it was possible to call in the application in the period between the decision of the ISC and the issue of a decision notice?

**Jim Mackinnon:** Many lawyers who are specialists in planning law probably knew that.

**David McLetchie:** Ann Faulds knew it, and you knew that she knew it, from your conversation.

**Jim Mackinnon:** She knew it and I knew it at the time. There was no question about what the power was. As I said, I was very mindful of the situation with the IKEA application, when we had tried to use that general power and had been frustrated because the decision notice had been issued.

**David McLetchie:** So the Trump Organization's legal advisers knew that call-in was an option and presumably communicated that option to their client prior to the Trump Organization's representatives meeting you on 4 December.

**Jim Mackinnon:** I would have thought so.

**David McLetchie:** Given all the expert advice that was available to the Trump Organization, why did you as chief planner and your colleague give private tutorials on the planning law of Scotland to a particular developer?

**Jim Mackinnon:** That is not the case. Let me be clear. If someone wants to apply for planning permission to Aberdeenshire Council, the City of Edinburgh Council or wherever, it is perfectly proper for them to speak to planning officials to get an understanding of process and procedure—we strongly encourage applicants to do that. The discussion with the Trump Organization was about process and procedure and was by no means a private tutorial. By the end of that meeting, the consensus and clear understanding were that three options were available to the Government.

It was not a question of a private tutorial; I made myself available to clarify the process and procedures that were available, in a confusing situation, for a potential £1 billion investment in Scotland. I did not think that that was in any way untoward or improper, because I was not discussing with the Trump Organization the merits of the case. The advice that the organisation would finally take would be from its own legal advisers and planning consultants.

**David McLetchie:** Paragraph 1 of the minute of your meeting with Mr Sorial and Mr Hobday of the Trump Organization says:

"The Trump Organisation had asked to meet Scottish Government ... officials to discuss the planning appeals process and any alternative options that were available".

However, on the morning of your meeting, the press reported statements from the Trump Organization in which Mr Sorial emphatically said:

"After consulting with our planners and ... solicitors"—

all the expert advisers that the organisation has in tow already—

"we have decided that it is not in our best interests to pursue an appeal. An appeal process is ... lengthy and expensive ... and we are just not in a position where we are willing to do that."

Why did Mr Sorial tell the world on the Monday that the organisation would definitely not pursue an appeal when the minute of your discussion with him said that your meeting's purpose was to discuss, among other things, the planning appeals process?

**Jim Mackinnon:** That is absolutely right. When Mr Salmond phoned me early in the evening of 3 December, he asked whether it was proper for me to meet the Trump Organization. I explained that that was proper, provided that we stuck to process and procedure. When I arranged that meeting, the most likely option probably related to the appeals process. That option seemed natural, but it became clear to me that there were felt to be severe problems with the appeals process and that the Trump Organization had signalled that it did not want to go down that route. I am not convinced that the appeals process is that difficult or convoluted, but that was the organisation's perception. I was not there to negotiate or to say, "We would prefer it if you appealed."

I have made it clear that the application could go to the Government in three ways. Whatever the route, it would go to the Government for a decision or determination. The other option was to walk away. I just wanted to ensure that we were clear about those routes and that the Trump Organization understood them. In some cases, the action would be for us, and we took action. We decided to call in the application, rather than react to a difficult and confusing situation. I was comfortable with the idea that we were prepared to offer information on what was involved in the procedural routes and that the Trump Organization could take it from there. That was the meeting's whole purpose.

**The Convener:** Last question.

**David McLetchie:** I would like to ask many more questions about that, but I will just ask about something that was put to the previous witness and on which it is important to have your position—your telephone conversation with Mr Campbell of Aberdeenshire Council. You may or may not have heard Mr Campbell's evidence that he asked for the Trump representatives to leave the room while you pursued that conversation, because he thought it "irregular" for your conversation to take place against the back-cloth of those people's presence. In retrospect, do you agree that it was irregular for you to call him when those representatives were present?

**Jim Mackinnon:** Not in the slightest. You will recall that Alan Campbell talked about meeting the Trump Organization in the aftermath of the infrastructure services committee meeting. I took a phone call from him and I have a very strong recollection that the Trump Organization's representatives were in his room when he phoned me.

It would have been highly improper and highly irregular if I had spoken to Mr Campbell and not mentioned that the Trump Organization's representatives were with me. I wanted that to be absolutely clear. He wanted to be frank about the

council's consideration of its standing orders and the options that were open to it so, in retrospect, I understood why he did not want those representatives to be there. Two principal parties with legal rights are involved—the Trump Organization and Aberdeenshire Council—and I did not want to do anything that would be seen in any way as underhand or improper, so I wanted the situation to be completely transparent.

I do not accept the central proposition that what I did was in any way irregular or improper. If I had not told Alan Campbell of the presence of the Trump Organization representatives and had tried to conduct a conversation with other people in the room of whom he was not aware, that would have been highly improper and irregular, but that did not happen. I have established an effective working relationship with Alan Campbell and I feel comfortable about sharing advice and information with him.

**David McLetchie:** But you disagree with him on that point.

**Jim Mackinnon:** Very strongly.

**David McLetchie:** After you concluded your conversation with Mr Campbell, did the meeting with the Trump representatives resume?

**Jim Mackinnon:** Yes.

**David McLetchie:** In the course of the resumed meeting, did you advise them of the content of your conversation with Mr Campbell?

**Jim Mackinnon:** No, I did not. I said that I had had a conversation with Alan Campbell and that he had updated me on the council's legal opinion on the standing orders. I just said that I had had updated information from Alan Campbell—that was it.

**David McLetchie:** So you had an update, but you did not tell them what the update was.

**Jim Mackinnon:** No, because Alan Campbell had asked the Trump Organization to leave the room. On that basis, it seemed clear to me that he did not want me to share the information that he had provided to me. That seemed perfectly okay and I did not breach what I thought was a confidence. If Alan Campbell had been happy for the Trump Organization to be in the room, he probably would not have spoken in the way that he did. If he asked them to leave the room, it would have been improper for me to say, "I've had a conversation with Alan Campbell and this is what he told me." That would not have been on. That is not the relationship that I have with Alan Campbell and I would not want to operate in that way with any colleague.

**David McLetchie:** But it was an update on a factual position and the purpose of your meeting

was to advise the Trump representatives of the factual situation. What is wrong with getting a factual update from Mr Campbell about where the council stood and then conveying the factual position to the Trump representatives?

**Jim Mackinnon:** I did not think that it was for me to do that. What we understood was that there were severe doubts about whether the council's standing orders would allow it to reconsider its position. That was the Trump Organization's and my understanding. Alan Campbell reaffirmed the position when he asked the Trump Organization to leave the room so I did not think that I should go beyond that organisation's understanding. Given that Alan Campbell had asked the Trump Organization to leave the room, I thought that it would have been highly inappropriate for me to share with it the contents of the telephone conversation—that would not have been proper.

**Johann Lamont:** It is clear that we share a commitment to ensuring transparency and confidence in the planning system. Frankly, if you were able to explain the appeals system to me, Mr Mackinnon, I suspect that you would be able to explain it to someone who has a battery of lawyers behind him.

Do you not accept the charge that the key issue is that the Trump people would not exercise their right to appeal because it would create a difficulty? Far from it being that they did not understand the system, the charge is that the Trump people believe that the appeals system is for the little people—it is not for the likes of them. As a consequence, the Government needed to find a way of getting the investment into Scotland. The potential for undermining the system is in the perception that if one brings a big enough bid to the table, the normal rules do not apply. Do you accept the danger of that? I know of your commitment to having a balanced and fair planning system.

**Jim Mackinnon:** I do not accept that premise at all. I have never understood why the Trump Organization was so reluctant to appeal because, if we look at the matter in practical terms, there would have been no difference in treatment once the application came to us. There would have had to be some form of public examination. To be blunt, we would have issued a letter or the Trump Organization—or its lawyers—would have filled in a form. It is not a question of there being one rule for one and one rule for another.

As I made clear, the reason why I thought that the appeals route was not in any way tenable was not the fact that the Trump Organization did not want to appeal. A decision letter would have been issued to refuse planning permission, with reasons, and the council, which was clearly minded to support the development, would have

turned up at the appeal to support the application. That seemed a ludicrous position to be in. As I explained to Mr Allan, that would then have got us into issues about costs and expenses.

**Johann Lamont:** With respect, that is not the point. The ludicrous position that Aberdeenshire Council manages to get itself into is not a matter for the Government, even if it makes it difficult for your planning profession to deal with such people.

I offer an example of a situation in which one might get into similar difficulties in the appeals process, but in which we would not tell people that they should not appeal. Local planning officials might say that there is nothing wrong with a proposal, but councillors might decide that, given the pressure on them, they want to refuse it. When those same officials go to the appeal, they have to argue the council's case. Is that not right?

**Jim Mackinnon:** Yes, absolutely.

11:30

**Johann Lamont:** As long as we have officials giving elected members advice, there is potential for that advice not to be taken and, therefore, for the ludicrous position that you describe to arise. That does not seem to me to be so damaging to the planning process that we need to find a new way of dealing with it.

I have a question on call-in. Would it have been possible for the Government to call in the application prior to any decision being made, given what was coming along the track? There was a big organisation that knew exactly how to appeal but realised—and perhaps had been signalled to—that it did not need to appeal. I am not talking to you as the chief planner; I am interested in the Government's view on the question. Would there have been a legal option to act before a decision was taken because you could see that trouble was coming along?

**Jim Mackinnon:** The day the application was registered as a valid planning application, the Government could have exercised its call-in powers, but the way in which the planning system in Scotland operates is such that, basically, we respect local authorities. We are not notified of many planning applications and we call in even fewer—between 20 and 30 every year.

I will be clear on the first point: it is not uncommon in Scotland for a local authority planning official to recommend that a planning application be approved, but for politicians, for whatever reasons—be they proper planning reasons or other reasons—to say that it should be refused and for there to be some expectation that planning officials will turn up at an appeal and defend the decision. Okay? That is perfectly right.

**Johann Lamont:** The point that I am making is, in a small way, a parallel to what you perceive to be a big problem. I do not accept that it is a big problem.

**Jim Mackinnon:** Can I finish my answer, please, Ms Lamont? I was saying that, in the situation in Aberdeenshire, we had planning officials recommending approval, a committee recommending refusal and then the council deciding to approve. That is exactly what the scenario was.

**Johann Lamont:** With respect, you do not know that, do you? You could not second-guess what the council was going to do as a planning authority. You could say what the traffic round elected members was, but you and I both know that they would not be allowed to make a decision except on planning grounds, so we do not know what they were going to do as the planning authority.

**Jim Mackinnon:** Sorry. Let me be clear again that there were perfectly reasonable reasons why the Government should get involved in the process: because of the scale of the development and the fact that it was contrary to the development plan and the SSSI. Right? No one is disputing that. I am saying that we looked at the process and I considered scenarios and options. I was perfectly entitled to do that and to say that, to me, it looked difficult for Aberdeenshire Council to continue with the process and that there were difficult routes ahead. I accept that the full council could have backed up the decision to refuse, but the likelihood was that it was not going to back it up, and that was made extremely clear by the resolution on 12 December. I was trying to determine what would happen if this or the next thing occurred. That is the view to which I came.

**Johann Lamont:** You were problem solving and scenario painting. It was not your decision—that is fair to say. When Mr Swinney, the minister who was making the planning decision, had to make the decision, he realised that Trump was not going to appeal and could see that it was a significant development. I presume that he asked you what the options were. You, of course, would have reflected on the possibility that the minister was going to ask you that, but I presume that you would have been responding to a request for a commentary on what options were then available. That is what I am trying to establish.

**Jim Mackinnon:** Mr Swinney phoned me on the Monday from New York—he was there on business—and asked for an update on the position and what the options were. I had thought about the scenarios over the weekend and said that immediate call-in looked like the best solution.

**Johann Lamont:** So you were doing your job by answering a request from a minister for the options that were available, given the decision that was taken.

I have a question on national developments. I might have this wrong, but I understand that there is an argument that the proposed development is a national development. However, it is not a national development under the hierarchy in the planning process; it is a major development. Am I right?

**Jim Mackinnon:** Correct.

**Johann Lamont:** Therefore, the only thing that it might get is an enhanced processing agreement—nothing else attaches to it. The idea that the call-in was caused by the development being of national significance is not the same as saying that it had a particular status. It was not designated as a national development. Is that right?

**Jim Mackinnon:** That is correct. Two weeks ago, we published the draft of our national planning framework, which set out about nine national developments, which are essentially infrastructure developments in the fields of transport, energy and environmental infrastructure.

The second stage in the hierarchy is major applications, which are essentially speculative applications—although some of them may be in line with the development plan—of a scale that requires agreement with the planning authority about how to handle them.

As you may recall, another key issue in planning reform was the integrity of the planning system when decisions are made by small committees. The new Planning etc (Scotland) Act 2006 put a requirement on planning authorities, when an environmental assessment of a proposal is significantly contrary to the development plan, to have the determination made not by a committee but by the full council.

**Johann Lamont:** I understand that, but the assertion—

**The Convener:** Last one, Johann—you need to draw this to a close.

**Johann Lamont:** I will maybe pursue my other points later and just ask Mr Mackinnon about his definition of when a matter becomes under determination by ministers—just in general terms. At what point are ministers precluded from commenting, on the basis that they are considering the matter for determination? Is it when it is notified? Is it when it is called in in exceptional circumstances, such as in this case? Is it when it goes to a public inquiry or whatever different process? At what stage is it the legal definition that ministers are determining the case?

**Jim Mackinnon:** Sorry, I am not sure that I understand the question.

**Johann Lamont:** Say, for example, that something has been notified and it has been agreed to call it in. Is it at the point of call-in that ministers are deemed to be in the process of determining the case?

**Jim Mackinnon:** Yes, they are determining it at the point of call-in, but it would be quite improper—

If Mr Swinney, as the planning minister, said that he welcomed the Trump development to Scotland, he would be debarred from the decision-making process. Once the determination is in, it goes into due process.

**Johann Lamont:** So if a minister, such as Mr Swinney, is in the process of determining, is that triggered by the call-in or by the notification?

**Jim Mackinnon:** Notification does not immediately mean call-in.

**Johann Lamont:** But you are considering whether to call it in.

**Jim Mackinnon:** Absolutely.

**Johann Lamont:** That then means that, at that stage, the Scottish ministers are debarred from commenting.

**Jim Mackinnon:** Yes, that is correct.

**Johann Lamont:** What I am trying to establish is whether the determination process starts when the application comes in. If not, does it start after the public inquiry reports?

**Jim Mackinnon:** The determination of a planning application starts when the application is registered; there are then various routes through the system. However, it would be inappropriate for a minister to comment publicly on any planning application, even before the application is lodged. That applies from before the application is lodged and registered, and right the way through. So if Mr Swinney were to make any public comment—he has not done so—about the merits of the case, he would be debarred from taking the decision.

**Johann Lamont:** And any minister who did comment would be making an inappropriate comment—at any stage.

**Jim Mackinnon:** Let me be clear. Our submissions make it very clear that decisions on planning matters are for the planning minister alone and that no other minister can intervene in the process. They are copied in on submissions on planning decisions or recalled appeals, but they have no locus. It is not appropriate for them to say anything about the merits of the case.

**Johann Lamont:** So it would be contrary to the ministerial code for any minister to make public comment on any planning application—for example, by writing a letter on behalf of constituents—given that they are ministers.

**Jim Mackinnon:** The ministerial code is perfectly clear that if a minister wants to make representations on behalf of their constituents, they are free to do so on the basis that it is a constituency representation.

**Jim Tolson:** Mr Mackinnon, when and how did you find out about the decision of the infrastructure services committee?

**Jim Mackinnon:** I was out of the country at the time. I saw an e-mail from one of my colleagues about it. When I switched on my BlackBerry, there was a message to phone Mr Salmond.

**Jim Tolson:** Can you tell the committee why the minutes of your meeting with the representatives of the Trump Organization, which we have before us, did not include any mention of your telephone call with the chief executive of Aberdeenshire Council?

**Jim Mackinnon:** That note was a note of the meeting with the Trump Organization representatives and, of course, they were not in the room when that telephone call was made.

**Jim Tolson:** Therefore, why was it necessary to call the chief executive of Aberdeenshire Council during your meeting with the Trump Organization representatives? What did you discuss with the chief executive and how did that call influence the remainder of your meeting with the Trump Organization representatives?

**Jim Mackinnon:** The reason why I called the chief executive was that the Trump Organization had said that its understanding of the standing orders was X, and I wondered whether that was correct. I knew that Alan Campbell had had several meetings with the Trump Organization, as he told the committee, and I thought that it would be appropriate to get up-to-date comments from him on the legal position. As I explained to Mr McLetchie, I took cognisance of what was said, but I made no further attempt to relay that information to the Trump Organization. To be honest, it confirmed what the Trump Organization understood anyway. Given that Alan Campbell had asked the Trump Organization representatives to leave the room, I did not think that it was appropriate to divulge to them what was said in our telephone conversation. Therefore, the call had no further bearing on the meeting.

**Jim Tolson:** When did your telephone conversation with Alan Campbell begin and end?

**Jim Mackinnon:** I think that it began just after 3 o'clock. It finished shortly after that. It lasted around five minutes.

**Jim Tolson:** When did you become aware that the decision letter had not been signed?

**Jim Mackinnon:** It was clear from my conversations with Alan Campbell that the council was not in a position to issue a decision letter. It was considering the implications of that, and it was keen to keep the application alive. A decision letter can be issued quite quickly—to be frank, I could have written it in 10 minutes. At that point, my understanding was that Aberdeenshire Council had not issued a decision letter. If such a letter had been issued, it would not have been possible for ministers to issue a call-in direction.

**Jim Tolson:** You say that the decision letter could have been written in 10 minutes, which might be a small exaggeration. What would be the normal timescale for writing such a letter, bearing in mind all the information that it should include? Ten minutes seems to be a very short timescale.

**Jim Mackinnon:** You must remember that a decision was taken on 29 November. Basically, a decision letter would have to say that Aberdeenshire Council was minded to refuse planning permission, that the application was significantly contrary to the development plan, that the proposals would have an unacceptable impact on a site of special scientific interest, that they contravened housing and land-supply policies in the structure plan, and that the location would be unsustainable because it would be served by private cars. It would have been perfectly possible for the council to issue such a letter, but I was clear at that time that it was not at the stage at which it could do so, and I simply did not want that to happen. Things could have happened overnight. Therefore, I decided that action had to be taken quickly.

**Jim Tolson:** It seems strange to me that Mr Campbell thought that it would be normal and proper to take a couple of weeks to put together such a letter. Will you comment on that?

**Jim Mackinnon:** My experience of the Ikea development at Straiton demonstrates that decisions can be made quickly. As I said, there was a difficult position in Aberdeenshire Council. There were strong views both for and against the application, but my clear understanding at the time was that a decision letter had not gone out. I might have phoned Alan Campbell the next day and found that it had, but it had not in the middle of the afternoon of 4 December, and the call-in option was therefore still a proper and viable option for ministers.

**Jim Tolson:** Was no attempt made by anyone to hold back the completion of a decision letter so that the application could be called in?



**Jim Mackinnon:** I am not aware of that. You would have to ask Alan Campbell that question. That is a matter for Aberdeenshire Council.

**Jim Tolson:** You helpfully mentioned that you had a telephone conversation on 4 December with Ann Faulds, who is the Scottish legal adviser for the Trump Organization. Why is that call not mentioned in the minutes of your meeting?

**Jim Mackinnon:** We tried to issue a note of the meeting with the Trump Organization very quickly, which we did, and we shared that note with it. That conversation was mentioned in Mr Swinney's statement of 20 December simply to provide context. We wanted a note of the meeting with the Trump Organization. On 20 December, Mr Swinney made it clear that there was a telephone conversation with Ann Faulds. I have explained the substance of that call.

**Jim Tolson:** You may think that you have done so, but did you discuss the call-in procedures with her?

**Jim Mackinnon:** No. We were clear that there were three options at that point. She did not request that I call in the application; we simply agreed that three possible routes were open. That was all.

**The Convener:** Jim Tolson should bring his questioning to a close so that other members can ask questions.

**Jim Tolson:** Did Ann Faulds, using her long legal experience, suggest how the Government should progress matters?

**Jim Mackinnon:** Not at all.

11:45

**David McLetchie:** In response to Mr Tolson, you said that you were up against the clock. You said that the decision letter could have been issued at any time, thereby thwarting the call-in that you proposed. If the decision letter could have been issued at any time, why did you say previously in evidence—I think I heard you correctly—that, in your discussion with the council's chief executive at 3 pm, you did not ask whether the decision letter was poised and ready to be signed?

**Jim Mackinnon:** I was trying to understand where the council was at that time. My recollection is clear: the council was still trying to pursue routes to keep the application alive. That position could have changed, but at that point in the afternoon the focus of the council's attention was on keeping the application alive. As I recall from an Aberdeenshire Council press release of 30 November, the leader of the council spoke of

"the overwhelming and unprecedented public response and dismay"

about the way in which the application had been handled. It seemed clear that the council was trying to keep the application alive. I was 99.9 per cent certain that the application was live and still in play.

**David McLetchie:** So, you were not up against the clock. Your expectation was that the decision letter was not going to be issued.

**Jim Mackinnon:** Actually, I was, because I did not know whether there was any pressure on Alan Campbell to issue such a letter. As I indicated, a decision letter can be drawn up and issued quickly and properly. That option was open to the council. I felt that the application should be continued.

Again, I want to make it clear that, if we had been about to go down the route of a refusal letter being issued, we would have entered the appeals procedure. We are talking about the integrity of the planning system—that is one of my main concerns—but an appeal in which both the appellant and the planning authority supported the development would be in the field of Whitehall farce. In my view, going to appeal would also have had very serious consequences for the Aberdeenshire taxpayer.

**David McLetchie:** Would it not have been a good idea to check whether the decision letter was ready to be signed?

**Jim Mackinnon:** I was pretty clear that it was not. We could have waited 24 hours, but that was the position at the time. I knew where all the parties were. My view was, "Let's just get on with it." That is the way in which I tend to approach such issues. I asked where we were at that point in time and whether I could wait another 24 hours. Of course, we could have done that, but I wanted to minimise the risk. There was so much concern about the integrity of the planning system that I felt that that was the way in which to proceed. We would bring the application into the Government. The consequence would be to ensure a full, open and transparent process for consideration of the application, which is what people seem to be looking for.

**Robert Brown:** I think you said in your opening statement that, at the time of the conversations on 4 December, you thought that Aberdeenshire Council was almost 100 per cent clear—I think that that was the wording—that no option was available to it to re-enter the procedure. Is that correct?

**Jim Mackinnon:** That is correct. The council was heading towards a situation in which it believed that it could not revisit the decision. That was its legal advice and that was the position at the time. It is perfectly possible that the politicians may not have accepted the advice. I took the view that they might seek to revisit the decision, despite

the legal advice, in which case we would have had an application that was decided in favour of the Trump Organization.

People were concerned about the integrity of the planning system and, in my view, that could be served only by the Government calling in the application. The other option was for the council to determine the decision, but people would have asked, "How can Aberdeenshire Council properly and fairly consider the application when it resolved on 12 December not to support it?" To me, the options were not terribly attractive. My feeling was that any future scenario that involved keeping the case alive had to involve the Scottish Government.

**Patricia Ferguson:** I am very interested in your evidence. I am conscious of the fact that 4 December must have been a particularly busy day for you. If I may, I will take you through the events of the day and how things developed; perhaps you will correct me if I am wrong. Am I correct in thinking that, on the previous day, 3 December, you had had a conversation with Mr Swinney while he was in the USA, in which you updated him on the generalities of the issue?

**Jim Mackinnon:** Yes.

**Patricia Ferguson:** You then met Mr Swinney prior to the Cabinet meeting on 4 December.

**Jim Mackinnon:** No, I did not meet Mr Swinney on 4 December. As Mr Swinney can tell you, he flew back from New York on the morning of 4 December because he was due to appear at a committee meeting—I think that it was a meeting of the Transport, Infrastructure and Climate Change Committee—on 4 December, which probably finished at half past 3. I caught him before the Cabinet meeting started, at about quarter to 4 or 10 to 4, and we had a telephone conversation.

**Patricia Ferguson:** Prior to 3 o'clock on that day, you had met the Trump representatives to discuss where things currently lay. During that meeting you had your call with Mr Campbell, for which the Trump representatives left the room. I presume that, when that telephone conversation ended, the meeting continued for some little time.

**Jim Mackinnon:** A small time, yes.

**Patricia Ferguson:** Following that meeting, you had a telephone conversation with Mr Salmond. Following that, you and Mr Ferguson agreed among yourselves to recommend to ministers that the call-in decision should be taken. At around 3.45 pm you had a conversation with Mr Swinney, before the Cabinet meeting at which that decision was made.

It seems strange to me that Aberdeenshire Council could not issue a decision letter in less than two weeks, but that Mr Swinney could take

the decision to call in the application on the basis of advice from you in a telephone conversation at 3.45 pm, and that, by some time after 4 pm, you were able to communicate that information to the chief executive of Aberdeenshire Council. Would it not have been normal for Mr Swinney to be given an options paper that explored every option that was available to him, which gave him all the background to the matter and which gave you the technical right to telephone Aberdeenshire Council to advise it that ministers had now cleared you to relay that information to it?

**Jim Mackinnon:** As I made clear in my statement, I spoke to Mr Swinney on the Monday lunch time—it was Monday morning in New York and Monday lunch time or early afternoon in Edinburgh. I told him of my deliberations over the weekend and what I was thinking of recommending. I have worked with Mr Swinney for the past eight or nine months and I have developed a very effective working relationship with him. He may well contradict that during his evidence session, but I believe that he trusts my professional advice and judgment. I felt comfortable with that.

A written paper also went to Mr Swinney, with formal advice recommending call-in. It was not a case of, "This is it, Mr Swinney—now, agree it." Mr Swinney agreed it, but a written submission went to him as well. The discussion was based on the options that I had put to him and discussed with him on the Monday, on which I suspect that he had reflected on the way back from New York, among other things that he was thinking about. By the Tuesday afternoon, it was absolutely clear in my mind what was the right way in which to proceed. He accepted that advice, which was promulgated in writing. Everything was done fairly and properly in that respect.

**Patricia Ferguson:** Just to clarify, how long was your conversation with Mr Swinney on 3 December?

**Jim Mackinnon:** Five or six minutes, I would guess.

**Patricia Ferguson:** Mr Swinney has indicated in answers to written questions the number of engagements that he had on that day. I accept that there would have been a period of time when he was flying back when he would, no doubt, have considered the matter among other things. However, did you give Mr Swinney the options paper before the conversation that you then had with him prior to the Cabinet meeting on 4 December?

**Jim Mackinnon:** No, I do not think that we did.

**Patricia Ferguson:** So, in relaying the information to Aberdeenshire Council, you acted on the basis of the telephone conversation that

you had with Mr Swinney prior to the Cabinet meeting.

**Jim Mackinnon:** No. I spoke to Mr Swinney. He understood the options and their implications. He had discussed them with me previously, so we had had two substantive discussions on the matter—not about the merits of the case, but about the options. By that time, I was clear in my mind. It is perfectly proper for ministers to accept verbal advice from civil servants on such issues.

As I have explained, I thought that we had to act quickly. I still believe that to be the case. Mr Swinney accepted that advice, and I saw nothing improper in that. The situation was fast moving and very difficult, as Alan Campbell made clear. On that basis, I was happy to have that discussion with Mr Swinney. I was confident about the advice that I gave and I was absolutely confident to relay that to Alan Campbell.

**Patricia Ferguson:** The implication seems to be that the decision was made on the basis of two five-minute conversations.

**Jim Mackinnon:** You must remember that we are not talking about the decision on the merits of the case. That decision involves a much more complex set of circumstances, and when ministers take such a decision they have a detailed and probably lengthy report from an inquiry reporter. We are talking about the process.

Mr Swinney understood that, whatever happened, the application was going to come to the Scottish ministers. It was going to come as a notified application, as an appeal, or as a call-in. I explained the advantages and disadvantages of all those. In particular, I explained my concerns about the case continuing with Aberdeenshire Council and what I thought was the ludicrous scenario of an appeal. That left call-in. We could call in the application, but if the Trump Organization did not want to go through that process, it could walk away.

Mr Swinney was deciding on a process by which the application could be determined by central Government. The decision was not about the merits of the application. A conversation about that would be much lengthier and it would have to be supported with detailed paperwork, as in the case of applications such as Lingerbay. The decision was about a process and not about the merits of the case. My view was that there was no real option but to recommend what he did.

**Patricia Ferguson:** This is my last question, convener.

Given how complicated the decision was, I find it strange that it was made without its being thoroughly tested in conversations between the two of you. However, I ask you whether the

urgency that was felt on the afternoon of 4 December had anything to do with the facts that are given in Mr Campbell's written evidence, where he indicates that part of the conversation that he had on the telephone was about whether the council had exhausted its processes in regard to the application, and where he confirms that legal advice indicated that that was the case within the terms of the existing scheme of delegation and that a written opinion was expected the following day.

**Jim Mackinnon:** Sorry, what is the question?

**Patricia Ferguson:** Did the fact that a legal opinion was expected the following day add to the urgency of the decision that was made on the 4<sup>th</sup>?

**Jim Mackinnon:** No. When Alan Campbell spoke, he made it clear to the committee that he was 90 per cent certain that the opinion from senior counsel would confirm his understanding of the situation, so it did not add much.

I was clear that, from a legal and technical perspective, there were difficulties with keeping the application alive in Aberdeenshire Council. We have heard talk of councillors being attacked for the decision that they made. People were het up about it. I think that the petition to Downing Street had some 15,000 people in favour of the application and some 5,000 against. That is extremely unusual. Most people do not vote in support of planning developments. There was extreme pressure on local councillors to go a certain way, and it was quite possible that they would do that. The application was naturally expected to come to the Scottish Government. In the circumstances, I thought, "We just call it in. It's the simplest and most straightforward way."

I make it clear that Mr Swinney and I discussed the options in the telephone conversation. As I said, it was our second conversation about the matter. I like to think that he trusts and respects the advice that I give, which is based on 30 years' experience. In fact, in the past week it has felt like a lot longer than that. I hope that ministers, by and large, trust the advice that I give them on that basis. Mr Swinney clearly did, and I am grateful for that, because I believe that he made the right decision to keep the case alive.

**Johann Lamont:** Convener, I have a supplementary question.

**The Convener:** It will need to be brief and it must be relevant to the line of questioning.

**Johann Lamont:** Absolutely.

Mr Mackinnon, you said that you were giving advice on the best way to get the planning application to the minister's desk. You said that there were three ways to do that, and you advised that the best way was call-in. Is it not the case that

that was the only way? The Trump Organization had said that it was not going to appeal and the council could not get out of the decision that it had made.

**Jim Mackinnon:** I would not say that call-in was necessarily the only way. There was still a possibility that the council could have tried to revisit the decision. It might not have done that, but it could have tried despite the legal advice. The Trump Organization said that it was not going to appeal, but it might have changed its mind. That was the position. As I said, things were really quite febrile at that time.

As I explained, if Aberdeenshire Council had supported the development, despite having rejected the application, the appeal procedure would have been a strange thing. In my view, the Aberdeenshire taxpayer would have faced a very hefty bill. The 1990 guidance makes clear that, if a council is not to be accused of unreasonable or vexatious behaviour, it must turn up to support its own planning decision. There was a real risk that such an accusation would be made in this case.

12:00

**The Convener:** Mr Campbell gave evidence that the legal advice was that the council was in a fix that it could not get out of. What solutions apart from call-in were available to you?

**Jim Mackinnon:** I am not sure that there were other solutions. There was the option of a notified application; the expectation was that we would call in such an application. There was also the appeal scenario that I have described and the option of call-in. Those are the three ways in which the application would come to the Government. Two of them, for a variety of reasons that I have explained, were extremely difficult to justify. I thought that the option of a notified application was extremely risky and that an appeal was potentially farcical.

**The Convener:** So call-in was really the only option.

**Jim Mackinnon:** When it comes down to it, the only practical way forward was for us to call in the application.

**Bob Doris:** My question is about the access that Trump Organization officials had to you on 4 December. On 3 December, the constituency MSP for Gordon made a request for you to meet the organisation's officials. That meeting was arranged rather quickly. In your opening statement, you mentioned the Rosyth waterfront project. Will you elaborate on the appropriateness of how speedily you have met developers for that project? Will you comment on the contrasting ways in which the two requests were handled?

**Jim Mackinnon:** Let me put the issue in context. As the planning reforms progressed through Holyrood during the previous session, I had many meetings with MSPs in party groups, as well as in smaller delegations. For example, Pauline McNeill had major concerns about the impact of houses in multiple occupation in her constituency and wanted to explore how the planning reforms might address that issue. I visited her constituency and met some residents. As a result of that visit, I organised a seminar for MSPs in whose constituencies HMOs are a difficulty.

There are many other instances of MSPs getting in touch with me. Hugh Henry phoned me on the retail policies in the Glasgow and Clyde valley structure plan. John Home Robertson sought and secured my involvement on the role of planning in addressing pressures to increase the supply of affordable housing. Trish Godman sought updates from me on the examination in public of objections to the Glasgow and Clyde valley structure plan. Margaret Jamieson spoke to me about a case in Kilmarnock. Lord James Douglas-Hamilton sought information and advice on planning agreements. Murray Tosh, the former Deputy Presiding Officer, regularly e-mailed or spoke to me about planning issues. I am very accessible to MSPs.

I turn to the issue of the Rosyth waterfront. It was alleged that I was approached in August for a meeting on that development and that I did not reply. That is not the case. The request in August was made to ministers, not to me. What happened was that Helen Eadie MSP left a voice mail message for me on the afternoon of 20 December. I was in Inverness at the time, and colleagues brought the message to my attention. The next morning, I e-mailed Mrs Eadie explaining that I would visit the Rosyth waterfront the following month—the visit was originally planned for today—and that she was welcome to attend the meeting that was planned. I also indicated that if she wanted to see me more urgently, I was more than happy to make myself available. The meeting has now been fixed for 23 January, and Mrs Eadie will attend it.

I do not accept the suggestion that has been made that I am not accessible to MSPs. I am accessible to all MSPs, deal with requests in whatever form they come and try to be as helpful and constructive as possible.

**Bob Doris:** Did Mrs Eadie take up your offer to meet you at an earlier date?

**Jim Mackinnon:** Mrs Eadie has agreed to attend my meeting with the Rosyth waterfront developers on 23 January.

**Bob Doris:** Was she content with that arrangement?

**Jim Mackinnon:** She was perfectly content with it.

**Bob Doris:** Mr Campbell gave evidence that Aberdeenshire Council took legal advice on attempting legally to block the call-in by the Scottish Government. Were you aware of that?

**Jim Mackinnon:** I was not—it was news to me. That relates to a point that I made earlier—if the council was trying legally to block the call-in, could it also have tried to issue a decision notice rejecting the application?

**Bob Doris:** That leads to my next question. The council obtained legal advice on whether the full council could reverse the infrastructure services committee's decision and the advice did not point in that direction. Did you feel that a danger was that councillors might ignore legal advice and try to set a precedent through the full council? Given the climate in Aberdeenshire, if the full council had tried to reverse the committee's decision, whether or not it was legally competent to do so, would that have compromised the integrity—that is your word—of the planning systems in Aberdeenshire and Scotland?

**Jim Mackinnon:** I thought that that was a possibility, given the passion about the proposal. The council might or might not have done that, but the scenario was reasonable to envisage, so I took the view that that could happen. If it had happened, all sorts of difficulties could have arisen in a subsequent legal challenge. I wanted to ensure that, if the application came to the Scottish Government, the legal basis of that was clear and secure. That was my motive.

**Bob Doris:** Was that a factor in the decision on whether to recommend a call-in?

**Jim Mackinnon:** Very much so. The underlying reasons relate to policy—they relate to the scale and location of the development and to the development plan. Those factors meant that the application would come to central Government. It could come in three ways and my view was that the best and safest way legally for it to come was as a direct call-in.

**The Convener:** I am a bit concerned about the expectation that you have given MSPs. I hope that they will not misuse what you have said, but your examples are commendable. However, I am not convinced that if Duncan McNeil, MSP for Greenock and Inverclyde, phoned you when you were on holiday, you would return my call on the same day, as you did with Mr Salmond's call. I certainly will not call you when you are on holiday.

**Jim Mackinnon:** I make it clear that I was not on holiday when Mr Salmond phoned me; I was on business in Bavaria. Some people might think that business in Bavaria is a holiday, but I was not on holiday.

**The Convener:** You were abroad. I promise not to call you when you are abroad or on holiday and expect you, the chief planner, to call back a lowly constituency MSP.

**Jim Mackinnon:** I would not regard any MSP, whether constituency or list, as lowly.

**The Convener:** Thank you.

**Jim Mackinnon:** Everyone in my directorate would seek to respond to an MSP's request for information and advice as politely as possible. We might have to put some points to a minister, but if we can help in a simple way by e-mailing or providing information and advice, we will do that. That is a fairly regular occurrence in the Government.

**Kenneth Gibson:** I have certainly returned plenty of calls when I have been on holiday, although none was to Mr Salmond, which is only because he has never phoned me—although I recall that he phoned me about nine years ago.

Mr Ferguson has sat patiently for the past hour and a quarter looking quite serene. What was your role in the process?

**David Ferguson (Scottish Government Planning Directorate):** I accompanied Jim Mackinnon at the meeting with the Trump Organization on 4 December. He and I discussed whether we would recommend a call-in to ministers and we agreed that that was the appropriate action, for the reasons that he outlined.

I spoke to the First Minister once. I believe that the Trump Organization wished to speak to him following the resolution by the council's infrastructure services committee to refuse permission and he asked whether it would be appropriate for him to have a discussion with the Trump Organization on the back of that. I advised him that, under the code of conduct for members of the Scottish Parliament and the ministerial code, it would be perfectly in order for him to represent his constituents' interests by speaking to the Trump Organization; as he had debarred himself from the planning decision-making process, no conflict would arise with his role. That is a summary of my direct involvement in the case.

**Kenneth Gibson:** Is your understanding of the process and procedures the same as Mr Mackinnon's?

**David Ferguson:** I stand by everything that Jim Mackinnon has said in evidence today.

**Kenneth Gibson:** Is it the case that, rather than ask Mr Campbell on 4 December to tell the planning directorate when a notification, if necessary, or a decision letter was to be issued, you simply decided that a call-in was a certainty,

whether or not an appeal was to be made? At the time, the suggestion was that an appeal would not be made, for the reasons that have been given. Was it commonly agreed in your department that a call-in was the best way to progress the matter?

**David Ferguson:** Jim Mackinnon and I discussed the matter and came to full agreement about it.

**Kenneth Gibson:** So it was effectively a departmental decision rather than an individual decision by Mr Mackinnon?

**David Ferguson:** Jim Mackinnon took my view and I confirmed that I thought that his view was correct and that that was how we should proceed—so it is a yes.

**Kenneth Gibson:** I accept that this has been a unique set of circumstances, but I wonder whether you can clarify how long it normally takes to consider called-in applications and how long you expect it to take to deliberate on this one.

**David Ferguson:** When cases are notified to the Government, there is a period of 28 days within which we have to look at the case and come to a view as to whether it should be called in, although that can be extended as and when necessary, depending on the circumstances of the case. Some cases are detailed and complicated, and cases are sometimes notified to us when we do not have all the relevant information. However, we try to come to a view within 28 days about whether to call in an application or whether to clear it back to a council.

If cases are called in, the papers are referred to the inquiry reporters unit. I could not say what the typical time would be for a case to be referred to the inquiry reporters, then for the Government to receive a report. It normally takes some months, but it depends on whether the case is considered through written submissions or whether a full, public local inquiry is involved. If it is the latter, it could be a year or more before the Scottish Government receives a report.

**Kenneth Gibson:** Do you envisage that happening in this case, or do you think that matters will be expedited?

**David Ferguson:** That depends on how the case will be determined. As Jim Mackinnon said, ministers have still to decide the way in which the process will go forward from here, whether that is a public inquiry or some other means.

**Jim Mackinnon:** We are talking not about expediting, but about an open, transparent process. We are not talking about a “shoe-in”, which is the word that I think Mr McLetchie once used. There is no presumption in favour of, or against, the development; there is a presumption in favour of ensuring that the processes are fair,

transparent and open, and that people who have views on the application, whether for or against, have the opportunity to make those views heard and considered by the reporter and, finally, by Mr Swinney.

**Kenneth Gibson:** And the Trump Organization has not indicated at any time that if the matter is not dealt with within a certain time it will withdraw?

**Jim Mackinnon:** It has not said anything about that. I have never had that sort of discussion with it.

**Kenneth Gibson:** Given the controversy that this entire process has generated and given the set of circumstances with which you were presented by the decisions that were made in Aberdeenshire, is there any way in which you think it could have been done differently?

**Jim Mackinnon:** You are right that the circumstances were unique. I have reflected long and hard on this. I thought about it over the weekend of 1 and 2 December and increasingly came to the view that there really was not much choice, in a way. Obviously, I have thought about it quite hard over the past four to six weeks. That has reinforced my view that, in the circumstances, this was the best way to handle it.

There is a wider issue, though. The First Minister's Council of Economic Advisers asked me to look at international comparisons of planning systems. I was not asked in the context of the Trump application; it was just about looking at how Scotland's planning system compares. It struck me that we may need to think about certain issues—for example the point that Mr Gibson made about being open for investment.

I found it quite amazing to hear Ian Paisley, the First Minister of Northern Ireland, who almost hotfooted to the Trump Organization, say, “We want you to come to Northern Ireland.” That seems to be quite acceptable. It is interesting that the First Minister of Northern Ireland is responsible for the planning service. The planning service in Northern Ireland is an agency of central Government, and local government is basically responsible for, I think, bogs, bins and burials.

So the Northern Ireland First Minister is saying, “Come to Northern Ireland; we will help you through the process,” while our position seems to be that contacts between ministers, senior civil servants and potential investors comes under public scrutiny and is in some way improper. I think that, as a Government, we need to reflect on that.

**Kenneth Gibson:** Indeed. That is the point that I made to Mr Campbell in terms of how this entire matter has been viewed from across the pond, so to speak.

**The Convener:** I am genuinely confused, having listened to the evidence from you, Mr Mackinnon, and from Aberdeenshire Council. Surely it would be astonishing if this application were rejected. I do not necessarily disagree with the view that we cannot afford to turn away a billion pound investment, as it was described in earlier evidence. We are in a bidding war with Northern Ireland. You have told the committee that there is no presumption that the development will be agreed to at the end of the process. If there is no such presumption, why are we going through what we are going through?

12:15

**Jim Mackinnon:** Let me be clear. I have read the comments of a number of people who would welcome the development in Scotland, but members of the Government have not said that they would welcome it. They are not allowed to—they are debarred from saying anything like that.

Planning law states that planning applications shall be determined in accordance with the development plan unless material considerations indicate otherwise. It is clear that the application that we are discussing is not in accordance with the development plan. The material considerations in question are many and varied. They include the considerations to which Alan Campbell referred—the potential economic benefits to the north-east, particularly from diversification, for example—but significant environmental issues are also involved. For example, the justification for going on to a site of special scientific interest and the impact of a large volume of housing on the trunk road network must be considered. A range of issues is involved.

Ministers are entering the process on the basis that it will be fair. They will listen to the reporter's views and reach a view of their own. That is what they must do.

**The Convener:** In light of your experience, would you be as astonished as I would be if the application were rejected?

**Jim Mackinnon:** I really cannot comment on that, convener.

**The Convener:** Okay. The smile is enough.

**Johann Lamont:** I would like to clarify something. It has been said that the called-in application will still be considered in an open and transparent process, but when the Planning etc (Scotland) Bill was being considered, no one proposed to ministers legislation that said that such applications should automatically be called in, despite the safeguards. Is it right to say that no one proposed or argued for the model that is now being advocated?

**Jim Mackinnon:** That is absolutely right.

**Johann Lamont:** In fact, we retained the right to call in major applications before determination at the local level.

**Jim Mackinnon:** We did not change that part of the law.

**Johann Lamont:** And that remains the case.

**Jim Mackinnon:** That is correct.

**Johann Lamont:** That right was not exercised at any stage and no advice was given to ministers to exercise it at any stage. We could have had such a process at an earlier point, but we did not. Do you agree that one reason why the position that is now being advocated was not advocated is that the Opposition in the Parliament argued for a third-party right of appeal, which would have meant that the community in Aberdeenshire that opposed the proposal, supported by the Scottish National Party, would have exercised its right of appeal to the Executive if the application had been agreed at the local level?

The context for the planning legislation was the strong argument for enhancing communities' rights of appeal and reducing the first party's right of appeal; as a consequence, the legislation was developed to get the balance right. Do you agree that the option that is now being described—perhaps it is being implied that it was a positive option—was not realistic in the previous session because of the political make-up of the Parliament?

**Jim Mackinnon:** The convener said that there are questions that are best answered by MSPs. You might want to ask Mr Swinney or Mr Salmond about that. I do not think that I should answer.

**The Convener:** Robert Brown will bring the questioning to a close.

**Robert Brown:** I want to move away from issues relating to the third-party right of appeal, which I understand exists in Ireland under Mr Paisley's scenario, both—

**Jim Mackinnon:** I am sorry, Mr Brown, but that is not the case. The third-party right of appeal exists in southern Ireland, where national politicians have no involvement in the determination of planning applications.

**Robert Brown:** Thank you.

I return to the application that we are discussing. Whatever the lead-up to the key decisions was, it is clear that they were taken in an hour-long period from just before 3 o'clock to around 4 o'clock, when you had a telephone conversation with Aberdeenshire Council and spoke with the Trump people, Ms Faulds from Dundas & Wilson, Mr Swinney and Mr Salmond, and then conveyed the decision back. Would I be right to say that one factor that you mentioned earlier—that the Trump

Organization had told you that it was minded not to appeal—was taken account of? I think that you said at the beginning of the session that that was one of the facts that you had at your disposal at that point.

**Jim Mackinnon:** Yes. There were press reports that the Trump Organization was not minded to appeal, and it confirmed that at the meeting. Its perception was that the appeals process was quite complicated and convoluted. I did not challenge the Trump Organization representatives on that. I did not say to them, “I think that it is fairly straightforward. All you’ve got to do is fill in a form. I am sure your lawyers will do that for a fee.” Thereafter, it would have come to the Government as an appeal that was recalled for ministers. To be honest, the process would not have been much different in substance to that which we will now follow.

I want to make it absolutely clear that I was not attempting to negotiate with the Trump Organization to try to persuade its representatives to appeal. I listened to their views and heard what they had to say. Ann Faulds confirmed that they saw the appeals process in a pretty negative light. That was their position. I did not try to persuade them otherwise.

**Robert Brown:** What I am trying to get at is that that aspect of the matter was known to you. I assume that it formed part of the advice that you gave to Mr Swinney. I assume that you told him that that was their attitude.

**Jim Mackinnon:** Mr Swinney knew that. What I said was that if we were to move beyond that—which is the point that Mr Allan asked me to explain—we would have had a pretty strange appeal, as the two principal parties would have turned up in support of the development. Aberdeenshire Council would have had to turn up in support of a development that it had refused. There were also issues such as awarding costs. The integrity of the planning system would not have been supported in such a scenario.

**Robert Brown:** You have explained that before, but I have one or two further questions on the matter. With respect, is not that view speculative in large measure? According to everyone’s understanding, the infrastructure services committee made the decision, correctly and legally, to refuse the application. Whether it did so rightly or wrongly is another issue. If nothing else had happened—if Aberdeenshire Council had not become involved in the arrangements and tried to deal with it again, so to speak—I assume that there would be no issue with the decision. As we heard, your clear understanding—you said it was almost 100 per cent—was that Aberdeenshire Council officials thought that that was the position, whatever councillors might have said. Is that correct?

**Jim Mackinnon:** That is correct.

**Robert Brown:** We then need to turn to the implications of all that. In your opening statement, you went to considerable lengths to make your explanation. Why did you not make it to the public, or the Parliament, before today? I appreciate that the issue may go beyond your knowledge.

**Jim Mackinnon:** We were asked to answer 54 parliamentary questions, which we have been engaged in for the past six weeks. That work made a huge demand on staff in the planning directorate. We also have to respond to about 30 freedom of information requests on matters that run much more widely than planning.

Mr Swinney put the statement into the public domain on 20 December. That put things in context. Today, I have the opportunity to explain my reasoning and rationale to the committee. I very much welcome the opportunity to explain the reasons that led up to my recommendation. I also very much welcome the opportunity to correct some of the assertions that have been made on my accessibility to MSPs, which are without foundation.

I want to be absolutely clear: yes, it was speculation. As chief planner, in advising ministers on the case, it was perfectly proper for me to consider the options and scenarios that were likely to flow from the decision. The decision was entirely proper and legitimate. In any case, the application would have had to come to the Government in some form.

**Robert Brown:** I am just trying to be clear about the considerations that were in your mind, and therefore in Mr Swinney’s mind, on the matter. There are really only two speculative possibilities that would cause you difficulty. The first is that the council would become involved in the planning process in some way. The second is that council officials, under instruction or otherwise, would not defend the appeal, if that was the way things went. Are those the two considerations that caused you to doubt whether the appeal procedure was a goer?

**Jim Mackinnon:** Let us take the second proposition, in which council officials are asked not to defend the appeal. The officials had recommended approval, but the infrastructure services committee had voted against that recommendation. If the whole council then voted to support the application, why would it ask its officials to turn up and support a decision to refuse? If one has professional planning advice signed by the director of planning that says, “We recommend the granting of planning permission, subject to 62 conditions,” the council as a whole is saying that it supports the application. The idea that planning officials would then be expected to



defend an appeal is not a particularly credible proposition.

**Robert Brown:** Except that we have the formal decision of the duly authorised body of the council—the infrastructure services committee—which is a decision of the council. Surely there is a lot of speculation about your approach to the matter.

**Jim Mackinnon:** There is an attempt to understand the consequences of different scenarios. My view, based on the evidence that I had at that time and consideration over the weekend, was that the scenarios that I outlined would have brought the planning system into considerable disrepute. There would have been an issue about the professional integrity of professional planners going to defend a refusal that they had not recommended. That would have been a very difficult situation for them.

**Robert Brown:** It was not quite as clear cut as there simply being a grant or a refusal; 62 conditions were attached. A lot of issues were involved.

**Jim Mackinnon:** There were 62 conditions, but the bottom line is that there was a grant. It would be perfectly normal and appropriate for an application of that scale to have 62 conditions.

**Robert Brown:** I want to ask a bit more about the basis of the call-in. There is no argument about the fact that there is an aspect of national significance that the chief planner and others have been considering throughout, but that is not the basis on which you took the decision to call in the application, according to your earlier evidence—Johann Lamont asked you one or two questions about that. What is the key basis for the call-in? Is it the perceived difficulties with an appeal? Is that a ground for calling in an application, or do you have to refer to the planning legislation for reasons to call in applications?

**Jim Mackinnon:** You would have to refer to the circular that was issued at the beginning of July, which sets out the circumstances in which the Scottish ministers are notified of planning applications and would consider calling them in. There were clearly grounds for calling in the application in question: it was contrary to a recently approved structure plan and it would have an impact on a site of special scientific interest, which is a national designation. The policy bases of that call-in were absolutely clear in my mind. No one is disputing for a minute that the planning application would have come to the Scottish ministers.

**Robert Brown:** I want to pursue that a bit further. The planning application was refused, so if that remained the position there would have been no concerns about interference with the structure

plan or damage to the SSSI on the basis of which the Scottish Government might have considered a call-in. Why was it considered legitimate to call in the planning application for reasons that no longer existed by dint of the refusal?

**Jim Mackinnon:** There was no formal notice of refusal at the time, Mr Brown; there was a resolution of the infrastructure services committee, which Aberdeenshire Council was seeking to revisit and reverse. I took a decision, based on my understanding of the situation, the likely scenarios and the fact that the application would have come to the Scottish ministers anyway, to recommend that the case be called in now.

**Robert Brown:** If the factors that you mention made the case so compelling, why was the application not called in earlier, between the lodging of it and the decision by the council, bearing in mind the positive view of the Formartine area committee?

**Jim Mackinnon:** The clear practice in the Scottish Government, as it was in the former Scottish Executive and Scottish Office, is to let planning applications run their course. The clear expectation was that in this case the application would come before the Scottish Government as a notified application and the Government would consider whether to call it in. We did not call in the application early, but let it run its course. Had we decided to call it in shortly after receipt, that would have been very unusual. I would have found it difficult to defend that, particularly given how the planning system works. In this case I was very clear about what the options were and felt that the approach that we took was the best way to proceed in the circumstances.

**Robert Brown:** But you had called in 20 or so other cases—I do not mean that you called them in personally.

**Jim Mackinnon:** There are 50,000 planning applications every year, Mr Brown. The Government is notified of about 300 or 400 every year and about 10 per cent of those are called in for determination. Some of them are minor applications that involve access to the trunk road network to which Transport Scotland has objected. We have to take a view on such things, but 90 per cent of the planning applications that are referred to the Scottish Government are returned.

**Robert Brown:** I want to take up the issue of the contact that you had with the First Minister, Alex Salmond, MSP for Gordon. I think that you had conversations with him on 29 and 30 November and on 3 and 4 December. Why was it necessary to have two conversations on 29 and 30 November about whether he could talk to you about such matters? Why was one conversation not adequate?

12:30

**Jim Mackinnon:** Let me be clear. As Mr Salmond has explained, I was in Germany at the time. He could not contact me because my BlackBerry, which is also my mobile phone, was switched off. Mr Salmond sought advice from David Ferguson on propriety issues in relation to the role of MSPs, but I was asked to call him as well. I did so and confirmed the advice that David Ferguson gave on the propriety of Mr Salmond's involvement as an MSP. I said that I would try to establish the facts with Aberdeenshire Council and that I would speak to council officials the next day and phone back Mr Salmond.

I spoke to Alan Campbell on the evening of 29 November and the morning of 30 November and I spoke to Christine Gore, the council's director of planning and environmental services. I then reported back to Mr Salmond. I phoned him on the Friday afternoon to say that the council was revisiting the matter and obtaining legal opinion on whether it could revisit the planning application and that the right of appeal still existed.

**Robert Brown:** I do not understand why you did not refer Mr Salmond to Sir John Elvidge for advice on whether, under the ministerial code, which refers to such matters, he could talk to you. That is the normal practice.

**Jim Mackinnon:** I would have expected it to be appropriate to ask the chief planner a question on planning issues. We are familiar with ministerial propriety in planning cases. It regularly comes across our desk. Several people here have been ministers and they regularly asked for advice on propriety in relation to planning. We give such advice. There was nothing remotely strange or improper in approaching planning officials for advice on the issue.

**Robert Brown:** I have a factual question. Where did your final conversation with Alex Salmond on 4 December, when you said that you phoned him as a courtesy, fall in the order of events?

**Jim Mackinnon:** It took place just before the Trump Organization left the room. I phoned Mr Salmond as a courtesy to say that I had met the Trump Organization and that anything further would be passed to Mr Swinney, in line with the normal procedures. That put an end to my involvement with Mr Salmond on the case. That was what I sought to do. I could do nothing further through discussions. By that time, I knew what I wanted to do. Having shown the Trump Organization out of the room, David Ferguson and I discussed and agreed what we should do. As a courtesy, we phoned Alan Campbell to tell him what we were talking about because, as he said, I had not mentioned that before. I then spoke quickly to Mr Swinney. I wanted to speak to him

before the Cabinet meeting started and to get the process moving.

**The Convener:** I thank Mr Mackinnon and Mr Ferguson for their attendance and co-operation. We need to bring your evidence to a close and to move on.

12:33

*Meeting suspended.*

12:36

*On resuming—*

**The Convener:** We move to our next witnesses. As happens, we have gone on and are now over an hour behind schedule, so I ask for some discipline from members in asking questions. At the request of the Cabinet Secretary for Finance and Sustainable Growth, I understand that it would not be appropriate to give the First Minister a dizzy. Therefore, I ask the cabinet secretary to bear with us and, if we cannot conclude all the questions that we wish to ask, to respond in writing in order to aid us in producing our final report. Let us press on.

I welcome the cabinet secretary and David Ferguson, who it is nice to see again. I do not expect that the cabinet secretary wants to make an opening statement.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** I do not intend to make an opening statement, because I put extensive material on the public record in December. I am happy to answer the committee's questions in that context.

**The Convener:** That is helpful, given the time constraints.

**Jim Tolson:** Did you ever question whether the First Minister's direct communication with Jim Mackinnon was a possible breach of the ministerial code?

**John Swinney:** No, I did not. Sir John Elvidge, who looked at the circumstances in which the issue was handled, made it clear in writing to me on 20 December that no official was asked to operate inappropriately. That is the conclusive answer that we need to that question.

**Jim Tolson:** You did not even question whether such extensive and frequent contact was appropriate?

**John Swinney:** Mr Mackinnon made it clear—and as cabinet minister with responsibility for Mr Mackinnon's area of responsibility I reiterate that I certainly want them to be—that officials in the Government are available and accessible to members of Parliament. When I was a

constituency member of Parliament in opposition, I used that facility frequently—I dare say that it caused some irritation to some people around this table—to pursue my constituency interest. It is pretty clear that, throughout the process, Mr Salmond has pursued his constituency interests. The issues to do with the decision-making process on the application have been properly progressed by the responsible ministers. The contact that took place between Mr Salmond and the chief planner took place in Mr Salmond's capacity as member of the Scottish Parliament for Gordon.

**Jim Tolson:** I want to ask more about the decision-making process. Can you tell us where you were when you received the recommendation from Mr Mackinnon? When was that?

**John Swinney:** I had just arrived in Bute House in advance of a Cabinet meeting on 4 December. I spoke by telephone to Mr Mackinnon.

**Jim Tolson:** So you had a verbal telephone conversation with him. How long did you take to decide on the recommendation, given the information that was brought to you?

**John Swinney:** Essentially, my conversation with Mr Mackinnon started the previous day—Monday 3 December—when I telephoned him from New York. I phoned him for an update for a number of reasons, not the least of which was that I would be undertaking a number of public speaking engagements at major investment conferences in the United States. I was also going to be undertaking a live business news interview on one of the US television networks. As members will not be surprised to hear, the issue was pretty prominent in the US media, so I wanted to be properly informed about the current situation.

Mr Mackinnon gave me that information. I asked him what his opinion was on the current state of play. I also asked him what our options were and he explained to me the different options that existed, one of which was of course a call-in. I therefore had notice and an explanation of that on the Monday and was in a position to reflect on it before I came to a decision on the afternoon of Tuesday 4 December.

**Jim Tolson:** Did you evaluate which method, whether call-in or appeal, would most speedily resolve the issue?

**John Swinney:** That was not my consideration. My consideration was how I could effectively protect the integrity of the planning system in Scotland. From where I was watching, I thought that significant questions were being asked about the effectiveness and integrity of the planning system. I therefore wanted to know what options existed to ensure that we could properly discharge our responsibilities, as a country, in relation to this international planning application.

**Jim Tolson:** Did you evaluate the risk of judicial review of your course of action compared with other options?

**John Swinney:** Obviously I considered the factors that I thought to be relevant in relation to the decision. What I was certain about was that there was a legal basis for the decision to call in the application, provided that Aberdeenshire Council had not issued a decision notice in relation to the decision of the infrastructure services committee. I was clearly aware that such a notice would be an impediment. I was also aware that, under the Town and Country Planning (Scotland) Act 1997, the power to call in was available for ministers and that it could be exercised in that fashion.

**Jim Tolson:** Who advised you and why was a development of that advice not mentioned in your lengthy statement that purported to be a full record?

**John Swinney:** I do not understand your point.

**Jim Tolson:** Who advised you about the judicial review process and about whether it was relevant?

**John Swinney:** The advice that I took was from the chief planner. However, my knowledge of planning issues and my Cabinet responsibility for such issues did not suddenly materialise on the morning of 3 December. This is an issue in which the whole planning process, my responsibilities as a minister and the supervision that I apply to the generality of the planning brief or to my actions as the planning minister in cases in which I have determined that I, as opposed to Stewart Stevenson, will be the planning minister, are matters on which I have been briefed since I became a minister last May. Obviously, I was in a position to make judgments that were based on that experience and knowledge, and on advice that was given to me by officials.

As Mr Tolson will know—this is a crystal-clear point of process and procedure—the Government, whether it is this Administration or a previous one, never comments on the receipt of legal advice. I have confirmed that point in a parliamentary answer.

**The Convener:** In your public statement, you went to great lengths to refute any accusations that you had met the Trump Organization in America or, indeed, had met it at all. Does that also apply to representatives of, and representations from, SMC Jenkins and Marr Limited, architects and planning consultants, who were supporting the Trump Organization?

**John Swinney:** I have never had any conversation or communication with Jenkins Marr—if that is the correct name—at any stage.

**Kenneth Gibson:** Good afternoon, cabinet secretary. As you will know, some MSPs have placed great emphasis on, and expressed concern about, the fact that a number of parliamentary questions on this matter have yet to be answered. Can you confirm that those questions will be answered according to the normal timescale and procedures?

**John Swinney:** I have answered 54 parliamentary questions formidably earlier than they should have been answered under the normal procedures and protocols of Parliament. If my recollection is correct, the questions that I answered on 20 December should have been answered about now, so the questions were answered very quickly. I gave our staff a significantly aggressive timescale to ensure that the material was prepared to allow me to answer the questions. Those questions were answered on 20 December and the remainder will be answered as swiftly as the Government can answer them. I aim to deliver complete answers before the normal deadline for consideration.

Much time has been spent on preparing for the committee's meeting, which provides the opportunity to answer many questions into the bargain. Other preparatory work is being done on other questions. Mr Harvie has had some questions answered in the past couple of days about planning issues that relate to the Menie estate development. Other questions will be answered timeously.

12:45

**Kenneth Gibson:** Mr Ferguson, have more resources than usual been used to ensure that the questions are answered as early as possible?

**David Ferguson:** As the cabinet secretary said, the timetable for answering the questions was much shorter than normal, in an attempt to put as much information as possible into the public domain. There has been much pressure on us to do that.

**Kenneth Gibson:** On 20 December, the cabinet secretary said that the Trump application was called in because

"The nature and scale of the proposals, and their potential impact on important natural heritage resources clearly raised issues of national importance."

However, Aberdeenshire Council had at that time decided in effect to refuse to grant planning permission, which would mean that there would be no adverse impact. Will you explain that contradiction?

**John Swinney:** It was clear that we had a planning application that was still live and which raised issues of national significance of the order

to which Mr Gibson referred. It was also clear after the infrastructure services committee's meeting that although one sub-committee had said no, another sub-committee had said yes. The opinions that were emerging from Aberdeenshire Council suggested to me that the council had a body of support for further consideration of the application. I therefore took the view that the application merited further consideration. My decision to call it in would ensure that further consideration could be given to it and to the issues that Mr Gibson has highlighted as being significant to the development.

**David McLetchie:** Does that mean that the decision to call in the application was taken to get the council out of the legal hole that it had dug itself into? Was the primary motivation for the exercise of your powers under the Town and Country Planning (Scotland) Act 1997 what had happened in the council's handling of the application?

**John Swinney:** I would not say that—I would describe the situation slightly differently. I was trying to protect the planning system's integrity. The bizarre situation was unfolding in which one council sub-committee supported the application and one had refused it, and the overwhelming majority of council members were excluded from the process but were making it obvious that they wanted to be involved in it.

We believed, on the basis of information from council members, that the council was likely to express support for the application, which it did in its discussion on 12 December. However, in that situation, we could have faced an appeal by the Trump Organization for which the council could send officials to a planning inquiry to justify a refusal while the council also made the case for endorsement and approval. As I am mindful of the need to protect the planning system's integrity, I felt that the way to resolve the situation was to ensure that ministers could provide for greater consideration of the application.

I return to the question that Mr Gibson asked. It is clear that the application raised issues of national significance, which I think we all accept would inevitably have come to ministers under any scenario.

**David McLetchie:** The motivation for the call-in of the application was, however, the legal mess. I asked you about that, and you said that you "would not say that", but you have just explained the legal mess that Aberdeenshire Council got itself into, which seems to have been the motivation behind the exercise of your call-in power. Is that fair comment?

**John Swinney:** I said that I would have expressed things differently, and that I thought that

there was a threat to the integrity of the planning system because of the situation in which we found ourselves. Issues of national significance were involved that required further consideration—that is implicit in the call-in notice, which Mr Ferguson issued on my behalf on 4 December—and we will progress that consideration.

**David McLetchie:** I want to get things correct, because I am sure that the reason why ministers exercised their power under section 46 of the Town and Country Planning (Scotland) Act 1997 is important to the legal process. Are you saying that you called in the application under that section because it raised issues of national significance, as many other applications do, or because of the legal hole that Aberdeenshire Council had got itself into?

**John Swinney:** The precise answer to your question is contained in the call-in letter that Mr Ferguson issued on 4 December. That letter makes it clear that the Scottish ministers gave the direction in view of

“the proposal raising issues of importance requiring scrutiny at a national level.”

That was the reason for call-in of the application. I have explained the context of the call-in, which was the situation in which we found ourselves. I thought that there was a danger to the integrity of the planning system as a result of the scenario that we faced.

**David McLetchie:** Right. So the legal pretext for the call-in was that—

**John Swinney:** Let us try to look at things in another way. It is clear that the application was called in because it raises issues of national significance that should be considered further. The context was that, over the period running up to 4 December, there was a view, which was certainly in my mind, that there was a danger that damage could be done to the integrity of the planning system unless the Government resolved the matter. The Government's action has, of course, been warmly and significantly endorsed by people representing all shades of opinion in Aberdeenshire, Parliament and the Parliament's Economy, Energy and Tourism Committee.

**Johann Lamont:** An interesting distinction is now being made. It was argued that the application had to be called in because a significant national development was being proposed, but the Government did not at any stage take the opportunity to exercise its right to call it in prior to the council taking a decision on it. Therefore, the issues of national significance were not sufficiently significant for the Government to act before a decision on the application was made. Is that right?

**John Swinney:** The application was being considered—

**Johann Lamont:** Were you advised to exercise your power to call in the application?

**John Swinney:** The application was properly considered by Aberdeenshire Council. When the stage was reached at which the consideration process could potentially have undermined the integrity of the planning system in Scotland, ministers exercised their right to call in the application.

**Johann Lamont:** With respect, I say that you are making two separate arguments at the same time. If a significant and controversial national development is being proposed, you can call in the application prior to any decision being taken by the council and prior to any problems being caused at local level. I presume that you were given advice on that and that you chose not to call in the application. You are now saying that you had to call it in because the scrutiny process was not rigorous enough. However, in your response to parliamentary question S3W-7675, you said:

“On 3 December, I contacted the Chief Planner to receive a general update on the events”.—[*Official Report, Written Answers*, 20 December 2007; S3W-7675.]

According to the chief planner, you asked what options were available to you not because the application would inevitably come before you, but because the Trump Organization said that it would not appeal. In a further conversation the next day, the call-in of the application was “discussed and approved”.

The legally binding and appropriate scrutiny at local level that was carried out by the council's two committees seems to have been considered insufficient, but you took the decision to call in the application after two five-minute conversations with the chief planner, despite the fact that you did not contemplate call-in at any stage prior to the council's decision.

**John Swinney:** The reason why the application was called in on 4 December was because of the way in which the application had been handled by Aberdeenshire Council. That is not just my assessment of the situation that had emerged by 3 December—it is the opinion of the overwhelming majority of the members of Aberdeenshire Council, which is now evidenced by the council's discussion of 12 December, during which it agreed that the application had not been properly considered and fully assessed. Therefore, the opportunity of call-in existed for ministers to act at that time to ensure that quality and rigour of scrutiny could be applied to the application.

**Johann Lamont:** With respect, minister, you made a decision following a five-minute conversation on the Monday, which was followed

up by a second five-minute conversation on the Tuesday, to act on a matter on which you had not previously received advice. You have said that the application related to a national development despite the fact that Jim Mackinnon has told us that it is not a national development. You are now saying that it was called in because of poor scrutiny. Surely we need to make a distinction between those issues. You have said that the local authority did not do things right and that the whole system might therefore collapse, but you took a decision on the basis of two five-minute conversations. I know that the chief planner is a man of integrity in giving advice, but ministers have a duty to interrogate that advice and then to take a decision. Are you seriously saying that two five-minute conversations provided grounds enough on which to call in the application because it had not been sufficiently scrutinised by the local authority committee, which had gone through due process over a long period?

**John Swinney:** Let us just examine those points. First, the idea that my involvement in the planning process started on 3 December ignores the fact that, as a minister, I have taken a keen interest in every aspect of my responsibilities from the moment I was appointed. The extent of ministerial responsibility in calling in applications came as no surprise to me because it was quite clear to me from my understanding of the Town and Country Planning (Scotland) Act 1997. The idea that I have somehow suddenly become involved in the planning process after a five-minute exercise is just a fallacy.

The second point—[*Interruption.*—if Ms Lamont will let me answer her questions, is that I receive advice from the chief planner but it is up to me to take decisions based on that advice. Within the context of my knowledge of the planning system, I was able to understand properly and consider the scenario that Mr Mackinnon painted for me in the course of our conversations on the Monday and the Tuesday.

My third point relates to the decision that was taken. The decision that I took was to ensure further consideration—nothing more and nothing less—of the application. That is an important point that should be reflected on in the context of the emerging situation at Aberdeenshire Council where, as members heard from the chief executive fully this morning, there was concern about the state of play of the application. The council's clear view was that the application had not been given full, proper and effective consideration. Therefore, my decision to call in the application provided for further opportunities for that consideration—nothing more and nothing less.

**Johann Lamont:** Actually—

**The Convener:** Unfortunately, as I mentioned, we are limited for time. As a consequence, the cabinet secretary has agreed that we can ask him—indeed, we may also need to ask the First Minister—to come back to us in order that we can complete our report. I need to bring in other committee members at this point.

**Alasdair Allan:** Can the cabinet secretary comment on any decision that has been made about the likely timescale for the process from here on in? What will be the nature of that process?

**John Swinney:** I have yet to take decisions on that. I am considering the options.

**Alasdair Allan:** I presume that the range of options that are open to you includes referral to a reporter, a public inquiry, hearings and written submissions.

**John Swinney:** There is a range of options. The application could be resolved by written submissions, some form of hearing or a public local inquiry. I am considering the issues around those options.

13:00

**David McLetchie:** In evidence to the committee, Mr Mackinnon acknowledged that the decision that was based on his recommendation could have waited another 24 hours, instead of being made on 4 December, within an hour or so of his meeting the Trump representatives. I think you will find that that is what he said. Why did you not wait another 24 hours? Why did you make your decision on the basis of two brief conversations? Why did you not await the written submission that Mr Mackinnon told us he had compiled for you, which set out all the options? Given that there was no screaming rush to make a decision—and you had many engagements and had to return from the United States—would it not have been better to take at least 24 hours to read the paper and give the matter some thought before you pressed the button and gave the go-ahead?

**John Swinney:** I have heard you complain about the pace of decision making in Government being far too slow, but now you are saying that it is unacceptable that the pace of decision making was far too fast—

**David McLetchie:** It depends on whether the right or wrong decision is made. That is the key issue.

**John Swinney:** That is correct, and we made the right decision.

In answer to Johann Lamont, I made the point that the issue was not taking up just the odd five minutes of consideration; I was aware of the

development's significance. I should perhaps clarify the terminology. The development is not a national development as we understand it under planning legislation and the national planning framework. However, it has national implications and is on a national scale, which is why the chief planner was keeping an eye on it and why I—the minister who would take decisions on the application—was aware of it. In the course of assessing the right approach and timescale for action, I thought that there was a need to resolve the situation to provide certainty and clarity.

We could have waited for 24 hours, but we might then have been in the situation that Mr Mackinnon described to the committee, which would have been similar to the situation that the Government faced in relation to the Ikea superstore development in Midlothian, when the local authority issued a decision notice and closed off the opportunity for the Government to call in the application—until then, there could have been a call-in at any moment. That is significant.

At the meeting of the Economy, Energy and Tourism Committee on 5 December there was cross-party endorsement of the swiftness and effectiveness of the Government's intervention. However, if the Government had not acted timeously and had lost the opportunity to call in the application, that committee might instead have discussed why the Government had not acted sooner, before Aberdeenshire Council could have thwarted the possibility of a call-in.

I accept that there were matters of judgment: in my judgment it was necessary to resolve a confusing situation that had the potential to do further damage to the integrity of the planning system in Scotland. As the responsible minister, I considered it my duty to act swiftly to address that point.

**David McLetchie:** If you examine the *Official Report*, I think that you will find that Mr Mackinnon said quite specifically that he was very confident that the pen was not poised over the decision letter and that another 24 hours could have been taken to make the decision. I think that you will find that that is a matter of record. I pressed Mr Mackinnon on the issue several times and he acknowledged that it was not a question of being up against the clock. We can both read the *Official Report*.

**John Swinney:** It is more than likely that that is on the record, but I am the responsible minister and, in my judgment, there was a danger that if we did not bring certainty to the process, we would lose any opportunity to restore the reputation and integrity of the planning system. That is why I acted in the timescale in which I acted.

**David McLetchie:** In coming to your swift decision, were you advised by Mr Mackinnon or

were you aware that, since May 1999, it was wholly unprecedented in the annals of the Scottish Executive for any application to be called in in the circumstances in which this case was called in, following the refusal of the application by the competent planning authority in Aberdeenshire?

**John Swinney:** I was aware of that point. In the planning system, circumstances arise that cannot always be predicted. Such circumstances are what we all generally consider to be the basis of unprecedented decisions. As a minister, I was in a position to reflect on particular circumstances and to take particular decisions to extend the consideration of a planning application that in my judgment—and certainly in the judgment of the overwhelming majority of members of Aberdeenshire Council—had not been given the full and due consideration that it required.

**David McLetchie:** So, in summary, you took what was, by your own admission, a wholly unprecedented decision to call in the application on the basis of two short conversations with the chief planner, in which he made that recommendation to you, even though you had the opportunity to defer consideration of the matter for, say, 24 hours before any such decision had to be made.

**John Swinney:** No, I did not. I took the decision in the context of the knowledge and experience that I had gained as a minister over a period of eight months and my understanding of some of the issues that we would be faced with and of the way in which ministers exercise responsibilities on planning matters. Yes, I had two conversations with the chief planner, in which I received information on the nature and character of the matters in question, but I stress that the decision that I took was to encourage further consideration of the application—nothing more and nothing less.

Therefore, there was no necessity for me to be in a position to make a judgment on the enormous volume of detail that supported the planning application, which Patricia Ferguson asked the chief planner about earlier. That was not the question that I was addressing; the question that I was addressing was whether further consideration should be given to the planning application—nothing more and nothing less. I took the decision that further consideration should be given to it.

**David McLetchie:** You are saying that your prior personal knowledge of planning law extended to the knowledge that it was possible for the Scottish Executive to call in the application in the legal window of opportunity, shall we say, that existed between the date of the planning authority's meeting and the signature or delivery of the decision letter. You knew that before 3 December, as a result of your personal knowledge of planning law. Is that what you are telling me?

**John Swinney:** Not as a result of my personal knowledge of planning law—you will know that I am not a qualified planner—but from my knowledge of planning in my capacity as a minister in the Scottish Government.

**David McLetchie:** You knew that?

**John Swinney:** I knew that.

**David McLetchie:** You are a very well-informed minister, Mr Swinney.

**Patricia Ferguson:** Good afternoon, Mr Swinney. I am curious about why you took the decision to be the minister responsible in the situation in question. Will you explain that to the committee?

**John Swinney:** First, I should say that ministers had been operating under the assumption that it was inevitable that the application would come to them, either through the decision of Aberdeenshire Council to grant planning permission or, if the council refused planning permission, as a result of an appeal by the Trump Organization. In order to prepare for that, I decided that, to make the process as transparent as possible, there should be no involvement on the part of the designated planning minister, Stewart Stevenson, because he had a reasonably close constituency interest in the Menie estate application, as he represents the neighbouring constituency of Banff and Buchan. On that basis, I considered it appropriate that I should exercise the responsibility, to provide transparency.

**Patricia Ferguson:** When was that decision arrived at?

**John Swinney:** It was arrived at in early November—certainly in advance of the Formartine area committee consideration. I cannot give you the precise date for when that decision was made, but I arrived at it in one of my regular and routine meetings with Mr Mackinnon.

**Patricia Ferguson:** I wonder, convener, whether Mr Swinney might be able to check that date and supply it to us. That would help our consideration of the matter.

**The Convener:** Is Mr Swinney happy to do that?

**John Swinney:** Yes.

**The Convener:** Patricia Ferguson can have one more question on that line of questioning, then Jim Tolson has a supplementary and Robert Brown will come in. The First Minister is here.

**Patricia Ferguson:** I have a question on a slightly different issue.

**The Convener:** Please assist us by being brief.

**Patricia Ferguson:** Mr Swinney, did Mr Salmond, albeit as the constituency MSP, make

any representations to you in your capacity as the minister with responsibility for planning, at least with regard to this application?

**John Swinney:** None whatsoever.

**Patricia Ferguson:** Neither on behalf of constituents nor in any other way?

**John Swinney:** None whatsoever.

**Jim Tolson:** I will follow up briefly on the previous point that you discussed with Patricia Ferguson. You said that you decided to take control of the application on behalf of the Government in early November, before the Formartine committee had sat. Why did you not exercise the call-in at that time to save everybody an awful lot of trouble?

**John Swinney:** I answered that point in response to Johann Lamont. The application was being considered by Aberdeenshire Council—it had been with the council for a considerable time. I took the view that the application was taking its course within the council and that ministers were in a position to exercise their powers and responsibilities if they saw fit.

**Jim Tolson:** You could have and should have called it in, but you did not do so.

**John Swinney:** I could have called it in, and I did call it in. The decision was taken to call it in on the basis that that would ensure that we could further consider the issues raised about the application in respect of the national considerations involved.

**Johann Lamont:** The decision not to call in the application meant that there was a possibility that it could be refused. You have said that you knew that it would inevitably come to your table. The fact is that it was not inevitable that it would come to your table when the Trump Organization chose not to exercise its right of appeal. The charge is that you needed to call it in because that was the only way in which what you described earlier as an inevitability would come about—that it would come to your desk for consideration.

**John Swinney:** No, because the clear context in which the decision to call it in took place was that the overwhelming majority of the members of Aberdeenshire Council felt that the application had not been given full and proper consideration by the council. It is important for ministers to be aware of that context.

**Robert Brown:** I have two areas of questioning. The background is the operation of the ministerial code, from which I will quote. You are aware of and touched on the fact that

“the Planning Minister, must do nothing which might be seen as prejudicial to that process, particularly in advance of the decision being taken.”



That is in the context of the Scottish Government's involvement in such matters. That covers both actual prejudice and the perception of prejudice. If I am not mistaken, the evidence that you have given indicates that you are aware of those issues. You have been careful to say that certainty of process was a factor in some of your decisions, against the background of the issues in Aberdeenshire and so forth. Because you called in the application only after it had been refused by the council, when the status quo was a refusal rather than a neutral position of no decision, would it not appear to a neutral observer that you had already decided that the decision of the council—or, to be precise, of the infrastructure services committee—was not appropriate and needed to be looked at again and probably reversed, and that the application should be granted? Is there not a perception of the Scottish Executive taking sides by going through this particular formulation instead of allowing the usual formulation to go ahead of an appeal by the applicant, if so advised?

13:15

**John Swinney:** No. We had a situation in which one sub-committee of Aberdeenshire Council had supported the application, another sub-committee had opposed it and a general level of opinion on the council was being expressed that the process had not been undertaken effectively because the overwhelming majority of councillors had been excluded from the decision-making process. I accept that that was speculation and assumption at that time—on 4 December—but it was confirmed firmly by Aberdeenshire Council's decision on 12 December.

My response to the issue was designed to ensure that there was proper opportunity to consider the application. That is the basis of the evidence that I have given to the committee this morning.

**Robert Brown:** I will come back on that, if I may, convener.

We heard clear evidence from Aberdeenshire Council's chief executive that there was nothing wrong with the decision of the infrastructure services committee, which had the delegated authority under the council's rules. It made the decision. According to the evidence that we heard from Mr Campbell and Mr Mackinnon, there was a speculative possibility—although it had reduced to almost nothing by that time—that Aberdeenshire Council might be able to involve itself further in the planning process. Is it not also the case that the council's decision on 12 December was taken subsequent to its coming out of the planning process? As we have heard, was the council not by that time in the position of being a quasi-consultee? We are talking about a situation that is

not exactly as you have described it to the committee. Is that not the case?

**John Swinney:** With the greatest respect, Mr Brown, we are splitting hairs in talking about the position of the members of Aberdeenshire Council. It was pretty clear that the overwhelming majority of Aberdeenshire councillors felt that they had been excluded from the decision-making process and that the consideration that had been given to the application was unsatisfactory.

**Robert Brown:** With great respect, Mr Swinney, we are not splitting hairs. Surely the key and central point in all this is that the legal decision lay with Aberdeenshire Council. Having heard all the evidence that we have now heard, do you not accept that the infrastructure services committee's decision was rightly taken in legal terms—agree with it, or not—and that Aberdeenshire Council had no right to come back into the planning process? Is that not the position that we know now is clearly the case? Was it not also the position at the time that you were making the decision, when it was pretty much 100 per cent ascertained that that was the case?

**John Swinney:** Clearly, my view is that the legal basis for what the Government has done is absolutely sound. That is my position. I think that it is also the view of any observer's reflection on the circumstances that we have dealt with.

**Robert Brown:** Can I—

**The Convener:** Last one, Robert, please.

**Robert Brown:** I seek clarification on the telephone calls that were a bit of an issue for the chief planner earlier this morning. There was a bit of a furore about the answer that the BBC was given in which it was denied that there had been telephone calls at which the Trump people were present. You then answered a parliamentary question from my colleague Mike Rumbles in which you said that there had been two telephone calls. Also, although I think they were different ones, two telephone calls were mentioned in your letter of 20 December.

Yesterday, a corrected answer to the PQ was issued—I think that both the committee and Mike Rumbles have seen it—which identifies that there were three telephone calls. I assume that that followed on from the statement from the Aberdeenshire Council chief executive. Can you give the committee an understanding of how, not only in the furore of the earlier BBC interest but in answer to the PQ, the information was got wrong, not once but twice? Why is it only now, some weeks later, that the Scottish Executive has made a formal correction?

**John Swinney:** First, I will explain the point on the advice that was given to the BBC. On 12

December, the Government press office received questions about telephone contacts between Aberdeenshire Council and the chief planner. The questions were answered correctly on 12 December, within a very short space of time of the questions being asked. On the following day, 13 December, the BBC refined its question by changing a limited number of words—about four words—in the question. During a very busy day, in which he dealt with a large number of questions on the Trump issue, one of my officials did not realise that a change had been made in the wording of that question and issued the same wording that he had issued on the previous evening. When the mistake was identified, officials clarified the situation to the media at the swiftest opportunity. The change at that time is a matter of record. We are talking about a matter of minutes to address the fact that incorrect information was given because one of my officials inadvertently did not recognise that four words in a BBC question had been changed, for which the Government has apologised.

The second point concerns Mike Rumbles's question about the number of telephone calls. As Mr Campbell said to the committee this morning, he issued a press statement on 13 December, I think, in which he said that there had been two telephone calls. Earlier, he said that there had been one telephone call and, in his written evidence, he said that there had been three telephone calls. When I saw Mr Campbell's written evidence, I made further checks on the sequence of calls and it emerged that the chief planner had had one call to discuss the current state of play in relation to the planning application and then there were two calls to discuss the issue of call-in. One call was made before the recommendation was given to me and the other was made after that, as a courtesy. That is the explanation.

As to the point about having to amend questions, I know for a certain fact that I am not the first Government minister who has had to correct parliamentary questions and I am sure that former ministers around the table today have had to do the same at some stage in the past.

**Patrick Harvie (Glasgow) (Green):** I will follow on from Robert Brown's point about the difference between the perception of inappropriate behaviour in the planning system and actual inappropriateness. If we are to retain the public trust in the planning system that we need in order to get people to participate in it and take it seriously, perception is hugely important. The cabinet secretary said that he took his decision because he sought to protect the integrity of the planning system. It would be charitable to say that, as regards public perception, the Government has not been universally successful in its objective. Is he aware that there is a public perception that the

integrity of the planning system has not been treated centrally in the matter? Is he aware that that perception will be reinforced if there is no public inquiry?

**John Swinney:** Public perception will be utterly impossible to measure and therefore it is entirely a matter of opinion what public perception will be. I am certain that the Government has acted effectively to protect the integrity of the planning system and address some of the difficulties that were unfortunately reinforced by the situation that we inherited as a consequence of the decision-making process in Aberdeenshire Council.

**The Convener:** Thank you, cabinet secretary. We are all under time constraint and I appreciate the frustration of my committee colleagues who wished to ask supplementary and additional questions. We have your assurance that you will continue to co-operate with the committee on the matter and we thank you and Mr Ferguson for your attendance this morning.

**The First Minister (Alex Salmond):** Convener—

**The Convener:** Just a second until we get a name-plate for you that says "The First Minister".

**David McLetchie:** Should it not say "Alex Salmond MSP"?

**The First Minister:** No, it should not, David; I am here as First Minister. I do not think that my actions as a constituency member are within your province, but the convener might check that.

**The Convener:** I will do the introductions, Mr Salmond—that is my job here.

**The First Minister:** Quite right, but I did not want there to be any confusion about the matter.

**The Convener:** If I can separate you and Mr McLetchie today, that will be my task.

In our final witness session, we will take evidence from the First Minister, Alex Salmond MSP, and David Ferguson, head of planning decisions in the planning directorate. We welcome your attendance at our committee, First Minister. I start with an apology, as we are running way behind schedule. We have another constraint in that the committee cannot sit while the Parliament is in plenary session, which means that we will have a very short time with you. I understand that that will not be satisfactory to you, and it is not ideal for the committee. We have a maximum of 35 minutes. We might have to revisit the matter or ask some questions in writing. The situation is not ideal, but it was important that we made a start this morning.

Do you have a statement for us? If so, I hope that it will be brief.

**The First Minister:** I do have a statement, convener, and yes, it is brief.

First, thank you. I am delighted to appear before the committee today. I have been offering to go to parliamentary committees since I became First Minister and you have availed me of the opportunity to break my duck. I will make a brief opening statement and then I will be happy to answer the committee's questions.

Obviously, as the constituency MSP, I am debarred from taking any role in the decision-making process on the Menie estate application. My actions in connection with the issue have been undertaken in my constituency rather than ministerial capacity. That is in accordance with the Scottish ministerial code. However, the committee should be aware that sections 6.7 and 6.10 of the code specify a range of activities in which ministers are properly able to engage with regard to planning decisions—correspondence, deputations, personal interviews, meetings and so on—in pursuing their legitimate constituency interest. In short, as long as they stay out of the decision-making process, they can act as a fully fledged constituency member of the Parliament.

There is one suggested restriction. In sections 6.8 and 6.9 of the ministerial code, ministers are discouraged from making public statements, or at least from expressing personal views. Rather, they should make it clear, when they make statements, that they reflect

“the views of their electorate”.

Although I am not prevented from expressing a view on the merits of the proposed development at the Menie estate, throughout the process I have taken the pragmatic and perhaps uncharacteristically cautious approach of not expressing in public my view on the merits of the planning application. Furthermore, I have followed that approach at private meetings as well.

Paragraph 3.1.5 of volume 1 of the code of conduct for members of the Scottish Parliament tells us:

“Members should be accessible to the people of the areas for which they have been elected to serve and to represent their interests conscientiously.”

I have therefore worked hard to represent the interests of my constituents. I have met people from all sides of the debate—the proposer, the developer, the protesters, Michael Forbes and his mother, Molly, and others. I have answered more than 400 pieces of correspondence—letters and e-mails—in one capacity or another. Each and every one of those answers made my role as a constituency MSP crystal clear and emphasised that as a minister I am debarred from decision making on a planning application in my constituency.

Lastly, the Government's actions in connection with the application have been explained through the 60 or more parliamentary questions that have now been answered, through John Swinney's news release of December, through the subsequent press conference that I held, but above all through today's evidence session. I will be as helpful as I can possibly be to the committee in my role as a constituency MSP within the limits of the parliamentary code that binds us all. I look forward to answering your questions.

**The Convener:** Thank you. We heard today about the difficulty that the Trump Organization had with understanding Scottish planning law, despite being supported by Jenkins & Marr, architects, planning consultants and legal opinion. It seems that the Trump Organization did not understand the planning system at all even though it had spent lots of money on the application. Would it not be understandable, therefore, if it perceived that it was meeting not the constituency MSP but a minister, and not just a minister but the First Minister? Did that excite its expectation that it could fast-track the development, get direct support for it, and circumvent some of the tedious planning processes that everyone else has to go through?

**The First Minister:** It is certainly true that the Trump Organization met previous First Ministers to talk about the development. Also, you might well argue that, as the constituency MSP, because I am out of the planning decision process, I am freer to meet people than a First Minister who was still within the planning process would be. Whatever people's expectations might be, I have gone through exactly what I can and cannot do with regard to the application in every phone call and meeting that I have held on the issue. I was watching this meeting earlier on television, so I know that you heard some of that from Alan Campbell, chief executive of Aberdeenshire Council. In every single phone call and meeting, I have gone through the limits that are placed on me by being the constituency MSP. No one can be in any doubt about that whatsoever.

13:30

**The Convener:** I think that most members would sympathise with the difficulty of the First Minister carrying out his appropriate role as a constituency MSP in a planning situation.

If someone receives a phone call from your private office asking, “Will you take a call from the First Minister?” there is inevitably some confusion about whether they are talking to Alex Salmond MSP or the First Minister. If Alex Salmond turns up in a ministerial car with support, the trappings of the First Minister's office can bring about confusion.

Do you not think, in retrospect, that it would have been better to be genuinely cautious and delegate one of your Scottish National Party colleagues—a list member in the region—to act on your behalf in planning matters?

**The First Minister:** No. It is my responsibility, as the constituency MSP, to respond to requests for meetings. Incidentally, a whole section—more than a page—of the ministerial code provides the basis on which a minister can do that. I presume that it would not be there if it was not to allow constituency MSPs who are also ministers to take such a position. Any confusion is removed by the fact that the first thing that I say in any conversation that I ever hold about the application is about my respective roles as First Minister and constituency MSP.

On a point of fact, as you slid it in during the introduction to your question—

**The Convener:** Slid it in?

**The First Minister:** Convener, if you just haud yer wheesht and haud yer horses, I can tell you that the only support that I had at the meeting that I held with the Trump Organization on 3 December, at its request, was my constituency secretary, Hannah Bardell.

**The Convener:** I have one final question. Jenkins & Marr, the architects and planning consultancy company, has offices in Glasgow, Edinburgh and Aberdeen. Do you know the company? Have you met any company representatives during the course of the planning application?

**The First Minister:** No. I mean—

**The Convener:** No is fine.

**The First Minister:** I was just going to say that I have certainly not met representatives from that company during the course of the planning application. I have no idea whether I have met them in the past, but they have certainly not been at any of the meetings that I have been at during the course of the planning application.

**The Convener:** I accept that qualification.

**Johann Lamont:** First Minister, I am sure that, given your enthusiasm for appearing before a committee, it must be a matter of regret to you that it is one investigating the quality of your judgment and the charge that you were perhaps reckless—

**The First Minister:** Sorry, Convener, but that is not the remit that the committee sent me. That remit said nothing about investigating the quality of my judgment; it was about the decision-making process.

**Johann Lamont:** Can I finish the question?

**The Convener:** We will let Johann finish the question.

**Johann Lamont:** I want clarification on the meetings with the Trump Organization. First Minister, I know that you met Donald Trump himself, presumably as First Minister. Did you have any meetings with the Trump Organization prior to 3 December?

**The First Minister:** Yes, I met Trump representatives on 24 September, when I went on a site visit to the Menie estate. I did so at their request, but I thought that it was important for me, as a constituency MSP, to go on that site visit because it is helpful to understand the nature of the application in the constituency for all the meetings, conversations and deputations that I have.

**Johann Lamont:** I understand that. In your experience as an elected member, prior to being First Minister, on how many occasions did you have meetings with the chief planner—whether that was under the Scottish Office or the old Scottish Executive? Did you have meetings with the chief planner about any other applications?

**The First Minister:** I do not think that I have met Jim Mackinnon about any matter. I did have a meeting with officials about Peterhead Port Authority, and it could have been that the chief planner was present. I would have to check the dates, but it is possible that the chief planner was there because it was a significant matter.

**Johann Lamont:** That would be helpful. Have you ever facilitated a meeting of a developer in your constituency with a chief planner?

**The First Minister:** I may well have done that with the Peterhead Port Authority on the occasion that I mentioned. What I would say, Johann, is that I have facilitated meetings with planning officials in Aberdeenshire on many occasions, not just for developers but for protesters.

**Johann Lamont:** But in all your time as an elected member you have never been able, other than on this occasion and perhaps one other, to set up a meeting at 24 hours' notice between the developer of a proposal and a chief planner.

**The First Minister:** Not having had notice of your question, though I can certainly check for you, the only occasion that I can remember in the lifetime of the Scottish Parliament—for much of that lifetime I was an MP rather than an MSP, which should be reflected on—is that I led a deputation on, I think, the Peterhead harbour development in the then Scottish Executive offices in Leith. Apart from that—

**Johann Lamont:** So, at very best, along with a lot of other things, it was rare for you to manage to get a meeting for developers with the chief planner within 24 hours. If I can progress—

**The First Minister:** There was one other occasion, Johann, which is coming to mind. Again, I can give you the background, because I want to be absolutely complete about this. I held a meeting at extremely short notice with Donald Dewar, who was, I think, then Secretary of State for Scotland—it was before he was First Minister—which was about the potential closure of two major fish factories as a result of European regulations. I can get the committee the exact timescale of the thing.

**Johann Lamont:** That was not a planning application. We are short of time.

**The First Minister:** I think you will find that it involved a range of issues.

**Johann Lamont:** I am trying to establish whether, in terms of handling other planning applications in your constituency, your approach in this case was typical.

On the use of the car, on what business were you engaged in Aberdeen on 3 and 4 December that required the use of a ministerial car?

**The First Minister:** A special adviser was helping me in national engagements on both 3 and 4 December, and on 3 December I was dropping him off in Milltimber, which I think is where his parents' house is, and which is near the Marcliffe hotel. I knew that I would be doing that and that is why, as the permanent secretary indicated, the use of the ministerial car was perfectly in order, under the circumstances.

On 4 December, I had a meeting first with an Aberdeenshire renewables organisation to talk about its proposed new headquarters; then I opened an oil company office complex in Aberdeen.

**Johann Lamont:** Okay, so there was substantial ministerial activity that involved your being in the Aberdeenshire area.

**The First Minister:** Well, I stay in the Aberdeenshire area, Johann—in Strichen.

**Johann Lamont:** Okay, that is fine. I am sure you do not stay there all the time. On the meeting with the Trump Organization—

**The First Minister:** Apart from Bute House, it is the only house I have got.

**Johann Lamont:** It is a serious point—just in terms of practicalities.

**The Convener:** Johann, I will give you another bite at it at the end of the meeting.

**Johann Lamont:** There is an issue. The charge is that the First Minister has perhaps misrepresented his own position or could potentially have had his position misrepresented.

He arrived at a meeting not in his constituency by ministerial car. He left a meeting not in his constituency by ministerial car, for a meeting at which he set up a meeting for developers with the chief planner, which he accepts was exceptional. There may be an issue there and the First Minister may want to reflect on whether that casts some doubt on his judgment about the perception of his use of the car in relation to a conflict of interests.

**The First Minister:** Johann, you have been a minister and you know that the use of civil service resources is the province of the permanent secretary. Can I direct you to the answer to parliamentary written question S3W-7702?

**Johann Lamont:** I am aware of the answer.

**The First Minister:** Well, if you are aware of the answer, then you will know that the permanent secretary investigated the use of the ministerial car on that occasion and found that it was

“consistent with ... general practice and ... appropriate and pragmatic.”—[*Official Report, Written Answers*, 20 December 2007; S3W-7702.]

Therefore—

**Johann Lamont:** I am not suggesting that it was inappropriate.

**The Convener:** Johann, let the First Minister complete his answer—we would ask him to do that.

**The First Minister:** On impressions that may be given to people, the way that I have counteracted the possible impression referred to by Johann Lamont was indicated in my earlier answer to the convener. Because I am aware of the sensitivities, the first thing that I have said in any meeting or phone call that I have had on this issue is that I am acting in my capacity as a constituency MSP. I then give people some indication of the ministerial code on these matters. That—absolutely, Johann—is the first thing that I say at any such meeting.

**Johann Lamont:** I will finish with the matter of perceptions. We are told that the Trump Organization did not understand how the appeal system worked. If you arrive and leave in a ministerial motor, you are telling them something—you are telling them something by making the effort to meet them at all. Can you explain why the Trump Organization found it useful to meet you at a stage when the only thing that the Executive could do was to take the extreme action of calling in the application? What was the purpose of meeting you as a constituency member who could do nothing about it? There is a perception that you must respond to.

**The First Minister:** You ask why the Trump Organization requested a meeting with me. The

Trump Organization answered that question in a statement on 16 December, in which it said:

"On the advice of their legal counsel, meetings were requested with local MSP Alex Salmond and the Government Chief Planner Jim Mackinnon, which are clearly permissible and do not violate Scottish law or Ministerial rules. The purpose of those meetings was to seek clarification about legally available options relating to the procedural aspects of the planning process as no clear guidance had been provided by the local government officials."

That is the Trump Organization's statement of its reasons for seeking the meeting.

My reason for responding to the request for a meeting is quite clear: I responded because I am a constituency member of the Scottish Parliament, the development is a major issue in my constituency, and I have turned down no request from anyone for a meeting. I have met all sides of the debate and replied to every letter and e-mail that I have received—more than 400 of them. Incidentally, I have offered meetings to people who did not even request meetings, in some cases when people seemed to take a view that I thought required explanation, but nobody has availed themselves of such an opportunity.

In carrying out my duties as a constituency MSP I have acted conscientiously in terms of the code of conduct for members of the Scottish Parliament, by which you and I are both bound.

**David McLetchie:** Did you publicly express support for the Trump application at any time prior to becoming First Minister?

**The First Minister:** Prior to becoming First Minister, when I was not bound by the rules that bind me now, the issue came up at a public meeting in Inverurie, during the election campaign. I expressed support for the development, although I also raised a number of issues surrounding the development. That was prior to my becoming a minister.

The Scottish ministerial code indicates that there can be "unavoidable" circumstances when even a minister must express an opinion. I was not a minister when the public meeting in Inverurie took place, but I would have thought that anyone would regard a public meeting in my constituency, during an election campaign in which the development was a major issue, as an unavoidable circumstance.

**The Convener:** Some people might say that it does not matter what politicians say during election campaigns.

**David McLetchie:** I quite agree. I am not surprised that you had to answer that question, First Minister.

By 3 December the Trump representatives had on board one of the foremost planning lawyers in

Scotland—the lady from Dundas & Wilson about whom we heard. They had also had the benefit of advice on the application from many planning consultants for years. Why should they consult Alex Salmond, a constituency MSP, about their legal options? Does it seem rather odd that you suddenly became the fount of all legal wisdom, when all those legal experts were being paid hundreds of pounds an hour for their advice?

**The First Minister:** I do not want to stray too far into a constituency meeting discussion, but I think that it would be helpful if I confirmed that the Trump Organization was uncertain about the routes ahead, as it said in its statement. The bulk of my meeting with the Trump Organization's representatives, which lasted about 40 or 45 minutes, was taken up by my opinion not on the legal issues but on what I detected about Aberdeenshire Council's wish to revisit the decision that the infrastructure services committee had made. I was in a position to give the Trump representatives the information that I had on that, which was very up to date.

We then spoke about the appeal process. You are quite right: I am not an expert on Scottish planning. The Trump representatives said that they wanted to request—not through me, but directly—a meeting with Jim Mackinnon, the chief planner, whom they had met on a number of occasions. I thought that that was a good thing, because there is no doubt that they were uncertain about the appeal procedure.

I listened to evidence that the committee heard and thought that this might help the committee. I asked the Trump representatives at the meeting, "From your point of view, there are options. Why do you not just appeal the decision?" The committee asked about that point. I can only give you their answer, which was that they thought that they were in a position of great reputational damage, in the sense that there was a lot of international comment about their application having been rejected by the locals.

13:45

They did not want to be seen to be in a position of appealing over the heads of the local community. As they expressed it, they only wanted to be developing where they were wanted. They argued that there was a possibility of significant reputational damage, which is why they were not minded to appeal—a statement that they had made publicly that day.

I did not have the knowledge to help them unduly, but I felt that they had an idea of the appeals procedure that I did not recognise. I thought that their request to meet the chief planner or someone from the planning department was sensible, under the circumstances.

At that stage, there were a number of questions that I did not know the answer to. One was to do with whether what had happened in Aberdeenshire had changed the situation regarding whether someone from the Government planning department could meet the developer, which was the reason for my phone call to Jim Mackinnon. I knew that I could meet the developer or anyone else, because of my previous phone calls to David Ferguson, and Jim Mackinnon's advice to me. However, I was not aware of whether the developer was able to meet the Government's chief planner or any other official, as they had done previously. That was what I ascertained from Jim Mackinnon at the close of the meeting.

**David McLetchie:** In response to media inquiries, was the fact that you had this meeting with the Trump representatives—albeit in your capacity as constituency MSP rather than as First Minister—ever denied by a spokesman acting on your behalf, either as the First Minister's spokesman or as a constituency MSP's spokesman?

**The First Minister:** Absolutely not. I can offer the committee documentary evidence to prove that. The meeting was not denied by me or by any of my spokespeople.

I have got the e-mail on this matter. It was sent in reply to a question from David Ewen of the *Evening Express* on the Thursday. It was sent at my instruction. It reads:

"As a constituency MSP I have met many people on all sides of the debate as I am duty bound to do so under the Scottish Parliamentary code and on Monday I met members of the Trump organisation in Aberdeen."

The day is specified because the question that I had received was to do with whether I had met them on Tuesday. My response continued:

"As First Minister I am excluded from the planning decision process and cannot make a public statement either for or against the development which is being decided by other Ministers."

A similar request came in from the BBC two days later. It was answered identically. There was never any denial from me or my spokesperson that the meeting had taken place.

I have heard—or read, rather—a description of the meeting as secret. However, if you are having secret meetings, it is best not to have them in the Marcliffe hotel in Aberdeen.

**Alasdair Allan:** First Minister, you have explained how you separated your roles of First Minister and constituency MSP. Could you elaborate, with specific regard to your dealings with the chief planner, how you made the separation between those two roles clear in his mind?

**The First Minister:** The only contact that I have had with the chief planner on this or related matters is that, after—I think—the council of economic advisers meeting at which he made a presentation on planning, I asked Jim Mackinnon for advice on the implications of road developments on a planning application and what the precedents were. I wanted to know whether there was an implication for local road developments, which is one of the issues in my constituency and he told me about that.

You have heard today about the other contacts that I have had with Jim Mackinnon. On the Thursday—that is Thursday 29 November—after the news broke and I had a request to meet the Trump Organization and I knew that other requests would come in because of the furore that was being caused, I sought advice from officials about meetings. I knew that I could meet people, because I had already done so. However, I did not know whether the decision of the council changed that situation. I did not know whether the fact that the council had made a decision meant that it was still allowable for me, as a constituency MSP, to meet people in those circumstances.

The answer that I got, which came first from David Ferguson as Jim Mackinnon was at a conference in Germany, was that yes, it was allowable. I subsequently received a phone call from Jim Mackinnon. Indeed, the next day, I received a further phone call from Mr Mackinnon, because obviously I had asked him about the planning situation with Aberdeenshire Council. In that second phone call, he elaborated on that issue.

I have had two other contacts with Jim Mackinnon on this issue. First, I phoned him at the end of the meeting on the mark of the Trump Organization to ask him whether it was permissible for him or for some of his officials to meet the developer at that stage. I knew that it was permissible for me to meet them, because that was the advice that officials had given me. Mr Mackinnon called me the following day to tell me that the meeting had taken place and that he would refer any of its implications to John Swinney, as the minister responsible for planning. To my memory and knowledge, those are the only contacts that I have had with Jim Mackinnon on this issue.

**Alasdair Allan:** Since John Swinney has taken on the role of minister with responsibility for planning, have you allowed him to get on with that job? Have you also respected the separation of powers in relation to that matter?

**The First Minister:** Yes, I have. I cannot remember the exact date—John Swinney no doubt does—but at some point in early November, shortly after I came back from Sri Lanka from the

meeting about the Commonwealth games, Mr Swinney told me that he was taking over the role of planning minister from Stewart Stevenson. It would hitherto have been expected that Mr Stevenson, who is designated as minister with responsibility for planning, would have had the role but, as Mr Swinney explained, he based his decision on the fact that Mr Stevenson represents an Aberdeenshire constituency. Although the development was not in that constituency, it had implications that related to Aberdeenshire and obviously to Aberdeenshire Council. I did not demur from that decision; indeed, I thought it thoroughly sensible. That apart, the next conversation that I had with John Swinney on this development took place when he told me, just before we walked into a Cabinet meeting, that the Government was calling in the application.

The reason for not having the conversation is the ministerial code. Indeed, it is not at all surprising that I do not have these conversations—the code tells me not to. As soon as you are in that position, you ensure that you are protected from any suggestion of not acting according to the code. Actually, you cannot be protected from such suggestions, but you can be protected during any proper discussion of or inquiry into them.

**The Convener:** Robert Brown and Kenny Gibson have further questions, but they will need to be brief if Patrick Harvie is to get a chance to ask his own brief question. I need to take Kenny first, because he is a committee member, but I hope that he will not eat up too much of the time.

**Kenneth Gibson:** In what way, if any, do you believe that your interest in this matter has influenced, even unintentionally, the actions of ministers and officials of the Scottish Government?

**The First Minister:** I have made very clear to all and sundry on every occasion my role as a constituency MSP, and I would say that I have certainly had no intentional—or I hope unintentional—influence over anyone.

In any case, anyone who knows John Swinney, the key minister with responsibility for planning, knows that he will carry out his duties and responsibilities without fear or favour. I have certainly not tried to introduce any fear or favour into the equation.

**Kenneth Gibson:** Finally, as I asked Mr Campbell earlier, what impact do you think that this matter has had on Scotland's image, particularly in the US and other places overseas?

**The First Minister:** I am in a position to defend the Government's decision on this matter and am very happy to do so. However, I want to highlight how perilous I believe the situation to have been in

early December. It is not so much a question of people or the decision itself being for or against the development. On 29 November, a major development might have been turned down—one might say unintentionally—by a council after the local committee was in favour of it and the infrastructure services committee voted against it. Quite clearly, council members wanted to revisit the issue. There is, incidentally, no doubt about that. Statements made by the council group leader on 30 November make that clear; Anne Robertson went on the record to say why the special meeting of the council was being convened.

Getting into such an extraordinary position would have had much wider implications than those created by the development itself. It would have sent out, internationally, an extraordinary message, not so much about whether Scotland welcomes development but about our capacity for moving planning matters through by proper and due process.

I was asked a question—by Lewis Macdonald, I think—on a related issue, about whether a full council should consider matters of such importance. I said that, in my view, it should. At the time—this was after the call in—I said that the most important thing was that the matter was being sorted out, both as regards what the Government had done and as regards the changes in the planning legislation. Although those changes are not directly related to this case, there are aspects of the case that might give us food for thought on those changes.

In general, I hope that we can get parliamentary consensus on the desire to move—within a year or so, once the various regulations have been taken through—from a position in which there is a perception that the Scottish planning system represents a competitive disadvantage for Scotland to one in which it represents a competitive advantage. I think that that ambition will be shared across the Parliament.

**Robert Brown:** You have made a number of references to the ministerial code. Some of the issues that have underlain the uncertainties that have arisen relate to the solidity of the decision-making process. As we know, the ministerial code says, in bold:

"It is particularly important to bear in mind that any attempt to influence the Minister taking a decision on a planning case, other than through the proper channels, could imperil the decision."

You have placed considerable emphasis on the fact that the application related to a constituency matter, and there is a lot of sympathy with you on that point, but the ministerial code talks about ministers being free to represent their electorate's view. Do you accept that, whatever else they might be, the Trump people are not your



electorate, albeit that they have an interest in a constituency issue? Representing the Trump position on the matter is a wee bit different from representing the electorate's view on it. Do you have any observations to make on that important distinction?

**The First Minister:** I am not sure that that is an important distinction as far as a planning application is concerned; I am not even sure that you are correct. I would have to check that up.

**Robert Brown:** I am quoting the ministerial code.

**The First Minister:** I am not talking about the ministerial code. My belief is that Neil Hobday, who stays on the Menie estate, is an elector of mine. I have not checked the voters roll, but I know that he stays there, so I suspect that he is an elector of mine. Besides, the proposal would still constitute a valid constituency interest. I point you to paragraphs 6.7, 6.8, 6.9 and 6.10 of the ministerial code. More than a page and a half of the ministerial code deals with how ministers are able to represent a constituency interest on planning matters. The assumption is that those parties who seek planning permission could well be companies. The code does not say that a constituency interest relates only to people who are on the voters roll. We are talking about the development of a constituency interest.

I have had reason to examine the ministerial code backwards and forwards, particularly when I was thinking about and seeking advice on what I could do on the matter. A genuine problem that some people have is that when they dip into the ministerial code, they confuse the advice to the planning minister or, as the code puts it,

"any other Minister involved in the decision-making process",

with the advice to a constituency MSP. Some parts of the code that have been quoted to me have been about what the planning minister can and cannot do. In fact, the code has a page on the wide range of things that a constituency MSP can do.

**The Convener:** I must interrupt you. Patrick Harvie has less than a minute to get his question in.

**Patrick Harvie:** I will be as quick as I can. I remain extremely concerned about the message that the whole business sends out about the planning system as a whole. John Swinney tells us that he took the decision that he did on the basis that he wanted more detailed scrutiny and further consideration of the application. The normal way for the Trump Organization to have achieved that, if that is what it was interested in, would have been for it to appeal the decision or to come back

with a revised application. The Trump Organization was not interested in further consideration or detailed scrutiny of its proposal; it was interested in saying, "Give us what we want or we will walk away." That was the ultimatum that it gave. The Scottish Government, in short order, took an unprecedented decision to accede to that ultimatum. What is the Government doing to prevent other developers from using, or threatening to use, that tactic in the future?

**The First Minister:** I do not think that that is the decision that the Government took. To be fair to the Trump Organization, that is not the case that it put forward in the meeting that I had with it. Its aversion to appealing was based on the reputation argument that I put forward.

**Patrick Harvie:** It had the choice to exercise its right to appeal but chose not to.

14:00

**The First Minister:** It would have had six months to decide whether to exercise it.

All members have heard evidence on the problems that an appeal would have given to Government, to the planning process and, in particular, to Aberdeenshire Council. My understanding of the evidence is that the problem for the planning process is that we would have had an appeal in which it was quite likely that both parties would have argued for the application, which would have been an extremely strange form of appeal in the planning process. Furthermore—I must confess that I did not realise this until I watched this morning's evidence—the likelihood is that Aberdeenshire Council could have faced a bill of hundreds of thousands of pounds, if it was felt that it had not pursued matters properly. That seems to be a good reason—

**The Convener:** I interrupt you only because we are both now in breach of parliamentary rules—the plenary session of Parliament is beginning. We welcome the fact that you have spent time with us and have shown a willingness to engage with us. Given that we have had to curtail the meeting, I assume that that willingness to engage with the committee will extend to your agreeing to deal with some of the issues that we have not been able to deal with during today's meeting. We will contact your private office to seek an accommodation.

**The First Minister:** I will always be willing to help you, convener.

**The Convener:** Thank you. I appreciate it.

*Meeting closed at 14:01.*



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