

22 June 2008

Greens of Crynoch
Blairs
Aberdeen
AB12 5YX

Colin Bell
Directorate for Planning and
Environmental Appeals
4 The Courtyard
Callendar Business Park
Callender Road
Falkirk
FK1 1XR

Dear Mr Bell

**Directorate for Planning and Environmental Appeals
Aberdeen Western Peripheral Route (AWPR)**

Outline Statement of Case on behalf of Mr Kenneth and Dr Rachel Stewart

in relation to

Public Local Enquiry into Draft Schemes and Orders for Aberdeen Western
Peripheral Route.

Roads (Scotland) Act 1984

Acquisition of Land (Authorisation Procedure)(Scotland) Act 1947

Directorate for Planning and Environment Appeals Reference C620707

Introduction

Our property, Greens of Crynoch Blairs Aberdeen, lies on the route of the proposed Southern side of the AWPR, more particularly on the route of the so-called Fastlink.

We have lived at Greens of Crynoch since December 1999, having moved out of the city of Aberdeen to benefit from the cleaner countryside air and enjoy the quiet and seclusion of the Maryculter area with our children. On moving into Greens of Crynoch we planted approximately 30 hectares adjacent to the farm house in mixed woodland forests leaving the balance of approximately 25 hectares in arable use. Over the last 8 years, through careful management of the land we have created an environment which is beneficial to the local wildlife and fauna, is a haven of peace and natural enjoyment for our family and maintains the land suitable for future agriculture uses.

European Convention on Human Rights (ECHR)

As we have worked on our property we did so in the sure knowledge that our right to enjoy property is enshrined in the principles of the European Convention on Human Rights (ECHR). More particularly Article 8 of the ECHR protects our right to private and family life and to our home.

The guidance notes to the ECHR state:

What does private life cover?

3.68 The concept of “private life” is broad. In general, your right to a private life means that you have the right to live your own life with such personal privacy as is reasonable in a democratic society, taking into account the rights and freedoms of others. Any interference with your body or the way you live your life needs to be justified.

What does respect for your home cover?

3.73 You have the right to enjoy living in your home without public authorities intruding or preventing you from entering it or living in it. You also have the right to enjoy your home peacefully.

Can a public authority interfere with my Article 8 rights?

3.75 Yes. But it would have to be shown that: the interference had a clear legal basis; the aim of the interference was either national security, public safety, protection of the economy, prevention of crime, the protection of health or morals or the protection of the rights and freedoms of others; it was necessary (and not just reasonable) to interfere with your rights for one of the permitted reasons; the interference was proportionate, going only as far as was required to meet the aim.

3.76 Before taking decisions affecting people’s rights under Article 8, a public authority will have to weigh all the competing interests carefully so as to justify any interference.

We are clearly afforded protection under the ECHR and the question then remaining is whether it can be demonstrated by the Scottish Ministers, as Trunk Roads Authority, referred to as “the Promoter”, that the aim of the interference with our rights is:

- a) either national security,
- b) public safety,
- c) protection of the economy,
- d) prevention of crime,
- e) the protection of health or morals, or
- f) the protection of the rights and freedoms of others.

It is not readily obvious which of these aims the Fastlink of the AWPR would fall under.

If it can be shown that interference of our rights is justified under any of the aims (a) to (f) the Promoter is required to demonstrate that *it was necessary (and not just reasonable)* to interfere with our rights.

Certainly the following aims are irrelevant to the case for the AWPR Fastlink: national security, public safety, prevention of crime, the protection of health or morals, and the protection of the rights and freedoms of others. That would leave as the only justification the *protection of the economy*.

What then constitutes *protection of the economy*?

Transportation of goods and people is a requirement of any economy, but can it be argued that the chosen route for the AWPR and the AWPR Fastlink are required to protect the economy of the North East of Scotland? To protect is to keep safe, defend, guard, shield or secure. It has the connotation of maintaining rather than advancing, expanding, encouraging or upgrading. Are there any signs that the economy of the North East of Scotland needs protecting or that it is under threat from a poor transport infrastructure that necessitates the AWPR or AWPR Fastlink?

If Aberdeen has a problem with traffic, it is with traffic flow into and out of the city at peak travel times, such as between 8:00 am to 9:00 am and 4:30 pm to 6:00 pm. At other times of the day traffic flows freely into, out off and around the city. The design of the proposed route for the AWPR and AWPR Fastlink, even by the statistics of Transport Scotland do virtually nothing to alleviate any issues with traffic flows in/out of and around Aberdeen, and so it is hard to see the justification of the AWPR and particularly the AWPR Fastlink on the grounds of *protection of the economy*. The scheme as proposed goes beyond what is required to maintain or facilitate the movement of traffic around Aberdeen.

If *protection of the economy* was a driver for the AWPR then the route chosen would be the shortest, cheapest solution which minimised road journeys, reduces travel times, reduces fuel consumption and carbon emissions. The chosen routes do none of the above when compared to the previously proposed routes.

Necessary (and not just reasonable)

Necessary means “absolutely essential”, “unavoidably determined by prior conditions or circumstances”, “logically inevitable”. Reasonable means with “good cause or justification” or “exhibiting good judgement”.

It can be seen that, before the State can interfere with our property by compulsory acquisition, the ECHR requires the State to demonstrate beyond the standard of “it has good cause or is exhibiting good judgement” to the standard of it is “absolutely essential”. We would argue that this standard applies not just to their decision to buy our property because of their choice of route but extends in fact to their choice of route and that they need to demonstrate the AWPR and particularly the AWPR Fastlink are “absolutely essential, unavoidable, and logically inevitable” for the protection of the economy.

We do not believe that the Scottish Ministers can demonstrate the routes chosen are “absolutely essential, unavoidable, and logically inevitable”. There are alternative routes which logically make more sense thus categorising the chosen AWPR and AWPR Fastlink as avoidable and non-essential. At the presentations given at the Old Mill Inn Maryculter on the 10th of March 2005 we were assured by the engineering representatives present at that meeting who were acting for the AWPR team that two years work had gone into the Murtle Route and that the Murtle Route was the only

viable option for the AWPR. We were told that the other routes did not make any sense and that they would not be followed. Given that the representatives were “experts” in their field and had considerable experience in the matters being discussed either they were negligent or deliberately misleading. In either event it is beyond belief that two routes neither of which made sense to the “experts” are now the routes favoured by the Scottish Ministers.

The AWPR and particularly the AWPR Fastlink cannot be “absolutely essential, unavoidable, and logically inevitable” as alternative routes exist which are shorter, such as the Murtle and Pitfodels routes. The Murtle and Pitfodels routes are closer to the city and will take more traffic flow out of the city. They are significantly shorter, will give shorter travelling times, will therefore give greater fuel savings, and are cheaper to construct and therefore give the Scottish Ministers the greatest good for the cheapest cost.

It is difficult to argue in the circumstances that the proposed route for the AWPR and particularly the AWPR Fastlink are reasonable and it is the duty of the state to show that the grounds for interfering with our property achieves the much higher standard of “necessary”. It is clear that the AWPR and particularly the AWPR Fastlink are not “absolutely essential, unavoidable, and logically inevitable”.

We cannot understand how the Scottish Ministers chose the current proposed routes, with such unnecessary waste of public money, when a much cheaper and more efficient solution exists and when the choice was apparently against the advice from its own experts.

Damage to the Environment

When we purchased Greens of Crynoch farm we immediately put 30 Hectares into woodland in an attempt to be responsible with the land and to put it into sustainable use. In our business we have significantly invested in the development of renewable energy technology – in the field of tidal energy. The Scottish Ministers make a huge public play on the benefits of renewable technologies and the threats we face from global warming. If the Scottish Ministers are serious about the threat of global warming then they would be seriously trying to minimise the length of AWPR and the unnecessary AWPR Fastlink. To build two much longer roads when one short one will do makes a mockery of the Scottish Ministers talk on the threats of global warming.

Scottish and UK politicians have repeatedly told the public that climate change is one of the greatest threats facing our planet, and that we should be looking to reduce our carbon emissions to combat this threat. We have repeatedly asked for details of the carbon emissions (Carbon Cost) which will result from the proposed route and particularly whether a comparison of Carbon Cost for the alternative routes, such as Murtle and Pitfodels, has been calculated. To date no information has been made available. During the construction phase of the development every mile of carriageway will release enormous quantities of CO² into the atmosphere; every unnecessary mile therefore clearly has implications for our contribution to carbon emissions. In addition for every mile of excess carriageway the daily additional fuel consumption will be around 4000 litres per day per mile, which is 1.5 million litres per annum per mile. This equates to an annual 4,500 tonnes extra CO² for every mile

(based on 22,000 vehicles at an average fuel consumption of 25 mpg). The cost to the environment for every unnecessary mile is colossal.

The poor design of the route and its unnecessary length will add to Scotland's carbon emissions at a cost which considerably exceeds the benefits. The statement in section 6 of your letter of 21 August 2007 that the AWPR will have "an extremely small increase in global carbon dioxide emissions in relation to total emissions from Scotland" is deliberately misleading and reduces the issue of climate change and global warming to nothing more than political spin. Nothing from Transport Scotland provides any supporting information on the issue of carbon emissions and gives only general platitudes while making no real attempt to genuinely consider the issue.

Inadequacy of responses to date

We can understand the issuing of standard letter to the 8000 or so people that have objected to the AWPR, but given that our property is directly affected and the AWPR is going to destroy our personal enjoyment of our property we would have expected, at the very least, some attempt to modify and personalise the response to address some of our concerns. No attempt has however been made. Our objections and concerns remain unanswered.

No consultation on modifications to area of land subject to compulsory purchase.

The letter from Jacobs U.K. Limited dated 28 September 2007 states that our feedback has been incorporated into the design process where possible. However the plans sent to us with the letter of the 28th show areas to be purchased which are far larger than the areas previously identified. No consultation was made over these additional areas. In particular no consultation was made over the proposed access road for Blaikiewell, which is to be taken through our property, with the resultant additional traffic through our property and additional loss of land.

No feed back from the environmental survey conducted on our property.

The survey of our land identified rare orchids, photos of which were shown to us by the surveyors, but no official acknowledgement or notification has been received and no mention of them has been made in any correspondence. We are concerned about the destruction of the natural wildlife habit that we have created and allowed to develop and are concerned that the level of environmental work which has been conducted is only superficial and that real environmental concerns are being glossed over. At a public meeting held at Netherley we were promised access to the notes taken by the environmental consultants which were relevant to our property; these notes have not however been made available.

Effect of lighting.

No mention has been made to lighting along the AWPR adjacent to our property, however it is evident that lighting either from traffic and/or street lighting will adversely affect our property and some form of mitigation measures will be required.

Waste of public funds – little improvement in traffic flow.

Nothing in the revised proposals show substantial improvement in the flow of traffic in and around Aberdeen. The excessive use of traffic lights will mean that traffic flow round Aberdeen will interrupt the flow of traffic in and out of Aberdeen resulting in a constant start-stop in the flow of traffic which will only add to congestion and result

in increased travel times in, out of, and around Aberdeen. Far from being a solution to Aberdeen's peak time congestion it will only exacerbate the situation.

Noise.

No detailed information on noise impact has been made available. The general reference to the WHO 1999 guidance on Community Noise is not particularly helpful. Currently our property is in a very quiet location with only two near neighbours, one situated approximately 800 meters east and the other approximately 350 meters to our west. If the AWPR does proceed we will have a major carriage way less than 100 meters from our house with nothing between our property and the carriage way and no provision being made to reduce road noise.

No information has been made available as to the predicted level of noise from the AWPR, when the road surface is new and also before it is resurfaced after a period of use, or what the road surface type is to be. No information has been made available as to the level of noise arising during construction, especially during the process of blasting to remove the granite hill on the southern most edge of our land and in close proximity to our house.

Protection of forested area.

Jacob's letter of 28 September indicates that no provision will be made for deer fencing. The currently proposed route cuts through a young forest which is currently protected by a deer fence. If no provision is made for protection from deer then the remaining forest will be subject to destruction by uncontrolled numbers of deer. This issue is not properly addressed by the current proposals.

Pollution.

Our property is situated in an area of countryside which is free of major industry and major transport networks and enjoys good quality of air. The positioning of the AWPR and particularly the AWPR Fastlink is going to adversely affect the air quality surrounding our property and adversely affect our family's health. No data has been made available on the local effect of the AWPR on air quality and the impact to those in close proximity to the proposed route. Together with noise and light pollution from the AWPR, air pollution resulting from the AWPR is of major concern.

Aberdeen Congestion

Schedule I Aberdeen Congestion and Alternate Route shows the major roads which suffer from peak time congestion in and around Aberdeen city. These roads are highlighted blue in colour. It is immediately obvious that the AWPR is going to do nothing to alleviate any traffic congestion within Aberdeen.

As for the AWPR Fastlink if there is a desire for traffic on the A90 to avoid the Portlethen area then a simple short route (marked yellow dashes) could be taken just South of Portlethen at Cairnwell joining the AWPR before Burnhead, or more preferably onto the previous Murtle Route.

Conclusion

Over the last seven years we have worked hard to create and allow the development of a natural wildlife environment where we are free to enjoy the benefits of nature and to allow our children access to the country side. The AWPR is going to destroy our peaceful enjoyment of our property and our way of life and we therefore object to the AWPR particularly the AWPR Fastlink and to the wasteful use of public funds on a scheme which will not solve or alleviate Aberdeen's congestion problems. If Scottish Ministers and Transport Scotland are serious about reducing Scotland's carbon footprint then they should look at easing the flow of traffic in and out of Aberdeen at peak traffic time so that commuters do not spend 30 to 45 minutes twice daily doing 3 miles per hour.

We do not believe that the Scottish Ministers can demonstrate that the AWPR and AWPR Fastlink can satisfy the conditions of the ECHR as they are not necessary for the protection of the economy.

There is still an opportunity for the Scottish Ministers to show that they can use money wisely, providing services in a way which reduces environmental impact with the lowest Carbon Cost and lowest cost to taxpayers. For all the reasons stated above we are strongly opposed to the current proposals for the AWPR, in particular the unnecessary so-called Fastlink from Stonehaven.

We should be pleased if you could acknowledge receipt of this letter.

Yours sincerely,

Ken R. Stewart

Dr Rachel Stewart