



Commissioner for Ethical Standards in Public Life in Scotland

CONDUCT of MEMBERS of the SCOTTISH PARLIAMENT

Report by

the Commissioner for Ethical Standards in Public Life in Scotland

on

complaint no. MSP/1937/16-17/09

Complainer:- Mr Christian Allard

Respondent:- Mr Alexander Burnett, MSP

6 September 2017

Commissioner for Ethical Standards in Public Life in Scotland

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CONDUCT of MEMBERS of the SCOTTISH PARLIAMENT

Report on complaint no. MSP/1937/16-17/09 to the Scottish Parliament

Complainer: - Mr Christian Allard

Respondent: - Mr Alexander Burnett MSP

1.0 Introduction

- 1.1 The Code of Conduct for Members of the Scottish Parliament ("the Code") has been approved by the Scottish Parliament under its Standing Orders to provide a set of principles and standards for its Members. For the purpose of considering these complaints, the relevant edition of the Code is edition 6 which was approved by the Parliament on 29 April 2016.
- 1.2 Other relevant provisions relating to the conduct of MSPs for the period in question include: the Scotland Act 1998 - "the 1998 Act"; The Scotland Act 2012 - "the 2012 Act"; The Interests of Members of the Scottish Parliament Act 2006- "the 2006 Act", as amended by the Interests of Members of the Scottish Parliament Act 2016 - "the 2016 Act"; and the Interests of Members of the Scottish Parliament Act 2006 (Declaration of Interests) Determination 2007 - "the Determination".
- 1.3 The applicable provisions of Volumes 2 and 3 of the Code are set out in part 8 of this Report.
- 1.4 Investigation of the complaint has been undertaken in terms of the Scottish Parliamentary Standards Commissioner Act 2002 ("the 2002 Act") and the Directions by the Standards Procedures and Public Appointments Committee dated 1 March 2012.
- 1.5 This Report falls to be submitted to the Parliament in terms of section 9 of the 2002 Act.

2.0 Complaint

- 2.1 The complainer is Mr Christian Allard ("the complainer"). His complaint is about Mr Alexander Burnett MSP ("the respondent"). Mr Burnett is an MSP (Scottish Conservative and Unionist) for the region of North East Scotland and was elected in May 2016. At the relevant time, he was a member of the Environment, Climate Change and Land Committee and a substitute member of the Rural Economy and Connectivity Committee. He was also his party's Shadow Spokesperson for Energy. The complainer was an MSP until 2016 and was subsequently elected as a Councillor for the Torry/Ferryhill ward of City of Aberdeen Council as member of the Scottish National Party.
- 2.2 The complaint was made by complaint form dated 8 September 2016 and a further clarification email dated 8 November 2016. The email includes a link to the Minute of a Meeting of Aberdeenshire Council held on 20 April 2015. These are attached as **Appendix 1**. The complaint deals with the alleged

failure of the respondent to declare his registered interests when submitting written Parliamentary Questions on 4 August 2016.

- 2.3 Specifically, the complaint alleges that the respondent has business interests related to housing development in Banchory, Aberdeenshire. It is the complainer's submission that the conflict of interest arises by virtue of entries in the respondent's Register of Interests which confirm his shareholding in Bancon Development Holdings Limited ("the Holdings Company"). The Respondent's Register of Interests for 2016 is attached at **Appendix 4**.
- 2.4 It is alleged that the respondent's property interests should have been declared when he submitted Parliamentary Questions on general and specific planning issues relating to housing development on 4 August 2016. The specific questions related to land at Auchattie/Braehead, Banchory which was the subject of a planning application for 300 houses ("the Development Site").
- 2.5 It is alleged that the respondent had an interest in that particular planning application due to his major shareholding in the Holdings Company, which opposed the planning application and is involved in another housing development in Banchory. The complainer describes the Holdings Company as a "rival" to the applicants for planning permission for the Development Site.

3.0 Response

- 3.1 The respondent provided a response to the initial complaint, dated 14 September 2016. He also provided three further responses on 3 November, 8 November, both 2016, and on 3 February 2017 to my requests for further clarification about his company interests. These responses are attached as **Appendix 2**.
- 3.2 The respondent does not dispute that he submitted the Parliamentary Questions. In summary, his position is that he did not make a declaration as he considered he had no interest in the specific application at the Development Site because it related to land that was not zoned for housing. He has explained that he posed the questions as a result of concerns expressed to him by constituents. He also referred to the fact that his Register of Interests contains very detailed entries and is clear and transparent as a consequence.
- 3.3 The respondent has confirmed that he holds 37.59% of the issued shares in the Holdings Company which is stated to include as part of its business activities the building and development of property.
- 3.4 The respondent has also confirmed that he is Chairman, Chief Executive, receives income from and is the 100% shareholder of the North Banchory Company Limited ("the Objecting Company"). One of that company's declared activities is property development.
- 3.5 The respondent has also confirmed that the Holdings Company has as a subsidiary, Bancon Developments Limited ("the Housing Company"). It is the Housing Company which owns a site within Banchory referred to in the

complaint. That site is zoned in the Aberdeenshire Local Development Plan 2012 for housing. The respondent considers that he has no interests in the Housing Company's operations in Banchory which would require to be registered or declared. He is not a director or shareholder, nor is he in receipt of any income from that company.

4.0 Admissibility of the complaints

- 4.1 Stage 1 of the investigation of a complaint requires an assessment of admissibility as set out in section 6 of the 2002 Act. In assessing admissibility, the key tests are whether the complaint is relevant, whether the complaint meets the requirements for form, content and execution and whether the complaint warrants further investigation if it appears after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place.
- 4.2 I concluded that the extensive details of the complaint and its apparent relevance to the respondent's obligations under the Code enabled me to find that the complaint was admissible. I wrote to the respondent and the Clerk to the SPPA Committee on 14 November 2016 to that effect. A copy of my letter is attached as **Appendix 3**.

5.0 Investigation and Findings

- 5.1 In view of the complex nature of the complaint, I decided that an interview with the respondent was appropriate to explore the nature and extent of his interests. The purpose was to inform my Stage 2 investigation of the complaint. This took place on 12 January 2017.
- 5.2 At interview, the respondent restated his position that he had made no declaration in respect of the Questions because he considered that he had no interest in any housing development at the Development Site. The reason was that it was not zoned for housing use in the 2012 Local Development Plan by Aberdeenshire Council (following rejection by the local community). That Plan was subsequently approved by Scottish Ministers and remains current. He noted that the applicants were in fact seeking to revive development of the un-zoned site despite the current zoning position and to overturn the refusal of a previous application which had sought permission for a housing development there.
- 5.3 He also reiterated that he had no interest in the other housing site in Banchory which is zoned for housing use by virtue of the current Development Plan. This was due to the zoned site being owned by the Housing Company, who are the developers of that site, and in which he had no role or shareholding.
- 5.4 The respondent's position was that the Objecting Company and the Holdings Company own land elsewhere. He stated that those land banks were unaffected by the success or otherwise of the planning application over the Development Site. He sought to draw a distinction between the particular range of housing types in the site being developed for sale by the Housing Company as opposed to the Development Site application for 300 houses of different housing types aimed at the rented and affordable sectors. He accordingly took the view that there was no competition

between the two sites and any link between the Housing Company and the Development Site was so tenuous that this was the reason that he had made no declaration.

- 5.5 At the interview, the respondent expanded further on the complaint and his registered business interests. He confirmed that in completing his Register for publication he had sought (and taken) advice from the Standards Clerks, and his financial and legal advisers. I note that such a course of action is encouraged and recommended in the Volume 2, section 2.8 (Responsibility of the Member) of the Code at paragraph 2.8.1. It is also emphasised in Volume 3 - Guidance (section 3 at paragraph 3.15).
- 5.6 The respondent confirmed that he had no role in the management of the housing and development operations of the Housing Company. He also confirmed that he had no other interests in the Company and was not a Board member or shareholder.
- 5.7 The allegation made by the complainer was based on the publicly available information recorded by the respondent in his Register of Interests. This is attached as Appendix 4 and is referred to for its terms.
- 5.8 The complainer refers in his complaint only to the Holdings Company. The various company issues involved, however, necessitated wider consideration of the companies' connections to enable determination of the complaint.
- 5.9 The respondent's Register entries are detailed and include references to his position as director, shareholder and/or beneficiary in various companies. The register records his interests in the Holdings Company and the Objecting Company, as noted in paragraphs 3.3 and 3.4 of this report. One of the purposes of the Objecting Company and of the Holdings Company is stated to be housing development. The Register contains no reference to the Housing Company. The respondent has confirmed that it is a subsidiary of the Holdings Company, and that the Housing Company is a company in which he has no direct, registrable interest (see paragraph 3.5 of this report).
- 5.10 Five Parliamentary Questions on planning/housing issues were submitted by the respondent on 4 August 2016. The details are set out in **Appendix 5** and are referred to for their terms. No declaration of interest was made. Three of the questions related to the Scottish Government's position and involvement in general planning issues about housing developments. The other two were specific questions about planning aspects related to the proposed housing development on the Development Site lodged by Sandlaw Farming Company/Ross Developments and Renewables Ltd.
- 5.11 The planning application for the un-zoned land was refused permission by Aberdeenshire Council on 3 May 2016, and there was an appeal against refusal. The process was completed on 9 November 2016, when the applicants' appeal to the Scottish Government Planning Environment Appeals Division against that refusal was dismissed. An extract web summary of the process is attached at **Appendix 6**. The Parliamentary Questions were lodged by the respondent on 4 August 2016, during the planning appeal element of the process.

- 5.12 Planning records demonstrate that the planning application for the 300 houses site at the Development Site attracted a considerable number of objections. The respondent confirms that neither he nor any other family members submitted any individual objection.
- 5.13 Of direct relevance to this complaint, however, is the letter of objection to the application lodged with the Planning Authority on 21 December 2015. The letter was submitted by the Development Manager of the Housing Company but also it was stated to be on behalf of the Objecting Company. A copy of this letter is included in Appendix 2 and is referred to for its terms.
- 5.14 The public planning register discloses that the Development Site application which attracted the objections was for housing types which consisted of 200 Private Rented, 75 Affordable and 25 Assisted Living Units. Publicly available information on the housing units being developed for sale on the Housing Company's site in Banchory indicate they were advertised for sale on the open market at various prices ranging from £249,500 upwards.
- 5.15 The submission of an objection to the Planning Authority on behalf of the Objecting Company and the Housing Company clearly raises the question of whether there was any financial interest to be declared by the respondent because of his company interests. The submission of an objection with the aim of having the planning application for the Development Site refused can be interpreted as a direct commercial challenge to the development of that site for housing in the Banchory area. It does not seem to me that the stance taken in the letter of 21 December 2015, which is one of objection, can reasonably be described as remote or disinterested. The Objecting Company was wholly owned by the respondent. Therefore the Parliamentary Questions were submitted by the beneficial owner of the Objecting Company.
- 5.16 The complainer submitted additional background context to support his complaint. This confirms that Aberdeenshire Council had held a Pre-determination Meeting (for a prior planning application of a similar nature) on 20 April 2015 over the Development Site. The narrative of the minute of that meeting confirmed the attendance of the Development Manager of the Housing Company to object to that similar proposal. In his address to the committee, the Development Manager submitted that the application should be refused as there was land already zoned for housing within Banchory which could deliver housing of the category proposed in the application for the Development Site. He confirmed that the objection was also made on behalf of the Objecting Company. (The minute of that meeting is contained in Appendix 1 as part of the background information provided by the complainer.)

The Code

- 5.17 Members are required to register interests in Heritable Property, Undertakings and Remuneration in the circumstances set out section 2 of the Code. Such Code provisions derive from the applicable legislation. The respondent has registered such interests as set out in Appendix 4 to this

Report. Registered Interests must also be declared in specified circumstances.

- 5.18 The 2006 Act defines "declarable interest" in any matter as being "a registrable financial interest in that matter" which is registered in the entry relating to that member. Such an interest must be declared "before taking part in any proceedings relating to that matter" (section 13(1)). The Act at section 13(2) confirms that such declarations may be oral or written as provided for in such circumstances as Parliament determines. In this instance, the respondent's obligation to make a declaration would be in respect of the Objecting Company and the Holdings Company. Any interest in the Housing Company which did not need to be registered could not be deemed declarable, given the definition of "declarable interest" in section 12 of the 2006 Act.
- 5.19 The 2007 Determination has set out the specific circumstances in which oral or written declarations must be made in parliamentary proceedings. The relevant provisions are contained in paragraphs 3 (oral declarations) and 4, 5 and 6 (written declarations). In the circumstances of this complaint, paragraphs 5 and 6 apply. Paragraph 5 requires a written declaration to be lodged with the Clerk before taking part in proceedings. Paragraph 6 defines "proceedings" of the Parliament", as including the lodging of questions for oral or written answer.
- 5.20 The Code of Conduct at Volume 2 - sections 3.1.8 and 3.1.9 deals with the terms of the 2007 Declaration on written declarations of interest. Section 3.1.8 confirms that a declaration of interests must be made by the member by means of lodging with the Clerk (usually understood to be the clerks at the chamber desk) a written declaration of that interest before taking part in such proceedings (as set out in paragraph 3.1.9).
- 5.21 It appears to me that the respondent, having properly registered his interests in the Objecting Company and the Holdings Company, had links to the planning application by virtue of (1) his registered interest in the Objecting Company, on whose behalf an objection was made to the planning application for the 300 houses on the Development Site and (2) the fact that the joint objector, the Housing Company, was a subsidiary of the Holdings Company in which the respondent had a registered interest. However, as noted in paragraph 5.18 of this report, the respondent's interest in the Housing Company was not declarable.
- 5.22 Relevant extracts from Volume 2 of the Code are set out in part 8 of this report, along with relevant paragraphs from the additional guidance set out in Volume 3 of the Code.

6.0 Conclusion

- 6.1 On the basis of my Investigation and Findings as contained in Section 5 (paragraphs 5.2 to 5.22) of this report, I have concluded, in respect of the complaint made by Mr Christian Allard that Mr Burnett was in breach of the requirement in section 13(1) of the 2006 Act and section 3.1.8 and 3.1.9 of the Code to make a written declaration of his interests when giving notice of the five Parliamentary Questions set out in Appendix 5 to this report.

6.2 The basis of this conclusion is that the five written Parliamentary Questions submitted by the respondent on 4 August 2016 consisted of:

three Questions on the approach of the Scottish Government and Planning Authorities to planning policy on development, which were of relevance to planning applicants and to objectors; and

two Questions on the specific planning application for the site at Auchattie/Braehead;

in all of which the respondent had a declarable interest by virtue of his registered financial interest in the North Banchory Company Limited (the Objecting Company).

7.0 Draft Report

7.1 Following the investigation, I submitted my draft Report to the respondent on 4 May 2017 and invited his representations.

7.2 He replied on 24 May 2017 and that response and my comments thereon are set out as **Appendix 7**.

Bill Thomson
Commissioner

6 September 2017

8.0 Extracts from Code of Conduct

Volume 2 Section 2: Categories of Registrable Interests

2.2 Remuneration and related undertaking

Remuneration

2.2.1 All remuneration received from the date of return as an MSP which falls into the categories (1) (a)-(f) and related undertakings which fall into categories (1A) (a) and (b) must be registered. Remuneration received solely as an MSP (i.e. MSPs' salary and allowances) or solely as a result of holding the various offices set out in paragraph (2) of this provision is expressly excluded.

2.2.2 Expenses fall within the definition of remuneration including expenses that represent reimbursement of costs incurred. Where a member receives expenses at the same time as receiving other remuneration (for example, a fee) from the same source these expenses are registrable.

2.2.3 Remuneration consisting solely of expenses not exceeding the specified limit (0.5% of a member's salary at the beginning of the current parliamentary session, rounded down to the nearest £10) is not registrable. Expenses received from a single source on a single occasion that exceed the specified limit are registrable. In addition, expenses received from a single source, which in aggregate during a parliamentary session exceed the specified limit, are registrable. Members should therefore keep a record of all expenses received from the date of the member's return, whether or not these are registrable at the time, so that they are aware if the aggregate expenses, from a single source, exceed the threshold for registration.

2.2.4 Remuneration received prior to the date of return as an MSP must also be registered if it meets the prejudice test. In terms of section 3(2) of the Act, an interest meets the prejudice test if, after taking into account all the circumstances, that interest is reasonably considered to prejudice, or to give the appearance of prejudicing, the ability of the member to participate in a disinterested manner in any proceedings of the Parliament.

2.2.5 Remuneration (including expenses exceeding the specified limit) received as an MP at Westminster or as an MEP should be registered where there is an overlap in the holding of both offices; as should any allowances paid in relation to Volume 2 – Code: Section 2 6th Edition, 29 April 2016 membership of the House of Lords or any other institution except the Scottish Parliament: for example, the Committee of the Regions.

2.2.6 When registering remuneration from employment, members must include the name of the employer, the employer's principal business address (if not a private individual), the nature of its business and the position that they hold.

2.2.7 When registering remuneration from self-employment or a partnership members must include the name and nature of the business or

partnership. The principal business address of the partnership must also be given. If a member is selfemployed and carries on the business from the member's private address, that address need not be included.

2.2.8 When registering remuneration from being the holder of an office, members must provide the name of the organisation in which an office is held, its principal business address, the nature of its business and the position held. Such positions can be in private businesses or public sector organisations. Examples include being a director of a consultancy firm or being a member of an advisory board or committee.

2.2.9 When registering remuneration from a directorship, members must provide the name of the undertaking in which the directorship is held, its principal business address and the nature of its business.

2.2.10 Where registering remuneration from a trade, profession or vocation, members must provide any name under which the trade etc. is carried out and the regularity and nature of the activity. Where work is provided under contract to one particular person or body, it is suggested that the names of that person or body should be given (under the requirement for any relevant additional information). For example, a member who is contracted to write a series of newspaper articles should consider giving the name of the publication and the frequency of articles for which the member is paid as well as the remuneration itself.

2.2.11 One-off activities which members might undertake, such as speaking at a conference or writing a single newspaper article, do not constitute remuneration from a trade, profession or vocation even if the member receives a fee or expenses for doing so (although this could be registered under the voluntary category). However, if a member undertakes such an activity on a regular, remunerated basis, this may be considered remuneration from a trade, profession or vocation. There may be circumstances where a one off activity is registrable under another category (e.g. gifts) if a payment of money, or transfer of property, in return for that activity goes beyond normal commercial rates.

2.2.12 For the purposes of initial registration, remuneration under each category ((1)(a)-(f)) must be registered with reference to the gross amount per annum (or nearest estimate) that a member expects to receive from the date of return. That remuneration will then be expressed in that member's entry in the Register as being remuneration falling within the following bands—

up to £500

Volume 2 – Code: Section 2

6th Edition, 29 April 2016

between £501 - £1,000

between £1,001 - £2,000

between £2,001 - £3,000

between £3,001 - £5,000

and thereafter in intervals of £5,000.

(Members may specify an exact figure, instead of indicating a bandwidth, if they wish.)

2.2.13 In the case of remuneration received prior to the date of return and to which the prejudice test applies, the remuneration received must be registered within the relevant band for each year in which it was received.

2.2.14 Where remuneration is being received but the member does not know the exact amount that will be received, the member must register remuneration on the basis of what the member expects to receive. Where this later proves to be inaccurate, the member is encouraged to amend the entry by lodging an appropriate amendment so that the remuneration is shown within the appropriate band. Members are referred to Section 1.2.28 (Volume 2) of this Code for further details on making amendments.

2.2.15 Members must also register any new remuneration for work undertaken after the date of return as a newly acquired interest. Members should refer to Section 1.2.12 (Volume 2) of this Code for guidance on the registration of new interests. They must also take steps to register any remuneration that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of it. Members should refer to Section 1.2.15 (Volume 2) of this Code for further guidance on late registration.

2.2.16 It is not necessary to register remuneration received prior to the date of return if this represents remuneration for activity undertaken solely before the member was returned, unless it meets the prejudice test. However, should a member receive remuneration on or after the date of their return, this is registrable, even if the activity was undertaken in advance of them becoming a member. Under the terms of the Act the relevant date that the interest is acquired is the date of receipt of payment.

2.2.17 Under the terms of the Act a member may not cease an interest that consists of remuneration (see Section 1.2.22 of Volume 2). Such interests will therefore remain on the register for the duration of the session.

2.2.18 Redundancy payments are registrable on receipt. Members are not required to register pensions. However, if a member wishes to, a pension may be registered voluntarily. There is a separate part of the written statement for registering voluntary interests. Members are referred to Section 1.2.17 of Volume 2 of the Code for guidance on voluntary registrations.

Volume 2 – Code: Section 2
6th Edition, 29 April 2016

Related undertaking

2.2.19 See the opening paragraphs in Section 2.2 above for all relevant definitions for the provisions on related undertakings.

2.2.20 Members are required to register any directorships which they hold, which are not remunerated, where the undertaking in which they hold a directorship is a parent or a subsidiary of an undertaking in which the member holds a remunerated directorship. Members are also required to register being a partner in a firm where the member does not, or did not, receive remuneration by virtue of being such a partner. This could be where

a member is a sleeping partner in a business or a business whose operating profits are wholly reinvested in the business.

2.2.21 Members should be aware of the need to register any previous directorship or partnership which is no longer held by them if the holding of that position meets the prejudice test set out in section 3(2) of the Act.

2.2.22 The provisions of the Companies Act 2006 referred to above set out the circumstances where an undertaking is treated as a parent or subsidiary of another undertaking. Generally, this relates to voting rights, the right to remove a board of directors and dominant influence and control. Members who hold the position of a director in any such body are expected to be aware of what constitutes a related undertaking in terms of the Act and what constitutes a parent and subsidiary undertaking in terms of the Companies Act 2006. Judgement about what constitutes a related undertaking in company law is complicated. Where any member has a doubt about whether or not a particular directorship should be registered, they are strongly recommended to take independent professional advice.

2.2.23 Members are required to register the name of the related subsidiary or parent undertaking, the nature of its business, its principal business address and its relationship to the other undertaking in which the member is a director and from which the member receives remuneration. Members who are unremunerated partners in firms are required to register the name of the firm, its principal business address and the nature of its business. Any other unremunerated directorships which are not related in any way to a remunerated directorship do not require to be registered but they may be registered on a voluntary basis.

2.7: Interest in Shares– Schedule, paragraph 9

A member has a registrable interest:

(1) Where a member has, or had, an interest in shares, whether that interest is, or was, held by the member or by a relevant person, and sub-paragraph (2) applies.

(2) This sub-paragraph applies where either—

(a) the nominal value of the shares at the relevant date is, or was, greater than 1% of the total nominal value of the issued share capital of the company or other body; or

(b) the market value of the shares at the relevant date exceeds, or exceeded, the specified limit.

(3) Sub-paragraph (1) applies to an interest in shares, whether that interest is, or was, held by a member (or a relevant person)—

(a) solely in the name of the member (or relevant person);

(b) jointly with any other person or body; or

(c) as a trustee, whether or not jointly with other trustees where the member has an interest as a beneficiary of the trust.

(4) Sub-paragraph (1) does not apply to an interest in shares which forms part of the assets of a partnership and any income from that partnership is, or forms part of, remuneration registered under paragraph 2 of this Schedule.

(5) Where a member has ceased to have an interest in shares before the date on which the member was returned as a member, the relevant date is the date when the interest in such shares ceased to be so held.

(6) Where a member had an interest in shares at the date on which the member was returned as a member, the relevant date is—

(a) that date; and

(b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

(7) Where a member acquires an interest in shares after the date on which the member was returned as a member, the relevant date is—

(a) the date on which the interest in shares was acquired; and

(b) the 5th April immediately following that date and in each succeeding year, where the interest is retained on that 5th April.

Key definitions:

“current parliamentary session” means the parliamentary session which begins immediately after, or in which, the member is returned;

an “interest in shares” means an interest in shares comprised in the share capital of a company or other body;

“relevant person” is a person who is subject to the control or direction of a member in respect of an interest in shares;

“specified limit” means 50% of a member’s salary (rounded down to the nearest £10) at the beginning of the current parliamentary session.

Guidance on interest in shares

2.7.1 A member is required to register an interest in shares which the member or a relevant person (meaning a person subject to the control or direction of the member in respect of that interest) has or had. A relevant person can be a relative (such as a spouse or civil partner) or some other individual or body. Such a person may nominally own or hold the shares but can be said to be controlled or directed where, for example, only the member may authorise disposal of the shares or where the member ultimately benefits from any income or gain on disposal.

2.7.2 Registration is required where the nominal value of the shares at the relevant date is or was greater than 1% of the total nominal value of the issued share capital of the company or other body; or where the market value of the shares at the relevant date exceeds 50% of a member's salary at the start of the current parliamentary session (rounded down to the nearest £10 – currently £30,340).

Members are not required to register interests in shares which do not exceed either of the value thresholds; however, members may register these in the voluntary category if they wish.

2.7.3 Once again, the —relevant date is important in understanding when an interest in shares falls to be registered. Calculation of the relevant date for shares works in the same way as for heritable property (above).

2.7.4 A member considering whether registration of an existing shareholding at the date of return is required on the basis of market value must ascertain its value at that date. If it exceeds 50% of a member's salary at the start of the current parliamentary session the shareholding must be registered. Likewise, a member considering whether registration of an existing shareholding at the date of return is required on the basis of the nominal value of the shares must ascertain whether this value is greater than 1% of the total nominal value of the issued share capital of the company or other body at that date. In either case the member must then obtain a new valuation on each subsequent 5th April that the member continues to have the interest in shares. If the value continues to exceed the relevant threshold, then the shares should continue to be registered. If they fall under that threshold then the member may have the interest removed from the Register as a ceased interest (see Section 1.2.21 of Volume 2 of this Code).

Members who have a portfolio of shares must continue to track the value of shares as at each relevant date to ensure that all holdings continue to fall under the threshold for registration. Where a shareholding later exceeds that threshold, the shareholding must be registered as if it was an interest acquired after the date of the member's return and on the relevant date on which the value exceeded the threshold.

2.7.5 Where a member disposes of shares before being returned, the market or nominal value for the purpose of registration is the market or nominal value at the date of sale. Similarly, for shares newly acquired after the date of return, registration depends either on the nominal value on acquisition or the market value at acquisition against member's salary at the start of the current parliamentary session and the nominal value or market value against this salary on each subsequent 5th April that the member continues to have the interest in shares.

2.7.6 As with the Gifts and Heritable Property categories, a member may be required to register interests in shares disposed of before being returned as an MSP, if the member considers that the prejudice test is met. The member may therefore not be in receipt of a salary at the time the interest is acquired or disposed of. In these circumstances the threshold for registration relates to the salary of a member at the start of the parliamentary session in which the member is considering registration.

2.7.7 A member does not have to register shares which form part of the assets of a partnership where any income received by the member from that partnership is already registered as remuneration under paragraph 2 of the Schedule to the Act.

2.7.8 There may also be circumstances in which interests in shares could fall within the gifts category. Members are advised to seek advice from the Standards clerks if they are uncertain in which category an interest should be registered.

2.7.9 The requirement to register shares applies not just to shares that a member owns in their own name but to shareholdings in joint names (such as with a spouse or business partner) and to shareholdings held as a trustee but only where the member has a beneficial interest in the income or assets of the relevant trust.

2.7.10 When registering shares, members are required to provide details of the type of shares, the name of the company in which the shares are held, the company's business address and the nature of its business. Members do not have to provide the date of acquisition of shares held at the date of return but must provide dates where the shares have been disposed of or acquired as the case may be during the parliamentary session.

2.7.11 For shares registered on the basis of market value, members must provide a valuation on the relevant date. For shares registered on the basis of a proportion of nominal value, members must provide the percentage of the issued share capital of the company that the member holds. Where shares could be registered on the basis of both market value and nominal value the market value should also be provided as well as the percentage of overall share capital.

2.7.12 Shares in investment trusts are registrable if they meet the conditions outlined above. Members are not required to register units held in unit trusts.

Members are not required to register investments that would not be considered to be part of a share portfolio, such as cash savings, cash ISAs, government bonds (gilts) and corporate bonds. If a member wishes to, these holdings may be registered in the voluntary category. Members are referred to Section 1.2.17 of Volume 2 of the Code for guidance on voluntary registrations.

2.7.13 Members must also take steps to register any interest in shares that they have accidentally overlooked, or had not realised required to be registered, as soon as possible and in all cases, within seven days of becoming aware of it. Members should refer to Section 1.2.15 of Volume 2 of this Code for further guidance on late registration.

2.7: Responsibility of the Member

2.7.1 Responsibility for ensuring compliance with the requirements of the Act for registration of interests lies with the individual member. If a member is uncertain about how the rules apply, the Standards clerks may be asked for advice. A member may also choose to consult a personal legal

adviser and, on detailed financial and commercial matters, a member may wish to seek advice from other relevant professionals. As explained in Section 1.2.28-30 of Volume 2, failure to comply with the requirements of registration will constitute a breach of the requirements of the Act and may be a criminal offence. It could also lead to sanctions being imposed on a member by the Parliament. Enforcement of the Rules in the Code is explained in Volume 2, Section 9 and in Volume 3, Section 9 of the Code.

Volume 2 Section 3: Declaration Of Interests

3.1 The statutory requirements

1: The statutory requirements

Section 12, declarable interests

(1) In this Act, a “declarable interest” means a declarable financial interest.

(2) A member has a declarable financial interest in any matter if that member has, or had, a registrable financial interest in that matter which is registered in the entry relating to that member.

(3) A member has a financial interest for the purposes of paragraph (b) of section 39(2) of the 1998 Act if that member has a declarable financial interest.

Section 13, declaration of interests

(1) Any member who has a declarable interest in any matter shall declare that interest before taking part in any proceedings of the Parliament relating to that matter.

(2) For the purposes of subsection (1), a member shall declare an interest by making, in such circumstances as the Parliament may determine, either an oral or, as the case may be, a written declaration of that interest.

3.1.1 Sections 12 and 13 of the Act set out the legal requirements in relation to declaration of interests.

3.1.2 An interest about which a declaration must be made is referred to as a ‘declarable interest’.

3.1.3 Under the statutory requirements, a member has a ‘declarable interest’ in relation to any matter if that member has a registrable financial interest relating to it. Registrable financial interests are those which must be registered under one of the categories set out in the schedule to the Act. These categories are explained in Section 2 of the Code.

3.1.4 A member who has a ‘declarable interest’ in a matter must make a declaration of that interest in any proceedings of the Parliament which relate to that matter, before otherwise taking part in those proceedings.

3.1.5 Declarations may be either oral or written. The Parliament has determined the circumstances in which declarations should be oral and in which they should be written (as required in the Act). The Interests of Members of the Scottish Parliament Act 2006 (Declaration of Interests) Determination 2007 sets out when oral and written declarations apply.

3.1.6 Where a member has a declarable interest in any matter, the member must make an oral declaration of that interest before speaking in any meeting of the Parliament relating to that matter. The requirement applies:

- during a meeting of the Parliament (includes initiating, contributing to or intervening in any debate) (an oral declaration is required); and
- during a meeting of a Parliamentary committee (or a joint committee meeting or sub-committee meeting) (includes initiating, contributing to or intervening in any debate) (an oral declaration is required).

3.1.7 Where a member has a declarable interest in any matter and takes part in a meeting of the Parliament relating to that matter only by attending and voting at that meeting, that member must have, prior to the meeting, made a written declaration of that interest. Where the interest is already registered, the declaration is made by virtue of that interest being registered in the entry relating to that member in the Register of Interests of Members of the Scottish Parliament and no additional written declaration is required (see paragraph 3.1.13).

3.1.8 Where a member has a declarable interest in any matter, and takes part in any proceedings of the Parliament relating to that matter otherwise than as provided in paragraphs 3.1.6 and 3.1.7, the member must make and lodge with the Clerk (usually understood to be the clerks in the Chamber Desk) a written declaration of that interest before taking part in any such proceedings relating to that matter.

3.1.9 For the purposes of paragraph 3.1.8, taking part in proceedings of the Parliament includes any of the following—

- (a) lodging questions for oral or written answer,
- (b) lodging motions, amendments to motions,
- (c) introducing a Bill, or lodging a proposal for a Member's Bill,
- (d) lodging amendments to Bills, or
- (e) adding the member's name in support of any of the proceedings referred to in (a) to (d) above.

3.1.10 Before taking part in any proceedings of the Parliament a member should consider whether they have a 'declarable interest' in relation to the particular matter being addressed in those proceedings. The onus is on individual members to decide.

3.1.11 A member must declare an interest when speaking or intervening in a debate where that interest relates to the subject being debated. The Act requires that only such interests as actually appear in the member's entry in the Register must be declared (section 12(2)). Following the lodging of a written statement of an interest with the Standards clerks (in relation to initial registration, newly acquired interests, or late registrations), there could be a period of up to 30 days before the statement actually appears on the Register and so becomes publicly known. In this situation, members are encouraged to make a declaration of that interest (either orally or in writing as appropriate to the proceedings) in order to avoid the suggestion of undue influence which only they will be aware of prior to the registration being published.

3.1.12 The Act refers to a member's participation in "any proceedings of the Parliament" relating to the 'declarable interest'. In this context, "proceedings of the Parliament" means all the actions noted above. Oral declarations are required only at meetings of the Parliament, its committees, joint committees and sub-committees.

3.1.13 A member is not required to make an oral declaration where the member simply attends or votes at a meeting but does nothing else. The effect of the Parliament's determination is that the member's register entry is sufficient declaration of their interest. If the member wishes to take part in the meeting in any way, other than simply attending or voting, they must make an oral declaration. Where the proceedings occur after the member has lodged a written statement with the clerks but before it is published in the Register, members are encouraged to make an oral declaration of that interest.

Volume 3 Guidance

Section 3: Declarations of Interests - Procedure in committees and sub-committees

3.5 It has been established as good practice that members of a committee (including committee substitutes) should declare interests relevant to the remit of that committee at the first meeting of the committee they attend or on the first occasion on which they address the committee, irrespective of the business before the committee at that meeting. The same applies to any MSPs who, although not members of the committee (or committee substitutes) expect to attend its meetings regularly.

3.6 Thereafter, a member must make a declaration at committee meetings wherever the requirements of section 13 of the Act apply.

3.7 The following procedures must be followed in declaring interests at committee meetings:

(a) Where a member has an interest relevant to the proceedings, the member must make an oral declaration of interest at each meeting of a committee in which that member participates. This is to allow the public attending any committee meeting to be aware of the member's interest. Where the member does nothing more than attend the committee meeting or vote at it, or both, no oral declaration is required, providing the interest

appears in the member's entry in the Register. Parliament has determined that the member's entry in the Register is sufficient declaration of that interest.

(b) The declaration should be made at the start of the relevant agenda item or as soon as the member is able to make the declaration, but before otherwise participating in those proceedings

(c) A declaration must be made whether a committee meets in private or public. Where a relevant matter is discussed in both private and public at any single committee meeting, the declaration should, as good practice, be made during the public session even if it has already been made in private session.

COMPLAINT FORM

Please use this form if you wish to make a complaint alleging misconduct against:

- (a) a councillor; or
- (b) a member of a devolved public body; or
- (c) a MSP.

13 SEP 2016

OFFICE OF PSQS

The complaint must be **legible** and **signed** by you.

If you need help to complete the form, please telephone the Commissioner for Ethical Standards in Public Life in Scotland on **0300 011 0550**. Please note that we are an independent body, therefore are not able to assist you in formulating your complaint.

Your details

Title: Mr

First Name: Christian _____ **Surname:** Allard _____

Address: _____

_____ **Postcode:** _____

Phone number (Day): _____ **(Evening):** _____

E-mail: _____

Who are you complaining about? Please give the name of the councillor(s), member(s) or MSP(s) you consider has / have broken the Code of Conduct* and the name of their council or public body.

Name of the councillor/member/MSP	Name of their council or public body (not applicable for MSPs)
Alexander Burnett MSP _____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

* The Councillors' Code of Conduct or the Code of Conduct for the public body. You can read the Codes on the web-site **www.publicstandardscommissioner.org.uk** or we can send you a copy. The MSPs' Code of Conduct can be found in the following web address: **http://www.scottish.parliament.uk/msp/conduct/code_final.pdf**

What are you complaining about? The Commissioner shall, so far as possible, investigate your complaint confidentially. Please note, to enable a full and fair investigation it is likely that your complaint will be forwarded to the person you are complaining about and to a limited number of senior officers in the relevant council/body.

What is the misconduct about which you are complaining? Please describe each incident in as much detail as possible.

I believe that Alexander Burnett failed to declare a financial interest in the success or otherwise of a planning application while lodging questions on the matter in parliament.

Mr Burnett lodged five questions in Holyrood related to a proposed housing development near Banchory in his constituency. The Braehead scheme is being proposed by Ross Developments and Renewables, a rival of the development firm of which Mr Burnett is a director and major shareholder.

Mr Burnett's family own large parts of the north side of Banchory and, amongst his business interests in property, Mr Burnett is a major shareholder in Bancon Developments Holdings who have opposed the Braehead development.

The Bancon Group have previously announced their intention to develop property at an alternative site in Braehead.

When lodging the series of parliamentary questions related to this development Mr Burnett failed to submit a written declaration of interest. This is a clear conflict of interest and by failing to disclose it there is a potential breach of the Code of Conduct. _____

Please continue on a separate sheet if necessary

Which part of the Code do you feel has been breached (list separately for each person which you are complaining)?

3.1.8

On what date(s) did this happen? Normally, you should make a complaint within one year of the alleged misconduct.

2nd August 2016

Have you made a complaint about the alleged misconduct to any other public authority? For example to the council or body concerned, the Scottish Public Services Ombudsman or any Parliamentary Authority.

No _____

Supporting Evidence: Please attach copies of documents, names and details of witnesses and any other evidence that you feel is relevant to your complaint. Please **do not send** originals.

The series of questions are available at

<http://www.scottish.parliament.uk/msps/currentmsps/alexander-burnett-msp.aspx>

Declaration

I confirm that the information I have given in this form is correct to the best of my knowledge. I request that the Commissioner for Ethical Standards in Public Life in Scotland investigates this allegation.

Signed: _____

Date: _____

08092016

Please send this form to: **Commissioner for Ethical Standards in Public Life in Scotland, Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE.**

From: [Allard Christian](#)
To: investigations@ethicalstandards.org.uk
Subject: Complaint against Mr Alexander Burnett MSP
Date: 08 November 2016 09:44:27

Your reference MSP/1937/16-17/9/DW

To: Douglas Winchester, Investigating Officer

Dear Mr Winchester

My original letter to you should have read "The Bancon Group have previously announced their intention to develop property at an alternative site to Braehead in Banchory" not "an alternative site in Braehead".

Evidence of this is available here:

<https://www.pressandjournal.co.uk/fp/news/aberdeenshire/512810/plans-lodged-for-almost-400-homes-in-hill-of-banchory/>

Evidence also available from this formal hearing at Aberdeenshire Council on page 6 :

"Ben Freeman, on behalf of Bancon Developments and OBO North Banchory Company, objected to the application on the basis that the proposed development site had been promoted and rejected for inclusion in the local development plan review; that other sites had been identified suitable for development in Banchory which would deliver housing, affordable housing, employment opportunities and local facilities and services in line with the adopted and emerging Local Development Plans; that the Strategic Development Plan was a statutory document adopted in 2012 and despite the applicant's claims that it was out of date contained provision for a healthy housing supply; that the private rented housing proposed would not be affordable to local people and that approval of the application would be make a mockery of the local development plan process." <http://committees.aberdeenshire.gov.uk/FunctionsPage.aspx?dsid=81725&action=GetFileFromDB>

Please don't hesitate to contact me if you wish further information.

Best regards

Christian Allard

ABERDEENSHIRE COUNCIL

PRE-DETERMINATION HEARING

**GYM HALL, HILL OF BANCHORY SCHOOL, BANCHORY
MONDAY 20 APRIL 2015**

Present: Councillors M F Ingleby (Chair), A M Allan, P J Argyle, G J Clark, K L Clark, L Clark, A Evison, K A Farquhar, P K Johnston, J J Latham, and Provost J Webster.

Officers: J Clark, Area Manager (Marr), J Joss, Senior Solicitor, N Stewart, Team Manager (Development Management), N Mair, Senior Planner, J Regulski, Planner and A Riddell, Area Committee Officer (Marr).

Planning permission in principle for residential development of 400 dwelling houses (including 300 private rented, 75 affordable and 25 assisted living units), Health Centre, employment uses, formation of Deeside Way hub, extension to Deeside Way, realignment and improvement to the B974, cycle paths, landscaping, open space and ancillary works at land at Braehead, Auchattie, Banchory (planning application reference no: APP/2015/0225)

The Chair welcomed all parties present and advised that this was not a public consultation but a formal hearing to allow those who had already submitted valid representations on the application, the applicant and consultees to orally express their views on the application to Councillors. She advised that following the hearing a report on the application together with a note of the hearing would be presented to the Marr Area Committee, possibly on 5 May 2015. The views of the Area Committee would thereafter be reported to the Full Council, probably on 18 June 2015, at which time it was expected that a decision on the application would be made. The applicant, selected consultees and all those who had submitted representations on the proposal had been advised of the hearing arrangements and requests to speak had been received from the following –

Ken Ross of Ross Developments & Renewables Ltd, on behalf of the applicant
Julia Davies, on behalf of Feughdee West Community Council
Robin and Bryonie Brodie, local residents
Dr John Coyne, local resident
Robin Davies, local resident
James Donald, local resident
Andrew Duff, local resident
Ben Freeman, on behalf of Bancon Developments
Theresa Hunt, from Burness Paull on behalf of Ian Adams, local resident
Ian & Christine Mechie, local residents
Theresa Nutter, local resident

The Chair then asked if there were any other parties who had requested to be heard and had not been identified and no further parties were identified.

The Chair explained that third parties should focus their comments on their views already expressed in writing and that only Councillors would be permitted to ask questions of any of the speakers to clarify points raised.

The Senior Planner, Neil Mair, made reference to the officer's report circulated which summarised the policy background, representations and main issues taken into account as part of the assessment of the application. Reference was made to the number of

representations received and he confirmed that a total of 458 valid representations had been received, 6 in support and 452 objections. A site visit had taken place prior to the hearing and maps detailing the location of the site including aerial photographs were displayed. He provided a description of the site which was currently agricultural land with a tree belt to the north, a road running around the periphery and Feugh Waters to the east. The indicative masterplan prepared by the applicant's agent indicated that the trees to the north and centre of the site would be retained. He reported on the detail of the proposal which included the provision of a health centre, district heating scheme and accessibility plan. He referred to key planning objectives for Banchory included in the current Aberdeenshire Local Development Plan and the Aberdeen City and Shire Strategic Development Plan including housing land supply. He confirmed that the application site had been submitted as a bid for inclusion in the next Local Development Plan for development of 230 units. A series of supporting documents had been submitted and reference was made to the composition of the development in terms of private rented, affordable and assisted living units and Scottish Planning Policy which encouraged a mix of tenure. He outlined consultation responses received and highlighted key considerations in relation to the application as detailed in paragraph 6.16 of the report and in particular the visual and landscape impact, impact on listed buildings, tourism and emerging 2016 Local Development Plan. In conclusion, he advised that a further report outlining key facts and considerations including equality issues would be presented to the Marr Area Committee for a view on the application and then to the Full Council for determination.

Thereafter, Councillors were given the opportunity to ask questions as follows –

Question – What has been done to robustly assess the impact of the development on tourist and visitor attractions in the area given that there is no reference to consultation with the Council's Economic Development section contained in the report?

Answer – This is tricky to assess and quantify as there is an element of objectivity involved. The Planning Service does not routinely consult with Economic Development on these types of applications.

Question - Given concerns expressed with regard to the impact on schools can you confirm if the Education Service objected to the development?

Answer - Comments from the Education Service are contained in section 4.11 of the report indicating that they were unable to support the development without information on the phasing, impact on school rolls and safer routes to school.

Question - The report refers to the proposed signalisation at Bridge of Feugh. Given the structure of the road network which contains single track roads and unclear bends at either side can you advise how this might be achieved?

Answer - Transportation colleagues are working with the Developer to identify solutions.

Question - Can you comment on the density of the proposed housing which is more closely associated with suburban developments not rural/semi-rural areas?

Answer - Every application must be considered on its own merits. The application is for planning permission in principle and the finer detail of the proposal would be considered at a later stage.

Mr Ross of Ross Developments and Renewables Ltd then addressed the Committee in support of the application. He considered that this was a unique opportunity to provide 400 families with homes of their choice within their community and at prices they could afford. No public subsidy was involved and the company would enter into a Section 75 Agreement to

ensure that the properties would remain available for key workers and local residents. He considered that the objections to the application would be valid and reasonable if it was intended that the properties were developed for sale at market value but this was not the case. Reference was made to material planning considerations and the requirement to determine planning matters within the context of the local development plan unless material considerations indicate otherwise. The application, in his view, presented a unique opportunity that could benefit the wider needs of the local community including housing, health, equality and the needs of the elderly. A public consultation exercise had been undertaken in Banchory and reference was made to comments received from those in attendance who had been unable to secure a rented property in the Banchory area and had to undertake a 60 mile round trip. He referred to numbers currently on the Council house waiting list, expenditure on temporary accommodation and the failure to deliver housing for private rental. He considered that there was a desperate need for rented accommodation in the Aberdeenshire housing market area and that this application provided an opportunity for Elected Members to consider the greater housing needs within the Community. In conclusion, he reiterated the lack of provision for private rented accommodation particularly in the Banchory area which he considered to be a high priority, the uniqueness of the proposal which would not require any external funding, support for the development in the local area and urged the Committee to support the application.

Councillors were then given the opportunity to ask questions.

Question - What range of rents are proposed?

Answer - A 2 bed affordable property estimated at £700 per calendar month and private rented sector property estimated at £850 per calendar month.

Question - Can you clarify what will be provided in terms of the health centre proposals? Is it provision of land only?

Answer - A site would be made available and the landowner is happy to gift the site to the community. The site would be large enough for the scale of the existing clinic and provide the opportunity for 50% expansion. Contact had been made with the National Health Service in that regard.

Question - How will the proposed access and signalisation at Bridge of Feugh work given the current road structure and existing visibility issues?

Answer - It is proposed to realign the road with the majority of traffic passing through the site so any increase in traffic on the existing road network would be limited. The existing road is considered substandard and there is an opportunity to use some of the land to improve site lines. Comments have only recently been received from the Roads service in relation to the proposed signalisation and discussions will continue with the Roads service to address any issues.

Question - What is the present use of Braehead Farm?

Answer - Poor quality agricultural land currently being used for grazing.

Question - Do you know who the proposed landlords would be and can you provide further information on the proposals for the Deeside Way hub?

Answer - In terms of landlord, the applicant is currently engaged with a number of parties. In terms of the Deeside Way hub it was intended to collect activities in one

location including starter business units and workshops and the proposed location was identified on the site map.

Question - You appear to be arguing for an exemption from the Local Plan based entirely on the Section 75 Agreement proposed, can you confirm where this has been used before, is the application site a bid site in the Local Plan for the next period and has an objection to the 2016 Local Plan been submitted?

Answer - Justification for the development was not entirely based on the Section 75 Agreement and these were being used in every Local Authority for that purpose. The application site was a bid site in the Local Plan for the next period. The applicant is promoting the current application and if the application is refused an objection to the Local Plan would be pursued.

Question - It was likely that the timescale for objections to the Local Development Plan would be closed before the application was determined. What level of Section 75 Agreement would you be happy with?

Answer - We will freely and willingly enter into a Section 75 Agreement to ensure that the properties would remain as rented accommodation.

Question - Great emphasis has been placed on the supply of affordable housing. The local development plan contains policies which require affordable housing to be delivered as part of that, why do you consider that the additional provision is required?

Answer - The current policies are based on population projections in 2008 as the figures for 2010 were too late to be included. The planned provision would not be sufficient to meet current needs and this development would provide an opportunity to deliver affordable housing earlier than planned.

Question - In terms of the roads layout you have indicated that it is intended to divert the Cairn O' Mount road through the middle of the site which would generate significant traffic and potential road safety issues. Can you advise why you consider it appropriate to direct a main road through the site?

Answer - The existing road is substandard and it is proposed to design something up to current standards which would improve road and pedestrian safety.

Question - The projection figures for education suggests schools will be at capacity in 4 years, what action will be taken to address this issue?

Answer - Consultation ongoing with the Education, Learning and Leisure Service and developer contributions may be required. It is hoped that clearer information will be available when the application is reported to the Full Council.

Julia Davies, Auchattie representative to Feughdee West Community Council, confirmed that the Community Council strongly opposed the proposed development and outlined the reasons for those objections which included the impact on the Community's confidence in the planning process given that the site although included as a bid for development in the Local Development Plan was not supported; justification for use of the site which was outwith the settlement boundary of Banchory would essentially result in a whole new village on the outskirts of the town within a rural setting; the increase in the volume of traffic and problems this would bring to Banchory, impact on education provision given that Banchory Academy was already oversubscribed; that sites had already been included for development in the Local

Plan and impact on the environment and tourism particularly the two major tourist attractions of the Waters of Feugh and Scolty Hill. In conclusion, she reiterated that the site had never been considered by the Community to be suitable for major development and had been excluded from the proposed Local Development Plan, that the development would represent a new village with urban density in the countryside with all the inherent pressures that a population of 1000 more people and their cars and related traffic would bring to Banchory and its infrastructure and urged the Committee to reject the application.

There were no questions for Mrs Davies.

It was confirmed that Robin and Bryonie Brodie were not present.

Dr Coyne then addressed Councillors and advised that, in his view, it would be difficult to identify a less favourable site for a housing development around Banchory than that which was being considered at Braehead Farm. The site was wedged between the confluences of the Dee and Feugh rivers both part of the Dee catchment, an area designated as a special area of conservation providing protection for freshwater pearl mussels, atlantic salmon and otters. Reference was made to current flooding issues during heavy rainfall, the impact such a development would have in terms of run off and pollution of the nearby water courses, dealing with domestic and commercial waste water and problems with access to and from the site including potential for back up of traffic on the B974 in the South Deeside Road. Using Scottish Executive figures for vehicle journeys, he considered that the development would produce over 3 million extra vehicle movements per annum and that the proposed traffic lights would not be able to deal with the back up of traffic. He also commented that the proposed monthly rental costs of £700 were not affordable.

There were no questions for Dr Coyne.

Robin Davies, a resident in the Auchattie area, then outlined his objections to the application. He considered that this was the wrong development in the wrong place, it was inconsistent with the local planning process given that the site was not designated for such development in the current and proposed development plan, the size of the proposed development and potential for further development was not appropriate in that location and the potential negative impact on the community and its local environment with knock on consequences for destruction of the local scenery, unacceptable increase in traffic, loss of amenity, threat to tourism and overload on local services.

There were no questions for Mr Davies.

At this stage in the proceedings Councillors Latham and Argyle left the hearing.

James Donald then addressed Councillors and advised that he lived opposite the application site and objected to the development. His objections related to the impact of the development on the open view from his property, potential for overshadowing, access and road safety issues, potential impact on existing mains sewage pipe which crossed the proposed site entrance, potential for increased flooding and impact on local wildlife. In conclusion he urged the Committee to refuse the application.

There were no questions for Mr Donald.

Andrew Duff then outlined his objections to the application as a resident and parent in the Deebank area. His objections related to the potential impact of the development on drainage including flood risk, the local road network, cycle connectivity and acceptable walking distances to school and potential for road safety issues given the increase in traffic generated.

There were no questions for Mr Duff.

Ben Freeman, on behalf of Bancon Developments and OBO North Banchory Company, objected to the application on the basis that the proposed development site had been promoted and rejected for inclusion in the local development plan review; that other sites had been identified suitable for development in Banchory which would deliver housing, affordable housing, employment opportunities and local facilities and services in line with the adopted and emerging Local Development Plans; that the Strategic Development Plan was a statutory document adopted in 2012 and despite the applicant's claims that it was out of date contained provision for a healthy housing supply; that the private rented housing proposed would not be affordable to local people and that approval of the application would be make a mockery of the local development plan process.

There were no questions for Mr Freeman.

Teresa Hunt of Burness Paul then addressed the Committee and outlined her client's, Ian Adams, objections to the application. She advised that full details of her client's objections were contained in the letter of representation submitted, that the application was contrary to the development plan and the applicant's argument that material considerations such as the alleged need for private rented accommodation were not justified. The proposed density of over 40 houses per hectare, which was not fixed and could be increased, would result in urbanisation of a rural area. The development would impact on tourism and on road safety issues given that the B974 road bridge and separate foot bridge at the Feugh were not designed to accommodate cyclists. Residents of the properties would be dependent on cars and the applicant had failed to demonstrate that the proposal complied with the policy on transportation. The application site had been promoted through the Local Development Plan process and rejected for good reason and would impact on natural heritage, environment, woodland and ecology. The impact on the River Dee special area of conservation and tributaries would be significant and the development would be out of keeping with the existing pattern of development in the area. In conclusion is urged the Committee to refused the application.

There were no questions from Members for Ms Hunt.

Ian Mechie advised Councillors of his objections to the application which were based on the impact of the development on the landscape and visual impact on the Bridge of Feugh area and Scolty Hill. The proposal would result in the development of a new village which would depend entirely on infrastructure such as shops, schools, recreation and community facilities in Banchory. The size of the development would be on a par with Braemar and concern was expressed that further development would take place on the site in future. The view from Scolty Hill would be irretrievably damaged and pressure on recreation facilities would be immense. Reference was made to the Scottish Government policy for further growth and regeneration and sites already allocated for the further growth of Banchory in the Local Development Plan. Substantial objections to the development had been submitted from both the Banchory and Feughdee West Community Councils and it was pointed out that residents had not objected to all developments only those in unsuitable locations such as the site proposed. In conclusion, he reiterated that approval of the application would result in a separate new village with urban density being developed outwith the Banchory settlement and urged Councillors to reject the application.

There were no questions for Mr Mechie.

The Chair confirmed that Theresa Nutter was not present.

Thereafter, all Councillors confirmed that they had received all the information they required.

All speakers were then asked if they considered they had a fair hearing and all confirmed that they had.

The Chair advised that a note of the hearing and a report on the application would be presented to the Marr Area Committee for its views and the application would then be presented to the Full Council for determination.

She thanked all those present for attending and closed the meeting at 9:05pm.

15 SEP 2016

OFFICE OF PSGS



The Scottish Parliament
Pàrlamaid na h-Alba

Mr Bill Thomson
Commissioner for Ethical Standards
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EH12 5HE

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EH99 1SP

Tel: 0131-348-5642
alexander.burnett.msp@parliament.scot

Your Reference: MSP/1937/16-17/9/DW

14th September 2016

Dear Commissioner,

Thank you for the opportunity to comment on the complaint lodged against me by the former SNP MSP Christian Allard in respect of Parliamentary questions raised by me on the direct request of a group of constituents for which I can happily provide correspondence.

I have no financial interest in the success or otherwise of the development of Auchattie and therefore believe there is no breach of the Code of Conduct.

Development of the Auchattie area was mooted most recently in 2010. However, following a series of public meetings it was rejected by the local community. It was not therefore included in the 2012 Local Development Plan by Aberdeenshire Council. **The Council's view was upheld by Scottish Ministers.**

The current (2015) proposals by Ross Developments seek to resurrect this, although they now refer to the area as Braehead rather than Auchattie. **Ross have repeatedly indicated that they are seeking to meet unmet demand for low cost and rented accommodation, and are accordingly NOT in competition with either other developers or established zoned land.**

Bancon Developments Holdings Ltd in which I have an interest, as declared in the Register of Interests, have areas of land already zoned for development in Banchory, and none of their development land is currently up for reconsideration. **Their land bank is accordingly unaffected by the success or otherwise of Ross Developments application.**

In answer to the allegation that Bancon has previously announced their intention to develop property at an alternative site in Braehead, **I can confirm that for at least over 15 years Bancon has had no interest in development in the Braehead area.** I was not a Director at that time.

In conclusion, I believe that if any credence is given to this complaint, it is so tenuous that it would prevent any MSP who has ever, or is ever considering, buying or building a house from commenting on any housing application in Scotland.

I would be more than happy to provide any further information you should require or present myself for interview.

I look forward to hearing from you.

Kind regards,

A handwritten signature in black ink, appearing to read 'Alexander Burnett', with a stylized flourish at the end.

Alexander Burnett MSP

Aberdeenshire West

Mr Bill Thomson
Commissioner for Ethical Standards
In Public Life in Scotland,
Thistle House,
91 Haymarket Terrace,
Edinburgh
EH12 5HE

Edinburgh
EH99 1SP

Tel: 0131-348-5642
alexander.burnett.msp@parliament.scot

Your Reference: MSP/1937/16-17/9/DW

07 NOV 2016

3rd November 2016

Dear Commissioner,

OFFICE OF PSCS

Thank you for your request for further information.

I am assuming that your reference to Balcon Developments should in fact read Bancon Developments.

I can confirm that no named Individual Directors of Bancon Developments or close family members have made an objection to Aberdeenshire Council regarding the Braehead Development application.

The only letter sent in relation to the Braehead application in question, which is the one which was called in by Ministers, and in respect of which I raised my constituents concerns, is that dated 21st December last year, a copy of which is enclosed.

The letter of 21st December 2015 was not signed by a named Director of Bancon Development but by Ben Freeman, Planning Manager of Bancon Developments Ltd.

I would be more than happy to provide any further information you should require or present myself for interview.

I look forward to hearing from you.

Kind regards,



Alexander Burnett MSP

Aberdeenshire West

Aberdeenshire Council
Viewmount
Arduthie Road
Stonehaven
AB31 2DQ

21st December 2015

**Residential Development of 300 No. Dwellinghouses (Including 200 Private Rented, 75 Affordable and 25 Assisted Living Units), Community Uses, Employment Uses (Incubator Units), Formation of Deeside Way Hub, Improvement to Sight Lines on the B974, Sculpture Trail, Cycle Paths, Landscaping, Open Space and Ancillary Works - Land At Braehead Auchattie Banchory
Aberdeenshire – APP/2015/3663**

Dear Sir/Madam

I wish to object to the proposed development at Braehead, Auchattie on the grounds that it is contrary to all arms of the development plan, including the Strategic Development Plan, the 2012 Local Development Plan and the emerging Local Development Plan for 2017-2026. The most significant of these is the Local Development Plan, which I deal with below: -

Local Development Plan

The site is not identified within the statutory 2012 Local Development Plan (LDP) for development. It was of course promoted as a 'bid site' to the 2012 LDP, but was considered totally unsuitable following full scrutiny by officers, public, and elected Members. On appeal, the DPEA reporters at the Examination in Public in 2011 also rejected the site. The site had also been promoted for development on several occasions prior to the 2012 LDP review as well, and has never received any support from planners or Members.

Promoted again through the current LDP review, the site has not been supported by officers, and at both the Main Issues Report and Proposed LDP stage, has not been supported by Members either.

Section 25 of the Town and Country Planning Act requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. It is abundantly clear that the site has been given full scrutiny on more than one occasion through the appropriate development planning process, and has been conclusively rejected as unsuitable for development.

To approve planning permission for the development would constitute abandoning the development planning process, and undermining well-informed and logical decisions made consistently over very many years.

Flawed Justification

The applicants seek to justify the proposals on two particular grounds: -

Firstly, the applicant argues that the Strategic Development Plan (SDP) (although only dating from 2012) is 'out-of-date' because it used household and population projections from 2008, while 2010 figures were available prior to its adoption. It is therefore argued that the forthcoming LDPs are seeking to allocate housing numbers based on out-of-date assumptions. The argument that Scottish Planning Policy (SPP) advocates a presumption in favour of sustainable development where there is an insufficient housing land supply or development plans are out-of-date is, however, not relevant in this case.

"The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making." (SPP paragraph 32)

However, this is an argument that has been run before, and found wanting. Despite considerable objection about the use of 2008 household and population forecasts, the SDP was examined by Scottish Ministers and the housing allocations were deemed both sufficient and appropriate, and subsequently adopted in 2012. It is therefore categorically up-to-date. Population forecasts will be revisited through the next SDP review, following the correct process.

The presumption in favour of sustainable development is also relevant where a planning authority fails to demonstrate an effective five year housing land supply. The housing land supply is measured annually via a Housing Land Audit, which is prepared in consultation with the development industry. Currently the Aberdeen Housing Market Area has a very healthy 7.7 year supply, confirmed by the 2015 Housing Land Audit.

Secondly, the applicant argues that there is a failure to allocate, promote or deliver private rented housing within Aberdeen City and Shire. It is argued that a positive response from public consultation demonstrates a demand for such property. However, private rented is not necessarily 'affordable' and significantly there is a requirement, in line with SPP, to provide 25% affordable housing, which is common to all development sites. In fact, the current market would suggest that private rented properties in Banchory are far from 'affordable' (rents in Banchory range from around £800pcm for a two bedroom flat up to £2,500 pcm for a 5 bedroom house).

It is not possible to differentiate between private rented and private housing for sale. Once planning permission is granted, there is no mechanism that can prevent the applicant from selling the housing like any other. It is therefore suggested that the private rented housing is simply a smokescreen to persuade the general public into accepting a housing development that they are clearly against – particularly in terms of location, visual impact, and for other important reasons.

It should also be noted that, while there has been a long term pattern of developing larger houses in Banchory, the recent trend is different. For example, Bancon have just completed 16 flats and duplex units at Ambleside, and have completed a masterplan for the M2 and H2 sites which incorporates a much wider range of house types, with a particular focus on 1, 2 and 3 bedroom homes. The provision of a more diverse housing mix, with more smaller houses is both an LDP requirement, as well as a reaction to a changing market. For the applicant at Braehead, to suggest that they alone would be appealing to a unique and large market is therefore a falsehood.

They rely heavily on the 'significant demand' for affordable homes in the area. It was said at the time of the previous application that they have 64 'notes of interest' in private rented houses at Braehead. However, to put this in context, Bancon had over 300 notes of interest for their developments in Banchory. The 'significant demand' is simply reflective of a strong market demand in Banchory, which is already being met on already 'zoned' land.

Other Reasons for Refusal

In addition to these two fundamentally flawed elements of the applicant's justification, there are several other important concerns with the development that should be given appropriate consideration.

1) Access limitations – The previous masterplan seeks the replacement of the B974 road with a new spine road through the site. This had met with some support from the local community, and yet there was little explanation of how of this road could be built, given that current topography would require it to be at least a 1:15 gradient over much of its length. This approach has now been abandoned, with a more conventional approach of two access points onto the B974 proposed.

Despite this, the applicant seeks to address the lack of access to bus services by intimating that the bus services may be persuaded to divert through the site, but provide no certainty about this. The necessary gradients through the site may well make it unattractive to bus operators.

The Transport Assessment also appears to underestimate the number of traffic movements that the development will generate, given the lack of access by other transport means.

2) Bridge of Feugh – Previous suggestions to install traffic lights at the Bridge of Feugh appear to have been abandoned, but only vague evidence of the existing traffic movements provided. The Council's Transportation Service have already indicated that the evidence provided in support of the application is not convincing, and that their view is that a new crossing over the River Feugh would be required to deliver the proposed development. There is no evidence that this would be viable or deliverable by the developer, and fundamentally whether it would be desirable, given the historic nature of the existing listed bridge and tollhouse, and the value of the area as a tourist attraction.

3) Visual Impact – The application is supported by a Visual Impact Assessment that plays down the potential impact of development, but this is almost directly contrary to a similar assessment carried out by DWA Landscape Architects in 2008. A copy of this assessment is appended for detailed information, but its conclusions are clear – development of the proposed site would harm the character of the area and completely alter the setting of Banchory, and particularly the outlook from the town over the Dee Valley. The reduction to 300 houses makes little difference to the impact of the development, aside from the fact that it the reduction is clearly a tactic to get a foot in the door to allow delivery of the 700 houses originally proposed for the wider area.

4) Accessibility – The applicants make considerable play on the location of site related to the town centre. However, the centre of the site is 1km from the junction of Dee Street and the A93. Peripheral parts of the proposed development 1.3km from that junction. A reasonable benchmark of 800m (10 minutes) walking distance has been used by urban designers for many years as the

longest distances that people will walk for services, with 400m (5 minutes) generally preferred. The site may, therefore, be closer to the town centre than the recently zoned land to the North of Banchory, but it is not close enough to encourage a modal shift away from private car use. It is important to note that the Hill of Banchory and Lochside of Leys areas have been appropriately masterplanned to provide local services and facilities within the 400 and 800m walking distances. The centre of the proposed development site is also 1.6km from the nearest primary school and secondary school – a distance that would preclude walking and cycling for the majority – as well as requiring pupils to cross the busy A93. This distance is also not far enough away to ensure school transport (only provided where pupils live >2km from the school), so children would either walk or be taken by private car. Existing zoned housing land in Banchory is considerably closer to schools.

5) Services – The area south of the River Dee is not served by a public drainage system, and therefore would necessitate substantial infrastructure work. The infrastructure costs of developing the site would therefore be very high. This raises additional concern about the proposal to provide all the mainstream housing for private rent – the provision of substantial infrastructure works without income from house sales must be seriously questionable. It is also noted that Banchory Waste Water Treatment Works has no available capacity, until such time as a growth project is complete in late 2017. This is contradicted by the applicant who states that there is available capacity.

6) Ecological Impact – Development of the land so close to the River Dee SAC must surely raise concerns over potential pollution and impacts on the nature conservation interests of the river, both during construction and following completion.

7) Public objection – this planning application has attracted substantial levels of objection – the first two weeks of public consultation have resulted in 133 letters of objection. Any suggestion that the strength of public feeling has diminished by the reduction to 300 houses should be dismissed immediately. The applicant compares the site favourably against the development proposed to the North of Banchory – which interestingly attracted only 5 letters of objection.

In light of the above analysis of the planning application, there are clearly very many reasons for the refusal of this planning application. I would also wish to register a desire to address the Committee if and when the application is reported to them.

Yours sincerely

Ben Freeman
Planning Manager
Bancon Developments Ltd
And obo
North Banchory Company

From: [Burnett A \(Alexander\). MSP](#)
To: investigations@ethicalstandards.org.uk
Subject: RE: MSP/1937-16-17/9
Date: 08 November 2016 09:25:05

Dear Mr Thomson,

Thank you for the opportunity to clarify.

Bancon Developments Ltd is a subsidiary company of Bancon Development Holdings Ltd.

I am a Non-Executive Director and minority shareholder in Bancon Development Holdings Ltd.

I hold no role, executive or non-executive in any of the subsidiary companies such as Bancon Developments Ltd and attend no meetings Board or Operational nor receive minutes of any such meetings or operational matters.

In line with the advice I received from the Clerks in compiling my Register of Interests, I declared my interest in Bancon Developments Holdings Limited as I held a position as a non-executive Director; owned a shareholding; received remuneration; and, attended Board meetings.

None of these criteria apply to Bancon Developments Ltd.

My apologies if explaining the disconnect between myself and Bancon Developments Ltd should have been made clear at the outset as I have been only trying to answer the questions as asked and in the most transparent manner.

The correct answer to your question in the letter of 2nd November would be that no named individual director of Bancon Developments Ltd or close family member made any objection to Aberdeenshire Council about the Braehead Development.

If I can be of any further assistance, please let me know.

Kind regards
alex

Alexander Burnett

MSP for Aberdeenshire West
Room [REDACTED]
The Scottish Parliament, Edinburgh, EH99 1SP
Office: 0131 3485 642
www.alexanderburnett.com

I send out occasional bulletins updating constituents on what I am doing as an MSP and will add your name to the list.

Please respond to this with "unsubscribe" if you do not wish to receive them. You can also opt out at any time in the future.



The Scottish Parliament
Pàrlamaid na h-Alba

Commissioner for Ethical
Standards in Public Life in
Scotland
Thistle House
91 Haymarket Terrace
Edinburgh
EH12 5HE

Office of Alexander Burnett MSP

Edinburgh
EH99 1SP

Alexander.burnett.msp@parliament.scot
www.alexanderburnett.com

0131 348 5642

3rd February 2017

Dear Commissioner,

Thank you for the opportunity to meet and discuss the complaint on the 12th January 2017.

I am happy to provide the further information you require.

Bancon Developments Holdings Company Ltd of which I am a shareholder and non-executive Director does not at any time purchase or hold land used for housing developments by the Bancon Group.

I trust this explanation is satisfactory and am happy to provide further information on this or other matters as requested.

Kind regards,

Alexander Burnett
MSP for Aberdeenshire West



Commissioner for Ethical Standards in Public Life in Scotland

CONFIDENTIAL

Mr Dougie Wands
Clerk to the Standards, Procedures
& Public Appointments Committee
The Scottish Parliament
Room TG01
Edinburgh
EH99 1SP

Reference: MSP/1937/16-17/9/DW

14 November 2016

Dear Mr Wands

Public Standards
Code of Conduct for Members of the Scottish Parliament
Complaint against Mr Alex Burnett MSP
by Mr Christian Allard

I have received a complaint from Mr Christian Allard alleging that Mr Alex Burnett MSP has failed to make appropriate registration and declaration of heritable property and financial interests in terms of Sections 2 and 3 of Volume 2 of the Code of Conduct for MSPs.

I write to inform the Standards, Procedures and Public Appointments Committee that in terms of the section 7(2) of the Scottish Parliamentary Standards Commissioner Act 2002 I have found the complaint is admissible and, therefore, I intend to continue consideration of the matter.

I will write to you further in due course.

Yours sincerely

Bill Thomson
Commissioner

Current MSPs

[Alexander Burnett](#)

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Register of Interests

Member's Name: Alexander Burnett

Constituency: Aberdeenshire West

Date on which initial statement lodged: 08 June 2016



Contact

[Full Contact Details](#)

Email: [Alexander Burnett](#)

Further information

Email our [Public Information Service](#) for more information.

All MSPs are required to provide details of their interests under the [Interests of Members of the Scottish Parliament Act 2006 \(asp 12\)](#). The Register of Interests of Members of the Scottish Parliament lists details of interests registered under categories such as remuneration, heritable property and gifts. More information about the exact nature of information required under each category of interest can be found at Volume 2: sections 1 and 2 of the [Code of Conduct for Members of the Scottish Parliament](#).

Information on the exact nature of the requirement under each category can be found in the [Interests of Members of the Scottish Parliament Act 2006 \(asp 12\)](#).

► [Guidance for MSPs: how to update the Register of Interests \(111KB pdf\)](#)

Remuneration and related undertaking:

I am Director and Chairman of North Banchory Company Limited, of Banchory Business Centre, Burn O'Bennie Road, Banchory, AB31 5ZU. This is a property development and letting company which also provides project management and energy consultancy services. I receive a basic salary of £6,120 per annum plus private medical insurance of approximately £1,500 per annum and, periodically, lump sum pension contributions. I do not expect to receive a pension contribution in the coming year and will register any contributions in the future in accordance with the rules. I expect to spend between 0 and 1 day per month on this role.

I own and am a sole trader of AJA Burnett Estate, a property leasing and forestry undertaking managed by Strutt & Parker, St Nicholas House, 68 Station Road, Banchory, AB31 5YJ. The level of profits and losses fluctuates. I anticipate to withdraw between £115,001 and £120,000 in way of personal remuneration in 2016/17 based on historical figures. I expect to spend between 0 and 1 day per month on this role.

I am a member of St Andrew Street Development, of Banchory Business Centre, Burn O'Bennie Road, Banchory, AB31 5ZU. This is a Limited Liability Partnership concerned with the ownership and rental of investment property. My share of profits for the year to 31 August 2015 was £4,400. I estimate that my share of profits for the year to 31 August 2016 will be between £5,001 and £10,000. I will not devote any time to this role.

I am an unpaid Director of Hill of Banchory ESCo Limited of Banchory Business Centre, Burn O'Bennie Road, Banchory, AB31 5ZU. Hill of Banchory ESCo Limited is a limited company providing heat energy to residential and commercial consumers and is a 100% owned subsidiary (related undertaking) of North Banchory Company Limited.

I am an unpaid Director of JIGSAW Energy Limited of Banchory Business Centre, Burn O'Bennie Road, Banchory, AB31 5ZU. JIGSAW Energy Limited is dormant limited company and is a 100% owned subsidiary (related undertaking) of North Banchory Company Limited.

Gifts:

No registrable interests

Overseas visits:

No registrable interests

Controlled transactions:

No registrable interests

Heritable property:

I own AJA Burnett Estate in Aberdeenshire which encompasses agricultural land, residential and commercial lettings, wayleaves and recreational, arts, sporting and forestry interests. The market value of the property is in the range £10,000,001 - £10,100,000. The property generates a gross annual income of between £640,001 and £650,000.

I am a Trustee and sole beneficiary of the Banchory Trust. The Trust owns property in Aberdeenshire with a market value of between £14,600,001 and £14,700,000. The Property generates a gross annual income of between £430,001 and £440,000. I do not expect to receive any income from the Banchory Trust this session.

I am a trustee and potential beneficiary of the Fordie Trust. The Trust owns property in Aberdeenshire with a market value of between £4,500,001 and £4,600,000. The Property generates a gross annual income of between £70,001 and £80,000. I do not expect to receive any income from the Fordie Trust this session.

Interest in shares:

I hold Ordinary £1 shares in North Banchory Company Limited, a property development and letting company which also provides project management and energy consultancy services. The shares represent 100% of the issued share capital, with a market value of approximately £9,889,626. I do not expect to receive any dividend from this company during this Session.

Through North Banchory Company Limited, I hold Ordinary £1 shares in Hill of Banchory ESCo Limited, a company providing heat energy to residential and commercial consumers. The shares represent 100% of the issued share capital, with a market value of approximately £907,059. I do not expect to receive any dividend from this company during this Session.

Through North Banchory Company Limited, I hold an Ordinary £1 share in JIGSAW Energy Limited, a dormant company. The shares represent 100% of the issued share capital. The market value of the shares falls below the threshold for registration. I do not expect to receive any dividend from this company during this Session.

Through North Banchory Company Limited, I hold Ordinary £1 shares in Horn Enterprises Limited, a company involved in investment and financing of development opportunities. The shares represent 100% of the issued share capital. The market value of the shares falls below the threshold for registration. I do not expect to receive any dividend from this company during this Session.

I hold an Ordinary £1 share in St Nicholas Productions Limited, which promotes and engages in diversified theatrical, artistic and associated recreational enterprises connected with Leys Estate and the Banchory area, together with the provision of marketing and support services. The shares represent 50% of the issued share capital. The market value of the shares falls below the threshold for registration. I do not expect to receive any dividend from this company during this Session.

I hold an Ordinary £1 share in The Wuid Chips Company Limited, a company supplying woodfuel and equipment for hire. The shares represent 50% of the issued share capital. The market value of the shares falls below the threshold for registration. I do not expect to receive any dividend from this company during this Session.

I hold Ordinary £1 shares in Inchmarlo Land Holdings Limited, a holding company. The shares represent 37.59% of the issued share capital. The market value of the shares falls below the threshold for registration. I do not expect to receive any dividend from this company during this Session.

Through Inchmarlo Land Holdings Limited, I hold "A" Ordinary £1 shares in Inchmarlo Land

Company Limited, a property letting, managing and development company. The shares represent 19.7% of the issued share capital, with a market value of approximately £136,119. I do not expect to receive any dividend from this company during this Session.

I hold Ordinary £1 shares in Bancon Developments Holdings Limited, a company concerned with the building, contracting, dealing, developing and managing of property. The shares represent 37.59% of the issued share capital, with a market value of approximately £5,524,602. I do not expect to receive any dividend from this company during this Session.

I hold 100 Ordinary £1 shares in Deeside Woodlands Products, a cooperative concerned with the production of timber products. The shares represent 14.3% of the issued share capital. The market value of the shares falls below the threshold for registration. I do not expect to receive any dividend from this company during this Session.

Voluntary:

I am a director of St Nicholas Productions Limited.

I am a director of The Wuid Chips Company Limited.

I am a director of Bancon Developments Holdings Limited.

I am a director, member and shareholder of Deeside Woodland Products, a cooperative.

Wednesday 24 August 2016

SCOTTISH GOVERNMENT

Communities

Alexander Burnett (Aberdeenshire West) (Scottish Conservative and Unionist Party): To ask the Scottish Government for what reason it made contact with Aberdeenshire Council in relation to the non-strategic/non-infrastructure planning application by Sandlaw Farming for a housing development in Banchory and whether it considers that this action was appropriate.

(S5W-01780)

Kevin Stewart: Contact between the Scottish Government and planning authorities is commonplace. In this instance contact was made in connection with a major housing proposal for private rented accommodation to request an update on the planning application and to enquire whether facilitated discussion had any role in the process. In the event, the planning authority were content to progress the application to planning committee and no further discussion took place.

Alexander Burnett (Aberdeenshire West) (Scottish Conservative and Unionist Party): To ask the Scottish Government what policy position determines its use of powers to become involved in non-strategic/non-infrastructure planning applications that have not become stalled in the planning process.

(S5W-01781)

Kevin Stewart: *Scottish Planning Policy* provides the policy context for ministers' expectations for the planning system. This underlines the importance of all those involved working together constructively and proportionately to achieve quality places. Whilst Scottish Ministers and planning authorities have respective formal roles which need to be respected, clear communication between all parties, including statutory agencies and the government can facilitate discussion and support efficient operation of the planning service. The chief planner's brokerage role was reflected in the government's Economic Strategy (2011). However, any brokerage or discussion on individual cases is only progressed with the agreement of the principal parties and respecting the statutory role of both ministers and planning authorities in the planning process.

Alexander Burnett (Aberdeenshire West) (Scottish Conservative and Unionist Party): To ask the Scottish Government whether it considers that the involvement of a representative on its Joint Housing Policy and Delivery Group in asking for the Scottish Government to assist in relation to the planning application by Sandlaw Farming for a housing development in Banchory represented a conflict of interest.

(S5W-01782)

Kevin Stewart: The Joint Housing Policy and Delivery Group includes representatives from 28 national housing related organisations. The group offers ministers advice on national strategic policy and delivery issues relating to housing. Members of the Joint Housing Policy and Delivery Group are expected to declare any conflicts of interest with respect to any topic being discussed by the group. Specific housing developments are not discussed in the group.

Alexander Burnett (Aberdeenshire West) (Scottish Conservative and Unionist Party): To ask the Scottish Government what its position is on reported concerns that there has been an increase in ministers intervening in local authority decisions regarding planning applications.

(S5W-01783)

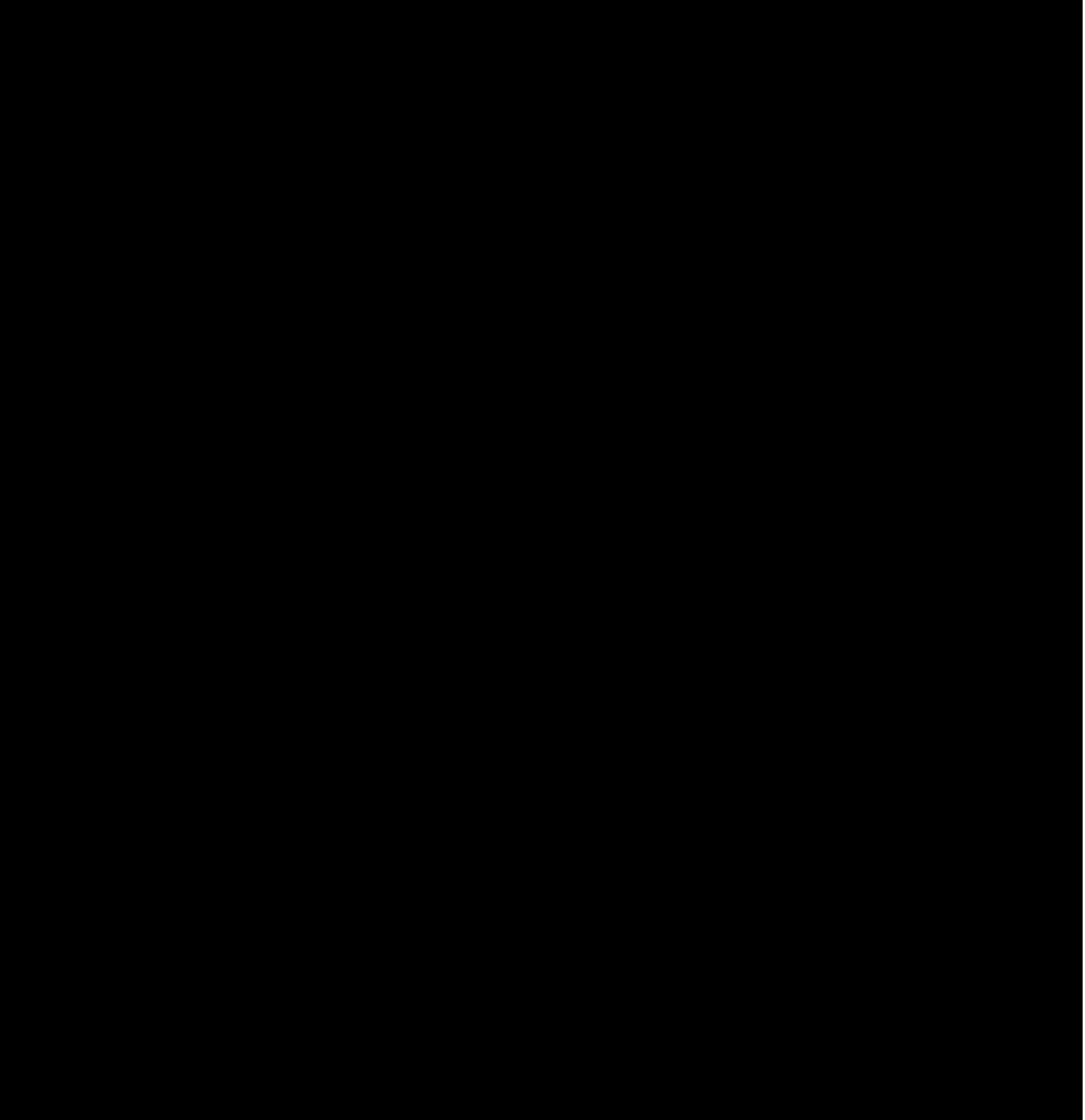
Kevin Stewart: Scottish ministers have a general power to intervene in the determination of a planning application but only where it appears there may be some matter of genuine national interest at stake. In practice, ministers will exercise this power very sparingly, recognising and respecting the important role of local authorities in making decisions on the future development of their areas. As at 31 March 2016 there were approximately 788 live cases over one year old in the planning system, creating uncertainty for not only developers but the communities in which they are proposed. In year

2015-16, planning authorities in Scotland determined 29,766 applications for planning permission. Through their power of call-in, Scottish ministers intervened in five (0.02%) of those.

Alexander Burnett (Aberdeenshire West) (Scottish Conservative and Unionist Party): To ask the Scottish Government whether it will consider publishing a register of cases in which ministers make contact, offer assistance or intervene in planning applications.

(S5W-01784)

Kevin Stewart: In the few cases where ministers intervene by recommending call-in of planning applications the reasons are publicly available. It is part of the day to day operation of the planning service that stakeholders, including the government, communicate and it would not be practical to record and publish every case where there is discussion with the government or its agencies. It would be for the planning authority in reporting to its planning committee to reflect any brokerage discussion relevant to the progress of any particular planning application and that would be both a proportionate and transparent reflection open to planning authorities.





The Scottish Government

Planning and Environmental Appeals Division

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DPEA case reference (type of case)	PPA-110-2309 (Planning Permission Appeal)
Case URL Bookmark	https://www.dpea.scotland.gov.uk/CaseDetails.aspx?id=117571
Site address	Land At Braehead, Auchattie, Banchory
Longitude	-2.49790806402
Latitude	57.0439731077
Case GIS latitude(Northings)	794876
Case GIS longitude(Eastings)	369887
GIS Map	Click here to see map
Case Detail	Residential Development Of 300 No. Dwellinghouses (Including 200 Private Rented, 75 Affordable And 25 Assisted Living Units), Community Uses, Employment Uses (Incubator Units), Formation Of Deeside Way Hub, Improvement To Sight Lines On The B974, Sculpture Trail, Cycle Paths, Landscaping, Open Space And Ancillary Works.
Type of application submitted to authority	Planning permission in principle
Date of receipt to DPEA	28 Jul 2016
Authority (and reference)	Aberdeenshire Council (APP/2015/3663)
Date of application	03 Dec 2015
Date of authority's decision	03 May 2016
Main Contact	Sandlaw Farming Company
Agent	Mr J Cox
Reason for appeal	Refusal of Application
How the case is to be decided	Site Inspection
Case Status	Decision issued
Name of case owner (contact no. and e-mail)	MacKenzie, Scott (Tel: 01324 696462 - Email: Scott.Mackenzie@gov.scot)
Name of reporter	Mr David Russell
DPEA target date	25 Oct 2016
Date decision issued (Decision of Case)	09 Nov 2016 (Appeal Dismissed)
Case characteristics	Housing (10 or more houses), Business, Landscaping,

All [2]		Appeal Documentation [1]	Decision / Outcome [1]				
	▲ Date Sent / Received	▲ Date of Publication	▲ Type of Publication	▲ Submitting Party	▲ Document Name	▲ Size	
	28 Jul 2016	05 Aug 2016	Appeal form	Agent - Ross Developments & Renewables Ltd	form and grounds - dated 28 July 2016	2MB	Bookmark (URL Details)

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The Scottish Parliament
Pàrlamaid na h-Alba

26 MAY 2017

OFFICE OF PSCS

Commissioner for Ethical Standards in
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0131 348 5642

24th May 2017

Your reference : MSP/1937/16-17/09

Dear Commissioner,

Code of Conduct for Members of the Scottish Parliament
Complaint by Mr Christian Allard

Thank you for your letter, dated 4th May, relative to the above, and for the opportunity to comment on your Draft Report.

While the Report is reasonable in most respects, and fairly comprehensive, it is felt that several issues might not have been fully covered.

In particular, it is suggested that to give a truly balanced view of the complaint, several issues could perhaps benefit from being explored in more detail. Therefore, could I ask you to give consideration to the following matters:

The Complainer

As the report sets out my political positions in Para 2.1, it is only correct to point out that the complainant Mr Allard was an MSP from May 2013 until the 2016 Scottish Parliamentary election for the Scottish Nationalist Party (SNP). He remains a member of the SNP and was recently elected as an SNP Councillor for the Torry/Ferryhill ward for Aberdeen City Council in May 2017.

The Original Complaint

Was lodged on 8th Sept 2016. The Draft Report suggests it was clarified in an e-mail dated 8th November 2016, but in fact the 'clarification' actually changed the nature of the complaint significantly.

Yet the Commissioner found on 14th November (only 6 days later) that there was a case to answer – deciding at that point that there were ‘extensive details’ available (see Para 4.2) to enable him to come to an initial conclusion.

The whole focus of Mr Allard’s original complaint is that there was a conflict of interest because the Respondent “*failed to declare a financial interest in the success or otherwise of a planning application*” because the Bancon Group planned “*to develop property at an alternative site in Braehead*”.

It was not until Mr Allard’s adjustment of his complaint on 8th November, that the question of potential conflicts of interest in relation to other alternative sites in Banchory could be considered. Up until this time it could only be construed that the complaint proceeded on a mistaken belief that Bancon had an interest in development land at Braehead, and the response to it accordingly prescribed.

As the nature of the complaint changed fundamentally, should not the original complaint have been dismissed, and if necessary a new process initiated in the light of the new and significantly changed allegation?

The New and Adjusted Complaint

On 8th November, it seems that Mr Allard realised his mistake in suggesting that Bancon had competing development interests at Braehead, and adjusted his complaint to refer to potential competition with a specific proposal (as identified in the press) by Bancon for development in Banchory.

However, despite the fact that the Bancon site enjoyed the benefit of a Local Plan zoning, Mr Allard mistakenly (see below) alleges that the two sites could be seen as alternatives.

It is surprising that it took so long for Mr Allard to adjust his complaint, as the application by Bancon to which he belatedly referred (Development at Lochside - APP/2014/1973) stems from a proposal put forward in 2010 as a submission to the 2012 Local Development Plan Review, and was included in the final plan of 2012.

The application to develop the land was lodged in May 2014. The proposal was therefore in the public domain at least 6 years before the events of 2016; while the application was lodged a year before the committee Minute (to which Mr Allard refers) was written; 2 years before Mr Burnett was elected; and, 2 years before the questions were raised.

Conflict of Interest

So where then does the “*financial interest in the success or otherwise of a planning application ... in Braehead*” arise? And, where specifically, does the conflict between its success and that proposed under APP/2014/1973, to which Mr Allard’s new complaint refers, arise.

The Draft Report discusses briefly (Para 5.14) the distinction to be drawn between the specialist house types proposed at Braehead, and the value and type of ‘open market’ houses which Bancon are currently marketing in Banchory. Strangely however it does

not record from this analysis that the contrasting proposals are for differing market offers, or that there is no obvious conflict.

That notwithstanding, it should be noted that the only 'open market' housing which Bancon have been advertising for sale are at a small site totally unrelated to the large site at Lochside to which the complaint refers. Further, and significantly, analysis of application ref APP/2014/ 1973 will show that it does not contain the specialist housing proposed at Braehead. Further, no marketing details have been considered for the Lochside site yet – far less publicised.

Further on the matter of 'competition', it is suggested in Para 2.5 of the Draft Report that "the Respondent" describes the Holdings company as a 'rival' to the Braehead applicants. This is not the case. It was in fact Mr Allard who made that suggestion in his original complaint. Albeit a fact which manifestly cannot be substantiated.

However, perhaps more importantly, as currently written, the Draft Report (and particularly Paras 5.15 and 5.16) proceeds on a misunderstanding of the Scottish Planning System, and in particular on a misinterpretation of the letter of objection lodged and spoken to by Bancon's Planning Manager.

Firstly, as noted above, the Lochside site was zoned for development in the 2012 Local Development Plan. Its status as zoned land could not be changed by the outcome of the Braehead application or appeal. There was no potential for the Respondent to be disadvantaged by the outcome of the Braehead proposals, so it cannot be said that a 'conflict of interest' arises there. This is not mentioned in the Draft Report.

While it might be argued that the release of more housing (however specialised) might change market conditions slightly, the Braehead developers themselves did not think so, and indeed argued that this was not the case. This was specifically because of the different and, in their view, unmet market demand being addressed by their proposal.

So looking specifically at matters from a planning law perspective, it has to be questioned whether it could be truly said that there was any conflict of interest.

It is unfortunate that although touched on in Para 5.4, no conclusions are drawn on this issue in the Draft Report.

Turning to Para 5.16 and the belated reference by Mr Allard to the Hearing Minute, and the short reference therein to the objection by Bancon Developments.

This should be read in the context of the Town and Country Planning Scotland Act.

It should be noted that in terms of the Act, planning applications have to be determined in accord with the Local Development Plan, (and in particular land use zonings), unless material planning considerations dictate otherwise.

Importantly, 'competition' is not accepted as a material planning consideration.

Correctly, Mr Freeman's letter does not touch on competition as it would have been a spurious reason for objection, and of little avail.

Rather than say the already zoned land "could deliver housing of the category proposed in the application for Braehead" (as suggested at para 5.16) the Minute records that he took a broader view, noting that "other sites had been identified which would deliver a range of uses in line with the adopted LDP". Read in planning terms, the letter is a stout defence of the Development Plan.

Against that planning background it is difficult to characterise the objection as a conflict of interest. Rather it should be seen as a strong letter of support for the 'plan led' approach to planning decision making which is advocated by Scottish Government, and outlined in Scottish Planning Policy.

To conclude as Para 5.15 implies, that the letter of objection was a "direct commercial challenge" and purely motivated by competing development interests, is to misunderstand the decision making process central to the Scottish planning process.

In planning terms, it is difficult to understand the relevance of the objection being "remote or disinterested".

Conclusions

Returning then to the motivation for the questions, if there was no economic benefit to the Respondent, then his stated reason for raising the issues – in support of constituents concerns – is clearly plausible.

The evidence submitted by the Respondent demonstrating that the questions originated from a constituent affected by the Braehead Development has not been fully reported in the Draft Report nor Annexed with the other documents.

At no point in the correspondence is any interest of Bancon mentioned.

Although this issue is touched on in Para 3.2, there appears to be no evaluation of this alternative.

A balanced report would surely record that there was indeed considerable local objection to the Braehead proposals, (indeed reportedly the most objections lodged to any planning application in Aberdeenshire). Para 5.12 touches on this, but draws no conclusions.

Reverting to the main issue raised in Mr Allard's complaint, that the Respondent had:

- 1) a "financial interest in the success" of the Braehead application; and,
- 2) a "clear conflict of interest" in the matter.

In the light of the further considerations raised above, it is hoped you will accept that neither of these accusations have proved sustainable.

It is felt that there is a significant distinction to be drawn between Mr Allard's allegations regarding 'financial interests' and 'conflicts of interest' and the 'declarable interest' which might arise in regard to the need to comply with Section 3.1.8 of the Code.

It is suggested that it would be important for the Final Report to make that distinction, and to confirm that there was no question of the Respondent profiting from his actions in this matter.

Turning finally to the matter of the 5 questions, it seems that 3 of these were related to Government policy on Planning, while only 2 related specifically to the Braehead site. The findings in Para 6.2 relating to the first 3 questions, imply that in the future the Respondent requires to declare an interest whenever he raises any planning matters - however general.

It would be helpful if the report clarified more fully the distinction to be drawn between an MSP's obligations in terms of 3.1.8 and the 'declaration of interest' granted by virtue of registration, and seemingly permitted under 3.1.7 of the Code.

I look forward to hearing from you.

Kind regards,

A handwritten signature in black ink, appearing to read 'Alexander Burnett', with a stylized flourish at the end.

Alexander Burnett - MSP for Aberdeenshire West

Complaint Number MSP/1937/16-17/09

The Commissioner's comments on representations submitted by Mr Alexander Burnett MSP ("the respondent") by letter dated 24 May received 26 May 2017 ("the response letter") on Draft Report "the report") issued on 4 May 2017.

The Commissioner notes the respondent's acknowledgement that the draft report is reasonable in most respects, and fairly comprehensive. It is also noted that the respondent however feels that several issues have not been fully covered and could perhaps benefit from being explored in more detail. An explanation of that position is provided in the response letter.

The Commissioner has considered the terms of the response letter in detail. He is satisfied with the accuracy of his narration (subject to minor textual amendment). Where such change has been made to the report, this is specified.

The Commissioner remains satisfied with his conclusion that there has been a breach of the MSP Code of Conduct.

The respondent's letter, which forms part of Appendix 7 to the Commissioner's Final Report, should be read in conjunction with the respondent's written responses to the complaint as set out in Appendix 2 to the Report.

The Commissioner's Response - General

The Commissioner notes that the respondent's response letter concentrates on planning legislation and, in this case, the distinction drawn between development of sites identified in the local development plan and proposed development of sites which are not so allocated. Although the complaint relates to a planning case, the Commissioner does not accept that it falls to be assessed solely in terms of the planning status of sites approved and proposed for development.

The Commissioner's view is that the evaluation must be undertaken in terms of the ethical standards legislation, including the relevant Acts of the Scottish Parliament and the requirements set out in the Code of Conduct for MSPs.

The particular issue in this case is the need for compliance with Code obligations on making declarations of interest in parliamentary proceedings in relation to interests which have been registered.

The Commissioner's Response – Detailed

Reference is made to individual points arising from the letter of response which have been summarised as follows:

	Respondent's representations	The Commissioner's comments
1.	Status of complainer as ex MSP and Councillor not narrated.	The Commissioner agrees that the complainer was an MSP until May 2016 and was subsequently elected as a councillor for the Torry/Ferryhill ward of City of Aberdeen Council as a member of the Scottish National Party. A change has been made to the report.
2.	Complainer's email of 08/11/16 constitutes new complaint.	The Commissioner sought clarification of the original complaint due to an apparent error - which was the subject of a response from the complainer by email dated 8/11/16. The Commissioner is satisfied that in such circumstances that email could not have the status of a new complaint. No changes have been made to the report
3.	Finding of Admissibility on complaint made 6 days after 08/11/16.	The Commissioner confirms his finding made on basis of his assessment of the principles/issues raised by the original complaint and the subsequent clarification of 8/11/16. No changes have been made to the report.
4.	Incorrect location of relevant development made in complaint.	The Commissioner confirms his finding that the complainer corrected the location during complaint consideration. The original issue is unchanged. No changes have been made to the report.
5.	Conflict of interest could only be considered if new complaint.	The position is as set out in comment 2. No changes have been made to the report.
6.	Complainer made a mistake about the sites – not competing ones.	The Commissioner finds that the sites were competing ones for the purpose of ethics assessment.

		No changes have been made to the report.
7.	Length of time to adjust complaint.	Considerable assessment was involved in this particular case in the circumstances of the complex issues arising. No changes have been made to the report.
8.	Bancon site known about for 6 years.	This does not affect to the subject matter of the complaint. No changes have been made to the report.
9.	Conflict does not arise in success or otherwise of planning application – different housing types are involved etc.	The Commissioner's conclusions are based on the fact that both (i) the North Banchory Company Limited, which is wholly owned by the respondent, and (ii) Bancon Developments Limited, which is a subsidiary of Bancon Development Holdings Limited (in which latter company the respondent holds approximately one third of the shares), objected to the Sandlaw planning application. The letter of objection argued against the grant of planning permission, (and included the acknowledgement that, if permission were granted, it would be possible for there to be a subsequent change of housing development and type). The respondent's response commenting on the local housing issues arising from the complaint does not affect the basis of the Commissioner's conclusions. No changes have been made to the Report.
10.	5.14 query – distinct housing groups – no conflict.	See answer 9. No changes have been made to the Report.
11.	Small site open market housing.	See answer 9.

		No changes have been made to the Report.
12.	Mixed housing in other Banchory sites.	See answer 9. No changes have been made to the Report.
13.	Not rival developments.	See answer 9. No changes have been made to the Report
14.	Report Section 5.15 & 5.16 - misunderstanding planning system.	See answers 9, 15 and 18. No changes have been made to the report.
15.	Letter from Bancon Developments Manager misinterpreted.	The Commissioner does not accept that the submission of the letter of objection by the North Banchory Company Limited and Bancon Developments Limited, even if construed as being in support of the plan based approach to planning decision making, was a purely academic or theoretical exercise by a disinterested observer of the process. Both companies have property development as one of their stated business activities. The letter was a direct objection and challenge (with a view to seeking and supporting refusal) submitted by the Development Manager of a company solely owned by the respondent and another company (a subsidiary - to which the respondent also had a business link). Additionally, the letter of objection acknowledged the prospect that a change of housing development and type could be involved. No changes have been made to the report.
16.	Zoned site would not be changed, no potential for R to be disadvantaged- therefore he has no conflict of interest.	Bancon Developments is developing the zoned site. See answers 9 and 15. No changes have been made to the report.

17.	Application complained of does not change market.	See answers 9 and 15. No changes have been made to the report.
18.	Planning law does not support complaint.	See Commissioner's Response – General on the applicability or otherwise of planning legislation as a basis for complaint consideration. See answer 9 and 15. No changes have been made to the report.
19.	Planning law does not accept competition as a material planning consideration.	See answer 9. No changes have been made to the report.
20.	"Not Remote and disinterested" assessment disputed.	See answers 9 and 15. No changes have been made to the report.
21.	No economic benefit to respondent in this matter.	The respondent's representation has been noted. No changes have been made to the report.
22.	Matter raised as a result of constituents concerns.	Constituent concerns are noted as an explanation of the respondent's actions. The extent of local objections is a matter of public record. The explanation does not obviate the respondent's statutory Code obligations to consider and make relevant declarations on registered financial interests. No changes have been made to the Report.
23.	Conclusion of financial interest not sustainable.	The respondent has registered his financial interests in local companies (with area housing interests) which have result consequential statutory responsibility for subsequent declaration. Code paragraph 3.1.7 narrates declaration requirements of MSPs where only attendance and voting involved. Paragraph 3.1.8 refers to other distinct parliamentary

		process which involves other declaration action. Paragraph 3.1.9 defines these latter situations which include lodging of Written Questions. No changes have been made to the report.
24.	Distinct from 3.1.8 of Code?	See answer 23. No changes have been made to the report.
25.	No question of profiteering on Respondent's part.	The respondent's position has been noted. No changes have been made to the report.
26.	Effect of Clause 6.2 of Report precludes asking any questions.	It is agreed that the respondent's registered interests raise the prospect that he may have to declare an interest when raising any planning matters – however general. No changes have been made to the report.
27.	Written Parliamentary Questions: 3 (policy) and 2 (site specific) on Planning Matters.	The Commissioner notes that three Questions related to the wider issue of Ministerial involvement in local authority decision making on planning applications. The Commissioner considers these were matters in which the respondent, by way of his interests in companies involved in local and regional property development, had a declarable interest in such planning issues. The Commissioner notes that two site specific Questions were lodged by the respondent about planning – in which he had a registered connection to two companies with housing development aims – involving a planning objection to the site. No changes have been made to the report.

28.	Report does not draw distinction between 3.1.8 and 3.1.7 of the Code.	Not Agreed – see Conclusions 6.1 and 6.2 of the Report. Code paragraph 3.1.7 narrates declaration requirements of MSPs where only attendance and voting involved. Paragraph 3.1.8 refers to other distinct parliamentary process which involves other declaration action. Paragraph (3.1.9 defines these latter situations and includes lodging of Written Questions.) No changes have been made to the report.
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The Commissioner has no further comment on the letter of Response.

Bill Thomson
Commissioner

6 September 2017

Crown Office and Procurator Fiscal Service

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Your ref:

Our ref: JAD/CH

Date: 1 September 2017

05 SEP 2017
OFFICE OF PSCS

Dear Mr Thomson

Complaint against Alexander Burnett

Thank you for your letter of 4 May 2017. I am sorry for the delay in replying to you. As I indicated to you when we met on 6th June I had formed the preliminary view that the case was timebarred on receipt but I would nevertheless require to report the matter to Crown Counsel for their instructions.

I have reported the matter to Crown Counsel for their consideration and instructions.

Crown Counsel have agreed that there is no alternative other than to mark the case for no proceedings.

Crown Counsel have asked that I raise awareness of the compelling need that cases are reported timeously if proceedings are to be contemplated.

[REDACTED] I also take cognisance of the fact that Mr Allard's complaint was initially made on 8 September 2016 in connection with an allegation said to have taken place on 20 April 2016 – about 6 weeks prior to the expiry of the timebar, which had in fact expired by the time offered his clarification on 8 November 2016.

In conclusion, in terms of paragraph 3 (16) (b) of the Directions by the Standards, Procedures and Public Appointments Committee I am advising that the Procurator Fiscal is not raising proceedings in respect of this matter. I believe that this now leaves the way open to you to resume your investigation and consideration of the complaint as you deem appropriate.

Yours sincerely

J A DUNN

Deputy Crown Agent, Local Court



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14th September 2017

Dear Joanna,

Thank you for your letter of the 7th September 2017 and the opportunity to respond to the Commissioner's findings in advance of the Standards, Procedures & Public Appointments Committee considering Complaint No. MSP/1937/16-17/09.

As I contended in my various submissions to the Commissioner, I do not have any pecuniary interest in the success or otherwise of the Braehead planning applications. As such, I dispute the conclusions found.

My interests are still correctly declared in my Register of Interests and in the public domain.

Thank you for your invitation to appear before the Committee to make representations about the Commissioner's findings in fact or his conclusion.

However, I have no wish to take up any more public time or money on this issue. Nevertheless, if you so wish I would be happy to attend.

Kind regards,

Alexander Burnett
MSP for Aberdeenshire West