

Mrs Kate Holy,
Chair, Kingsbarns Community Council
10 Lady Wynd
Kingsbarns
St Andrews Fife
KY16 8SU

Your reference

Our reference

MKG/MKG/PERSONAL/PERSONAL
UKG/11200068.1

10 June 2011

Dear Mrs Holy

**Land to West of Kingsbarns, North of Station Road, Kingsbarns
19 May 2011 planning permissions for housing (DPEA references PPA-250-
2064/2065)**

I refer to the Scottish Ministers' 19 May 2011 planning permission in principle for 18 dwellinghouses and planning permission for 22 dwellinghouses etc at the above location. On 9 June 2011 I received your request to consider, and provide my opinion about, whether the related February 2011 appeals (against the failure by Fife Council to give its decisions about the related applications for planning permission in principle and the application for planning permission) were made within the period set out in the relevant legislation.

The brief CV attached in Appendix 1 to this letter sets out some details about my qualifications and experience. The note attached in Appendix 2 to this letter sets out relevant information in this instance.

There was no agreement to extend the periods for determination of the applications before the right of appeal under section 47 of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act") arose (see regulation 26 of the Town and Country Planning (Development Management Procedure) (Scotland) Regulations 2008). Accordingly, the appeals in this instance ought to have been made on or before 31 August 2010. The, purported, appeals were made within the 3-month appeal period of the, purported, agreed extended deadline of 30 November 2010 for the determination of the applications.

My opinion is that: (a) Fife Council erred in law by, purportedly, granting extensions of the periods for determination of these applications in June and October 2010; (b) the, purported, February 2011 appeals were not made in time; (c) the Scottish Ministers have erred in law by accepting the, purported, February 2011 appeals out of time (for the avoidance of doubt this is the case even allowing for the fact that Fife Council did not apparently make the point that the appeals were out of time in its responses in the planning appeals process) and (d) the Scottish Ministers have, without any reason, acted inconsistently by deciding to entertain an out of time appeal contrary to their approach in *Vattenfall Wind Power Ltd v The Scottish Ministers* [2009] CSIH 27.

There is, in my opinion, an additional issue with the application for planning

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permission in principle (reference 10/00871/PPP) The request for extension was made on 21 June. At the time when that request was made, no objections had been made to the PPP application because the Council had not advertised the application for comment. Accordingly, when the request was made for the extension, the requisite number of objections required to trigger transfer of the application from the officer to the committee had not been met. The PPP application was therefore a delegated application at the time when the request for extension was made. There is no provision to extend the period of determination for a delegated decision (section 43A(8)(c) of the 1997 Act. It therefore seems to me that the request for an extension of the determination period for the PPP application was incompetent, as well as being out of time.

However, notwithstanding the errors referred to above, the Scottish Ministers' 19 May 2011 planning permission in principle and the planning permission still stand. That position would only be altered if there was a relevant statutory order (for instance an order made under s 65 of the 1997 Act) or those permissions were set aside by a court order (made, for instance, following an application for judicial review of the Scottish Ministers' grants of permission).

I trust this is sufficient for your purposes. If you require anything further please do not hesitate to contact me.

Yours sincerely

MICHAEL GREIG
Legal Director
DLA PIPER SCOTLAND LLP

michael.greig@dlapiper.com