

West of Square Housing Appeal - Legal Opinion

Background

Cambo Estate gained planning approval by appealing against the non-determination of the planning applications by Fife Council within an 'agreed' period. Although such decisions are final, they can be challenged in the Court of Session and they can be quashed if the Court is satisfied that they are not within the powers of the planning act or that interests have been prejudiced by a failure to comply with that act. If decisions are quashed, non-determined applications return to the local authority for determination - in our case by the local area committee. An applicant has a right to appeal any local authority decision within 3 months.

In our case, can the appeal decisions be challenged?

Basically, according to planning law, unless there is a written agreement to extend the two month determination period (for local developments) before the expiry of that period, an applicant loses the right to appeal against non-determination after five months.

According to documents placed before the Reporter, it appears that no such agreement was reached during the determination period. If there was no agreement (and Fife Council has been asked to respond so as to clarify the position) then Cambo Estate lost the right to appeal against non-determination on 31 August 2010 - six months before the eventual appeals were lodged. Such 'out of time' appeals have been successfully challenged in the Court of Session.

What could be achieved by successfully challenging the decisions?

We should bear in mind that, in a recent report to the area committee, Fife Council concluded that proposals were "contrary to the development plan and premature in terms of the emerging Finalised St Andrews and East Fife Local Plan and the forthcoming Plan Examination." Earlier, the area committee agreed that "the aspect to the West should be retained by not developing this site and allocating a maximum of 20 units on other sites within the settlement which should be identified by allowing development through rural policies." Kingsbarns Community Council is concerned that, in response to the area committee recommendation, the Head of Development Services decided that "it was not proposed to amend" the identified greenfield site boundary.

By bringing these applications back to Fife Council, we might gain:

- a proper democratic Plan Examination of our unresolved housing and site issues
- a solution more in tune with the unanimous (but ignored) view of our local councilors
- detailed and informed consideration by planning officials (who still await information)
- full consideration and determination by the local committee (democratic, accountable)
- correction of significant policy errors in appeal decision (adopted plan AGLV)
- meaningful dialogue as regards unresolved conditions (access, land management)
- improvements in procedure, for the good of all
- re-assessment of the £677,400 grant award which "may be withdrawn .. due to delay"

Who would challenge the decision?

It is unlikely that an individual could afford to challenge the decision in the Court of Session. Even if a group of individuals were to raise sufficient funds they might not be able to claim title and interest to pursue the case. However, Fife Council could challenge the decisions.

It could be argued that Fife Council should challenge the decisions. Whilst it is probably unfair to say that Fife Council "failed to determine the applications in time" [as reported in press] it is reasonably fair to say that Fife Council failed to take steps to keep these important applications on their own books, where they belonged (according to planning law), so that the applications could be properly determined by the local committee in a fully accountable and democratic way.