

Case Law Spotlight

Time limit for lodging appeal against deemed refusal of planning permission: *Vattenfall Wind Power Ltd v Scottish Ministers* [2009] CSIH 27. On 10 April 2003, Vattenfall lodged an application with Scottish Borders Council seeking planning permission to build 12 wind turbines and associated infrastructure at Minch Moor, Peebleshire. Some five years and three months later on 6 June 2008, they appealed to Scottish Ministers on the basis that there had not been a determination of their application by the planning authority (i.e. a deemed refusal). The Ministers wrote to the applicants by letter of 9 July 2008 stating that the appeal was out of time and refused to entertain it. Vattenfall appealed against that decision to the Court of Session. The Town and Country Planning (Scotland) Act 1997 provides that a planning authority is required to determine an application within the time period set down in the applicable regulations or within such other time period as may be agreed in writing with the applicant *at any time*. The time period set out in the regulations is two months, or such longer period as may be agreed between the applicant and planning authority. The regulations go on to specify that the time limit for appeal to the Scottish Ministers is 6 months from the date of refusal of planning permission or 6 months from the period of deemed refusal. In the present case, the planning authority sent a letter to Vattenfall in August 2007 (already 4 years and 2 months after the application had been lodged), agreeing an extension of the time period to 31 December 2007. Vattenfall argued that the deadline for appeal was therefore 30 June 2008 and that it had been lodged timeously. The Court disagreed. Whilst it might be the case that the obligation on the planning authority to determine an application subsists indefinitely, that is an entirely separate matter to the applicant's rights as far as appeal to the Ministers is concerned. Once the 6 month period had first passed, the right to appeal was lost irretrievably and the applicants therefore either had to await the uncertain outcome from the planning authority or else start afresh with a new planning application. This would appear to accord with common sense, otherwise an applicant, as in this case, would never lose the right to appeal against non-determination so long as an extension was agreed with the local planning authority, even years after the application was lodged and left undetermined. Conversely, the time period may be lengthy so long as extensions are agreed *within the 6 month period* set out in the regulations. It is not the case that agreed extensions of time for

determination eat into the time limit allowed for appeal to the Scottish Ministers. If that were true, many appeals against non-determination would be out of time and developers would be prejudiced. Where there are multiple extensions, each extension effectively starts the clock ticking again, so long as it is agreed in writing within 6 months of the extension before it. In that way, applications can be kept before a local planning authority for a very long time indeed, while still preserving the right to appeal against non-determination to the Scottish Ministers.

Cases referred to:

London and Clydeside Estates v Aberdeen District Council 1980 SC (HL) 1

Bovis Homes (Scotland) Ltd v Inverclyde District Council 1982 SLT 473

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