

LOCAL REVIEW BOARD APPEAL AGAINST THE MORAY COUNCIL REFUSAL OF PLANNING  
APPLICATION: 08/02487/FUL – RENOVATE AND REUSE REMAINS OF EXISTING LIME KILN TO CREATE  
DWELLINGHOUSE AT BRAEHEAD QUARRY KEITH

Our Ref. 080142/COWIE/mjh  
Your Ref. 08/02487/FUL  
Council Refusal Notice dated 23<sup>RD</sup> April 2010



## 1.0 INTRODUCTION

1.1 In November 2008, CM Design Chartered Town Planners and Architectural Designers (thereafter called 'The Agent'), submitted a detailed planning application on behalf of Mr & Mrs Kenny Cowie (thereafter called 'The Appellants'), to The Moray Council (thereafter called 'The Council') to renovate and reuse the remains of an existing lime kiln in order to create a dwellinghouse at Braehead Quarry Keith (Council Ref. No. 08/02487/FUL Refers).

1.2 Following extensive consideration, the Council refused the proposal (Decision Notice – Document 01), under delegated powers on 23<sup>rd</sup> April 2010, for the following reasons:

1. *The proposal is contrary to the provisions of the approved Moray Local Plan 2008 policies H8, E10, EP9 and IMP1.*
2. *The site is within the Countryside Around Towns (CAT) designation that surrounds Keith and as new build development, the proposal is not one of the specified exceptions to the presumption against development in the CAT.*
3. *It would create a precedent for further undesirable development elsewhere within the CAT designations. Structures such as this recessed lime kiln, whilst substantial, do not read as free standing buildings, so their presence cannot be relied upon to justify new dwellings.*
4. *At the time of considering the application, a contaminated land assessment had not been satisfactorily concluded so as to determine whether the site would be appropriate for the use applied for. Therefore, the nature, extent and potential impacts of any contamination, and subsequent remediation method statement (if necessary) cannot be determined or agreed upon at this time.*

- 1.3 After due consideration, the appellants has decided to exercise their right to seek a review of this decision, in accordance with section 43A of the Town & Country Planning (Scotland) Act 1997 (as amended) and the following is their detailed Statement of Case to accompany the enclosed 'Notice of Review' application form.

## **2.0 SITE PLANNING HISTORY**

- 2.1 In late 2006, the appellant sought planning approval to remove the remains of the existing lime kiln and erect an earth-shelter dwelling in its place (Council Ref. 06/02751/FUL refers). After consideration the Council refused the application under delegated powers, as the application did not represent the rehabilitation, conversion, limited extension or change of use of an existing building, the exceptions allowed for under the previous Local Plan Countryside Around Town policy. Instead the Council considered the earth shelter to be a new replacement building, which was deemed contrary to policy.
- 2.2 The appellants subsequently appealed this decision to the Scottish Ministers, who under reference P/PPA/300/246 (Document 02) agreed with the Council, that no attempt had been made to '...use the kiln structure as an intrinsic part of the project...' (para. 4) and therefore dismissed the appellants appeal accordingly.

## **3.0 APPEAL SITE DESCRIPTION**

- 3.1 The appeal site is located approximately 1km to the south of Keith and is within an area designated by the Council as 'Countryside Around Town' (CAT). The appeal site is of irregular shape parcel of ground, extending to approximately 2630 square metres and is a small parcel of the larger lands owned by the appellants. The appeal site incorporates the existing Lime Kiln building, which it is proposed to rehabilitate to form an innovative, architecturally designed house as a basis for this development (Refer to Drawing 080142.COWIE.02 – Document 03).

- 3.2 The appellants lands are bounded along its northern extent by Denwell Public Roadway and extend southward by over 260metres, with the latter part being formerly worked as a small quarry. The appellants lands rise by over 5metres from Denwell Road up to the former quarry, however the former kiln sits on approximately the same contour as the roadway.
- 3.3 The remaining lime kiln building primarily extends to the two main substantive walls along the north and western extent, and the earth embankments towards the front of the site. The western wall extends to approximately 40 metres in length and includes substantial stone abutments and the remains of an arched opening. The front wall (northern) extends higher and again retains the arched opening and is flanked with earth embankments on either side.

#### **4.0 PLANNING CONSIDERATIONS**

- 4.1 Section 25 of the Town and Country Planning Act (as amended) requires that a planning application and any subsequent appeal is considered and determined in accordance with the provisions of the development plan, unless there are material considerations which indicate otherwise.
- 4.2 The primary area under contention in this appeal, relates to Moray Local Plan 2008 (MLP) Policies H7: Reuse & Replacement of Existing Buildings in the Countryside, (Document 04), E10: Countryside Around Towns (Document 05) and EP9: Contaminated Land (Document 06). In considering each of these policy aspects the appellants wish to comment as follows:
- 4.3 **The Principal of Renovating and Reusing the Braehead Lime Kiln as a Dwellinghouse**
- 4.3.1 The Council Planning Officer's Report of Handling (Document 07) highlights that the appeal site falls within the Keith Countryside Around Town (CAT) designation as outlined in the MLP, within

such areas the policy (E10: Settlement Boundaries) states that new developments will only be acceptable if they are limited to one of the following three criteria:

- a) involves the rehabilitation, conversion, limited extension, replacement or change of use of existing buildings;
- b) is necessary for the purposes of agriculture, forestry, low intensity recreational use or specifically allowed under the terms of other Local Plan policies within these areas;
- c) is a designated 'Long' term housing allocation, released for development under the terms of policy H2.

4.3.2 The appellants submission is not required for the purpose of agricultural, forestry, low intensity recreational use or allowed for under other MLP policies, nor is the site designated as a 'Long' term housing allocation. Therefore, criteria (b) & (c) are irrelevant in this appeal and have no bearing on its success.

4.3.3 However, as the appeal proposes the reuse and renovation of the existing Braehead Lime Kiln to form a dwellinghouse, the appellants' notes that criteria (a) is relevant and contends the appeal is compatible with this criteria and was the justification for this revised planning submission.

4.3.4 Regrettably, in dismissing the appellants application, the Planning Officer in his Report of Handling (Document 07) states that the existing Lime Kiln cannot be considered as a 'building' as it '*...was never a free standing structure with 4 walls and a conventional roof...*' and, as such, the application failed as it did not satisfy the first criteria of the CAT policy.

4.3.5 In preparation of this appeal, we have reviewed the MLP for the definition of a building the Planning Officer was referring to, and have found no such definition. We would therefore,

contend that the definition for a ‘building’ for the purpose of this appeal should be taken from the Oxford English Dictionary, and their definition states:

*‘Building - a structure that has a roof and walls and stands more or less permanently in one place...’*

4.3.6 In considering the appellants Lime Kiln against this definition, we conclude that it is a ‘building’ for the following reasons:

- The lime kiln has been located on this site for a large number of years, as it first appears on the 1905 edition of the Ordnance Survey Mapping (Document 08). To date the remains of the building are still delineated on the current Ordnance Survey mapping and, as such, it is undisputable that the Lime Kiln has stood ‘...permanently in one place...’ for a number of years.
- The remaining structure clearly has two definable substantial stone walls evident on site (North and West - Plate 01 & 02). The north wall still retains a complete opening (Plate 01), whilst the supporting abutments and principle west wall still stand. Both of these walls are still structurally sound and are currently free standing structure.
- Due to the kiln becoming disused and abandoned, over time the roof structure has deteriorated and collapsed and the appellant work to asses the structural integrity of the remaining stone walls has resulted in the collapsed roof being removed from the site.



PLATE 01



PLATE 02

- 4.3.6 As the Lime Kiln clearly meets the dictionary definition of a 'building', the appellants asserts that the Kiln is classified as a building and, as such the first aspect of the CAT policy is applicable to this appeal. Nevertheless, in order to make this appeal submission fully compliant with the first strand of the CAT policy, it is necessary to consider if the appeal proposes to rehabilitate, convert, extend, replace or change the use of the kiln.
- 4.3.7 The appellants previous appeal to the Scottish Government (Refer to Para 2.2 above) which was considered under the previous Local Plan, failed as the Reporter concluded that the proposed earth-shelter dwelling, whilst paying homage to the kiln, was an entirely new building. Furthermore, he noted that no attempt had been made to '...use the kiln structure as an intrinsic part of the project...' (Para. 4 – Document 02) and as the previous CAT policy did not permit the replacement of buildings in the CAT, the Reporter had no option but to dismiss the appeal.
- 4.3.8 As part of this appeal submission, the appellants have completely redesign their proposal and have taken on-board the Reporters findings, this has resulted in an approach which utilises the remaining two structurally sound walls (north & west) as the two principle walls of the new house. This reuse of the main walls, as an intrinsic part of the dwelling, ensures that the appeal submission now accords with the rehabilitation and conversion aspect of the CAT policy.
- 4.3.9 In reviewing the final two permissive aspects of the CAT policy (Limited Extension and Change of Use); the appellants note that the Lime kiln was an extensive building, covering a floor area greater than 360sq.m, whilst the proposed house only extends to approximately 120 sq.m. and, as such, rather than an extension to the existing building, there is a dramatic reduction in its overall size.

4.3.10 Obviously as the building was previously operated as a Lime Kiln, a Change of Use is proposed. However, the CAT policy does not specify any particular favoured use over another and, as such, the change from commercial to residential is again considered to accord with policy.

4.3.11 In conclusion, basing the assessment of the appeal submission against the forgoing CAT policy, we have demonstrated that the kiln is undoubtedly a building and it represents a rehabilitation, conversion, change of use and a reduction in the overall size of the building. As a result, it is asserted that the appeal accords with criteria (a) outlined in MLP Policy E10.

#### 4.4 **The Design and Siting of the Proposed Dwellinghouse**

4.4.1 Notwithstanding the principle that this Statement of Case has demonstrated that the rehabilitation of the Lime Kiln into a dwellinghouse is acceptable in terms of the CAT policy, the appellant still has to consider if the design and siting of the proposal is acceptable in the wider MLP policy consideration.

4.4.2 As demonstrated above that the kiln is an existing building, the second lead policy in considering the acceptability of a new house in the rural landscape is policy H7 (Re-use & Replacement of Existing Buildings in the Countryside) (Document 04).

4.4.3 This policy allows for re-use of existing buildings or their replacement for houses where:

- There is clear evidence (equivalent to Level 2) of the previous building; including the previous building extent (the policy includes a diagram which defines 'previous building').
- The proposed house sits on at least part of the footprint of the previous building.

4.4.4 The policy goes on to advocate that new developments should incorporate stonework and salvaged material, where possible and the Council would require evidence why conversion is not possible, if wholesale demolition is proposed. Finally, the policy highlights that this criteria does not apply to temporary structures and provides examples such as; wooden or corrugated iron sheds and stores.

- 4.4.5 In considering the appellants submission against policy H7, as noted above the two principal walls of the Lime Kiln are still free standing structures on site and the entire extent of the building is clearly evident. Therefore, we would contend that the remains of the kiln exceed the 'Level 2' requirement outlined in the '6 Stages of Building Designs' (Document 04) contained within Policy H7 and, as such, the development should be considered under this policy.
- 4.4.6 The policy states the Council prefers the reuse of a building over its replacement and it notes that a building which meets 'Level 4' of the '6 Stages of Building Designs' (Document 04) will be expected to be reused rather than replaced.
- 4.4.7 In terms of the appellants' submission, it is arguable if the extent of the remaining kiln would conform to Level 4. Nevertheless, the appellants have already demonstrated that they are proposing to rehabilitate the kiln to provide a uniquely designed, architectural house on this site. This design utilises the remaining two standing walls as an intrinsic part of the project, with the main house siting within the confines of the previous building extent and the existing earth embankments partly hiding the house from wider views in this landscape.
- 4.4.8 Furthermore, the bespoke nature of the house and finishes are such that even the few narrow glimpses that area available, will leave the viewer impressed with the integration of the historic structure with the modern house.
- 4.4.9 The appellants, believe that their proposal conforms easily with Policy H7, as the remains of the kiln comply with 'Level 2' of the existing building requirements outlined in the policy and on the basis that the development utilises the existing remaining structure as part of the new build.



## 5.0 **Potential Contaminated Land Risk to the Development**

5.1 Moray Local Plan Policy EP9 seeks to protect new developments from land which is contaminated and is inappropriate for future use; should land be contaminated by past use, the policy requires risk assessments to be undertaken to identify the contaminants and looks for appropriate mitigation.

5.2 To the north of the site lies a former quarry which was infilled some years back with municipal waste before being covered over. The appellants are aware that this former use could result in migrating gases and to this end, they have previously undertaken gas testing around the former landfill area, these tests did not show up any high levels of gas migration (Document 09). Unfortunately, these previous tests do not meet the current testing standards and, as such, the Council Contaminated Land Section requested significant, much more expensive testing work be undertaken before removing their objection to this development.

5.3 After consideration and in light of the Reporters comments in their previous appeal (Para. 7. '...it would have been right in my assessment to grant permission, with pollution risks being controlled by condition...'), the appellants asked the Contaminated Land Section to put in place suspensive conditions seeking the gas testing and monitoring to be done when planning approval was granted and before development commences.

5.4 It is the appellants' view that this would be more reasonable in this instance and they would have no objection to conditions controlling this aspect being attached as part of the approval.

## 6.0 **LOCAL REPRESENTATION**

6.1 In accordance with the neighbour notification in place at the time, the appellant undertook the appropriate notification procedures and the Council advertised the application in the relevant local press. This publicity resulted in a single letter of representation being submitted.

6.2 This letter raised various concerns, including; the ground conditions for soakaways, the previous use of the site and the design of the building. Upon receipt of this letter, CM Design on behalf of the appellants provided the Council a written response (Document 10), which we consider adequately deals with their concerns.

## 7.0 CONCLUSIONS

7.1 In 2008, the appellants submitted a detailed application to the Moray Council to renovate and reuse the remains of an existing lime kiln in order to create a dwellinghouse at Braehead Quarry Keith. The Council refused the proposal (Decision Notice – Document 01), under delegated powers on 23<sup>rd</sup> April 2010, and after due consideration the appellants has decided to exercise their right to seek a review of this decision, in accordance with section 43A of the Town & Country Planning (Scotland) Act 1997 (as amended).

7.2 This Statement of Case reviewed the reasons for refusal and has carefully considered the MLP policies which are relevant to this case and initially identified that the Lime Kiln represented an existing building in terms of Policy E10 for the following reasons:

- The lime kiln has been located on this site for a large number of years, as it first appears on the 1905 edition of the Ordnance Survey Mapping. To date the remains of the building are still delineated on the current Ordnance Survey mapping and, as such, it is undisputable that the Lime Kiln has stood ‘...*permanently in one place...*’ for a number of years.
- The remaining structure clearly has two definable substantial stone walls evident on site. The north wall still retains a complete opening, whilst the supporting abutments and principle west wall still stand. Both of these walls are still structurally sound and are currently free standing.

- Due to the kiln becoming disused and abandoned, over time roof structure has deteriorated and collapsed and the appellant work to assess the structural integrity of the remaining

- 7.3 The statement of Case then outlined how the proposal has been redesigned to taken on-board the previous appeal decision and now proposes the utilisation of the remaining two structurally sound walls (north & west) as the two principle walls of the new house. This reuse of the main walls of the Lime Kiln, as an intrinsic part of the dwelling, ensures that the appeal submission now accords with the rehabilitation, conversion, change of use aspect of the CAT policy and as a result, the appeal accords with criteria (a) outlined in MLP Policy E10.
- 7.4 In terms of the Housing in the Countryside policies, the appellants have demonstrated that the remains of the kiln exceed the 'Level 2' outlined in the '6 Stages of Building Designs' in policy H7 and as such the development should be considered under that policy.
- 7.5 The case goes on to demonstrated that the proposal easily conforms with Policy H7, as the remains of the kiln comply with 'Level 2' of the existing building requirements outlined in the policy and the design utilises the remaining two standing walls as an intrinsic part of the project, with the main house siting within the confines of the previous building extent and the existing earth embankments partly hiding the house from wider views in this landscape.
- 7.6 Finally this appeal statement reviews the Contaminated Land objection to this development and agrees with the findings of the Scottish Government Reporter that pollution risks could be controlled by suspensive conditions seeking the gas testing and monitoring to be done prior to development commencing. The appellant would have no objection to conditions controlling this aspect as part of the approval.

7.7.1 Consequently, based on all of the above, the appellant believes the application and therefore this appeal should be duly permitted and, as such, we look forward to the Local Review Board approving of this appeal