



Directorate for Planning and Environmental Appeals Appeal Decision Notice

Decision by Mike Croft, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: P/PPA/300/246
- Site address: The Old Lime Kiln, Braehead Quarry, Keith, Moray, AB55 5NU
- Appeal by Mr and Mrs Cowie against the decision by Moray Council
- Application for planning permission 06/02751/FUL dated 15 November 2006 refused by notice dated 26 April 2007
- The development proposed: the erection of an earth shelter dwellinghouse
- Date of site visit by Reporter: 9 October 2007

Date of appeal decision: 29 October 2007

Decision

I dismiss the appeal and refuse planning permission.

Reasoning

1. The determining issue in this appeal is whether the appeal project would harm the appearance of the local countryside, bearing in mind the provisions of the development plan.
2. The appellants state that their project would involve the rehabilitation of a dilapidated lime kiln. An important part of the background to the present case is an appeal decision (ref P/PPA/300/165) in September 2005 rejecting a traditionally designed house immediately south of the lime kiln on the basis of the prominence of the site and a failure to conform to the Countryside Around Towns (CAT) policy. This policy, within policy L/ENV11 of the Moray Local Plan, adopted in 2000, presumes against development in the countryside around Keith, unless it involves the rehabilitation, conversion, limited extension or change of use of existing buildings.
3. I believe the appellants are right to regard this as a significant revision from the previous proposal here. The site is lower than in the previous case and, just as the rear of the remains of the lime kiln are now set into the ground, so would the rear of the proposed dwelling. In this way the project seeks to use the kiln's footprint and contours, with the rear elevation being landscaped earth generally following the existing landform and with the project incorporating a grass roof. Nevertheless, although the proposed dwelling in this case would be set lower than in the earlier proposal, it would be nearer the road and it would have a front elevation facing north-west in full view of the road. That elevation, with its generous fenestration, would appear on the skyline from that road and it would be a prominent feature only 20 m or so from it. The elevation would be in view from the road for several hundred metres.
4. The appellants are correct when they point out that the council's appeal questionnaire says that the proposal is restricted to the change of use or alteration of an existing building. The appellants describe the project as one which uses the kiln's footprint and contours, with the proposed side elevations replicating the kiln frontage. In their later representations, however, the council regard this as a new-build project and, notwithstanding their questionnaire response, I am sure that is the correct interpretation. The plans indicate no attempt to use the kiln structure **as an intrinsic part** of the project, and there is in any case no evidence that such an approach would result in a structurally sound solution. There is a fairly vague coincidence between the

location of some of the proposed dwelling walls and some of the surviving kiln walls but that, together with the maintenance of the land form that has developed around the decaying kiln, is the limit of the connection between the new dwelling project and the kiln

5. The project therefore has none of the exceptional elements required by policy L/ENV11. The council's assessment of it as a new-build project is correct. Bearing in mind the prominence that the proposed dwelling would have (as I describe in paragraph 3 above), I believe with the council that it would detrimentally alter the character of the open countryside here and it would be contrary to policy L/ENV11.

6. In my assessment, therefore, the appeal project would not be as innovative as the appellants claim. They say that the proposed use of an existing building would avoid eroding the distinction between built-up and rural areas, not setting an undesirable precedent for other new dwellings in the CAT areas. But the fact is that the project would not **use** an existing building: it would simply be located where a dilapidated building exists, and that is different.

7. Section 25 of the Town and Country Planning (Scotland) Act 1997 requires me to determine this appeal in accordance with the development plan unless material considerations indicate otherwise. Local plan policy L/ENV11 has most relevance in this respect and I have dealt with that above. The appellants also claim conformity for their project with local plan policies L/HC3 and L/IMP3. Policy L/HC3 requires new countryside houses to integrate sensitively with the landform and to blend unobtrusively with the surroundings, but I do not see what is proposed here doing that. Policy L/IMP3 encourages highly innovative design solutions, but I have already expressed my reservations about how innovative this project would be, and the policy itself says that innovation may not be suitable in every situation. The appellants draw my attention to policies 1 and 2 of the Moray Structure Plan 2007 which is now operative, but I do not believe that these take matters materially further so far as this appeal is concerned. Local plan policy L/ENV22 is relevant as it deals with pollution risks: if I had been satisfied on the visual impact of this project it would have been right in my assessment to grant permission, with pollution risks being controlled by condition. As to material considerations outwith the development plan, I note Scottish Ministers' advice about the scope for housing development within the countryside, but it is still clear to me that this project would be inappropriate in its local setting. I note, too, the appellants' claim that the project would support their agricultural enterprise here, but there is no substantial evidence about the need for such support.

This is the version issued to parties 29 October 2007

MIKE CROFT
Reporter