



Appeal Decision

Site visit made on 3 April 2025

by John Felgate BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 May 2025

Appeal Ref: APP/B5480/W/25/3359165

16 Gray Gardens, Rainham RM13 7NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jamal Pritom against the decision of the Council of the London Borough of Havering.
 - The application Ref is P0507.24.
 - The development proposed is “subdivision of the existing house into two dwellings, including double with part single storey rear extension, including modifications to elevations”.
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Decision

1. The appeal is invalid, and no further action will be taken on it.

Procedural note

2. My concerns about the validity of the appeal were set out in a letter sent to both of the main parties in the appeal, on 11 April 2025. Comments were received from the Council on 16 April, and from the appellant on 21 April. A further letter, containing a list of relevant questions, was sent to the parties on 23 April 2025, and replies were received from the appellant on 23 April and 25 April respectively. This correspondence has been taken fully into account.

Reasons for invalidity

The relevant legislation

3. On 12 February 2024, the provisions of the Environment Act 2021 relating to biodiversity net gain (BNG) came into force for major developments, and on 2 April 2024 this was extended to include smaller sites.
4. Under Article 7(1A) of the Town and Country Planning (Development Management Procedure) Order 2015 ('the DMPO'), relevant applications submitted after those dates are required to be accompanied by certain information relating to BNG. The information required includes a completed biodiversity metric calculation, showing the biodiversity value of the on-site habitat, and various other related details which are listed in full in sub-paragraph (c) of the above Article. This requirement applies to all applications for planning permission, except where one of the exemptions specified in the legislation applies. These include an exemption for self-build or custom build housing developments.
5. The meaning of self-build and custom housebuilding is defined in the Self-Build and Custom Housebuilding Act 2015 ('the 2015 Act') as follows:

“1 (A1) “... Self-build and custom housebuilding” means the building or completion by -

(a) individuals,
(b) associations of individuals, or
(c) persons working with or for individuals or associations of individuals,
of houses to be occupied as homes by those individuals.

(A2) But it does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person.”

6. In addition, the following further explanation regarding self- and custom-build housing is given in the national Planning Practice Guidance (the PPG), published by the Ministry of Housing, Communities and Local Government:

“In considering whether a home is a self-build or custom build home, relevant authorities must be satisfied that the initial owner of the home will have primary input into its final design and layout. ...Off-plan housing, homes purchased at the plan stage prior to construction and without input into the design and layout from the buyer, are not considered to meet the definition of self-build and custom housing.” [ID: 57-016-20210208]

Validity issues in the appeal

7. In the case of the present appeal scheme, the biodiversity matrix and other biodiversity information required by the DMPO have not been submitted. The application and appeal can therefore only be valid if one of the exemptions is applicable. The self-build exemption has been claimed.
8. Having regard to the submitted plans and documents, the following two issues arise regarding the applicability of the self-build exemption in this case:
- whether the development would comprise the *‘the building or completion... of houses’* within the terms of the 2015 Act;
 - and whether the development would be occupied in a way that would satisfy the requirements of that Act, taking account also of the related PPG guidance.

Whether the development would comprise the ‘the building or completion... of houses’

9. I appreciate that the appellant’s intention may well be to build the proposed development himself. However, from the above it will be clear that this is not enough, on its own, to qualify as a self-build or custom-built development.
10. In this case, the proposed development is described, broadly, as the subdivision of an existing house, plus extensions and other alterations. Works of this nature are not referred to in the definition of self- and custom-build housing in the 2015 Act.
11. Whilst the proposed scheme would result in the formation of two new dwellings, in place of the existing one, that does not seem to me to be the same thing as *‘the building or completion... of houses’*, as required by the terms of the relevant legislation. In the case of the appeal scheme, the existing property already exists as a dwelling, and does not require either construction or completion.
12. If the 2015 Act had been intended to embrace works of subdivision or conversion, or the extension of existing buildings, it could have done so in express terms. The lack of specific provision for these types of development seems to me to suggest

that they are seen as something different from self-build housing. Nothing in the plans or submissions before me in relation to the appeal scheme gives me any reason to depart from this view.

13. Having regard to the evidence before me, I conclude that the development now proposed would not fall within the scope of the phrase 'the building or completion of houses', and therefore fails to meet the relevant definition of self-build and custom-build housing.

Whether the development would be occupied in a way that would satisfy the requirements of the Act and related Guidance

14. The appellant Mr Pritom states, through his agent, that he intends to occupy one of the two dwellings that would be created. I have no reason to doubt this stated intention. It also seems likely, although there is no statement or other evidence to this effect, that the appellant will have had some input, and possibly a primary input, to the design and layout of the scheme; albeit that these are to some extent dictated by the constraints of the existing building.
15. However, intentions may sometimes change, and so too could the ownership of the property. Without some means of ensuring that the dwelling in question was occupied initially by the appellant, or another person fulfilling the same criteria, the occupation of that dwelling as a bona-fide self-build or custom-build dwelling would not be guaranteed.
16. The occupation of the dwelling referred to by the appellant as a self-build dwelling, could be secured by a Section 106 agreement or undertaking. But no such obligation has been entered into or suggested by any party, and I have no power to impose one. Nor has any relevant planning condition been proposed, and in any event it seems doubtful whether such a condition, controlling the occupation of the property, would be enforceable in these circumstances. The Council suggests that a statement of intent from the appellant would suffice, but in the absence of a legally binding obligation, this would have no legal effect.
17. And in any event, the proposed development would create two dwellings, not just one. To qualify for the self-build exemption, it seems to me that the whole development would need to be self- or custom-build, rather than just part. No information has been submitted with regard to the occupation of the second dwelling, or whether that occupant has also had a primary input into its final design and layout.
18. As set out above, the PPG makes it clear that authorities should take steps to satisfy themselves with regard to these matters. On appeal, the same responsibility attaches to the appointed Inspector, on behalf of the Secretary of State. In the present case, I find no evidence that the development would be occupied in a way that would satisfy the requirements of the 2015 Act and related Guidance, relating to self-build and custom-build housing.

Other matters

19. The appellant has offered to furnish a 'BNG report' as part of the appeal process. But even if that report were to include all of the information needed to comply with Article 7(1A) (c) of the DMPO, the fact remains that that, other than where one of the BNG exemptions applies, that information is required to be submitted as part of the initial application; without it, an application cannot lawfully be determined.

From the above, the present appeal does not appear to benefit from any exemption.

20. Whilst in some cases the Planning Inspectorate may be able to exercise a degree of discretion to accept late information, this does not seem to me a suitable case for that approach. This is because the information required to make the application and appeal fully compliant with the BNG legislation would involve a high degree of technical complexity, and should therefore properly be considered by the local planning authority in the first instance.

Conclusion

21. On the evidence before me, it appears to me that the proposed development would not accord with the definition of self-or custom-built housing, and nor could it be guaranteed to be occupied as such. The scheme therefore does not appear to qualify for the self-build exemption from the BNG regime. In these circumstances, the absence of the required BNG information means that the application as submitted to the Council was invalid.
22. An invalid application may not lawfully be determined, and it follows that any appeal relating to such an application is also invalid.
23. For these reasons, I find the present appeal to be invalid. No further action on it will therefore be taken.

J Felgate

INSPECTOR