



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/25/3359602

12 Ingrebourne Road, Rainham, Essex RM13 9AL

- 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 Oscar Platacs against the decision of the Council of the London Borough of Havering.
 - The application Ref is P0915.24.
 - The development proposed is a new build house.
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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 the appellant and the Council, on 11 April 2025. Comments were received from the appellant on 16 April and 4 May, and these have been taken into account.

Reasons for invalidity

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'), all applications for planning permission submitted after those dates are required to be accompanied by certain information relating to BNG, except where one of the exemptions specified in the legislation applies. The information required includes a declaration as to whether the applicant believes the BNG provisions to apply to the application, and if not, the reasons why. Where none of the exemptions apply, the application must also be accompanied by 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.
5. In the case of the present appeal scheme, the biodiversity matrix and other biodiversity information required by DMPO Article 7(1A) have not been submitted. The application and appeal can therefore only be valid if one of the exemptions is applicable.
6. On the application form the appellant, through his agent, declared that he believed the BNG requirement to be not applicable, and selected the reason as "*Submitted before commencement of BNG*". However, the planning application form was

dated 27 June 2024, and the case officer's report confirms that the application was received on that date. This was after the date when the above provisions relating to BNG came into effect. The BNG declaration contained within the application form was therefore clearly erroneous. No corrected or amended declaration appears to have been submitted at any stage.

7. In the subsequent correspondence that has taken place with the Planning Inspectorate, the appellant has asked for the proposed scheme to be treated as a self-build development, falling within the exemption from BNG that is available for self-build and custom housebuilding. However, the evidence for this appears to rest on the fact that an exemption from the Community Infrastructure Levy (CIL) has also been claimed on this basis. The application itself appears to contain no reference to self- or custom-build, either in the application form, or any of the accompanying documents, including the Planning Statement or the Design and Access Statement. Nor is there any reference in the documents submitted at the appeal stage. In the circumstances, the evidence presented is not conclusive.
8. Furthermore, in order to qualify as self-build and custom housebuilding, for the purposes of the relevant BNG legislation, the development would need to comply with the definition contained in Section 1(A1) of the Self-Build and Custom Housebuilding Act 2015. This makes it clear that the new dwelling must be occupied by the person or persons responsible for carrying out or commissioning the building. This is further clarified 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]
9. In the present case, there is no indication as to who would be the occupier of the new dwelling, nor indeed whether their identity is yet known. There is also no indication that the occupier would be a person who has had a primary input to the design and layout. There is therefore no clear evidence that the development would be capable of meeting the definition of self- or custom-build housing. Nor is there any suggestion as to how its status as such would be secured. The latter could potentially be achieved by way of a legally binding Section 106 agreement or undertaking, but no such obligation has been entered into, and I have no power to impose one.
10. I appreciate that the appellant's intention may 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.
11. I am fully aware that the application was accepted and validated by the Council. However, the Council's position as to validity is not binding on the Secretary of State. As set out above, the PPG makes it clear that authorities should take steps to satisfy themselves with regard to the relevant considerations, and on appeal, the same responsibility attaches to the Secretary of State or his appointed inspector. Having regard to the matters set out above, I am not satisfied in this case that it has been demonstrated that the proposed scheme would be, or could

be secured as, a self-build development. That being so, the development cannot benefit from the relevant exemption from the legal requirements relating to BNG.

Other matters

12. In addition to the above matters, the plans submitted with the application appear to me to contain conflicting and contradictory information regarding the proposed development itself. On the Elevations and Floor Plans drawing, No AUG24_121BR_02, the proposed new dwelling is shown attached to the side of the existing house, No 12 Ingrebourne Road, and in line with that property, continuing the existing building line of the street.
13. Yet on the Block Plan, drawing No JUNE28_143TR_03, the new dwelling is shown apparently replacing the current house on its existing footprint. Furthermore, in this drawing, the new dwelling is also shown turned at right angles to the building line, and 'handed' compared to the floor plan drawing; and also appears to be drawn to a scale which is smaller than the surrounding base detail.
14. Evidently, one of the two plans must be erroneous. However, the plan numbers are listed on the refusal notice, and it is clear from this that the plans before me now are the same ones that were submitted to the Council. As far as I am aware, no request has been made to substitute any amended or corrected plans (and in any event, any such request would be granted only exceptionally). Therefore had the appeal proceeded to a decision on its planning merits, that decision would have been considered on the basis of the plans as submitted.
15. In this case, the contradictions that I have identified between the submitted plans are so serious as to render the proposed scheme unintelligible. This defect could not have been remedied by way of a condition, because based on the submitted plans, it is not possible for the scheme's merits to be properly or reliably assessed.
16. It follows that had the appeal proceeded, the only possible outcome would have been for it to be dismissed for lack of clarity. However, in the circumstances, it is not possible to issue such a decision, because a finding of invalidity precludes any actual decision from being made.

Conclusion

17. 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.
18. An invalid application may not lawfully be determined, and it follows that any appeal relating to such an application is also invalid.
19. For these reasons, I find the present appeal to be invalid. No further action on it will therefore be taken.

J Felgate

INSPECTOR