



Appeal Decision

by John Felgate BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th of May 2025

Appeal Ref: APP/F2605/W/25/3358306

'Alrina', Rectory Lane, Weeting, Norfolk IP27 0PX

- 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 R Drummond against the decision of Breckland Council.
 - The application Ref is 3PL/2024/0448/F.
 - The development proposed is "residential development of replacement dwelling and 1 new dwelling".
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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 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'), applications for planning permission 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 planning applications, 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 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]

7. In the present case, the exemption for self-build or custom build housing has been claimed, and the BNG information that would otherwise be required by DMPO Article 7(1A) has not been submitted. However, other than the declaration to that effect on page 9 of the application form, none of the other documents submitted at either the application or appeal stages appear to have contained any reference to the development being a self- or custom-build project, nor any other information relevant to that aspect of the scheme. At neither stage was any information submitted regarding the identity of the prospective occupiers of the two dwellings, or in what way they had played a primary role in the design and layout of their respective dwellings. The claim to exemption from BNG on these grounds was therefore open to question.
8. In the subsequent correspondence with the Planning Inspectorate, referred to above, it is stated that the occupiers would be the appellant and an unnamed brother, and that both were involved in giving instructions during the design process. I have no reason to doubt this information, or the genuineness of the appellant's intentions in this regard. But intentions can change, as can land ownership.
9. The initial occupation of the dwellings could potentially be controlled by way of a Section 106 agreement or undertaking, so as to ensure that the scheme was carried out as a self-build or custom-build development, in compliance with the 2015 Act and PPG guidance. But in this case no such obligation has been entered into, and I have no power to impose one. A planning condition would not be suitable for this purpose. In the absence of any such legally-binding mechanism, there is no certainty that the proposed scheme would be carried out or occupied as a self- or custom-built development. It follows that the proposal does not qualify on these grounds for the relevant exemption from the BNG legislation.
10. I am fully aware that the application was accepted and validated by the Council. However, the Council's opinion 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 benefits from any exemption from the relevant legal requirements relating to BNG.

Conclusion

11. 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 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.
12. An invalid application may not lawfully be determined, and it follows that any appeal relating to such an application is also invalid.
13. For these reasons, I find the present appeal to be invalid. No further action on it will therefore be taken.

J Felgate

INSPECTOR