



Appeal Decision

Site visit made on 1 December 2025

by **M Willis BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 December 2025

Appeal Ref: APP/N4720/W/25/3372474

Site of the Old Water Tower, Quarry Lane, Scarcroft, Leeds, West Yorkshire LS14 3HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr T Zaman (Winsor Properties) against Leeds City Council.
 - The application Ref is 25/03001/FU.
 - The development proposed is a change of use of land from Sui Generis Use associated with demolished water tower to residential for the construction of one new dwelling house with integral double garage (Use Class C3) with associated access, driveway and landscaping works.
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Decision

1. The appeal is dismissed and planning permission for a change of use of land from Sui Generis Use associated with demolished water tower to residential for the construction of one new dwelling house with integral double garage (Use Class C3) with associated access, driveway and landscaping is refused.

Preliminary Matters

2. Winsor Properties is identified as the applicant on the application form and the form is signed by Mr T Zaman Winsor Properties. The appeal form and correspondence on file also refer to Mr T Zaman Winsor Properties. I am therefore satisfied the applicant and appellant are the same.
3. The appeal is made on the grounds that the Council failed to determine the application in the prescribed statutory period. The Council has confirmed that had it made a decision on the application it would have refused planning permission and has provided its putative reason for refusal which is as follows:

The Local Planning Authority consider that in the absence of an appropriate mechanism to ensure compliance with the self-build exemption regarding the requirement to deliver a 10% biodiversity net gain via development, the proposal has failed to secure the delivery of a self-build dwelling and, in the alternative the development were not to come forward as a 'self-build' development, failed to secure the necessary biodiversity net gain in accordance with the requirements of the Environment Act 2021, and related biodiversity policy to deliver a biodiversity net gain. Consequently, conflict with Core Strategy policy ID2, and guidance within the NPPF is identified.

4. The Council has indicated that additional and revised information was submitted by the appellant during the application stage although this information was not formally registered and consulted upon. Some of this information has been

provided as part of this appeal so I have considered whether accepting it at this stage would deny the Council and those previously consulted on the application the opportunity to comment upon it. As the Council has commented on the additional and revised information in its response to this appeal and interested parties have also had chance to provide comments, I am satisfied accepting this material does not result in procedural unfairness. To confirm, my decision is therefore based on the evidence submitted when this appeal was made.

Main Issue

5. Having regard to the above and the evidence before me, the main issue to be considered in this appeal is whether the proposal meets the definition of a self-build dwelling and therefore the requirements of the Biodiversity Net Gain (BNG) exemption.

Reasons

6. The appellant is advancing the proposal as a self-build development and therefore is exempt from the requirement to provide mandatory BNG as is required under the Environment Act 2021.
7. The Council considers a Section 106 (s106) planning obligation is required to ensure the proposal is delivered as a self-build development and thereby ensuring the BNG exemption for self-build and custom build housebuilding applies. The appellant disagrees and considers signed Community Infrastructure Levy (CIL) exemption forms completed as part of the application to be legally binding documents which would secure the self-build aspect of the development. He also suggests a suitably worded planning condition could be used to secure BNG if a breach to the self-build aspect of the development occurred and the BNG exemption no longer applied. The appellant argues a s106 planning obligation is therefore unfounded and unreasonable.
8. To qualify as self-build and custom housebuilding, and to consequently meet the requirements for the exemption allowed under 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.
9. I have no reason to doubt the appellant has been involved in designing the proposal, that he would be involved in building it or that the dwelling would become his home. However, any exemption to pay CIL is applied for under separate legislation and does not control the development or ensure the dwelling is constructed as a self-build property. Planning conditions could also not be used to secure the development as self-build or require occupation of the dwelling by the person who built it, as these would fail to meet the tests set out in paragraph 57 of the National Planning Policy Framework (the Framework) in terms of their enforceability.
10. In my judgement a s106 planning obligation would be the most appropriate method of ensuring the proposal comes forward as a self-build dwelling rather than market housing and to ensure it is occupied by the appellant. In the absence of such a legally binding mechanism in this case, the proposal does not therefore meet the

definition of a self-build dwelling and so would not be exempt from BNG. With no valid BNG exemption in place this would need to be secured.

11. Notwithstanding the appellants position that a BNG exemption applies, I note the application form was completed indicating that, if granted, the planning permission would be subject to the biodiversity gain condition (as set out in paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990). I understand from the Council's submission that a biodiversity metric was completed and submitted as part of the original application, however, this has not been provided and so is not before me. Consequently, the baseline biodiversity value of the on-site habitat has not been established and so, even if this appeal had been allowed, it would not be possible for the mandatory BNG condition to be attached.
12. As the pre-development condition and value of the on-site habitat has not been established, I am also not persuaded a planning condition requiring BNG to be provided in the event the development was not brought forward as a self-build to be enforceable. Therefore, such a condition would fail to meet the tests set out in the Framework.
13. For the reasons set out above, the absence of a legally binding mechanism to secure the development as a self-build dwelling means it does not meet the definition of a self-build property and the requirements of the BNG exemption. The proposed development therefore fails to comply with Policy ID2 of the Leeds Local Plan Core Strategy (2014) (as amended by the Core Strategy Selective Review 2019) which requires Section 106 planning obligations to be secured as part of a planning permission where this is necessary, directly related to the development, and reasonably related in scale and kind in order to make a specific development acceptable and where a planning condition would not be effective.

Other Matters

14. Potential benefits of the proposal include the provision of one dwelling as well as economic and employment benefits associated with its construction. Given the limited scale of the development, I consider such benefits to be very modest and so are given limited weight in the planning balance.
15. Representations have been made by the public regarding the design and siting of the development; effects on amenity; impacts to trees and landscaping; potential impacts to the public right of way; access matters, drainage and biodiversity. These are acknowledged, however, I note the Council has said that, based on the revised plans and information submitted by the appellant at the application stage, and subject to suitable conditions, it is content the proposed development would not generate significant harm in terms of its design and siting; the living conditions of future occupiers or neighbouring residents; landscaping and existing trees; highways and drainage; protected species and in relation to contaminated land matters. Given my finding on the main issue would remain irrespective of the acceptability or otherwise of the proposal in relation to each of these matters, there is no need for me to address these in detail as they are not determinative in this case.
16. Concerns have also been made regarding the potential for future development on the plot; the planning history of the site; issues of subsidence affecting adjoining land; inaccuracies within the application, including ownership; the status of the

appellant 'Winsor Properties' as a functioning business and the conduct of officers of the Council.

17. Any future proposals would be subject of a separate application and so is not a matter for this appeal. Ownership and private access issues, as well as damage to property, are civil matters between private parties. Issues relating to planning history, enforcement and the previous conduct of Council officers is a matter for the Council to address through its own processes and procedures. These matters therefore fall outside of my jurisdiction in the determination of this appeal.
18. Finally, as explained previously, I am satisfied the appellant has the legal right to make this appeal and so the status of 'Winsor Properties' is not of relevance.

Planning Balance

19. I have found the proposed development to be contrary to Policy ID2 of the Leeds Local Plan Core Strategy (2014) (as amended by the Core Strategy Selective Review 2019). Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals should be determined in accordance with the development plan unless material considerations indicate otherwise. I have found the benefits of this proposal to carry limited weight. These benefits do not amount to a material consideration of sufficient weight to indicate that a decision contrary to the relevant development plan policies, resulting in material planning harm associated with BNG, should be made. I therefore conclude that the benefits of the development would not outweigh the harm in the overall planning balance.

Conclusion

20. For the reasons given above the appeal should be dismissed.

M Willis

INSPECTOR