



Appeal Decision

Site visit made on 18 December 2025

by N Unwin BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th April 2026

Appeal Ref: APP/U2750/W/25/3374151

The Courtyard, Swinton Lane, Swinton, North Yorkshire, Malton YO17 6QR

- 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 Harry Hague and David Hague against the decision of North Yorkshire Council.
 - The application ref is 24/00589/FUL.
 - The development proposed is: erection of 2 detached self/custom build houses with associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is described as a self-build dwelling and therefore could benefit from the self-build and custom build exemption from biodiversity net gain provided for in the Biodiversity Gain Requirements (Exemptions) Regulations 2024. The Council proposed a condition to secure compliance with the exemption, with the appellant proposing a similarly worded condition. I sought views from both parties on the practicalities of enforcing the conditions and whether the conditions satisfy the other relevant legal and policy tests. Whilst this matter was not a reason for refusal on the Council's decision notice, as the appellant and the Council have been afforded the opportunity to comment on the matter, I am content that no party has been prejudiced by including it as a main issue in my decision.

Main Issues

3. The main issues are:
 - Whether the proposal would satisfy the requirements of the statutory framework for biodiversity net gain;
 - Whether the site is suitable for the proposed development, having regard to relevant policies for the Council's spatial strategy; and
 - Whether the proposed development would be isolated including from shops, services, and facilities.

Reasons

Biodiversity net gain

4. Biodiversity net gain (BNG) is a statutory requirement introduced by the Environment Act 2021. Where applicable, it is secured through a statutory

planning condition intended to ensure a minimum 10% increase in biodiversity value. Compliance with this statutory regime is a material consideration for the decision maker, as failure to do so could undermine both its effective implementation and the wider biodiversity objectives it seeks to achieve.

5. Article 7 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires an application for planning permission to be accompanied by a statement confirming whether the development would be subject to the statutory BNG condition and if not the reasons for that belief. If BNG is applicable, further information relating to BNG is required. This enables the statutory BNG condition to be applied and subsequently discharged.
6. Self-build development is one of the exemptions from the statutory BNG condition. This exemption was ticked on the planning application form and the development description refers to the development as self/custom build houses. However, the description of development alone is not sufficient to secure the development as a self-build development.
7. The Council proposed a planning condition which seeks to require the proposed dwellings to be self-build or custom housebuilding as defined in the Self-Build and Custom Housebuilding Act 2015 (as amended) (SBCH). The appellant's suggested condition expands on this, requiring the dwellings to be occupied by a person or by his or her partner and dependants for at least three years.
8. I am not convinced either condition proposed would be enforceable. Part of the requirement for the initial owners of the homes is to have primary input into its final design and layout. Were the dwellings to be first occupied by a person who did not meet the specified criteria, any breach would be incapable of remedy as the fact of first occupation could not be undone, even if that person subsequently vacated the property.
9. In absence of an alternative mechanism to secure the development as a self-build dwelling there is insufficient certainty that the proposal would be a self-build or custom build house. Accordingly, the proposal does not benefit from any BNG exemption. The minimum information required for a planning application, as set out in Article 7 has not been provided.
10. Therefore, in light of the above, the proposal would fail to satisfy the requirements of the statutory framework for BNG. The proposal would therefore also be in conflict with paragraph 187 of the National Planning Policy Framework which seeks to secure net gains for biodiversity.

Suitability of location for housing

11. The appeal site adjoins a cluster of buildings approximately 1.3 kilometres south of the village of Swinton. The appeal site and adjoining land has a complex planning history of commercial and residential development, notably permission for 9 dwellings with the Council confirming works have commenced.
12. Policy SP1 of the Ryedale Local Plan Strategy (2013) (the Local Plan) sets out the spatial strategy where development will be distributed based on a hierarchy of settlements including Principle Town, Local Service Centres (market towns) and Local Service Centres (service villages). Although Swinton is a Local Service Centres (service villages), the appeal site is located outside of this.

13. Policy SP1 of the Local Plan goes on to say that outside of these defined settlements, development will be restricted to that which is necessary to support the rural economy and communities, secures significant improvements to the environment or conservation of significant heritage assets, or which is justified through the Neighbourhood Planning process.
14. Policy SP2 sets out the sources of new housing across the district. For the purposes of this policy the appeal site is located within the 'wider open countryside' where development is limited to new build dwellings necessary to support the land-based economy where there is an essential need in that location that can be justified, conversion of traditional rural buildings, change of use of tourist accommodation, and replacement dwellings. The proposal would not meet any of these aforementioned criteria and would therefore not comply with Policies SP1 and SP2 of the Local Plan.

Isolated dwellings

15. Paragraph 84 of the National Planning Policy Framework (the Framework) sets out that the development of isolated homes in the countryside should be avoided, unless one or more of the specific criteria are met. It is not claimed that any of the exceptions are met in this case. There is some dispute over whether or not the development would constitute isolated homes.
16. 'Isolated' is not defined in the Framework but the Braintree judgement¹ sets out that it simply connotes a dwelling that is physically separate or remote from a settlement. That judgment supports the view that a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without shops and services, or public transport within easy reach. Whether a proposed new dwelling is 'isolated' is a matter of fact and planning judgement for the decision maker. The proposal is adjacent to an existing cluster of buildings, with planning permission for 9 dwellings and as such, is not physically isolated.
17. With regard to access to shops, services, and facilities, Swinton is approximately 1.3 kilometres from the appeal site. It contains a number of services and facilities including bus services to Malton and Norton which lies approximately three kilometres to the east of the appeal site. Malton and Norton is identified as the Principal Town and the primary focus for growth within the Local Plan.
18. The appeal site accesses Swinton via Swinton Lane with this section possessing no pavement, requiring pedestrians to walk along the road which lacks street lighting. There is also no bus service connecting the appeal site to Swinton. However, during my site visit the road seemed relatively lightly trafficked with good visibility in either direction. It is reasonable to consider future occupiers of the proposal could make the journey to Swinton via foot during daylight hours.
19. Given the relatively short distance to Swinton, the journey could also be made via bicycle, supporting the services within this settlement. Once in Swinton, bus services provide the option to continue the journey to Malton and Norton via public transport, or given its proximity, continue the journey cycling, offering a genuine choice of transport modes. Further, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making. As

¹ Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

such, I consider the proposal would not be isolated from shops, services, and facilities.

20. For the above reasons, the proposed development would not be isolated, including from shops, services, and facilities. It would therefore not conflict with the relevant provisions of paragraphs 83 and 84 of the Framework which together require the development of isolated homes within the countryside to be avoided and the promotion of sustainable development in rural areas.

Planning Balance

21. The Council has conceded that they do not have a 5 year housing land supply. The appellant contends that the Council can only demonstrate a 0.8 year supply of deliverable housing sites and the Council do not dispute this. This is a significant shortfall. As such, the policies which are most important for determining the application are out-of-date. Policy SP19 of the Local Plan says that where this is the case, permission should be granted unless material considerations indicate otherwise. This is reflected within paragraph 11(d) of the National Planning Policy Framework (the Framework) which is engaged.
22. Whilst the proposal is located within the Howardian Hills National Landscape, the Council's delegated report states that the proposal would not have an impact on the character of the landscape. There is nothing before me to suggest that there are any policies in the Framework protecting this asset that provide a strong reason for refusing the development under paragraph 11d)(i).
23. Paragraph 11d)(ii) of the Framework also states that planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
24. With regards to whether the most important policies are out of date, the Council provides no compelling evidence to show that the housing supply requirements set out in the Framework will be met by the current housing and growth strategies which underpin Policies SP1 and SP2 of the Local Plan. It has not been shown that these policies are consistent with the Framework, and I therefore consider them to be out of date in regard to housing supply and I give the proposal's conflict with them limited weight.
25. The proposal would deliver two sustainable dwellings on previously developed land, making a positive and valuable boost to the housing stock, particularly given the significant shortfall.
26. The proposal would have associated economic benefits during the period of construction and through the use of surrounding services and facilities once the dwellings were occupied. Further, the proposal would be a more sympathetic form of development compared to the previously approved commercial development at the appeal site, benefiting the Howardian Hills National Landscape and likely generating fewer vehicle movements. Nonetheless, given the scale of the proposal and appeal site, these benefits would be limited.
27. Notwithstanding the above, the conflict with Policies SP1 and SP2 of the Local Plan and paragraph 187 of the Framework, which combined carry substantial

weight, would significantly and demonstrably outweigh the above identified benefits.

Conclusion

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
29. The proposal benefits from the presumption of sustainable development as outlined in Paragraph 11d) of the Framework. Nevertheless, the adverse impacts of the proposal would significantly and demonstrably outweigh the identified benefits when assessed against the policies in this Framework taken as a whole.
30. For the reasons set out above, I conclude that the appeal should be dismissed.

N Unwin

INSPECTOR