

Appeal Decision

Site visit made on 10 August 2021

by David Spencer BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 August 2021

Appeal Ref: APP/X1545/W/20/3264169

Land Adjacent the Old Forge and Thornley Cottage, Burnham Road, Althorne CM3 6DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr R Thame against the decision of Maldon District Council.
 - The application Ref FUL/MAL/20/00725, dated 20 July 2020, was refused by notice dated 6 November 2020.
 - The development proposed is construction of a dwelling and cartlodge.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Maldon District Council against Mr R Thame. This application is the subject of a separate Decision.

Preliminary matters

3. On 20 July 2021 the Government issued a revision of the National Planning Policy Framework (NPPF) which is a material consideration in determining this appeal. It updates the previous 2018/9 version which the Local Planning Authority (LPA) took into account when making its decision. Accordingly, both main parties to this appeal have been invited to comment on the revised NPPF. I have taken into account representations received. All references in this decision to the NPPF are to the July 2021 version.

Main Issues

4. The two main issues in this appeal are firstly, the effect of the proposed dwelling on the character and appearance of the surrounding area, and secondly, whether the appeal proposal would contribute to a sustainable pattern of housing development in the District.

Reasons

Character and Appearance

5. The appeal site is situated on the north of Burnham Road at the eastern edge of the village. It is a plot of garden land comparable in width and depth to those of the dwellings immediately to the west of the site, including the directly adjacent 'Thornley Cottage'. To the east of the site are the houses at 'The Old Forge' and 'Capri'. The latter is a large dwelling of more recent appearance. The appeal site, as former garden land, contains no notable or intrinsic

landscape features. The immediate presence of 'Thornley Cottage', a twentieth century chalet style dwelling, together with the older property of 'The Old Forge' and its large detached modern garage building, combine to provide an overtly residential character at the appeal location, notwithstanding the open farmland directly opposite. Consequently, I do not find the appeal site to provide a particularly strong visual cue or marker in character transition from the more nucleated settlement pattern to the west and the sparse pattern of development in the countryside further to the east beyond 'Capri'.

6. I note the previous 2017 appeal decision¹ at the same site but due to the presence of 'The Old Forge' and the larger, newer dwelling at 'Capri' immediately to the east of the appeal site, I do not find there to be a clear demarcation to the settlement edge on the north side of Burnham Road at this location. From my observations, the appeal site comprises an 'infill' plot within a continuous pattern of generally single depth linear development which starts at 'Capri' and extends west to the Summerhill Road junction. In street scene views from both the east and west within Burnham Road, due to the presence and scale of adjoining residential development on either side, the proposed dwelling would not appear as intrusive development into the open countryside on the north side of Burnham Road.
7. Whilst it would consolidate a linear pattern development beyond the adopted settlement boundary at 'Thornley Cottage', it would do so only in a very modest way given that 'Capri', a short distance to the east forms a clear terminus to this pattern of development beyond which the countryside character of the Dengie peninsula and a more definite sporadic rural pattern of development prevails. Consequently, the appeal proposal would not result in any significant harm to the character, appearance or intrinsic beauty of the countryside at this location.
8. I note in contrast to the previous 2017 appeal decision, the proposal before me is detailed rather than in outline. In terms of the design and appearance of the proposed dwelling it would be a 1½ storey building of similar scale and massing to the adjoining 'Thornley Cottage' and likewise orientated with a gable end facing onto Burnham Road. Due to its set back position from Burnham Road and constrained scale it would not be prominent in the street scene nor overbearing on 'The Old Forge', which occupies a more forward position adjacent to Burnham Road. Accordingly, I find there would be no harm to the setting of 'The Old Forge' as a non-designated heritage asset. The proposed dwelling would follow the rhythm of development on the north side of Burnham Road which predominantly comprises of Twentieth Century builds. There is already notable variety in the scale, appearance, roofscapes and detailed materials of the dwellings in this part of Althorne. Consequently, the extent of glazing proposed on the front elevation, together with the modest Juliet balcony, would not appear harmful in this locality.
9. I therefore conclude that the proposed dwelling would not have a significantly harmful effect on the character and appearance of the surrounding area. On this main issue it would accord with Policies D1 and H4 of the adopted Maldon District Local Development Plan 2014-2029 (the MDLDP) which seek to secure a design quality that respects and enhances the character and local context and make effective use of land, having regard to, amongst other things,

¹ APP/X1545/W/17/3169919

existing character and density of the surrounding area. It would also accord with those parts of MDLDP Policies S1 and S8 which seek to secure high quality design, maintain the rural character of the District without compromising the identify of individual settlements and protect the countryside for its landscape, natural resources and ecological value as well as its intrinsic character and beauty. The appeal proposal would also accord with NPPF objectives for high quality design (paragraph 130) and conserving the natural environment (paragraph 174).

Sustainable Location

10. The MDLDP provides a clear spatial strategy for the District to sustainably meet established development requirements over the plan period. It was prepared and adopted within the parameters of the NPPF. In terms of the approach to planning for rural housing this has remained broadly consistent (now presented at NPPF paragraphs 78 and 79). The one material change to the NPPF since the last appeal is the clarification provided by the Braintree decision² on isolated homes in the countryside, now reflected in NPPF paragraph 80. Due to its location, the appeal proposal would not be isolated and as such there is not a requirement on the appellant to demonstrate those exceptional circumstances for a new home in the countryside. It nonetheless remains, that the development plan, as the starting point for determining planning proposals, does not identify Althorne, either on its own or as part of a cluster of rural settlements, as a sustainable location for housing growth in MDLDP Policy S2.
11. MDLDP Policy S8 clarifies that Althorne is a in the 'smaller villages' tier of the settlement hierarchy. Policy SS8 does not ascribe any particular role or level of development to named settlements in the hierarchy but states that sustainable development will be supported within defined settlement boundaries and planning permission only granted outside of such boundaries in a limited number of circumstances. The list at criteria (a)-(m) of Policy S8 does not include infill or other market housing developments or reference Policy H4. As part of the overarching approach to securing sustainable development in the District, Policy S1 of the MDLDP seeks, amongst other things, to meet housing needs in "the most sustainable locations" (criterion 2) and minimise the need to travel, and where travel is necessary, to prioritise sustainable modes of transport (criterion 13).
12. Althorne is a moderately sized village with some facilities, including a Parish Hall, the Three Horseshoes pub and a recreation ground. The post office/shop has closed in recent times, there is no school and notwithstanding some nearby modest vineyards, employment opportunities in the village appear to be limited. Althorne is not within a reasonable walking distance of either Burnham-on-Crouch or Latchingdon, the situation compounded by a lack of a continuous safe connecting footway to either settlement. Burnham-on-Crouch, Latchingdon, Mayland and Southminster are all within reasonable cycling distance but the quality of connecting routes involves heavily trafficked roads, including appreciable lengths in the countryside without street-lighting and very limited natural surveillance. The roads to Burnham-on-Crouch and Latchingdon are particularly sinuous with many sharp bends, including within the national speed limit. Overall, I find the quality of connecting routes would significantly deter cycling from the appeal site to nearby settlements.

² Braintree District Council v. SSCLG, Greyread Ltd and Granville Developments [2018] EWCA 610Civ

13. There are bus stops of varying quality within the vicinity of the site. Those on Burnham Road closest to the appeal site have a very limited daily service which is generally timetabled to coincide with schools and thus unattractive for commuting to nearby centres for work or to flexibly access higher order services and facilities, including generally after 4pm. There appear to be no buses from these stops on a Saturday or Sunday. Frequent daily bus services serve the B1018 Southminster Road in Althorne but this is a significant walking distance from the appeal site and no shelter at the bus stop. I therefore find it unlikely that using this bus service would be an attractive option for future occupiers of the appeal proposal. The area is served by a dial-a-ride service (Dart5) which appears to operate Monday to Saturday between 06:00 and 20:00. It is not a timetabled service and seems to principally operate as a low-cost taxi with the added dimension of seeking to group and co-ordinate similar journeys in order to improve efficiency. This requires users to contact the service in advance. I can see the attractiveness of the Dart 5 facility for occasional and sporadic journeys, but it would not be comparable to the frequency and reliability of a turn-up and board timetabled bus service in terms of providing an attractive alternative to the use of the private car. Overall, I find the appeal location to have a limited bus infrastructure.
14. Althorne parish benefits from a railway station with regular daily services. The station is in countryside to the south-west of the village. It is approximately 1½ kilometres from the appeal site and therefore beyond a reasonable walking distance for regular use. Access to the station involves a narrow, unlit lane. Whilst there is secure cycle parking at the station, I find the quality of route and relative remoteness of the station would only appeal to all but the most ardent cyclist. Consequently, I do not find the railway station to markedly improve the sustainability credentials of the appeal location.
15. The appellant refers to home-working and the recent impact of the Covid-19 pandemic in this regard. In my view, it remains too early to draw conclusions on trends around homeworking to rely on it as a factor to allow new housing in locations where otherwise there would be a dependency on the use of the private car.
16. Taking, all of the above into account, I find that future occupiers of the appeal proposal would be heavily reliant on the use a car to access basic day-to-day services, including any commuting to work. The NPPF at paragraph 105 recognises opportunities to maximise sustainable transport solutions will vary between urban and rural areas but I do not find the alternative transport modes in the rural appeal location to be sufficiently attractive so as to provide genuine choice. NPPF paragraph 79 advises that development in one settlement may support the services and facilities in another nearby village but I am not persuaded that a single dwelling in Althorne would make a material difference to the viability of services in nearby villages. The MDLDP spatial strategy is not predicated on a clustering of rural settlements to secure sustainable growth in the terms set out in NPPF paragraph 79.
17. The appellant has referred to developments in the District at other rural locations, including recent appeal decisions, where the principal of new 'infill' housing has been accepted in the countryside³. I have relatively few details of these schemes to enable meaningful comparison to the circumstances at the

³ Decision notice for OUT/MAL/16/01490, APP/X1545/W/18/3216494, APP/X1545/W/20/3258926

appeal location in Althorne. Moreover, I find the recent appeal at Cock Clarks (3252706) to be of limited benefit to the appellant in its conclusion at paragraph 17 on sustainable location (comparable to Althorne). The LPA has provided an overview of various recent decisions (including those upheld at appeal) where new housing has been refused in and around Althorne. There appears to be a consistent conclusion, over a sustained period, that Althorne is not to be regarded as a sustainable location for housing growth⁴.

18. Overall, I find the appeal proposal would not be sustainably located due to the relatively limited range of services in the small village of Althorne and the poor connectivity from the appeal location to higher order settlements or nearby villages by modes of transport other than the private car. In coming to this view I give significant weight to similar findings in other appeal decisions regarding the sustainability of Althorne⁵ and the fact that matters appear to have recently worsened with the loss of the shop/post office. Consequently, the proposal would not accord with the overarching spatial strategy and objectives to sustainably locate new housing development and to minimise the need travel as set out in MDLDP Policies S1, S2 and S8 as described above.

Other Matters

19. The proposed dwelling would be close to the boundary with 'Thornley Cottage'. This dwelling has a number of openings on its flank elevation that would face directly towards the appeal proposal. Due to the proposed setback position of the dwelling and the modest scale of the proposed cartlodge building, there would be no adverse impact in terms of outlook, overlooking or loss of daylight to the side window to the dual aspect front lounge of 'Thornley Cottage'. Occasional noise and headlights from vehicles manoeuvring to the front of the proposed dwelling would not be particularly harmful given the adjacent B1010 Burnham Road.
20. I also note openings on the proposed dwelling have been positioned and obscure glazed to avoid a loss of privacy at 'Thornley Cottage'. Additionally, whilst the proposed dwelling would be prominent in the outlook from the kitchen of 'Thornley Cottage' there would remain an appreciable open outlook to the south-east in front of the proposed dwelling which would mitigate against the kitchen becoming a particularly claustrophobic or gloomy room.
21. The appeal proposal would extend to a depth beyond the established rear building line in this part of Burnham Road. I am satisfied that subject to conditions on the boundary treatments there would be no harmful loss of privacy or unacceptably intrusive noise to the private amenity space of 'Thornley Cottage'.

Planning Balance and Conclusion

22. The LPA accepts that it cannot demonstrate a five-year supply of deliverable housing land, with a marginal shortfall at 4.9 years. I also note the recent appeal decision⁶ provided by the appellant on this point. As such paragraph 11(d) of the NPPF is engaged and advises that planning permission should be granted unless the adverse impacts of doing so would significantly and

⁴ Notably summarised at paragraphs 90-96 of APP/X1545/W/18/3216373

⁵ APP/X1545/W/17/3169919; APP/X1545/W/16/3152730; and APP/X1545/W/18/3216373

⁶ APP/X1545/W/20/3258926

- demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole. This is also reflected in Policy S1 of the MDLDP.
23. The appeal proposal would not be remote or isolated in social sustainability terms, future occupants would be part of a rural community including access to a Parish Hall and a public house. There would be no significant harm to the character and appearance of the locality and the appeal proposal would make effective use what is currently a vacant plot of land. These are appreciable social and environmental benefits that weigh in favour of the proposal. At one dwelling, the benefit to meeting housing need would be modest, a factor I give only moderate weight to given the propensity of 3 bedroom housing in a District where the greater housing need is for smaller properties. The economic benefits during construction and the ability of the dwelling to support local services and facilities, again, would only be modest from a single dwelling.
24. Whilst there would be no significant harm to character and appearance, the appeal proposal would be outside the settlement boundary of a small rural village with limited services and limited connectivity other than by car to higher order settlements. Whilst the spatial strategy is not currently delivering the required five-year supply of deliverable housing land, the shortfall is very marginal. Whilst the spatial strategy is out of date on this basis it does not follow that any harm arising from a conflict with the spatial strategy in MDLDP Policies S2 and S8 and the overarching objectives for sustainable development in Policy S1 would be of no weight. The intended outcomes of the spatial strategy are entirely consistent with the NPPF including the need to actively manage patterns of growth to locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. Accordingly, I give significant weight to the harm that would arise from the conflict with the adopted development plan's spatial strategy at MDLDP Policies S1, S2 and S8.
25. In conclusion, I find the adverse impacts would significantly and demonstrably outweigh the modest benefits of the appeal proposal. As such, on wider terms, when looking at the policies of the NPPF when taken as a whole, the appeal proposal would not amount to sustainable development for which there is presumption in favour of. Accordingly, the appeal proposal, which would be contrary to the development plan, should not succeed.
26. The site is in the Zone of Influence for the Blackwater Estuary Special Protection Area (SPA) and Ramsar and the Dengie SPA and Ramsar, as defined in the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038. Had the proposal been acceptable in planning terms, it would have been necessary for me to have undertaken an Appropriate Assessment (AA) as the competent authority. However, the Habitats Regulations 2017 indicate the requirement for an AA would only be necessary where the competent authority is minded to grant consent for a plan or project. As such it is not necessary for me to undertake an AA for the appeal proposal.
27. I have taken into account all other matters raised, but there is nothing that leads me to conclude other than the appeal should be dismissed.

David Spencer

Inspector.