
Costs 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

Costs application in relation to Appeal Ref: APP/X1545/W/20/3264169 Land adjacent the Old Forge and Thornley Cottage, Burnham Road, Althorne CM3 6DP.

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Maldon District Council for a full award of costs against Mr R Thame.
 - The appeal was against the refusal of planning permission for construction of a dwelling and cartlodge.
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Decision

1. The application for an award of costs is refused.

Reasons

1. The application for costs seeks a full award on the basis that the appellant pursued an appeal with no reasonable prospect of success in light of recent decisions (including appeal decisions) in respect of both the same site/proposal and for schemes of a similar nature in the locality of Althorne. The Local Planning Authority (LPA) also asserts that the appellant presented misleading information regarding the services and facilities available in Althorne. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
2. In respect of behaviour that may give rise to a procedural award of costs, the PPG at paragraph 16-052-20140306 states that it can include scenarios where information has been provided that is shown to be manifestly inaccurate or untrue. From everything before me it is unclear exactly when the shop/post office closed in Althorne. The LPA refer to a separate appeal hearing in December 2020 in Althorne in which it was identified that the shop had ceased trading¹. The LPA officer report also identifies that the shop had closed (a point raised in various responses to the planning application). The appellant makes brief generic reference to 'shops' in the area in their initial appeal statement but it was not a pivotal part of the appellant's case which relied to a greater extent on public transport connectivity. Overall, I am not persuaded that the appellant has "manifestly" sought to mislead the appeal process in this regard or required the LPA to incur unnecessary effort and expense in dealing with the issue of the wider sustainability of Althorne.

¹ APP/X1545/W/18/3216373 paragraph 47

3. On the substantive grounds regarding the prospect of the appeal, I note that when the appellant submitted the planning application in July 2020, just over 3 years had passed since the previous appeal decision² on the site for a similar proposal for a single dwelling. The appellant's planning statement accompanying the application sets out a number of material considerations which, in the appellant's opinion, could support a different conclusion. These included the detailed nature of the planning application (as opposed to the earlier outline scheme), the Braintree Court of Appeal decision in 2018³, the weight to be applied to Policy S8 of the now adopted Maldon District Local Development Plan (MDLDP) and the need to boost the supply of housing more generally. The submitted planning statement to accompany the application sets out at Section 4 a coherent case for the proposal and was accompanied by additional information on public transport which the appellant says was not made available at the 2017 appeal. It is also noteworthy, that the appellant's previous 2016 outline planning application was recommended for approval by officers, despite the LPAs evidence to this appeal that there has been a generally consistent resistance to development outside of the settlement boundary of Althorne since the beginning of 2013. Taking all of this into account I consider the appellant did not behave unreasonably in re-submitting a similar proposal, with revised and additional evidence, intended to overcome previous concerns.
4. As part of the appeal process, it is agreed that there is no longer a five-year supply of deliverable housing land. As such, the engagement of the NPPFs 'tilted balance' is a markedly different circumstance to the previous appeal at this site and potentially to earlier decision making in Althorne since 2013. Whilst I have found against the appeal proposal, matters are balanced, particularly as I have not been able to share the previous conclusions of my colleague that the appeal proposal would result in significant harm to the character and appearance of the area. Overall, I find the appellant has been able to advance an arguable case at this appeal that other material considerations such as national planning policy indicate a decision could be made otherwise than in accordance with the development and has provided adequate supporting evidence as part of the original planning statement and appeal documentation.
2. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has not been demonstrated in relation to the appeal.
3. For the reasons given above, I refuse the application for an award of costs.

David Spencer

INSPECTOR.

² APP/X1545/W/17/3169919

³ Braintree District Council v SSCLG, Greyread Ltd and Granville Developments [2018] EWCA 610civ