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## Appeal Decision

Site visit made on 7 November 2025

by **G Dring BA (Hons) MA MRTPI MAUDE**

an Inspector appointed by the Secretary of State

Decision date: 11 December 2025

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**Appeal Ref: APP/X1545/W/25/3367949**

**Land adjacent The Old Forge and Thornley Cottage, Burnham Road, Althorne, Essex CM3 6DP**

- 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 Thame against the decision of Maldon District Council.
- The application Ref is 24/00912/FUL.
- The development proposed is construction of new dwelling and associated development.

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### Decision

1. The appeal is allowed and planning permission is granted for construction of new dwelling and associated development at land adjacent The Old Forge and Thornley Cottage, Burnham Road, Althorne, Essex, CM3 6DP in accordance with the terms of the application, Ref 24/00912/FUL, subject to the conditions in the attached schedule.

### Preliminary Matters

2. The Council's second reason for refusal related to the lack of suitable mitigation in relation to European sites. An updated Unilateral Undertaking (UU1) was submitted with the appeal. I will return to this matter later in my decision.
3. Under paragraph 15 of the new Schedule 7A of the Town and Country Planning Act 1990, all developments are now required to achieve a 10% biodiversity net gain (the 'biodiversity objective'), unless one of the various exemptions applies. The appellant indicated on the planning application form that the proposal would be exempt from the biodiversity objective, due to the development being self-build. However, there was no mechanism submitted to secure the development as a self-build dwelling. The appellant submitted a revised Unilateral Undertaking (UU2) in this regard on the 28 November 2025, and the Council has had the opportunity to comment on it.

### Main Issues

4. The main issues are:
  - whether the appeal site is in a suitable location for the development proposed when considering the Council's spatial strategy and the accessibility of services and facilities;
  - the effect of the proposal on the integrity of European sites; and
  - whether there are any other considerations, that might outweigh any harm arising from the appeal proposal.

## Reasons

### *Location*

5. There is no dispute between the parties that the appeal site is outside of any settlement boundary as defined in the Maldon District Approved Local Development Plan 2014-2029 July 2017 (LDP). Therefore, for the purposes of the development plan, the site is located within the countryside. Policy S8 of the LDP states that planning permission for development in the countryside will only be granted in specific circumstances and where the intrinsic character and beauty of the countryside is not adversely impacted. It has not been asserted that any of the permissible circumstances set out under Policy S8 are applicable in this case and thus the proposal would conflict with it.
6. Policy S2 identifies that strategic growth will be focused in the main settlements where it will be most accessible and in the case of rural villages, where it would support rural housing needs, local services and facilities and the rural economy. Neither the appeal site nor Althorne as a settlement is referred to under Policy S2 of the LDP.
7. Policy S1 of the LDP seeks, amongst other things, that housing is delivered in the most sustainable locations and that the need to travel is minimised and where travel is necessary, sustainable modes of transport are prioritised.
8. The appeal site sits between existing residential development along the northern side of Burnham Road and during my site visit I noted that whilst outside of the defined settlement boundary, it appears as being within the settlement of Althorne, visually and spatially. Althorne is a small village where I witnessed a playing field, village hall, public house and church during my site visit, that could be accessed on foot from the appeal site, using the pavement. Nevertheless, I recognise that the village benefits from a limited range of services and facilities that would not meet day to day needs.
9. I noted the bus stop within walking distance of the appeal site. The appellant asserts that there are fairly regular bus services to both Chelmsford and Burnham-on-Crouch which would provide access to larger settlements by means other than the private car. Nevertheless, I do not have a timetable of services before me and interested parties raise that the frequency of services has reduced and that the bus stop nearest to the appeal site is not served by the main bus service.
10. There is a railway station at Althorne, however, it is outside of the village and due to distance and the rural nature of the road that leads to it, it is likely that future occupants would drive to it. Cycling may be an option for some, but due to the rural, winding roads that are largely covered by the national speed limit, it is likely that it would not be an option accessible to many. Burnham-on-Crouch is around a ten minute drive from the appeal site where a wider range of facilities and services can be accessed. It is asserted that the nearest primary and secondary schools are also a short drive away of between five and ten minutes.
11. Based on the factors above, I find that future occupants would be reliant on the private car to access most of their day to day needs, meaning that whilst there may be some limited accessibility by sustainable modes of transport, it would not be prioritised, as required by Policy S1 of the LDP. My consideration of this matter

is consistent with two previous appeal decisions on the appeal site in 2017 and 2021 where the Inspectors came to similar conclusions.

12. The appellant has referred me to a planning application at a site opposite the appeal site before me now, which is for the delivery of a mixed use development of up to 750 dwellings and 1000 square metres of commercial space, early years facility, education provision, parks and allotments. Nevertheless, it is confirmed that this is currently pending consideration. Therefore, at this time it does not alter my conclusions set out above.
13. I therefore find that the appeal site is not in a suitable location for the development proposed when considering the Council's spatial strategy and the accessibility of services and facilities. The proposal would be contrary to Policies S1, S2 and S8 of the LDP, the relevant aims of which are set out above.

#### *European sites*

14. The appeal site is located within the zone of influence of Foulness Estuary Special Protection Area (SPA) and Ramsar site, Crouch and Roach Estuaries SPA and Ramsar site and Dengie SPA and Ramsar site. These European sites are recognised for their value as coastal habitats which support internationally important populations of bird species including breeding and non-breeding birds and are protected under the Conservation of Habitats and Species Regulations 2017. The proposed dwelling would be likely to increase disturbance to them through additional recreational pressure. In combination with other developments, the proposal would therefore lead to a likely significant effect on the European sites.
15. The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Supplementary Planning Document May 2020 (SPD) has been prepared. The SPD is endorsed by Natural England and sets out a strategic approach to mitigation which includes a tariff-based requirement to fund measures to mitigate the potential adverse effects on the qualifying features of the European sites.
16. The appellant has provided UU1 with the appeal. The Council has reviewed UU1 and confirmed that it is satisfied that it resolves the concerns raised under its second reason for refusal. I concur with the Council and find that appropriate mitigation has been secured through this legal agreement. Any potential adverse effects would therefore be mitigated and harmful effects on the European sites would be avoided. Following my appropriate assessment, I am satisfied that the proposal would not adversely affect the integrity of the European sites. The proposal would therefore comply with Policy N2 of the LDP which requires that an assessment in accordance with the relevant legislation is undertaken.

#### *Other considerations*

17. There is no dispute between the parties that the Council cannot currently demonstrate a sufficient housing land supply with the supply currently identified as 2.7 years. I find this to be a significant shortfall.
18. The application of policies in the National Planning Policy Framework (the Framework) that protect areas or assets of particular importance do not provide a clear reason for refusing the proposal. Consequently, Paragraph 11 d ii. of the Framework is engaged, which states that permission should be granted unless the

adverse impacts of doing so would significantly and demonstrably outweigh the benefits when considered against the policies in the Framework taken as a whole, whilst having particular regard to key policies, including directing development to sustainable locations.

19. The proposal would contribute one self-build dwelling to the housing supply, which would be a small but important contribution, in light of the current housing land supply position. This attracts significant weight in favour of the proposed development. There would also be some modest economic benefits through the construction phase and after with future occupants spending in the local area. Paragraph 83 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities. The Framework also recognises that development in one village may support services nearby. Whilst one dwelling is a limited contribution it would still add a new home which would appear as being within the village of Althorne. This would provide some social benefits to the existing rural community. Cumulatively, I attribute significant weight to the benefits.
20. In terms of harms, the appeal site would be located outside of the defined settlement boundary. I recognise that the planning system should be genuinely plan led, nevertheless, the absence of a sufficient housing land supply indicates that housing requirements are not currently being met within settlement boundaries. This tempers the harm related to the location of the site outside the defined boundary, particularly given the site appears as being within the village on the ground. I therefore attribute limited weight to the conflict with the spatial strategy.
21. Paragraph 110 of the Framework states that the planning system should actively manage patterns of growth in support of objectives including the promotion of sustainable transport modes. Whilst some services and facilities could be accessed from the appeal site by sustainable modes of transport, these would be limited. Whilst the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, even when considering this approach, the accessibility of the site utilising sustainable modes of transport would be limited. I therefore attribute significant weight to the conflict with this Framework objective.
22. Accordingly, I find that in the specific circumstances of this case, the cumulative adverse impacts of the proposal would not significantly and demonstrably outweigh the cumulative benefits. This is a material consideration that indicates the appeal should be determined otherwise than in accordance with the development plan.

### **Other Matters**

23. Concerns are raised by interested parties about the effect of an additional access, with regard to highway safety, due to the higher traffic frequency and speeding that occurs. Whilst the Highway Authority may have objected to previous schemes on visibility grounds, the details of those proposals are not before me nor are the full consultation responses or the policies or guidance in place at that time. The Highway Authority do not object to the appeal proposal before me now, subject to conditions being imposed. There is no compelling evidence before me which suggests I should take a different view on this matter.

24. An objection is raised regarding the effect of the proposal on the daylight reaching windows in the side elevation of Thornley Cottage and the level of privacy that would be maintained. The side elevation of the proposed dwelling would run parallel to the side elevation of Thornley Cottage, extending further to the rear. Nevertheless, the proposed dwelling would be set off from the side boundary and would be limited in height to one storey with accommodation in the roofspace. The main roof would slope away from the side boundary. The proposed dwelling would drop in height to single storey only at the rear.
25. Obscure glazing is proposed for both windows in the side elevation which would both serve bathrooms, and the obscuration of the first floor window could be secured by planning condition. The condition of the rooflights could also be subject to a planning condition to prevent issues of overlooking. Overall, whilst I understand the neighbour's concerns given the outlooks from the windows in the side elevation of the neighbouring property, across the open and undeveloped area adjacent, would be lost, I concur with the Council's assessment that there would be no unacceptable harm in relation to the effects on the living conditions of neighbouring occupiers, that would warrant the refusal of the scheme.
26. I note that there have been a number of applications refused by the Council at the appeal site since 1990 and I have considered the previous appeal decisions referred to me. When the 2021 appeal was dismissed, the housing land supply shortfall was marginal, at 4.9 years. In the 2017 appeal decision there was no shortfall in the housing land supply identified. The housing land supply shortfall is much more significant currently and therefore it weighs differently in the planning balance when compared to the circumstances in those previous decisions. I must consider the appeal before me on its individual merits at the current point in time.

### **Conditions and Planning Obligations**

27. The Council has suggested 18 conditions in the event that the appeal be allowed. I have considered these in light of the requirements of the Framework and the advice set out in the Planning Practice Guidance, and made minor amendments to their wording if and where appropriate. In addition to the standard time limit, a condition setting out the approved plans is necessary to provide certainty.
28. Conditions are imposed to require external materials, finished level details and hard and soft landscaping to ensure an appropriate visual appearance. These are necessary before works above slab level take place to ensure a cohesive scheme. I have also identified other boundary treatment details as a requirement in the interests of neighbouring amenity. Two additional conditions are imposed relating to the obscuration of a window at first floor level in the side elevation and rooflight details in the interests of preventing overlooking of the neighbouring property.
29. Conditions requiring surface and foul water drainage schemes are necessary to ensure the site is properly drained. A Biodiversity Enhancement Strategy, lighting details and a requirement that mitigation and works are carried out in accordance with the submitted Ecological Survey and Assessment are necessary in the interests of biodiversity.
30. Conditions requiring that visibility splays are provided, that the access point is of a suitable width and material and that the highway is kept clear of materials during the construction phase are necessary in the interests of highway safety. A condition requiring cycle parking is necessary in the interests of promoting

sustainable transport. A condition setting out what is required in the event that contamination is found during the course of construction is reasonable in the interests of the environment.

31. I have not imposed the suggested condition restricting permitted development rights for extensions and outbuildings. Whilst the Council refer to character and appearance and neighbouring residential amenity, I have not been provided with any significant justification for this condition, nor has any evidence been provided which details why the limitations imposed by the Town and Country Planning (General Permitted Development) Order 2015 (as amended) would not be sufficient to avoid any significant harm in this case. This approach is in accordance with paragraph 55 of the Framework which is clear that permitted development rights should not be withdrawn unless there is clear justification to do so.
32. I have not imposed a condition relating to the provision of a Travel Information Pack due to the development being a self-build dwelling.
33. I am content that the submitted UU1 would provide appropriate mitigation in respect of European sites and that UU2 would secure the scheme as a self-build development which is necessary to comply with the biodiversity objective exemptions. I find that both UU1 and UU2 would be necessary to make the development acceptable, that they are directly related to the development and fairly and reasonably related in scale and kind. I have therefore taken both of them into account in my consideration of the appeal.
34. Two informatives are suggested by the Council. I have not attached these to the list of conditions as they would have no legal weight. Nevertheless, I am satisfied that the appellant has seen these, given they were included in the Council's list of suggested conditions.

## **Conclusion**

35. I have found above that limited weight should be attributed to the conflict with the spatial strategy. Nevertheless, given the aim set out under Policy S1 of the LDP to minimise travel and where travel is necessary, that sustainable modes of transport are prioritised aligns with the aims of the Framework, I attach significant weight to the conflict with this element of the policy. Consequently, the proposal would be contrary to the development plan taken as a whole.
36. However, given the current housing land supply position, I attribute significant weight to the provision of a dwelling which would appear as being within the settlement and which would add to the vitality of an existing rural community. As a result, I find that the cumulative weight of adverse impacts would not significantly and demonstrably outweigh the cumulative benefits, when assessed against the Framework taken as a whole.
37. I therefore find that material considerations indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal is therefore allowed subject to conditions.

*G Dring*  
INSPECTOR

## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing numbers: 200 Rev 00, 201 Rev 00, 202 Rev 01 and 203 Rev 00.
- 3) No development above slab level shall take place until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Prior to development above slab level of the dwelling hereby approved, full details of both the finished levels, above ordnance datum, of the ground floor of the proposed building and of the finished garden levels and hard and soft surfaces in relation to existing ground levels shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) No development above slab level shall take place until full details of the provision and subsequent retention of both hard and soft landscape works on the site have been submitted to and approved in writing by the local planning authority. These details shall include:

### Soft landscape works:

- 1) Details of proposed schedules of species of trees and shrubs to be planted, planting layouts with stock sizes and planting numbers/densities.
- 2) Details of the planting scheme implementation programme, including ground protection and preparation, weed clearance, stock sizes, seeding rates, planting methods, mulching, plant protection, staking and/or other support.
- 3) Details of the aftercare and maintenance programme.

The soft landscape works shall be carried out as approved within the first available planting season (October to March inclusive) following the commencement of the development unless otherwise agreed in writing by the local planning authority. If within a period of five years from the date of the planting of any tree or plant, or any tree or plant planted in its replacement, is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives its written consent to any variation.

### Hard landscape works:

- 1) Details of walls with brick types, construction design and dimensions.

- 2) Details of all other boundary treatments including location, materials and specifications.
- 3) Details of paved surfacing, with materials finishing and edgings.
- 4) Timing for undertaking the works.

The hard landscape works shall be implemented in accordance with the approved details.

- 6) No development works above ground level shall occur until details of the rooflights in the western facing roof slope are submitted to and approved in writing by the local planning authority. The details shall include the height of the rooflight above the floor of the room in which it is being installed and the glazing and opening specifications. The development shall be completed in accordance with the approved details prior to occupation and retained as such thereafter.
- 7) The dwelling hereby permitted shall not be occupied until the window at first floor level in the western elevation has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is being installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
- 8) No development works above ground level shall occur until details of the surface water drainage scheme to serve the development shall be submitted to and agreed in writing by the local planning authority. The agreed scheme shall be implemented in accordance with the approved details prior to the first occupation of the development. The scheme shall ensure that for a minimum:
  - 1) The development should be able to manage water on site for 1 in 100 year events plus 40% climate change allowance.
  - 2) Run-off from a greenfield site for all storm events that have a 100% chance of occurring each year (1 in 1 year event) inclusive of climate change should be no higher than 10/l/s and no lower than 1/l/s. The rate should be restricted to the 1 in 1 greenfield rate or equivalent greenfield rates with long term storage (minimum rate 1l/s) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield) or 50% betterment of existing run off rates on brownfield sites (provided this does not result in a runoff rate less than greenfield).

The Applicant is advised that in order to satisfy the soakaway condition the following details will be required: - details of the area to be drained, infiltration rate (as determined by BRE Digest 365), proposed length, width and depth of soakaway, groundwater level and whether it will be rubble filled.

Where the local planning authority accepts discharge to an adopted sewer network the Applicant will be required to provide written confirmation from the statutory undertaker that the discharge will be accepted.

- 9) No development works above ground level shall occur until details of the foul drainage scheme to serve the development shall be submitted to and agreed

in writing by the local planning authority. The agreed scheme shall be implemented prior to the first occupation of the development.

- 10) No development works above ground level shall occur until a Biodiversity Enhancement Strategy for protected and Priority species shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
- a) Purpose and conservation objectives for the proposed enhancement measures;
  - b) Detailed designs or product descriptions to achieve stated objectives;
  - c) Locations, orientations, and heights of proposed enhancement measures by appropriate maps and plans;
  - d) Timetable for implementation demonstrating that works are aligned with the development;
  - e) Persons responsible for implementing the enhancement measures;
  - f) Details of initial aftercare and long-term maintenance (where relevant).

The strategy shall be implemented in accordance with the approved details prior to occupation and shall be retained in that manner thereafter.

- 11) Prior to the installation of any external lighting, a lighting design scheme for biodiversity has been submitted to and approved in writing by the local planning authority. The scheme shall identify those features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used for foraging; and show how and where external lighting will be installed (through the provision of appropriate lighting plans, drawings and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and maintained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.

- 12) All mitigation measures and/or works shall be carried out in accordance with the details contained in the Ecological Survey and Assessment (Essex Mammal Surveys, February 2025), as already submitted with the planning application, and agreed in principle with the local planning authority prior to determination. This may include the appointment of an appropriately competent person e.g., an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.
- 13) Prior to first occupation of the development, the access at its centre line shall be provided with a clear to ground visibility splay with dimensions of 2 metres by 43 metres in each direction, as measured from and along the nearside edge of the carriageway. Such vehicular visibility splays shall be provided before the access is first used by vehicular traffic and retained free of any obstruction at all times.
- 14) Notwithstanding the width of the access as shown on planning drawing no. 201 Rev 00, prior to first occupation of the development, the vehicular access

shall be constructed at right angles to the highway boundary and to the existing carriageway. The width of the access at its junction with the highway shall be 3.6 metres wide and shall be provided with an appropriate dropped kerb vehicular crossing of the footway.

- 15) No unbound material shall be used in the surface treatment of the vehicular access within 6 metres of the highway boundary.
- 16) Areas within the curtilage of the site for the purpose of the reception and storage of building materials shall be identified clear of the highway.
- 17) Prior to first occupation of the development, cycle parking shall be provided in accordance with Maldon District Council's Parking Standards. The approved facility shall be secure, convenient, covered and retained at all times.
- 18) Any contamination that is found during the course of construction of the approved development shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to the local planning authority for approval in writing. These approved schemes shall be carried out before the development is resumed or continued. Following completion of measures identified in the approved remediation scheme, a verification report demonstrating the effectiveness of the remediation scheme carried out must be submitted to the local planning authority for approval in writing.

**END OF SCHEDULE**