

CHERWELL DISTRICT COUNCIL
TOWN AND COUNTRY PLANNING ACT 1990
RULE 6 STATEMENT OF CASE

Appeal by Hollins Strategic Land LLP against Cherwell District Council's refusal to grant outline planning permission for a development of up to 55 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road, Adderbury, Oxfordshire. (Council's Ref. 17/02394/OUT) APP/C3105/W/18/3216992.

1. SITE LOCATION AND PROPOSAL

- 1.1 The application site occupies an area of approximately 4ha in area and is situated to the south of the village of Adderbury, to the North of Berry Hill Road and close to the junction with the A4095 but separated from it by a field and a public right of way. The land is predominantly open and accommodates a stable and haybarn and part of the land is used for associated equestrian purposes. It is surrounded by field hedgerows and trees.
- 1.2 Surrounding the land to the south and east are agricultural fields, to the west is residential development in the form of a ribbon of detached houses set back from Berry Hill Road and to the north is further agricultural land with a sewerage treatment works close to the northern boundary of the site.
- 1.3 The site has naturally occurring constraints including the topography of the land, which slopes down to the north (with the land level change being approximately 12m from the south to the middle of the northern edge of the site), the field boundaries being hedgerows/ trees, the land having potential for naturally occurring contaminants and a public right of way running along the northern edge of the site.
- 1.4 There are also a number of constraints in the wider area including ecological records (West European Hedgehog and Swifts) within the vicinity and a public right of way to the east of the site. There are also heritage assets within proximity including the Adderbury Conservation Area, the boundary for which, at its closest point is approximately 115m to the western boundary (and 180m to the northern boundary). The Grade I listed Church of St Mary, is visible approximately 400m to the north measured from the northern boundary of the site.
- 1.5 The application was amended through the planning application process. The scheme for consideration at appeal is for a residential development of up to 55 dwellings. All matters are reserved for later approval apart from access which is for consideration. Access is proposed from Berry Hill Road, to the eastern side of the southern site boundary.
- 1.6 The application was accompanied by a raft of information including technical assessments, a Design and Access Statement and an indicative layout.

2. RELEVANT PLANNING HISTORY

2.1 The relevant planning history for the site is as follows:

02/01009/F	Erection of stable and hay barn and a menage and track to existing access	Application Permitted
05/01468/F	1 No. bungalow with associated access and re-site existing stables	Application Refused
06/00712/OUT	OUTLINE application for 5 No. detached dwellings, two terraces of 6 No. dwellings for affordable housing. New access, screened parking and amenity area.	Application Refused
06/00005/SO	Screening Opinion - Residential Development - 06/00712/OUT	Screening Opinion not requesting EIA
17/00089/SO	Screening opinion to 17/02394/OUT - Outline planning permission for up to 60 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road	Screening Opinion not requesting EIA

2.2 Residential development has been resisted on the site in the past and application 06/00712/OUT was the subject of a planning appeal, which was subsequently dismissed (APP/C3105/A/06/2032232). The reasons for the appeal being dismissed were predominantly due to the Inspector finding that the development would have a significant adverse impact on the character and appearance of the area and would conflict with policies which aim to control residential development within the countryside. It was also concluded that the proposed houses would be provided in an unsustainable location.

2.3 The Council will refer to this and other appeal decisions in evidence as necessary.

3. POLICY CONSIDERATIONS

3.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that any application for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

3.2 The Development Plan

3.3 The Cherwell Local Plan Part 1 – 2011 – 2031 was formally adopted by Cherwell District Council on 20 July 2015 and it provides the strategic planning policy framework for the District to 2031. The Local Plan Part 1 replaced a number of the 'saved' policies of the adopted Cherwell Local Plan 1996 though some of its policies

are retained and remain part of the Development Plan. The following are the list of relevant planning policies from these two Plans:

Cherwell Local Plan 2011 - 2031 Part 1

PSD1: Presumption in Favour of Sustainable Development
SLE4: Improved Transport and Connections
BSC1: District wide housing distribution
BSC2: Effective and efficient use of land
BSC3: Affordable housing
BSC4: Housing mix
BSC7: Meeting education needs
BSC8: Securing health and well being
BSC9: Public services and utilities
BSC10: Open space, sport and recreation provision
BSC11: Local standards of provision – outdoor recreation
BSC12: Indoor sport, recreation and community facilities
ESD1: Mitigating and adapting to climate change
ESD2: Energy Hierarchy and Allowable solutions
ESD3: Sustainable construction
ESD5: Renewable Energy
ESD6: Sustainable flood risk management
ESD7: Sustainable drainage systems
ESD10: Biodiversity and the natural environment
ESD13: Local landscape protection and enhancement
ESD15: Character of the built environment
ESD17: Green Infrastructure
Policy Villages 1: Village Categorisation
Policy Villages 2: Distributing Growth across the Rural Areas
INF1: Infrastructure

Cherwell Local Plan 1996 (Saved Policies)

H18: New dwellings in the countryside
C8: Sporadic development in the open countryside
C27: Development in Villages to respect historic settlement pattern
C28: Layout, design and external appearance of new development
C30: Design Control
C33: Protection of important gaps of undeveloped land

- 3.4 The Adderbury Neighbourhood Plan also forms part of the Development Plan having been 'made' on the 16 July 2018 following a favourable referendum held on 21 June 2018. The following is the most relevant Policy of the Adderbury Neighbourhood Plan:

Policy AD1 – Adderbury Settlement Boundary

- 3.5 In the Part 1 Cherwell Local Plan (2011-2031), the Council committed to work which sought to address the unmet, objectively assessed housing need from elsewhere in the Oxfordshire Housing Market Area (HMA), particularly from Oxford City. On the 26th September 2016, the Oxfordshire Growth Board agreed an apportionment of Oxford's unmet housing need to the Oxfordshire districts, including 4,400 homes to Cherwell District (2011-2031). Cherwell District Council has been preparing a Local

Plan Part 1 Partial Review (Oxford's Unmet Housing Need) to determine how the Cherwell District proportion could be met through the Plan led system. This was submitted to the Secretary of State for Housing, Communities and Local Government for formal examination on the 5 March 2018. The appointed Inspector has held a Preliminary Hearing and has confirmed that the Plan can proceed to the Main Hearings, which are scheduled to commence on Tuesday 5th February 2019.

3.6 The Proposed Submission Partial Review Plan July 2017 proposes a strategy to meet the Cherwell District proportion (4,400 homes) of the Oxford Unmet Need. The Plan proposes to focus development on a geographic area extending north from Oxford to South Kidlington, along the A44 corridor to Yarnton and Begbroke and up to Woodstock in West Oxfordshire. This involves development in the Oxford Green Belt. One of the reasons for the strategic decision to locate development in this area is that it prioritises the need for development to be well connected to Oxford in an area of the District that has the strongest economic and social relationships with Oxford.

3.7 The Council will update on progress on the status of the Local Plan Part 1 Partial Review in evidence.

Other relevant documents

3.8 **The National Planning Policy Framework** (July 2018)

National Planning Policy is a material planning consideration. The NPPF sets out the Government's definition of sustainable development and the policies through which it envisages the planning system will deliver this. It reinforces the plan-led system and has at its heart a presumption in favour of sustainable development.

3.9 **Planning Practice Guidance**

The PPG assists in the interpretation of National Planning Policy in the NPPF and its application to both plan making and decision taking. It also provides guidance on relevant planning legislation as well as details of best practice in the planning system to assist practitioners and the public with general development management and plan making matters.

3.10 The Council will also refer to various documents in support of its case including (but not limited to) the following:

3.11 Adderbury Conservation Area Appraisal

3.12 Landscape Documents including:

- National Character Area Profiles
- Oxfordshire Wildlife and Landscape Study (2004)
- Cherwell District Landscape Assessment (1995)
- Category A Villages Analysis (March 2016) and Appendices including Adderbury Village Analysis and Historic Landscape Characterisation

- 3.13 Cherwell Residential Design Guide SPD (July 2018)
- 3.14 Developer Contributions SPD (February 2018)
- 3.15 Annual Monitoring Report (December 2018)
- 3.16 Housing and Economic Land Availability Assessment (February 2018)
- 3.17 The Council will draw on all relevant policy and evidence in support of its case.

4. THE COUNCIL'S CASE

4.1 Application 17/02394/OUT was submitted to the Council on 28 November 2017 and validated on 1 December 2017. It was publicised under the Council's normal procedures for a major application and as a departure from the Development Plan. The application was reported to Planning Committee on the 24 May 2018 with an Officer recommendation of refusal. The Planning Committee resolved to refuse the application. The reasons for the refusal for the application are as follows:

- 1 The development proposed, by reason of its scale and siting beyond the built up limits of the village, in open countryside and taking into account the number of dwellings already permitted in Adderbury as well as Cherwell District Council's ability to demonstrate an up-to-date five year housing land supply, is considered to be unnecessary, undesirable and unsustainable development which would undermine the housing strategy and prejudice a more balanced distribution of rural housing growth planned for in the Cherwell Local Plan Part 1. The site itself is in an unsustainable location on the edge of the village, distant from local services and facilities and would result in a development where future occupiers would be highly reliant on the private car for day to day needs. The proposal is therefore unacceptable in principle and contrary to Policies ESD1, SLE4 and Villages 2 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policy H18 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

- 2 The development proposed, by virtue of its poorly integrated relationship with existing built development, its extension beyond the built limits of the village (beyond the Adderbury Settlement Boundary as defined in the Draft Adderbury Neighbourhood Plan Referendum version - 2014 - 2031) causing significant urbanisation and its visual impact on the rural character and appearance of the locality, would cause unacceptable harm to the character and appearance of the area and the rural setting of the village and would fail to reinforce local distinctiveness. It would also result in 'less than substantial' harm to the setting of the Church of St Mary and the harm stemming from the proposals are not considered to be outweighed by any public benefits. The proposal is therefore contrary to Policies ESD13, ESD15 and Villages 2 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policies C8, C27, C28 and C33 of the Cherwell Local Plan 1996, Policy AD1 of the Draft Adderbury Neighbourhood Plan Referendum version - 2014 - 2031 and Government guidance contained within the National Planning Policy Framework.
 - 3 The Design and Access Statement and indicative layout submitted as part of the application fails to provide sufficient acceptable detail in respect of the design principles set as a basis for the future detailed consideration of the development proposed. The Local Planning Authority is therefore unable to determine whether the development proposed could be satisfactorily accommodated on the site in a manner that would respect its context, enhance the built environment and properly respond to local distinctiveness. The proposal therefore fails to accord with the requirements of Policy ESD15 of the Cherwell Local Plan (2011-2031) Part 1, Saved Policies C27, C28 and C30 of the Cherwell Local Plan 1996 and Government guidance within the National Planning Policy Framework.
 - 4 The submitted Drainage Strategy does not provide sufficient certainty to demonstrate that a drainage strategy based on Sustainable Urban Drainage Systems can be appropriately accommodated to deal with the sustainable discharge of surface water. The proposal is therefore contrary to Policy ESD7 of the Cherwell Local Plan (2011-2031) Part 1 and Government guidance contained within the National Planning Policy Framework.
 - 5 In the absence of the completion of a satisfactory Planning Obligation, the Local Planning Authority is not convinced that the necessary infrastructure directly required both on and off site as a result of this development, in the interests of safeguarding public infrastructure, mitigating highway safety concerns, delivering mixed and balanced communities by the provision of affordable housing and securing on site future maintenance arrangements will be provided. This would be contrary to Policy INF1, PSD1, BSC2, BSC9, BSC11 and ESD7 of the adopted Cherwell Local Plan (2011-2031) Part 1 and the advice within the National Planning Policy Framework.
- 4.2 The Council's evidence will support the reasons set out in paragraph 4.1 to demonstrate that the proposed development does not accord with the Development Plan and that there are no other material considerations that warrant granting planning permission. In support of its case, the Council will call on witnesses at the

inquiry to present Planning, Housing Land Supply, Landscape and Heritage evidence. The Council may also call on a drainage witness.

5. Reason for refusal 1

- 5.1. The first reason for refusal relates to the principle of the development and has two main strands. Firstly, whether the development would comply with the Development Plan in principle and secondly, the relationship of the development site to the village and whether it is sustainable.
- 5.2. The Cherwell Local Plan Part 1 sets out the Council's overall strategy for the provision of new residential development. In principle, this is to concentrate the majority of development at Banbury and Bicester. Policy BSC1 does however provide for 2,350 homes in the rural areas. This includes an allocation for 1600 dwellings at Upper Heyford (Policy Villages 5), leaving 750 dwellings identified for development elsewhere in the District.
- 5.3. Policy Villages 1 of the Cherwell Local Plan Part 1 categorises villages based upon a number of criteria, which in essence is based upon their ability to sustainably support new residential development. Adderbury is categorised by Policy Villages 1 as a Category A village being one of the most sustainable in the Cherwell District. This policy advises the type of new development that could be supported within the built up limits of the village.
- 5.4. Policy Villages 2 allows for the 750 homes to be accommodated across the rural areas and specifically at Category A villages. There are a number of criteria that must be used to consider whether a site is suitable.
- 5.5. The Council will set out that in line with its December 2018 Annual Monitoring Report, of the 750 dwellings identified, 746 dwellings have been identified for meeting the Policy Villages 2 requirement since the 1 April 2014. These 746 dwellings either have planning permission or a resolution to approve. The Council will refer to recent appeal decisions which confirm that an overprovision of the rural housing allocation at an early stage in the plan period would prejudice the sustainable growth strategy set out in the Local Plan. Inspectors have endorsed the view that this would leave limited ability to respond to later changes in housing need in individual settlements in accordance with the overall strategy for sustainability in the Local Plan.
- 5.6. In Adderbury, 120 dwellings have been approved since 31 March 2014 therefore contributing to the Policy Villages 2 numbers. 65 dwellings were also approved in January 2014, which brings a total of 185 dwellings in the village either under construction or recently completed. The Council will refer to recent appeal decisions received by the Council that have confirmed that if disproportionate numbers of dwellings are permitted in any one settlement, then other settlements where housing sites have yet to be identified may not be able to meet their needs, including affordable housing needs without undermining the Local Plan strategy.
- 5.7. The Council will also refer to the Examiner's report for the Adderbury Neighbourhood Plan 2018, which supported the fact that the Neighbourhood Plan does not allocate sites for residential development due to the number of new dwellings already

permitted in Adderbury acknowledging that the contribution from these sites amounts to a significant boost to the supply of housing. It does however recognise that there is potential for other new dwellings to be provided on infill plots or through the redevelopment of sites within the proposed settlement boundary.

- 5.8. With regard to Housing Land Supply, the Council will demonstrate that its position, as set out in the Annual Monitoring Report (December 2018) is that the District presently has a 5.0 year Housing Land Supply for the period 2018-2023 and a 5.2 year Housing Land Supply for the period 2019-2024 (commencing 1 April 2019). The Council will refer to the Written Ministerial Statement made by James Brokenshire MP relating to Housing Land Supply in Oxfordshire, which gives a temporary relief to Oxfordshire Authorities (requiring only a 3 year housing land supply) so that the Authorities can focus their efforts on the Joint Spatial Strategy to enable the Oxfordshire Housing and Growth Deal to be delivered. This is a material consideration in the consideration of applications for housing development.
- 5.9. With regards to the Oxfordshire Housing Market Area and Oxford's unmet housing need, the Council will refer to the partial review of the Local Plan and update on its progress as referred to in paragraphs 3.3-3.5. The appeal site is not one of the suggested locations to meet Oxford's unmet housing needs.
- 5.10. The Council will demonstrate that taking into account the above policy position with regard to the Council's overall housing strategy, the delivery of the rural housing allowance, including the number of new homes approved in Adderbury and the Council's ability to meet its Housing Land Supply requirements, the proposal does not comply with the Development Plan taken as a whole. There is therefore no need for a development of the scale proposed within open countryside. The Council will demonstrate through evidence to support other reasons for refusal that the development would cause harm and would not comply with the various policies of the Development Plan including the criteria of Policy Villages 2.
- 5.11. The Council will also demonstrate that the location of the site and its relationship with the village will result in future occupiers being highly reliant on the private car for their day to day needs and therefore it is located in an unsustainable location.

6. Reason for refusal 2

- 6.1. Policy AD1 of the now adopted Adderbury Neighbourhood Plan includes a settlement boundary for the village. The Policy requires that any development outside the settlement boundary should not be permitted unless it would enhance, or at least not harm, landscape character. Policy ESD13 of the Cherwell Local Plan Part 1 expects development to respect and enhance local landscape character. There are a number of criteria that a proposal would be assessed against, including that development is expected not to cause visual intrusion into the open countryside, it must be consistent with local character and must not harm the setting of settlements, buildings or structures. Policy Villages 2 requires consideration to be given to whether significant landscape impacts could be avoided and an assessment of whether development would contribute in enhancing the built environment. A key part of the environmental

role of sustainable development as set out in the NPPF is to contribute to protecting and enhancing the natural, built and historic environment.

- 6.2. The Council will provide evidence to demonstrate that the proposed development would be detrimental to the rural character of, and approach to, the village. This would involve significant urbanisation and would result in a development that poorly integrates with the existing built development due to its conflict with the local village settlement pattern and therefore would fail to reinforce local distinctiveness. It will be shown that the site is important in the rural setting of the village and that the development would be harmful at the entrance to the village extending into the open countryside.
- 6.3. The Council will refer to the previous appeal decision (06/00712/OUT - APP/C3105/A/06/2032232) relating to development on the site and the Inspector's comments regarding the character and importance of this site.
- 6.4. It will also be demonstrated that the site has been considered and rejected through the Council's Housing and Economic Land Availability Assessment (February 2018).
- 6.5. In respect of heritage, there is a legislative requirement at S66 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 for a Local Planning Authority to have regard to the desirability of preserving a listed building or its setting. Planning policy (e.g. in Chapter 16 of the NPPF) requires great weight to be given to the conservation of heritage assets, and that any harm to those assets should require clear and convincing justification. The Council will draw on relevant policy to explain its case.
- 6.6. The appeal scheme would harm an attractive view of the Grade I listed village church and views of it from surrounding vantage points which are an important part of the heritage significance of the church as a historic landscape feature. The land itself contributes to the rural setting of the church from the south and Berry Hill Road. The Council will provide evidence to demonstrate that development on the site would change this setting and be harmful to views of the church from the south. This would cause less than substantial harm and the Local Authority will demonstrate that there are insufficient public benefits to the scheme to outweigh this harm.

7. Reason for refusal 3

- 7.1 Policy ESD15 of the Cherwell Local Plan Part 1 provides guidance as to the assessment of development and its impact upon the character of the built and historic environment. This includes securing development that would complement and enhance the character of its context through sensitive siting, layout and high quality design. Policy Villages 2 requires development to contribute to enhancing the built environment. The NPPF is clear that good design is a key aspect of sustainable development. The Council's recently adopted Design Guide SPD provides guidance on the design standards expected from residential development in Cherwell.
- 7.2 Whilst acknowledging that design and layout is a reserved matter, the Council will provide evidence to show that the illustrative layout does not demonstrate how 55 dwellings could be satisfactorily accommodated within this site in a manner that

would be sympathetic to the existing settlement pattern, be locally distinctive or which would enhance the built environment. In addition, the Council will demonstrate why the Design and Access Statement is not considered to provide sufficient detail in respect of design principles that are to be set as a basis for the future detailed consideration of the development proposed. The Council will explain why this does not allow an assessment of whether the development proposed could be satisfactorily accommodated on the site in a manner that would respect its context, enhance the built environment and properly respond to local distinctiveness.

8. Reason for refusal 4

- 8.1 The appellant has indicated that discussions are expected to be undertaken in respect of the drainage matter prior to the inquiry date. Should this lead to the Lead Local Flood Authority being able to remove their objection, then it may be that the Local Planning Authority will not pursue reason for refusal 4.
- 8.2 If the matter is not satisfactorily resolved to the satisfaction of the Lead Local Flood Authority, then evidence will be provided to demonstrate that the Drainage Strategy that was considered through the planning application process does not provide sufficient certainty that a sustainable urban drainage system can be appropriately accommodated to deal with the sustainable discharge of surface water. This is due to the suggested method of infiltration not being proven through soakage testing and, if this were not achievable, then there being uncertainties as to how an alternative arrangement would be achieved due to intervening third party land. There would therefore be conflict with Policy ESD7 of the Local Plan in that it has not been demonstrated that sustainable urban drainage systems can be used to manage surface water.

9. Reason for refusal 5

- 9.1 As the planning application was refused before any legal agreement could be drafted, there could be no certainty that the appellant (and any other parties with an interest in the land) would have committed to the necessary covenants to secure the infrastructure required.
- 9.2 The Council will submit a statement with its proofs of evidence setting out the justification for the commitments expected to be made within any planning obligation, having regard to the statutory tests in Regulations 122 and 123 of the CIL Regulations 2010 (as amended). This is expected to be broadly in line with the recommended heads of terms for a planning obligation as listed in the Officers report to Planning Committee (para 8.74) taking account of any material changes in circumstances since this date.
- 9.3 The Council will demonstrate that the lack of a satisfactory S106 obligation to secure the necessary infrastructure and contributions would result in a proposal which would fail to mitigate adequately the likely impact of the development and as such results in an unsustainable form of development contrary to Development Plan policies and the NPPF.

9.4 It is noted within the appellant's Statement of Case that it will undertake to negotiate a planning obligation in order to overcome this reason for refusal. The Council will maintain this reason for refusal pending the submission of an acceptable obligation.

10. Conclusion

10.1 Having regard to the above, the Council will demonstrate that the proposed development would conflict with the policies of the Development Plan. It would result in development outside the settlement boundary of Adderbury as defined by Policy AD1 of the Adderbury Neighbourhood Plan and would be harmful to the rural setting, character and local distinctiveness of the village. There would also be harm to the setting of the grade 1 listed Church of St Mary. Given the Council's housing land supply position and its position with regard to delivering the rural housing allowance, there is no need for a development of this nature and the environmental harm is considered to be significant. The Council will therefore demonstrate that the proposal does not comply with the Development Plan and is not justified by other material considerations.

10.2 For the reasons set out above, the Council will respectfully ask for the appeal to be dismissed.

11. OTHER DOCUMENTS TO WHICH THE COUNCIL MAY REFER

- 11.1
1. Reports to Planning Committee, written updates and minutes of the Planning Committee meeting of 24 May 2018.
 2. Site location plan showing appeal site and surroundings
 3. Plans and other application documentation
 4. Policy documents referred to throughout the Statement
 5. Relevant appeal decisions.
 6. Site history documentation
- 11.2 The Council reserves the right to refer to any other documents as is necessary in proofs of evidence.