



# Appeal Decision

Hearing held on 22 June 2021

Site Visit made on 23 June 2021

**by William Cooper BA (Hons) MA CMLI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 September 2021**

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## **Appeal Ref: APP/C3105/W/20/3255419**

### **Land off Berry Hill Road, Adderbury, OX17 3HF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
  - The appeal is made by Hollins Strategic Land LLP against the decision of Cherwell District Council.
  - The application Ref: 19/00963/OUT, dated 24 May 2019, was refused by notice dated 20 January 2020.
  - The development proposed is described as resubmission of application 17/02394/OUT - outline application for permission for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access).
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### **Decision**

1. The appeal is allowed and outline planning permission is granted for up to 40 dwellings with associated landscaping, open space and vehicular access off Berry Hill Road (all matters reserved other than access) at Land off Berry Hill Road, Adderbury, OX17 3HF in accordance with the terms of the application, Ref: 19/00963/OUT, dated 24 May 2019, and the plans submitted with it, subject to the conditions set out in the attached Schedule A.

### **Applications for costs**

2. An application for an award of costs was made by Hollins Strategic Land LLP against Cherwell District Council. This application is the subject of a separate decision.

### **Preliminary Matters**

3. The address above, which is taken from the appeal site notice and the Council's appeal questionnaire in the interests of precision, was confirmed at the hearing as being accurate.
4. The planning application was submitted in outline with all matters of detail reserved for future consideration save for the access. I have assessed the proposal on this basis and treated the illustrative drawings as simply being an illustration of how the proposal could ultimately be configured.
5. A draft agreement made under Section 106 of the Town and Country Planning Act 1990 as amended, agreed by all parties, was presented at the hearing. This covers provision of affordable housing, highways works and construction apprenticeships and financial contributions in respect of open space and sustainable urban drainage scheme (SUDS) maintenance, and community hall,

healthcare, off-site sports refuse bin, education, public rights of way and transport provision. This section 106 planning agreement has been completed and informs my conclusion on the third main issue identified below.

6. Since the Council's decision, a new version of the National Planning Policy Framework (the Framework) was published in July 2021. The parties have had opportunity to comment on the engagement of the latest version of the Framework in relation to the appeal, and so will not be disadvantaged by my having regard to it in reaching my decision.

### **Main Issues**

7. The main issues in this case are:

- Whether the location of the proposed development is suitable, with particular reference to the spatial strategy for the area and reliance on the private car;
- The effect of the proposed development on the character and appearance of the area; and
- Whether the proposed development would make adequate provision for local infrastructure, highway safety, affordable housing and future on site future maintenance arrangements.

### **Reasons**

#### *Whether a suitable location*

8. The appeal site is adjacent to the south-eastern end of the built-up area of the village of Adderbury. While an access track, sand paddock and stable building occupy some of the eastern part of the appeal site, it is a field with established hedgerow perimeters, which mainly comprises grass paddocks.
9. Policy Villages 2 (PV2) of the Cherwell Local Plan (2011-2031) Part 1 (2015) (LP) specifies a total of 750 homes to be delivered at Category A villages, of which Adderbury is one. This is in addition to the rural allowance for small site 'windfalls' set out in Policy BSC1 of the LP. In addition, saved Policy H18 of the Cherwell Local Plan (1996) (CLP) seeks to restrict development beyond settlements' built-up limits to a limited number of exceptional scenarios.
10. Policy ESD1 of the LP seeks to mitigate and adapt to climate change, in part through 'delivering development that seeks to reduce the need to travel and which encourages sustainable travel options including walking, cycling and public transport to reduce dependence on private cars'.
11. This approach is echoed in the requirement of Policy SLE4 of the LP that 'all development where reasonable to do so, should facilitate the use of sustainable modes of transport to make the fullest possible use of public transport, walking and cycling. Encouragement will be given to solutions which support reductions in greenhouse gas emissions and reduce congestion'. Supporting paragraph B.70 indicates that the strategy is to propose 'more sustainable locations for housing and employment growth, whilst recognising the importance of the car in a rural District. The strategy seeks to avoid increasing the function of the towns as dormitory centres by strengthening their employment base and transport connection to those sites'. A criterion for consideration under PV2

that is relevant to this matter is whether the site is well located to services and facilities.

12. In the first reason for refusal (RFR1), the Council described the proposal as 'unnecessary, undesirable and unsustainable development', '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, with no further development identified through the Adderbury Neighbourhood Plan'. RFR1 also described the proposal as being in an 'unsustainable location on the edge of the village, distant from local services and facilities', such as to result in high reliance by future occupiers on the private car for day to day needs.
13. Subsequent to the Council's decision, they have revised their position to no longer contesting RFR1<sup>1</sup>. The Council sets out that this is in the light of the change in housing land supply requirement in Oxfordshire from three to five years, as per the Ministerial Land Supply Update Statement (LSUS) on 25 March 2021, and to be consistent with Council Planning Officers' emergent views on housing proposals elsewhere in the district, for example at Deddington and Hook Norton<sup>2</sup>.
14. Also, the Merton Road (Ambrosden) and North of Shortlands (Sibford Ferris) appeal decisions<sup>3</sup> point to the possibility of housing at a Category A village in the district not impeding the essential thrust of the rebalancing strategy of an urban focus on new development in Banbury and Bicester.
15. The Council confirmed at the hearing that their in-principle objection no longer stands in relation to the greenfield extension aspect of the appeal proposal, until such time as the 750 headline homes figure in PV2 is delivered. I see no reason to take a different view on this point.
16. While the Council maintains some concern about the 'relative' remoteness of the appeal site, the site has some accessibility by bicycle and on foot to the centre of Adderbury Category A Service Village<sup>4</sup>. Also, bus service provision to Banbury and Oxford is fairly accessible from the appeal site, albeit via some stretches of unsurfaced grass verge in the village. The above accessibility would be enhanced by the highway improvement works to Berry Hill Road and Oxford Road<sup>5</sup>, which include the pending traffic calming scheme.
17. As such, the proposal is likely to result in a combination of a) a realistic prospect of some additional patronage of and profile for non-car modes of transport in and around the village by more 'green' minded occupants of the proposed development, and b) substantial reliance on the private car by future occupiers to access employment, bulk shopping, leisure, and health care facilities further afield.
18. I therefore conclude that the proposal would incur some private car dependency with associated environmental harm, albeit tempered by localised greener transport opportunities and a recognition of the importance of the car in the rural district. Thus, the proposal would not be entirely suitably located,

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<sup>1</sup> As per paragraph 1.1G of the appeal Statement of Common Ground (SoCG).

<sup>2</sup> Planning Application Refs: 20/02083/OUT (the Deddington application) 21/00500/OUT (the Hook Norton Application).

<sup>3</sup> Appeal Refs: APP/C3105/W/19/3228169, September 2019 and APP/C3105/W/19/3229631, December 2019.

<sup>4</sup> Village Categorisation as per Policy Villages 1 of the LP.

<sup>5</sup> As illustrated on Proposed Highway Improvement Plan drawing no. 1899-F03.

with particular reference to the spatial strategy for the area and reliance on the private car. As such, the proposal would not fully accord with the focus in Policies ESD1 and SLE4 of the LP on facilitating the use of sustainable modes of transport, and the focus in Policy PV2 of the LP on locating development 'well' in relation to services and facilities. This would result in moderate harm in terms of locational suitability.

19. Since their decision, the Council has changed their position in relation to RFR1<sup>6</sup>, to the point where a) it has no in-principle objections to the appeal proposals with regard to saved Policy H18 of the CLP, Policies BSC1 or PV2 of the LP, save for the consideration of landscape matters, b) it considers the appeal site to be locationally sustainable and c) it considers that the proposal would comply with policies ESD1 and SLE4 of the LP. I accept that the proposal would not impede the delivery of the numerical vision for housing in Policies BSC1 and PV2 of the LP. However, community concern remains about the suitability of the location. I am not persuaded that the exceptions in Policy H18 of the CLP are met. Furthermore, the Council's change in position does not alter the above specifics in this case, and my consequent findings in respect of the identified conflict with aspects of Policies ESD1, PV2 and SLE4 of the LP.

#### *Character and appearance*

20. Berry Hill Road leads out of the south-eastern end of the village of Adderbury. Along this road, a relatively spacious, hybrid semi-rural and semi-suburban village character, within and leading to a verdant countryside setting, is apparent. The traffic calming scheme which is due to take place on Berry Hill Road, including chicane detailing, is set to further evolve the hybrid character towards this end of the village.
21. Judging by its illustrative layout, the appeal proposal would reduce the openness and verdancy of a field within an 'arrowhead' shaped area of countryside on the north-eastern side of Berry Hill Road. Also, it would depart from the ribbon pattern of housing on the north-eastern side of the road, and is likely to introduce a meandering cul-de-sac type layout to the southern part of the site.
22. That said, judging by the illustrative layout and what I saw during my site visit, the following combination of factors would go some way towards preserving the sense of an evolved, hybrid semi-rural and semi-suburban village character, in a verdant countryside setting, at the south-eastern end of the village. Established vegetation in the landscape, including perimeter hedging and trees along the appeal site's Berry Hill Road frontage and other boundaries, would substantially screen the development. The envisaged siting of housing towards the southern end of the site would allow for substantial, naturalistic soft landscape buffer zones along the site's front boundary onto Berry Hill Road and its eastern boundary alongside a public footpath.
23. Moreover, the envisaged absence of houses and roads from the northern half of the site would go some way towards tying the proposal in with the meandering line of building extent, on the north-eastern side of Berry Hill Road. Extensive open and verdant countryside would remain beyond much of the appeal site's perimeter. The verdancy of the site's frontage onto Berry Hill Road and its perimeter zones adjoining open countryside would be retained and enhanced.

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<sup>6</sup> As set out in section 1.1D to 1.1G of the SoCG.

Together, these landscape factors would help soften the transition from development to countryside.

24. Consequently, the perception of the hybrid, semi-rural and semi-suburban village character in a verdant countryside setting, of the south-eastern end of the village would endure to a large extent, viewed from the A4260 Oxford Road and much of the public footpath network along the eastern and northern boundaries of the site. Such is the bulk and density of the established boundary vegetation, and envisaged scope for further soft landscaped buffer areas, that the visibility of developed character would be limited to within the site, down the site access and glimpsed views from outside the site through perimeter vegetation.
25. Moreover, footway enhancements along Berry Hill Road and a safer link across Oxford Road to the public rights of way network beyond<sup>7</sup>, together with the envisaged views of the spire of the grade I listed Church of St Mary across the development, would increase opportunities for appreciation of the local landscape.
26. Furthermore, through its scale on the approximately parallelogram shaped site, located towards the south-eastern end of the village, the proposal would have the spatial personality and presence to 'hold its own' as a new 'end stop' to the south-eastern end of the built-up area of the village, without detracting from the evolved architectural character of the village's more recent residential areas, and the historic character of the village's historic core within the Adderbury Conservation Area (CA) located some distance to the north. Given this, and the separation between the appeal site and the CA, the proposal would have a neutral effect on the setting of the CA. The Council and appellant express the shared view that no harm would arise to the listed Church of St Mary or its setting, or to any other heritage asset or its setting<sup>8</sup>. I agree on this point.
27. Drawing the strands together, I find that through reduction of the verdancy and spaciousness of the appeal site, and the increase in developed character towards the south-eastern end of the village, the proposal would reduce the rural character of the village's setting. This would result in a localised adverse impact on the area's character and appearance, tempered by the assimilating factors identified.
28. Therefore, in conclusion the proposal would, overall, moderately harm the character and appearance of the area. As such, it would conflict with Policies ESD13, ESD15 and PV2 of the LP, and saved Policies C8, C27, C28 and C33 of the CLP, which together seek to ensure that development complements, protects and enhances local character. Furthermore, through being development outside the Adderbury settlement boundary, which would harm local landscape character, the proposal would conflict with Policy AD1 of the Adderbury Neighbourhood Plan 2014-2031 (NP).

### *Infrastructure provision*

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<sup>7</sup> As illustrated on Proposed Highway Improvement Plan drawing no. 1899-F03.

<sup>8</sup> As stated in paragraphs 5.8 and 5.10 of the SoCG.

29. The SoCG<sup>9</sup> indicates that once the Section 106 planning agreement is completed and signed by all parties, the Council can withdraw the third reason for refusal. This agreement has been completed and signed by all parties.
30. Given the provision in the agreement for affordable housing, highways works and construction apprenticeships and financial contributions in respect of open space and SUDS maintenance, and community hall, healthcare, off-site sports refuse bin, education, public rights of way and transport provision, this main issue is satisfactorily addressed.
31. In conclusion, the proposed development would make acceptable provision for local infrastructure, highway safety, affordable housing and future on site future maintenance arrangements. As such, the proposal would not conflict with Policies INF1, PSD1 BSC2, BSC9, BSC11 and ESD7 of the LP, which together seek to ensure that local infrastructure requirements are met.
32. Policy BSC 2 of the LP does not cover infrastructure and so is not engaged in respect of this main issue.

### **Other Matters**

33. Concerns have been expressed by some local residents about the proposal's effect on road congestion and highway safety, which go beyond the reasons for refusal.
34. The Highway Authority has not objected to the proposal on these grounds. The proposed highway improvement plan includes new footway on Berry Hill Road, and pedestrian refuges on Oxford Road, which would improve pedestrian safety in the locality. Also, the pending traffic calming scheme on Berry Hill Road is likely to have a positive effect on highways safety in the vicinity of the site's access. Furthermore, the Appeal Note on Transport and Highways Matters by the appellant's transport planning consultant indicates that the traffic from the up to to 40 additional homes towards the south-eastern end of the village would not be of a volume to harm the safety or capacity of the road network, including the Oxford Road/Berry Hill Road junction. In the light of the above, I find that, subject to conditions regarding the site access and parking areas, the proposal would not harm the safety and capacity of the local road network.

### **Conditions**

35. The conditions suggested by the Council have been considered against the tests of the Framework and advice provided by Planning Practice Guidance. I have found them to be broadly reasonable and necessary in the circumstances of this case. I have made some minor drafting changes to suggested conditions in the interests of precision.
36. Conditions relating to approved plans, the submission and implementation of reserved matters and associated time limits are necessary to provide certainty. I attach conditions relating to the site access and parking areas in the interests of highway safety. Conditions regarding a travel plan, information pack and electric vehicle charging infrastructure are required in the interests of sustainable transport. A condition relating to affordable housing and Lifetime Homes provision is necessary to provide an inclusive mix of housing. Conditions regarding drainage and surface water mitigation are necessary to ensure

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<sup>9</sup> Paragraph 1.1J.

sustainable water management. Conditions relating to ecology, arboricultural protection and landscape are required to safeguard biodiversity and the character and appearance of the area. I attach conditions relating to construction management and contaminated land to safeguard residents' living conditions. A condition is also attached to safeguard archaeological assets.

### **Planning Balance and Conclusion**

37. In the light of the LSUS, the Council confirms that it cannot demonstrate a five year supply of deliverable housing sites. On the evidence before me, I consider the shortfall to be in the region of 0.3 to 0.5 years for the purposes of this decision.
38. The proposal would provide the following benefits. It would contribute up to 40 dwellings in the area, within the above context of housing land shortfall. The dwellings would include up to 14 affordable units and up to two units built to Lifetime Homes standards, to help meet local community housing needs. The proposal would provide potential for enhancing the area's green infrastructure network through additional publicly accessible, naturalistic green space with views of the grade I listed church spire, and proposed highway improvements. Furthermore, associated socio-economic benefits during and after construction would include patronage of local facilities, businesses and services in the village, which would contribute to their sustenance. The above together amounts to a substantial combination of benefits.
39. The harm arising in terms of locational suitability and the area's character and appearance would be moderate, and the resultant conflict with the development plan as a whole carries moderate weight.
40. As a result of the housing land supply shortfall, the policies referred to earlier in this decision, which are those most important for determining the appeal, are out of date. Consequently the tilted balance, under the terms of paragraph 11 of the Framework, is engaged. This tells us that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.
41. While the proposal would conflict with Policy AD1 of the NP, it is more than three years since the NP became part of the development plan. With reference to paragraph 14 of the Framework, this limits the weight which the conflict with NP Policy AD1 carries.
42. The adverse impacts of the proposal would be moderate in terms of locational suitability and the impact on the area's character and appearance. These moderately adverse impacts would not significantly and demonstrably outweigh the substantial totality of planning benefits, when assessed against the policies in the Framework taken as a whole.
43. As such, the proposal benefits from the presumption in favour of sustainable development. I find that this consideration is of sufficient weight to indicate that planning permission should be granted, notwithstanding the conflict with the development plan. I therefore conclude that the appeal succeeds.

*William Cooper* INSPECTOR

### **Schedule A) Conditions**

- 1) No development shall commence until details of the appearance, landscaping, layout, and scale (hereinafter called 'the reserved matters') shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission.
- 3) The development hereby permitted shall commence not later than one year from the date of approval of the last of the reserved matters to be approved.
- 4) The development shall be carried out in accordance with the following approved drawings: Location Plan; 1899-F01 Rev J Proposed Highway Improvement Plan; 1899-F03 Proposed Highway Improvement Plan.
- 5) No development shall commence until have been submitted to and approved in writing by the local planning authority details for the construction of the site access arrangement. These shall be in accordance with the Proposed Highway Improvement Plan drawing Ref: 1899-F01 Rev J. The works shall be carried out as approved, in accordance with the Oxfordshire County Council Residential Road Design Guide, prior to the first occupation of the first dwelling, and retained thereafter.
- 6) No structure exceeding 1m in height, measured from carriageway level shall be placed within the visibility splays of the site access.
- 7) Prior to the first occupation of each dwelling hereby permitted, the parking areas shall be constructed, laid out, surfaced, drained and completed in accordance with specification details to be submitted to and approved in writing by the local planning authority. The works shall be carried out as approved and retained thereafter.
- 8) Prior to first occupation of the development hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a Travel Plan. The Travel Plan shall be prepared to the format shown in Appendix 4 of the Oxfordshire County Council guidance Transport for New Developments: Transport Assessments and Travel Plans (March 2014). The works shall be carried out as approved and retained thereafter.
- 9) Prior to first occupation of the development hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a Residential Travel Information Pack (RTIP), which, as approved, shall be distributed to each dwelling at the point of their first occupation.
- 10) The total number of dwellings on the site shall not exceed 40, and shall include 35% affordable dwellings and 5% Lifetime Living Homes.
- 11) No development shall commence until have been submitted to and approved in writing by the local planning authority a detailed scheme for the



surface water and foul sewage drainage of the development. The surface water drainage scheme as approved shall be carried out prior to commencement of any building works on the site. The approved foul sewage drainage scheme shall be implemented prior to the first occupation of each building to which the scheme relates. The drainage works shall be laid out and constructed in accordance with current edition of the Water UK Sewers for Adoption Design and Construction Guide for Developers.

- 12) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority full details of the construction of the surface water mitigation proposals, including any balancing pond if required, and implementation schedule. The works shall be carried out as approved and retained thereafter.
- 13) No site clearance or development works shall take place until there shall have been submitted to and approved in writing by the local planning authority an ecological enhancement scheme, which shall include implementation timing. The scheme shall be carried out as approved.
- 14) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority full details of an arboricultural protection scheme. The scheme shall be appropriate to the scale and duration of the development works and include the following: a) contact details for the supervising project arboriculturalist; b) relevant persons/contractors to be briefed by the project arboriculturalist on on-site tree related matters; c) the timing and methodology of scheduled site monitoring visits to be undertaken by the project arboriculturalist; d) procedures for notifying and communicating with the local planning authority when dealing with any unforeseen variations to the agreed tree works and arboricultural incidents; e) details of appropriate supervision for the installation of load-bearing 'structural cell' planting pits and/or associated features such as irrigation systems, root barriers and surface requirements (for example reduced dig systems, arboresin or tree grilles).
- 15) All approved tree works shall be carried out in accordance with the current revision of British Standard 3998: Recommendations for Tree Works, by suitably qualified and insured arboricultural contractors.
- 16) No removal of mature trees shall take place until such time as they have been checked for bats by a suitably qualified ecologist prior to removal. Should bats be found to be present in any tree due for removal, a bat mitigation scheme must be submitted to and approved in writing by the local planning authority prior to the removal of the trees concerned. The bat mitigation scheme shall be carried out as approved.
- 17) As part of the reserved matters, a landscaping scheme shall be submitted to and approved in writing by the local planning authority. The scheme for landscaping the site shall include: a) details of the proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas; b) details of the existing trees and hedgerows to be retained as well as any to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any

excavation; and c) details of the hard surface areas, including pavements, pedestrian areas, reduced-dig areas, crossing points and steps.

- 18) As part of the reserved matters, a landscape management plan, to include the timing of the implementation of the plan, long term design objectives, management responsibilities, maintenance schedules and procedures for the replacement of failed planting for all landscape areas, other than for privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority. Thereafter the landscape management plan shall be carried out as approved.
- 19) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a construction environment management plan (CEMP). The CEMP shall include details of measures to be taken to ensure that construction works do not adversely affect residential properties on, adjacent to or surrounding the site, together with details of the consultation and communication to be carried out with local residents. The CEMP shall be carried out as approved.
- 20) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a detailed assessment of the impact of the development on local air quality. This shall have regard to the Cherwell District Council Air Quality Action Plan. The assessment shall include future air quality monitoring provision.
- 21) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority an archaeological written scheme of investigation for the development site prepared by a professional archaeological organisation. The scheme shall include a staged programme of archaeological evaluation and mitigation by the commissioned archaeological organisation, including all processing, research and analysis necessary to produce an accessible and useable archive and a full report for publication.
- 22) Each dwelling, prior to its first occupation, shall be provided with ducting to allow for the future installation of electrical vehicle charging infrastructure to serve the dwelling.
- 23) No development shall commence until an investigation and risk assessment has been completed to assess the nature and extent of any contamination on the site and a written report of the findings submitted to and approved in writing by the local planning authority. The investigation and risk assessment must be undertaken by competent persons and include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments; (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with the Environment Agency's Land Contamination: Risk Management (LCRM) guidance (available on [www.GOV.UK](http://www.GOV.UK)). Remedial works shall be carried out as approved.

## **APPEARANCES**

### FOR THE APPELLANT:

Nigel Evers  
Sarah Reid  
Kathryn Sather  
Matthew Symons  
Phil Wooliscroft

Viridian Landscape Planning  
Kings Chambers  
Kathryn Sather & Associates  
Hollins Strategic Land  
Croft Transport Solutions

### FOR THE LOCAL PLANNING AUTHORITY:

Andy Bateson  
Max Askew

Cherwell District Council  
Askew Nelson

### INTERESTED PARTIES:

Mr Rashid Bbosa  
Mr Richard Oliver

Oxfordshire County Council  
Oxfordshire County Council

## **DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Extract from Sustainability Appraisal for the Adderbury Neighbourhood Plan, received 22 June 2021.
2. Planning Obligation by Deed of Agreement, dated 22 June 2021, received 24 June 2021.