

Appendix D

Appeal by Peppermint Grove Ltd Site at 46 Newbold Road, Chesterfield.

CHE/16/00591/FUL

2/1192

1. Planning permission was refused on 11th January 2017 for the development of 13 residential units and ancillary works on the site of 46 Newbold Road. The application was refused by planning committee against the advice of officers for the following reasons:

In the opinion of the local planning authority the loss of the existing building will result in the erosion of the character of the area to the detriment of the appearance of the local area. Furthermore the loss of protected trees will be detrimental to the character of the area having regard to the ecological and amenity contribution they provide. The local planning authority consider therefore that the development does not respond to and integrate with the character of the site and surroundings and respect the local distinctiveness of its context and will therefore be at odds with policies CS9 and CS18 of the Core Strategy 2011-2031.

2. An appeal against the decision has been determined by the written representation appeal method and has been dismissed.
3. The main issues are the effect on the character and appearance of the area, including trees protected by a Tree Preservation Order, and the effect on biodiversity.

Character and appearance – including protected trees

4. The appeal site consists of previously developed land accessed from the southern side of Newbold Road (B6051). Land levels within the site gently rise from the comparatively wide frontage onto Newbold Road which is characterised by a line of protected trees behind a boundary wall. There are additional groups of trees further into the site, some of which are protected, with the tree cover gradually reducing with distance from the frontage. A vacant building (No 46), which was formerly used as NHS offices, is sited close to the

boundary with Nos. 43 and 45 Cobden Road and No 48 Newbold Road. There are also areas of hardstanding with marked parking bays and landscaped areas towards the rear of the site. Predominantly residential properties are located along Newbold Road and Cobden Road to the west, with school buildings and their grounds adjoining the other boundaries of the site.

5. The existing building (No 46) consists of a two storey villa style property with outrigger elements characterised by timber sash windows, bay windows, porticos and other architectural detailing from the late Georgian and early Victorian periods. The building is not statutorily listed or within a Conservation Area, but is a non-designated heritage asset as it has been included within the Council's draft local list with its significance derived from villas of its style being increasingly uncommon in Chesterfield. However, since the determination of the application subject to this appeal, the Council has subsequently granted prior approval on 3 April 2017 for the demolition of No 46 through permitted developments rights conferred by Schedule 2, Part 11, Class B of the GPDO1. The building had not been removed at the time of my visit, but the evidence before me indicates that there is a realistic prospect that its demolition would take place, irrespective of the outcome of this appeal. Consequently, the loss of the building in terms of its local significance would be outweighed by the fallback position in this instance. The removal of the existing building is not, therefore, an influential factor upon the outcome of this appeal.
6. The existing trees within the site make an important contribution to the verdant character of the area, particularly along the Newbold Road frontage. An Arboricultural Method Statement provided by the appellant and accompanied by a Tree Constraints Plan, Tree Protection Plan and Landscape Masterplan, identified 36 trees and two groups of varied species and sizes. The proposal requires the removal of a total of 29 trees, including 11 trees (T2, T4, T7, T9, T13, T14, T15, T16, T17, T18, T19) which are protected by Tree Preservation Order 133 1994 (TPO). Six trees protected by the TPO (T1, T3, T5, T6, T8, T10) are proposed to be retained, whilst two protected trees (T11 and T12) are recent replacement Oak trees which are proposed to be relocated.

The proposal would also include the planting of 16 new trees within the site. Based upon the evidence removal of two Hawthorn trees (TPO ref T2 and T4) located along the frontage adjacent to the boundary wall and to the west of the access would not be harmful. Those trees are either dead or dying due to overcrowding by two Beech trees (T1 and T5) and a Whitebeam (T3) tree which are generally in good condition and afford high visual amenity to the frontage. Two Hawthorn trees (T7 and T9) on the frontage to the eastern side of the access, together with a further Hawthorn (T13) and a Sycamore (T14), are also suitable for removal due to their similarly poor condition arising from overcrowding. Two Beech trees (T6 and T10) that have high visual amenity value and a Whitebeam (T8) would be retained along that section of the frontage and when taken together would maintain the verdant character of that part of the site. A Weeping Ash (T16) located to the south east of the existing building, together with a Cherry (T18) and Sycamore (T19) towards the western boundary wall and the rear of the site, would require removal due to their location within the footprint of the proposed development. Each of those trees had signs of decay and poor form which suggests a limited life expectancy. As the visual amenity of T16, T18 and T19 is considerably less than the frontage trees due to their set back position within the site, their removal would not be harmful when taking account of new planting within the site and along the southern boundary. An Oak (T15) and a Sycamore (T17) despite being in comparatively good condition, afford limited amenity from public vantage points due to their set back position within the site, with some signs of stress to the Oak due to the proximity to the existing driveway. In such circumstances, on balance, the removal of T15 and T17 would not be harmful subject to appropriate tree replacement and landscape planting within the site.

7. The inspector considered the views expressed by all parties in terms of the siting of the dwelling and driveway denoted as Plot 13, including those relating to amendments submitted in response to initial concerns raised by the Council's Tree Officer. Based upon the evidence the dwelling and driveway of Plot 13 would be within the required root protection area (RPA) of the Whitebeam (T3) and Beech (T5) trees as indicated on the Tree Protection Plan (drg.no. TSC 03 rev B)

and confirmed by the Arboricultural Method Statement dated November 2016. Having regard to BS 5837:20122, the inspector was satisfied that the reduction of the canopy of the T3 tree, together with appropriate construction methods for hard surfacing of the access road and driveway within the RPAs would be achievable without causing a significant adverse impact upon the T3 and T5 trees (or the T6 tree nearby). In reaching those findings, the inspector observed that a tarmac pathway runs across the RPA of the T3 and T5 trees, with the RPA of T5 (together with T6) also constrained by hardstanding associated with the existing main access road at a reduced land level.

8. Notwithstanding the above, it is reasonable that the siting of the dwelling on Plot 13 would require deeper excavations, including for foundations, than those which have taken place for hard surfacing of the existing pathway and those which would be required to construct the driveway and access. The footprint of the dwelling would include sections of the RPAs of both T3 and T5 trees with no evidence to demonstrate that special engineering measures to construct the building within the RPA, including any foundations, would be feasible. In such circumstances, the siting of the dwelling on Plot 13 would be detrimental to the long term health of both the T3 and T5 trees, particularly as protection of their roots within the site should be prioritised given the existing constraints of the immediately adjacent boundary wall and Newbold Road highway infrastructure. The Whitebeam (T3) and Beech (T5) are mature trees which offer high visual amenity to the site due to their size, form, height and prominence from public vantage points and they are likely to be susceptible to development impacts. The loss or removal of either tree as a result of the development would have a considerable impact upon the verdant character of the Newbold Road frontage of the site.
9. The development, therefore, would cause significant harm to the character and appearance of the area given that there is no evidence before me that the T3 and T5 trees would be otherwise unlikely to survive on site for many years. The removal of the existing tarmac pathway and replacement with soft landscaping, together with the proposed tree protection measures such as protective fencing would not overcome the

harm identified. Furthermore, the constrained separation distance between Plot 13 and the boundary wall would limit the potential for suitable replacements along the site frontage if T3 or T5 were removed or lost.

10. The Oak trees (T11 and T12) which replaced a Willow and Weeping Ash in the original Order have been recently planted. Those trees would be capable of relocation to a different part of the site frontage to avoid any adverse impact on their condition or longevity. The remaining trees within the site which are not protected by TPO and are proposed to be removed are generally of low quality, small in size and with poor form. Consequently, those trees could be removed without harm to the character and appearance of the area, given the new tree planting proposed. However, the absence of concern in those respects does not outweigh the harm identified.
11. Aside from the verdant nature of the site, the character of the area is influenced by a diverse mix of predominantly large detached and semi-detached properties with a broad consistency of front building lines, particularly along Cobden Road. The properties immediately adjacent to the site adjoining Cobden Road consist of two storey properties with a mix of architectural features and some modern infill developments, that have a similar scale, form and materials within confined plots and a noticeable transition of building heights that follow the rising land levels toward the south. The properties along Newbold Road opposite and to the east, are visually prominent and display a range of different designs, height, scale, form, proportions and use of materials. The varied style, proportions and height of properties in the surrounding area, including some modern school buildings to the south, offer an opportunity for original and innovative design of built form whilst complementing local distinctiveness.
12. The contemporary design of the predominantly one and a half storey development of detached, semi-detached and terraced properties would be laid out in a courtyard arrangement and accessed from a single driveway from the main access. The development would differ from the predominant design, scale and more linear pattern of development with shallow frontages

onto Cobden Road and opposite on Newbold Road. However, the existing building within the site and to the west are typically well screened from the road frontage by walls and groups of trees and the pattern of built form would not be dissimilar to the grouping of school buildings to the south relative to Cross Street and at the rear of Cobden Road. The development would retain some mature trees along the frontage, which irrespective of the impact of Plot 13 upon some protected trees and proposed alterations to boundary walls, would provide some filtering of views. Consequently, the set back position of the courtyard development would limit its influence upon the Newbold Road frontage, including views along the access. The development would be glimpsed between properties on Cobden Road and would be visible when approaching the site along Newbold Road from the east, due to the set back position of an adjacent building (No 44) and reduced tree screening towards the rear of the site. However, the modest scale of buildings would be viewed in the context of a diverse group of buildings of different styles, including glimpses of modern school buildings in similar backland positions. In such circumstances, the design, scale, form, massing and materials of the proposed development would not be viewed as out of place and would not, in itself, harm the character and appearance of the area. Existing views from the rear elevations and rear gardens of the adjoining properties facing Cobden Road and Nos. 44 and 48 Newbold Road would be altered by the development. However, such a change is an inevitable consequence of any new development located adjacent to residential properties and is not reason in itself to withhold planning permission. However, the absence of concern in that respect is a neutral factor.

13. The inspector concluded that the development would result in significant harm upon the character and appearance of the area, due to the incompatible siting of Plot 13 which would have a harmful effect upon the health and longevity of protected Whitebeam (T3) and Beech (T5) trees that contribute high amenity value to the Newbold Road frontage. The proposal, therefore, would conflict with Policies CS9 and CS18 of the Chesterfield Borough Council Local Plan: Core Strategy 2011 - 2031 (CS), adopted July 2013. When taken together the policies seek that all development should identify,

respond to and integrate with the character of the site and surroundings and the local distinctiveness of its context, including tree cover and an attractive interface between development boundaries and their surroundings. The policies are consistent with the National Planning Policy Framework (the Framework).

Biodiversity

14. The appellant provided an ecology scoping report dated July 2016, followed by a revised ecology scoping survey dated December 2016. The Council have not provided any contrary evidence. The surveys found no evidence of roosting bats within the existing building. The inspector was satisfied that the building has negligible roosting value for bats despite spaces between roof tiles and soffits given its urban location and detachment from foraging habitats for bats. In addition, the method of demolition of the building, including roof removal, could be suitably controlled to minimise the risk of harm to bats. Furthermore, based upon the evidence, the trees to be removed have low or negligible suitability for bat roosts. In that context, the risk of harm to bats arising from tree removal could be suitably mitigated by requiring further climbing inspections and the installation of bat boxes on trees to be retained. External lighting within the site could also be controlled to prevent adverse effects on bat commuting or foraging corridors.
15. The trees within the site provide a suitable habitat for nesting birds. However, any impact of the proposal could be appropriately mitigated by restricting removal and pruning to periods outside of the main nesting season, together with the use of bird boxes and appropriate landscape planting. The grassland vegetation which covers a significant proportion of the site is a suitable habitat for reptiles. However, the site is isolated from other areas of suitable habitat and there are no waterbodies in close proximity. It is, therefore, unlikely that Great Crested Newts are present within the site or would be affected by the development. No evidence of badgers was found on or adjacent to the site.

16. The inspector concluded that the development would not have a harmful effect on biodiversity, including protected species, subject to the imposition of conditions if the appeal were to be allowed. The proposal, therefore, would not conflict with Policies CS9 and CS18 of the CS or the Framework in that respect.

Other Matters

17. The proposal would deliver social and economic benefits in an accessible location by providing 13 new homes on previously developed land in relatively close proximity to Chesterfield Town Centre and other services and facilities. In that respect, the development would contribute to meeting the housing requirements of Chesterfield, whilst supporting local services, businesses and the employment market. There would also be local economic benefits arising from the construction activity required to deliver the development.
18. The development would provide safe and suitable access to the site for all people utilising an existing access onto Newbold Road. Traffic movements when compared to the previous use of the site would not be significant and would not have a severe residual cumulative impact upon the transport network. Adequate parking would be provided for each dwelling on driveways and integral garages. Furthermore, alterations to the existing footway crossing, layout of turning areas within the site, the gradient of the driveway, restrictions upon gates and retention of parking spaces would be capable of being dealt with by conditions. Consequently, the development would not have a detrimental impact upon highway or pedestrian safety.
19. Adjoining properties are generally at raised land levels relative to the site. The removal of the existing building and replacement with a one and half storey development would reduce the scale, bulk and massing of built form visible from Nos. 43 and 45 Cobden Road and No 48 Newbold Road. The development would introduce built form closer to the habitable windows and rear gardens of Nos. 35-41 (odds) Cobden Road and No 44 Newbold Road. However, the difference in slab and garden levels of those properties, together with the modest scale of buildings proposed would prevent any adverse impact in terms of outlook, privacy and light despite

the close proximity of built form to boundaries. Consequently, the development would not have a detrimental impact upon the living conditions of occupiers of neighbouring properties.

20. The development in Flood Zone 1 would not be at an unacceptable risk of flooding or increase the risk of flooding to surrounding properties as surface water and foul water drainage could be dealt with by condition. There is no substantiated evidence that the development would have any adverse impact in terms of land stability, ground conditions or local infrastructure.

Planning Balance

21. The proposal would not have a harmful effect upon biodiversity and the inspector attributed positive weight to the social and economic benefits arising from the development of 13 new homes in an accessible location close to Chesterfield Town Centre. However, the harm upon the character and appearance of the area arising from the incompatible siting of the dwelling on Plot 13 resulting in a harmful effect on the long term health and longevity of Whitebeam (T3) and Beech (T5) trees on the Newbold Road frontage, is significant and overriding. The absence of harm in all other respects is a neutral factor. Consequently, the proposal would not result in sustainable development when considered relative to the development plan and the Framework as a whole.
22. The Unilateral Undertaking signed by the applicant includes planning obligations to secure contributions to public open space and public art in seeking to accord with CS policy requirements. However, as the appeal is to be dismissed based on its substantive merits, it is not necessary for the inspector to look in detail at these obligations as they would not alter the outcome of this appeal.