

## APPENDIX A

Appeal by Peppermint Grove Ltd  
Site at 46 Newbold Road, Chesterfield.  
CHE/17/00421/FUL  
2/1192

1. Planning permission was refused on 21<sup>st</sup> November 2017 for the development of 12 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 development fails to recognise the contribution of the protected trees on the site to the character and appearance of the local area. The development is thereby detrimental to the character and appearance of the site and area having regard to the loss of protected trees contrary to policy CS9 and CS18 of the adopted Chesterfield Core Strategy 2011 - 2031.*

2. An appeal against the decision has been determined by the written representation appeal method and has been allowed.
3. A signed and dated planning obligation consisting of a unilateral undertaking (UU) was provided as part of the appeal. This would secure the provision of public art, or a contribution towards public art off-site as part of the finished scheme. It would also provide for the formation of a management company to manage open space, landscaping and site drainage.
4. The main issue was the potential effect of the loss of protected trees on the character and appearance of the area. The appeal site lies on the north western edge of Chesterfield town centre in a predominantly residential area, with some commercial properties close to the site along Newbold Road, and a primary school to the rear. It comprises a vacant office building, previously used by the NHS Primary Care Trust, and includes the associated parking and gardens, which are enclosed by a high boundary wall. The gardens include mature landscaping and a number of mature trees, which are protected by Tree Preservation Order. The trees along the

Newbold Road frontage provide an attractive feature in the existing streetscene and these, and to a lesser extent the trees further back on the site, are visible in wider views of the site along Newbold Road. There are few street trees in the streets surrounding the site and the verdant appearance of the site make a positive contribution to the character and appearance of the area.

5. The scheme comprises the erection of 12 dwellings of contemporary design which would be configured in a courtyard arrangement with a single point of access at the existing entrance from Newbold Road. The development would require the removal of 29 trees from the site, 12 of which are subject to the Tree Preservation Order. Many of the trees proposed for removal are identified in the submitted tree survey as in poor health. The Council's Tree Officer confirmed that 7 of the 12 protected trees are either dead or dying, or are in poor shape due to overcrowding by other trees or ivy. A further 32 are considered unsuitable for retention within a development scheme due to the risk of failure. The Council did not dispute that these identified specimens have a limited lifespan and so the contribution they could make to the character and appearance of the area would in any case be limited.
6. The inspector noted the particular concerns of the Council in relation to the removal of T15 oak and T17 Sycamore. These trees lie in the centre of the site and are estimated to be around 15 and 17 metres high. As such, they are visible in some views from outside the site, including from Newbold Road, in glimpsed views in gaps in the frontage from Cobden Road, and would be visible from the playground of St Marys School, in combination with the trees along the road frontage which are to be retained. They are also likely in combination to contribute to the quality of the view available to residents adjoining the appeal site. However, the inspector noted during the site visit that the trees were not prominently visible in public views into the site and the verdant appearance of the site was primarily derived from the contribution of the mature trees along the Newbold Road frontage.

7. The inspector noted that the Council's Tree Officer has no objection to the trees being removed to accommodate the proposal. Whilst the inspector did not dispute that the quality of some private views into the site would be reduced as a result of their removal, taking into account the relatively limited prominence of these trees in public views, and the potential to mitigate the effect of their loss through appropriate tree replacement and planting, she did not consider that on balance their removal would have a significantly harmful effect on the character and appearance of the area. The inspector also took into account that a number of smaller unprotected trees would also be removed as part of the scheme. It is clear that the site would require substantial tree removal to facilitate redevelopment. However, given that the frontage trees, which make the greatest contribution to the character and appearance of the wider area are largely retained, and that these largely screen the rear of the site from wider views, the inspector was satisfied that the proposal would not on balance be harmful to the character and appearance of the area. The inspector therefore found no conflict with policy CS18 of the Chesterfield Core Strategy, which seeks to ensure that new development integrates with and respects the character of the site including tree cover, or with guidance in the *National Planning Policy Framework*, which has similar aims.

#### *Other Matters*

8. Although not a matter of concern for the Council, I note the Civic Society had expressed concerns in relation to the impact on heritage assets, in particular, the demolition of No 46 Newbold Road, which is a non-designated heritage asset. Whilst the inspector had been provided with no information of the building's significance, she noted that it is not on the statutory list, and that the Council has granted prior approval for the demolition of the building. Having regard to the appearance of the building and its state of repair the inspector considered there to be a reasonable likelihood of this demolition taking place, irrespective of the outcome of this appeal. It is therefore likely that the loss of the building in terms of local significance would be outweighed by the available fallback position in this case, and the matter does not alter my reasoning.

9. The inspectors attention was drawn to the concerns of some residents, in relation to the design of the proposed dwellings, and the effect of the proposal on the character and appearance of the area. The design is clearly contemporary and as such is a departure from the appearance of the buildings on Cobden Road. However, the wider area is not homogenous in character with commercial buildings and modern infill development also part of the wider mix. Furthermore, the site is relatively self-contained, with the main views of the site provided through the screen of mature trees on Newbold Road. In this regard, the dwellings would not appear prominent or intrusive within the wider streetscene or significantly detract from the established character of the area.
  
10. A number of residents also expressed concerns in relation to the potential impact of the proposal as a result of potential overlooking, loss of light or the potential overbearing effects of development. The Council are satisfied that the scale and position of the proposed dwellings, along with the proposed location of windows, would meet the requirements set out in the Council's SPD. I also note that the previous Inspector concluded that the differences in land level between the site and its neighbours, and the modest scale of the buildings would not result in development which would have an adverse effect on living conditions. Taking into account the size and position of the proposed dwellings, the inspector saw no reason to dispute this view, and whilst she acknowledged that the quality of the view available to residents is likely to diminish, she was also of the view that the effects of the proposal would not be so intrusive as to harm living conditions. Furthermore, the inspector had no compelling evidence that the proposal could not be drained appropriately, or, subject to appropriate conditions, would increase the risk of flooding to adjoining properties. She took into account that the proposal would not include social housing but the Council has raised no concerns in this regard, and in the absence of a substantiated need and an identified development plan policy with which to secure it, the inspector can give the matter no weight.

11. The inspector noted the concerns of local residents in relation to highway safety. However, she concurred with the view of the Local Highway Authority, that the proposal would be unlikely to generate significantly higher levels of traffic than the existing office use. As such, the inspector considered the scheme unlikely to give rise to harm to highway safety.
12. The inspector noted the issues raised by some residents in relation to protected species, including bats. However, she had been provided with no substantive evidence that the submitted surveys should not be relied upon and so she concurred with the views of the Council and the previous Inspector, that subject to appropriate conditions, including measures to protect nesting birds, the proposal would not have a detrimental effect on the biodiversity of the site. Whilst the inspector noted the comments of residents in relation to potential damage to property or subsidence as a result of development, she had no substantive evidence on which to conclude that this would occur. The inspector noted comments from residents raising concerns on how the application was handled by the Council. She had no compelling reason to conclude that the application was not administered appropriately, and in any case, this would not alter the other considerations before her.

### **Conclusion and Conditions**

13. The inspector considered the proposed conditions in line with guidance in *Planning Practice Guidance*. In addition to conditions relating to the time period of implementation, and the approved plans, she also consider it reasonable and necessary to impose conditions to require the proper foul and surface water drainage of the site. The Council proposed a number of conditions in this regard, and she agreed on the need to reduce surface water run-off from the site in line with the objective of responding to climate change. In the interests of brevity, to avoid duplication, and to remove a requirement to accord with Building Regulations, which is unnecessary, she amended the wording of these conditions.
14. The inspector has considered the proposed geo-technical conditions, but noted that the Coal Authority are satisfied that the site investigations that have already taken place indicate that the development does not require any further mitigation or

remediation in relation to coal mining legacy. As such the inspector did not consider a condition in this regard to be necessary. In relation to ground contamination, the submitted phase II investigation indicates that the site has some soil contamination present and that remediation will be required. The inspector has therefore imposed relevant conditions in order to ensure the safe development of the site. In order to protect the living conditions of nearby residential occupiers, it is necessary to require a construction management plan for the development and to limit the hours in which work on site can occur.

15. A number of highways conditions are proposed by the Council. A condition requiring that the proposed parking is provided and retained is reasonable and necessary in order to ensure the development provides appropriate levels of parking in the long term. However, the inspector had concerns regarding the wording of the proposed condition relating to garages. Whilst a condition requiring that permission is sought for conversion of integral garages would enable the Local Planning Authority to assess and if necessary control such proposals, the requirement that an integral garage is only ever used for parking is unreasonable and potentially unenforceable as it would prevent the use of such spaces for normal domestic storage. In seeking to ensure that households have appropriate levels of parking provision the inspector considered it sufficient to require that the garages are available for parking, rather than households be prevented from using the spaces for any domestic function. In this regard the inspector altered the wording of the proposed condition.
16. In order to maintain a safe access to the site, a condition regarding the drive gradients and access via a dropped kerb to maintain pedestrian accessibility is reasonable and necessary. The access serves a number of dwellings and there is no indication that a condition preventing installation of a gate is necessary in this case. The Local Highway Authority has advised that the access to the site is unlikely to be adopted and that refuse vehicles will not enter the site to make collections. It is therefore reasonable that conditions relating to refuse collection and maintenance of the access are imposed on the permission. The submitted ecology survey identified T17 as a potential bat roost and so, in the interests

of ensuring appropriate mitigation, the inspector imposed conditions requiring an additional survey of T17, a requirement for an enhancement strategy and a lighting strategy, and the prohibition of vegetation clearance during the nesting season to protect nesting birds.

17. The Council had suggested a number of conditions relating to trees on site. In the interests of clarity the inspector considered it necessary to impose a condition referring to the trees to be retained or translocated, and to impose conditions to ensure the protection of trees during construction. A condition requiring full details of proposed hard landscaping, is also necessary, in order to ensure both the protection of on-site trees, and an appropriate appearance for the finished development.
18. In relation to the removal of permitted development rights from the development. Taking into account the relatively dense nature of the proposal, and the rear facing nature of properties to Newbold Road, the inspector considered such a condition to be reasonable in the interests of retaining amenity space within the development, preventing overlooking to adjoining properties, and to ensure a satisfactory appearance to the development. Furthermore a condition relating to approval of the finished materials is also necessary to ensure an acceptable appearance for the finished scheme. A condition requiring that the finished development is capable of receiving high speed broadband is in accordance with the aims of paragraph 42 of the Framework and is reasonable for the provision of future homes. The Council included a condition requiring a strategy to promote the local supply chain, employment and training opportunities throughout the construction of the development. This is in accordance with policy CS13 of the Core Strategy, which seeks to secure such agreements as part of all major developments in the Borough, in order to achieve sustainable development in the long term. The appellant has not expressed any objection to the condition and the inspector accepted that such agreements can help foster economic growth for the benefit of the local community. The inspector considered the condition to be reasonable in this case.

19. Lastly, a unilateral undertaking was provided with the proposal. It provides for the formation of a management company to manage open space, landscaping and site drainage. It also commits the developer to make provision for public art within the site, or agreed alternative provision, before the occupation of the first dwelling. Policy CS18 of the Core Strategy seeks public art in schemes costing in excess of £1million and the inspector recognised that such provision can make an important contribution to the public realm. Furthermore, the appellant has not indicated any objection to this requirement and so the inspector considered there was no reason to conclude that the requirements of the Development Plan should not apply in this case.

#### Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. All external dimensions and elevational treatments shall be as shown on the approved plans (listed below) with the exception of any approved non material amendment.
  - PG.218516.LOC – Site Location Plan
  - PG.218516.101D Planning Layout
  - PG.218516.102D Landscaping Masterplan
  - PG.218516.103C Site Sections
  - PG.218516.104A Survey Block Plan Overlay
  - PG.218516.111B Type B Proposed Plans
  - PG.218516.112 Type C Proposed Plans
  - PG.218516.113 Type D Proposed Plans
  - PG.218516.115B Courtyard Block Elevations
  - PG.218516.116B Courtyard Block Elevations
  - PG.218516.119 Site Frontage Railings
  - PG.218516.SS Indicative Streetscene Visuals (1-5)
  - 21620\_OGL-REV0 – Topographical Survey
  - TSC 01B Tree Survey
  - TSC 02B Tree Constraints Plan
  - TSC 03C Tree Protection Plan
  - TSC 04A Landscape Masterplans
  - PG.218516.DA Rev A - Design & Access Statement
  - Ecology Scoping Survey (prepared by Prime Environment) dated December 2016 and a Bat Climbing Inspection.



- Phase 2 Geotechnical and Geo-environmental Site Investigation Report (prepared by Eastwoods & Partners) dated December 2016
  - Arboricultural Method Statement – Nov 2016
3. No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and,
  - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
4. None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.

5. Development shall not commence until details as specified in this condition have been submitted to the Local Planning Authority for consideration and those details, or any amendments to those details as may be required, have received the written approval of the Local Planning Authority.
  - I. A site investigation/Phase 2 report where the previous use of the site indicates contaminative uses. The site investigation/Phase 2 report shall document the ground conditions of the site. The site investigation shall establish the full extent, depth and cross-section, nature and composition of the contamination. Ground gas, groundwater and chemical analysis, identified as being appropriate by the desktop study, shall be carried out in accordance with current guidance using UKAS accredited methods. All technical data must be submitted to the Local Planning Authority.
  - II. A detailed scheme of remedial works should the investigation reveal the presence of ground gas or other contamination. The scheme shall include a Remediation Method Statement and Risk Assessment Strategy to avoid any risk arising when the site is developed or occupied.
  - III. If, during remediation works any contamination is identified that has not been considered in the Remediation Method Statement, then additional remediation proposals for this material shall be submitted to the Local Planning Authority for written approval. Any approved proposals shall thereafter form part of the Remediation Method Statement.
  - IV. The development hereby approved shall not be occupied until a written Validation Report (pursuant to A II and A III only) has been submitted to and approved in writing by the Local Planning Authority. A Validation Report is required to confirm that all remedial works have been completed and validated in accordance with the agreed Remediation Method Statement.

- V. In the event it is proposed to import soil onto site in connection with the development the proposed soil shall be sampled at source and analysed in a MCERT certified laboratory, the results of which shall be submitted to the Local Planning Authority for consideration. Only the soil approved in writing by the Local Planning Authority shall be used on site.
6. No development shall take place including any works of demolition until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for but not necessarily be restricted to the following as appropriate
- parking of vehicles of site operatives and visitors
  - routes for construction traffic
  - hours of operation
  - method of prevention of debris being carried onto highway
  - pedestrian and cyclist protection
  - proposed temporary traffic restrictions
  - arrangements for turning vehicles
7. Work shall only be carried out on site between 8:00am and 6:00pm Monday to Friday, 9:00am to 5:00pm on a Saturday and no work on a Sunday or Public Holiday. The term "work" will also apply to the operation of plant, machinery and equipment.
8. No dwelling shall be occupied until space has been laid out within the site in accordance with approved planning layout for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear.
9. The garages hereby permitted and car parking spaces to be provided shall be kept available for the parking of motor vehicles at all times. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and/or re-enacting that Order) the garage/car parking spaces hereby permitted shall be retained as such and shall not be used for any purpose other than that associated with the residential occupation of

the property without the grant of further specific planning permission from the Local Planning Authority.

10. The proposed access to Newbold Road shall be no steeper than 1:30 for the first 10m from the nearside highway boundary and 1:12 thereafter. Individual drives shall not exceed a maximum longitudinal gradient of 1:14. A vehicular dropped crossing shall be retained at the site entrance.
11. No part of the development shall be occupied until details of arrangements for storage of bins and collection of waste have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the agreed details and the facilities retained for the designated purposes at all times thereafter.
12. No development shall be commenced until details of the proposed arrangements for future management and maintenance of the proposed streets within the development have been submitted to and approved by the local planning authority.
13. Development shall not commence (including any site clearance/preparation) until a further bat survey of T17 has been undertaken (in accordance with recommendations within the Ecology Scoping Survey (Section 3 Results and Discussion) and the results submitted to the Local Planning Authority for written approval. Only once the survey / report has been considered by the Local Planning Authority and its written approval has been given shall any works (which may include necessary mitigation works) commence on site and the works shall be completed exclusively in accordance with the scheme receiving written approval.
14. No removal of vegetation that may be used by breeding birds shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to the local planning authority.

15. Prior to the commencement of development a detailed lighting strategy shall be submitted to and approved in writing by the LPA. Such approved measures must be implemented in full and maintained thereafter.
16. Prior to the commencement of development a detailed enhancement strategy that provides details of enhancement measures for roosting bats and nesting birds shall be submitted to and approved in writing by the LPA. Such approved measures must be implemented in full and maintained thereafter.
17. Under Tree Preservation Order 4901.133 Trees T1, T5, T6 & T10 Purple Beech and T3 & T8 Whitebeam shall be retained; furthermore in the first available planting season prior to any development commencing Trees T11 and T12 of the same Order shall be translocated to the frontage of the site as shown in drawing TSC04 Rev A Landscape Master Plan and Planting Details by Weddle Landscape Design and detailed in the Arboricultural Method Statement Nov 2016. If either of these two trees fail during transplanting two new heavy standard Oak trees shall be planted as their replacements as shown in drawing TSC04 Rev A Landscape Master Plan and Planting Details by Weddle Landscape Design / detailed in the Arboricultural Method Statement Nov 2016 and thereafter maintained under the terms and provisions of the aforementioned Order.
18. Prior to development commencing (including site clearance / demolition) the Root Protection Area's (RPAs) illustrated on drawing no. TSC03 Rev C Tree Protection Plan by Weddle Landscape Design and as detailed in the Arboricultural Method Statement Nov 2016 shall be established to all retained protected trees within the application site boundary. Protective fencing to define these RPAs shall be erected conforming to BS 5837 'Trees in Relation to Design, demolition and construction - Recommendations' 2012) during site clearance and while any construction is in progress and notices should be attached to the fencing at regular intervals to this effect. There must be no excavations, no soil stripping and no grading of the site within the RPAs and there should also be no storage of materials within the RPAs.

19. Removal of any hard surfacing, boundary walls, retaining walls and services within the defined Root Protection Areas (RPAs) shall be undertaken strictly in accordance with the Arboricultural Method Statement Nov 2016. The removal of any existing hard surfaces within the RPAs shall be carried out without the use of any heavy machinery and care must be taken not to disturb tree roots that may be present beneath it. Hand held tools or appropriate machinery shall be used to remove the existing surfaces unless prior written approval is sought in writing by the Local Planning Authority.
20. Prior to the commencement of development details of the location of site cabins, materials, construction vehicles and parking shall be submitted to the Local Planning Authority for consideration and written approval; and these should be outside the Root Protection Areas of the retained trees.
21. Within 2 months of commencement of development, full details of hard and soft landscape works for the approved development shall be submitted to the Local Planning Authority for consideration. The hard landscaping scheme shall take account of any established root protection areas to retained trees on site and may require alternative measures of construction and finishes to be considered (as detailed in the Arboricultural Method Statement Nov 2016 – or any subsequent revisions thereto). Hard landscaping includes proposed finished land levels or contours; means of enclosure; minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.) retained historic landscape features and proposals for restoration, where relevant. These works shall be carried out as approved prior to the occupation of the dwelling.
22. Before construction works commence or ordering of external materials takes place, precise specifications or samples of the walling and roofing materials to be used shall be submitted to the Local Planning Authority for consideration. Only those materials approved in writing by the Local Planning Authority shall be used as part of the development.

23. Notwithstanding the provision of the Town and Country Planning (General Permitted) Development Order 1995 (as amended) there shall be no extensions, outbuildings or garages constructed (other than garden sheds or greenhouses of a volume less than 10 cubic metre) or additional windows erected or installed at or in the dwelling hereby approved without the prior written agreement of the Local Planning Authority.
24. Prior to development commencing an Employment and Training Scheme shall be submitted to the Local Planning Authority for consideration and written approval. The Scheme shall include a strategy to promote local supply chain, employment and training opportunities throughout the construction of the development.
25. The development hereby approved shall include the provision of appropriate infrastructure to enable the dwellings to have high speed broadband, in accordance with details to be submitted to, and approved in writing, by the Local Planning Authority.