

## **APPENDIX B**

### **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. The appellant sought to recover costs on the appeal and the application for an award of costs is allowed in the terms set out below.
3. *Planning Practice Guidance* advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The appellant considered that the Council acted unreasonably in refusing the application and contends that they also failed to adequately substantiate their case at appeal.
4. The Council's concerns related to the removal of trees from the site, and the effect this would potentially have on the character and appearance of the area. Particular concerns were expressed in relation to the removal of 2 trees known as T15 and T17 on the Tree Preservation Order. The application was a resubmission of a previous scheme which was the subject of an appeal decision. The Inspector for the previous appeal found that these trees afforded "*limited amenity from*

*public vantage points due to their set back position within the site....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”.*

5. The scheme which is the subject of this appeal comprises the previous layout, with the omission of a dwelling to the front of the site, which led the previous Inspector to have concerns in relation to the effects of the proposal on other protected trees to the front of the site. As such, the impact on the trees in question, T15 and T17, had already been effectively considered by the previous Inspector. The inspector noted that the Council Officer’s advice to Committee Members reflected this and that this was in line with the advice of the Council’s own Tree Officer.
6. Planning Committee Members are not bound to accept the recommendations of their officers. Nevertheless, reasons for refusal should be substantiated and based on relevant evidence. In this regard the officer’s report to committee highlighted to Members the need to take account of all material considerations, including the findings of the planning Inspector for the previous appeal. Notwithstanding this, the Committee refused the proposal, based on the visual effects of the loss of trees which the previous Inspector had already concluded could be removed.
7. In seeking to substantiate the refusal the Council advised that Members considered that compensatory landscaping, secured by condition, would be insufficient to allay their concerns. However, this is in direct contradiction of the findings of the previous Inspector, who considered that the removal of T15 and T17 would not be harmful subject to appropriate tree replacement and landscape planting within the site. In short, the issue on which the Council refused the proposal had effectively been considered by the previous appeal Inspector who found it to be acceptable.
8. *Planning Policy Guidance* is clear that an LPA can be considered to have acted unreasonably if they persist in objections to a scheme, or elements of a scheme, which an Inspector has previously indicated to be acceptable. In refusing the application, and failing to take account of the

previous appeal decision for the site, the Council acted unreasonably by delaying development which could clearly have been approved and that the whole appeal process should have been avoided. Accordingly, all of the costs associated with the appeal, including those of employing a professional adviser, were unnecessary.

9. The inspector therefore found that unreasonable behaviour resulting in unnecessary expense, as described in the Planning Practice Guidance, had been demonstrated and that a full award of costs is justified.

### **Costs Order**

10. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Chesterfield Borough Council shall pay to Peppermint Grove Ltd, the costs of the appeal proceedings described in the heading of this decision.
11. The applicant is now invited to submit to Chesterfield Borough Council, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is provided.