

## Appendix A

### Appeal by Dr C Martin

#### Felling Protected Tree at Lodge Cottage, 2 Somersal Lane, Chesterfield.

#### CHE/21/00527/TPO

1. Planning permission was refused on 31<sup>st</sup> August 2021 for felling a protected Lime tree at 2 Somersall Lane for the following reasons:
  - Tree not unreasonably burdensome;
  - No evidence of damage to property;
  - The tree is in sound condition and has good amenity value.
  
2. An appeal against the decision has been determined by the written representation appeal method and has been dismissed. The main issues were:
  - i) whether the proposed felling would preserve the Grade II listed Lodge and its setting,
  - ii) whether it would preserve or enhance the character or appearance of the Somersall Conservation Area (SCA), and
  - iii) whether sufficient justification for the felling has been given.
  
3. Number 2 Somersall Lane is one of a pair of early 19th century lodges that marked the entrance to the drive of Somersall Hall when it was the focal point of a landed estate on the western edges of Chesterfield. Each lodge is a single storey stucco building with a hipped stone slate roof and central stack. The inspector concluded that No 2's significance arises from its intact historic fabric, its modest scale and appearance at the junction of the former drive and Chatsworth Road, and its spatial relationship with the lodge located on the opposing corner.
  
4. The extents of the SCA include the full length of the drive from the lodges, the extended Somersall Hall which dates from the 17th century, and areas of later and very low density detached housing on the western side of Somersall Lane. One of the

SCA's key characteristics appears to be its mature tree cover, as there are large and established trees lining both sides of the former drive and also populating nearby gardens. The inspector concluded that the significance of the SCA is derived from its low density building pattern, the historic fabric of the Hall and its gate houses, and the verdant character afforded by mature trees.

5. There is also a significant presence of mature trees within the street scene on the southern side of Chatsworth Road in the vicinity of the junction with Somersall Lane. However, the appeal tree is relatively isolated and is viewed as a single specimen. It stands around 18 metres tall, with a reasonably symmetrical and fairly narrow canopy above a forked stem, and although there is evidence of former crown lifting, it has retained an attractive and natural form. It is very close to No 2's boundary with Chatsworth Road and section of the stone boundary wall has had to be removed to accommodate its growth.
6. The inspector concluded that the Lime tree is highly visible in the street scene and makes a positive contribution to the SCA and the street scene, both individually and collectively. He gave this contribution moderate weight with regard to the SCA, and visual amenity more generally in the wider area. He commented that there was nothing before him to indicate that the Lime tree has particular value with regard to the significance of No 2 or its setting.
7. The application states that the Lime tree is too close to the house and that the concerns of the owner are not outweighed by its amenity value, which it is argued, is relatively low. The form also states that there are no concerns that the tree might fall or break, or that it is causing damage to property. It was accompanied by a report from an arboriculturalist who had examined the tree in 2010. The 2010 report concluded that the tree was too close to the building and that it would be sensible to remove it. However, the report also states that the report's author was unable to find any evidence of the tree disturbing No 2's fabric. Although small cracks were noted in the outbuilding in 2021, there was nothing that justified further investigation.

8. The inspector appreciated that best practice would preclude planting a tree of this size this close to a building. However, as noted above, there is no evidence that the tree is causing damage to No 2 or that it is likely to do so in the future. Nor is it clear why the tree is causing trepidation to No 2's current occupier, who has recently moved into the premises and who would have been aware of its proximity and size at the time. Moreover, there was nothing before the inspector to indicate that the tree is diseased or lacks structural integrity.
9. Although the inspector acknowledged that mature trees in proximity to dwellings can be inconvenient, it is often the presence of such trees that make an area particularly attractive. Furthermore, although in this case inconvenience and trepidation are referred to, no further details are given.
10. Consequently, the inspector was unable to conclude that there are sufficient reasons of such weight to warrant felling a tree which makes a positive contribution to the SCA and the street scene generally. Paragraph 131 of the National Planning Policy Framework which states that existing trees are to be retained wherever possible, reinforced the inspectors reasoning in this regard.

*Other matters*

11. One of the grounds for appeal is that the Council had not followed government guidance, had not undertaken an amenity valuation and had misused the TEMPO appraisal system. These reasons were not advanced at application and as the appellant had opted for the fast track procedure they were not taken into account at appeal. However the Council forwarded a copy of its TEMPO evaluation, dated August 2021. The appellant advanced the argument that the tree is clearly outgrowing its context which would reduce the overall score. However, given the appeal tree's high and relatively narrow canopy, and on the basis of what was before the inspector he disagrees that the Lime tree had clearly outgrown its context. The inspector appreciated that there might be more up to date versions of TEMPO but these were not before him and in any case, his reasoning was based on his observations at the visit. Furthermore, the inspector had to proceed on the basis that the tree is protected, as to do otherwise is outside the remit of the appeal process.

12. The appellant suggested that *Acer rubrum* could be planted in a different part of No 2's garden as a replacement if the appeal was to be allowed. However, in the inspectors experience this is a fast-growing tree, which would ultimately reach a similar size to that of the appeal tree. Moreover, No 2 has a very modest garden and it is very difficult to see where a tree of stature could be located without future pressure arising in terms of overshadowing, oversailing or proximity to the dwelling and as such, the inspector gave this suggestion very little weight.

### **Conclusion**

13. The Lime tree makes a moderately positive contribution to the character and appearance of the SCA and the wider area, and there is insufficient justification for felling. The appeal is dismissed.