

Report of Director of Planning and Transport

23A Private Road

1 Summary

Application No: 23/01001/PFUL3 for planning permission

Application by: Michael Flint-Bush

Proposal: Use of unadopted adjacent land to be maintained as an extension to outdoor amenity space and construction of close boarded timber fencing to existing shared boundaries where required.

The applications are brought to Committee as they have raised significant local interest.

To meet the Council's Performance Targets the applications should be determined by 24th October 2024.

2 Recommendations

GRANT PLANNING PERMISSION subject to conditions substantially in the form listed in the draft decision notice at the end of this report, with power to determine the final details of the conditions to be delegated to the Director of Planning and Transport.

3 Background

- 3.1 23A Private Road is a detached dwelling accessed via a long driveway that runs alongside Yew Close. Bounding 23A Private Road to the north (rear) are Mapperley Street and a footpath / driveway which is a historic continuation of Mapperley Street running along the rear of houses on Private Road. It is evident that Mapperley Street and its continuation once provided access to the rear and coach houses / stables of the large Private Road properties. Mapperley Street is adopted highway up to its junction with Hood Street. Land Registry records indicate that some of the Mapperley Street continuation is owned by houses on Private Road with the two application sites of relevance in this instance having no ownership. The Mapperley Park and Alexandra Park Conservation Area boundary runs along Mapperley Street and its continuation. The surrounding area largely comprises a mix of detached and semi-detached dwellings.
- 3.2 Planning permission was granted in 2021 (ref. 21/00322/PFUL3) for the construction of new dwelling on the land which forms the continuation of Mapperley Street to the north of 23A Private Road.
- 3.3 In 2021, 27 Mapperley Street received planning permission for 'Use of unadopted adjacent land as extensions to driveway and garden; associated earthworks, removal of section of brick boundary wall and erection of 2m high timber fencing.' (21/01414/PFUL3). This permission has been implemented.

4 Details of the proposal

- 4.1 This application relates to a piece of land further along the Mapperley Street continuation, to the east (rear) of the new house and to the north of 3 Yew Close.
- 4.2 The application seeks planning permission to use this piece of land as garden space for the new dwelling with a close boarded timber fence constructed along the boundary with 27 Mapperley Street, the house to the north. A footpath would be retained through this land, as is the case with the new house being built. There is no known public right of way over this land.
- 4.3 The applicant has placed a notice in the local press under Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This states that "...an applicant for planning permission must give requisite notice of the application to any person (other than the applicant) who on the prescribed date is an owner of the land to which the application relates, or a tenant -
- (a) by serving the notice on every such person whose name and address is known to the applicant; and
 - (b) where the applicant has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by publication of the notice after the prescribed date in a newspaper circulating in the locality in which the land to which the application relates is situated.

5 Consultations and observations of other officers

Adjoining occupiers consulted:

Thirteen neighbours notified. The application was also advertised by site notice and press advert due to the potential impact on the conservation area.

6 objections have been received from 4 local residents, objecting on the following grounds:

- Loss of biodiversity
- Any development on the land (being higher than the adjacent land to the north) would overlook neighbour and result in loss of privacy
- No Tree Survey has been carried out
- No detail of how the land will be maintained is included in application
- Land in question has been maintained by a neighbour since September 2022
- Neighbours have a right of way over the land

A number of objections also contained objections to 23/01000/PFUL3 which are not relevant to this application (highway safety, parking issues, damage to adopted highway, disruption to bin collections, loss of vehicle access rights)

Additional consultation letters sent to:

Highways: The proposal for the area of unadopted land is unlikely to be detrimental to the public highway. The area of land is set back a considerable distance from the nearest public highway (junction of Mapperley Street and Hood Street), and this area of land is not adopted public highway. There is no known public right of way.

Environmental Health and Safer Places: potentially a contaminated land issue in relation to the garden area from the historic road at the site. Recommend a condition for Site Investigation and Remediation.

6 Relevant policies and guidance

National Planning Policy Framework (NPPF) (December 2023)

The NPPF advises that there is a presumption in favour of sustainable development and that applications for sustainable development should be approved where possible. Paragraph 131 notes that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Paragraph 135 of the NPPF states that planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;

b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;

- c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Aligned Core Strategies (ACS) (2014)

Policy A: Presumption in Favour of Sustainable Development
 Policy 10: Design and Enhancing Local Identity
 Policy 11: The Historic Environment

Land and Planning Policies (LAPP) (2020)

Policy DE1: Building Design and Use
 Policy DE2: Context and Place Making
 Policy HE1: Proposals Affecting Designated and Non-Designated Heritage Assets

 Policy IN2: Land Contamination, Instability and Pollution

7. Appraisal of proposed development

Main Issues

- (i) Principle of the development
- (ii) Design and impact on the street scene and conservation area
- (iii) Impact on neighbours
- (iv) Other matters

(i) Principle of the development

- 7.1 The application site is located within a predominantly residential area. The change in use of land to allow it to be used as part of the residential curtilage of the new dwelling is therefore acceptable in principle. It should be noted in this regard that the process of obtaining planning permission is separate from the question of ownership, or any private rights that may exist over the land. A grant of planning permission does not override any such private rights or confer any legitimacy to any claims regarding ownership. In this case, the applicant has completed the requisite procedures for applying for planning permission on land where the ownership is not known, and the council is obliged to determine the application on its planning merits.

(ii) Design and Impact on the streetscene and conservation area (Policies 10

and 11 of the ACS and Policies DE1, DE2 and HE1 of the LAPP)

- 7.2 The application site would not be visible from the street scene and it is not considered that the proposed change in use would have any adverse impact upon the character or appearance of the Conservation Area. It is therefore considered the proposal complies with Policies 10 and 11 of the ACS and Policies DE1, DE2 and HE1 of the LAPP.

(iii) Impact on neighbours (Policy 10 of the ACS and Policy DE1 of the LAPP)

- 7.3 The application site is at a higher ground level than the rear gardens of 6 Hood Street and 2-8 Fairbank Crescent to the north. Due to the overgrown nature of the site, the exact change in ground level is not currently known. The agent has agreed to a condition that prior to the first use of the land as residential curtilage, plans showing the change in ground level, along with fence details, shall be submitted for approval. This will ensure that a fence of a suitable height to prevent overlooking can be installed at the site. It is therefore considered the proposal will not have a significant negative impact on neighbour amenity and complies with Policy 10 of the ACS and Policy DE1 of the LAPP.

(iv) Other matters

- 7.4 Environmental Health have stated that due to the historic use of the site as a road, there may be contamination. As the proposed development involves changing the use of the land to residential curtilage, a site investigation should be undertaken with a Remediation Strategy proposed, if necessary. These can be conditioned and it is considered this is sufficient to satisfy Policy 10 of the ACS and Policy IN2 of the LAPP.

8. Sustainability / Biodiversity

None.

9. Financial Implications

None.

10. Legal Implications

The issues raised in this report are primarily ones of planning judgement. Should legal considerations arise these will be addressed at the meeting.

11. Equality and Diversity Implications

None.

12. Risk Management Issues

None.

13. Strategic Priorities

None.

14. Crime and Disorder Act implications

None.

15. Value for money

None.

16. List of background papers other than published works or those disclosing confidential or exempt information

1. Application No: 23/01001/PFUL3 - link to online case file:

<https://publicaccess.nottinghamcity.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RVVCG4LYIU800>

17. Published documents referred to in compiling this report

Aligned Core Strategies – Local Plan Part 1 (2014)

Land and Planning Policies – Local Plan Part 2 (2020)

NPPF (2021)

Strategic Council Plan 2024-27 refresh

Contact Officer:

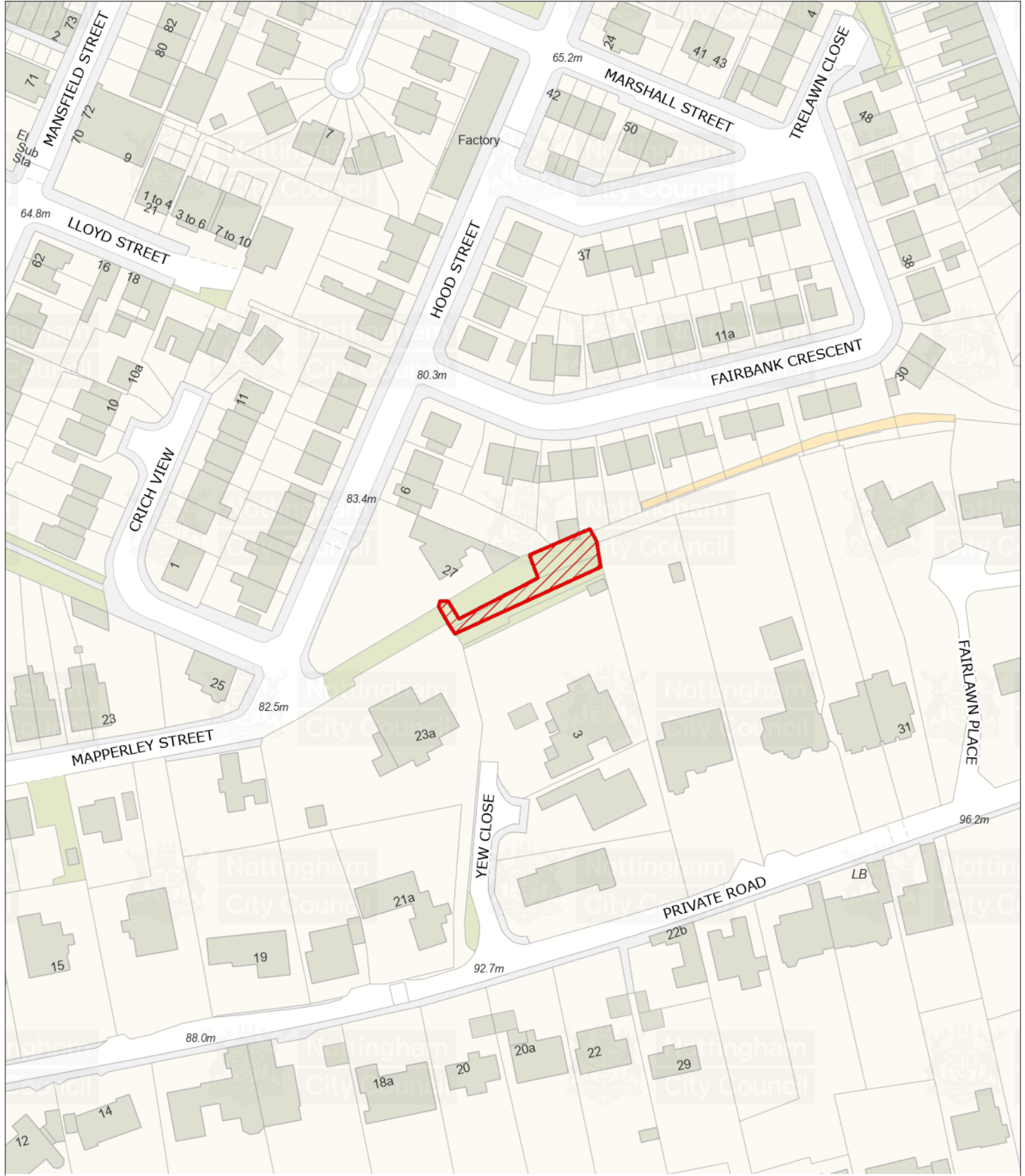
Katherine Lowe, Case Officer, Development Management.

Email: katherine.lowe@nottinghamcity.gov.uk Telephone: 0115 8762435

Site Location Plan (Not to scale)

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Land at Mapperley Street



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0 0.03 0.05 km

Key



City Boundary



Planning Applications - Polygons

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Description

23/01001/PFUL3



Nottingham
City Council

My Ref: 23/01001/PFUL3 (PP-12216817)

Your Ref:

Contact: Miss Katherine Lowe

Email: development.management@nottinghamcity.gov.uk



**Nottingham
City Council**

Development Management
City Planning
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NG2 3NG

Tel: 0115 8764447
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Mr Harry Sculthorp
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Hucknall Road
Sherwood
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Date of decision:

**TOWN AND COUNTRY PLANNING ACT 1990
APPLICATION FOR PLANNING PERMISSION**

Application No: 23/01001/PFUL3 (PP-12216817)
Application by: Mr Michael Flint-Bush
Location: 23A Private Road, Nottingham, Nottingham City
Proposal: Use of unadopted adjacent land to be maintained as an extension to outdoor amenity space and construction of 1.8m high close boarded timber fencing to existing shared boundaries where required.

Nottingham City Council as Local Planning Authority hereby **GRANTS PLANNING PERMISSION** for the development described in the above application subject to the following conditions:-

Time limit

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: In accordance with Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Pre-commencement conditions

(The conditions in this section require further matters to be submitted to the local planning authority for approval before starting work)

2. Prior to the commencement of the development, a Remediation Strategy that includes the following components to deal with the risks associated with ground and groundwater contamination of the site shall be submitted to and be approved in writing by the Local Planning Authority:
 - a) A Preliminary Risk Assessment which has identified:
 - i) all previous site uses
 - ii) the nature and extent of potential contaminants associated with those uses
 - iii) the underlying geology of the site
 - iv) a conceptual model of the site indicating sources, pathways and receptors
 - v) potentially unacceptable risks arising from ground and groundwater contamination at



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the site.

- b) A Site Investigation, based on a) above, and a detailed assessment of the risk to all receptors that may be affected, including those off site.
- c) A Remediation Plan, based on a) and b) above, giving full details of the remediation measures required and how they are to be undertaken (including a contingency plan for dealing with any unexpected contamination not previously identified in the Site Investigation).
- d) A Verification Plan providing details of the data that will be collected in order to demonstrate that the works set out in c) above are complete.

The Remediation Strategy shall be carried out in accordance with the approved details unless varied with the express written approval of the Local Planning Authority.

Reason: To ensure any potential contamination is investigated and mitigated in the interests of future occupier amenity and to comply with Policy IN2 of the LAPP.

Pre-occupation conditions

(The conditions in this section must be complied with before the development is occupied)

- 3. Prior to first occupation of the development, the following shall be submitted to and be approved in writing by the Local Planning Authority:

A Verification Report, which shall include the data referred to in the Verification Plan, to demonstrate that the approved Remediation Strategy to deal with ground and groundwater contamination of the site has been fully implemented and completed.

Reason: To ensure any potential contamination is mitigated in the interests of future occupier amenity and to comply with Policy IN2 of the LAPP.

- 4. Prior to the first use of the land as residential curtilage, a plan showing the existing ground levels in relation to the properties and gardens to the north of the site and proposed fence details shall be submitted to the Local Planning Authority for approval. The fence shall then be installed in accordance with the approved plans, prior to the first use of the land as residential curtilage.

Reason: To protect the amenities of the occupiers of nearby property to comply with Policy 10 of the ACS and Policy DE1 of the LAPP

Regulatory/ongoing conditions

(Conditions relating to the subsequent use of the development and other regulatory matters)

There are no conditions in this section.

Standard condition- scope of permission

- S1. Except as may be modified by the conditions listed above, the development shall be carried out in complete accordance with the details described in the forms, drawings and other documents comprising the application as validated by the council on 13 September 2023.

Reason: To determine the scope of this permission.

Informatives

1. The reason for this decision, and a summary of the policies the local planning authority has had regard to are set out in the committee report, enclosed herewith and forming part of this decision.

2. This permission is valid only for the purposes of Part III of the Town & Country Planning Act 1990. It does not remove the need to obtain any other consents that may be necessary, nor does it imply that such other consents will necessarily be forthcoming. It does not override any restrictions contained in the deeds to the property or the rights of neighbours. You are advised to check what other restrictions there are and what other consents may be needed, for example from the landowner, statutory bodies and neighbours. This permission is not an approval under the Building Regulations.

3. The Remediation Strategy (including its component elements) must be undertaken and implemented in accordance with the Environment Agency's Land Contamination Risk Management guidance published at <https://www.gov.uk/government/publications/land-contamination-risk-management-lcrm>, CIRIA C735 Good Practice on the Testing & Verification of Protection Systems for Buildings Against Hazardous Ground Gases (2014)' and other authoritative guidance. The Remediation Strategy must also provide details of:

- 'Cut and fill' operations on site
- How trees retained on site will be dealt with
- How compliance with the requirements of the Nottingham City Council - Guidance on Cover Layers & Verification Testing 2019 will be achieved
- Any asbestos surveys carried out, the method statement for removal of asbestos and subsequent validation of air and soil following asbestos removal and demolition.

Following completion of the development, no construction work, landscaping or other activity must be undertaken which may compromise the remediation measures implemented to deal with ground and groundwater contamination of the site.

It is a requirement of current Building Regulations that basic radon protection measures are installed in all new constructions, extensions conversions & refurbishments on sites which are Radon Class 3 or 4 and full radon protection measure are installed on site which are Radon Class 5 or higher. Advice from the Council's Environmental Health Team regarding appropriate gas protection measures must be sought where there are both radon issues and ground gas issues present.

The responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or the landowner. The developer is required to institute a thorough investigation and assessment of the ground conditions, nature and degree of contamination on the site to ensure that actual or potential risks to public health and safety can be overcome by appropriate remedial, preventive or precautionary measures. The developer shall provide at his own expense such evidence as is required to indicate clearly that the risks associated with ground, groundwater and ground gas contamination of the site has been addressed satisfactorily.

Where a condition specified in this decision notice requires any further details to be submitted for approval, please note that an application fee will be payable at the time such details are submitted to the City Council. A form is available from the City Council for this purpose.

Your attention is drawn to the rights of appeal set out on the attached sheet.

RIGHTS OF APPEAL

Application No: 23/01001/PFUL3 (PP-12216817)

If the applicant is aggrieved by the decision of the City Council to impose conditions on the grant of permission for the proposed development, then he or she can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

Any appeal must be submitted within six months of the date of this notice. You can obtain an appeal form from the Customer Support Unit, The Planning Inspectorate, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Phone: 0117 372 6372. Appeal forms can also be downloaded from the Planning Inspectorate website at <http://www.planning-inspectorate.gov.uk/pins/index.htm>. Alternatively, the Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal - see www.planningportal.gov.uk/pes.

The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay.

The Secretary of State need not consider an appeal if the City Council could not for legal reasons have granted permission or approved the proposals without the conditions it imposed.

In practice, the Secretary of State does not refuse to consider appeals solely because the City Council based its decision on a direction given by him.

PURCHASE NOTICES

If either the City Council or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. This procedure is set out in Part VI of the Town and Country Planning Act 1990.

COMPENSATION

In certain limited circumstances, a claim may be made against the City Council for compensation where permission is refused or granted subject to conditions by the Secretary of State. The circumstances in which compensation is payable are set out in Section 114 of the Town & Country Planning Act 1990.

STREET NAMING AND NUMBERING

Nottingham City Council has a statutory responsibility for agreeing and registering addresses. If the development will create one or more new addresses or streets (for example a new build or conversion) please contact address.management@nottinghamcity.gov.uk as soon as possible,



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quoting your planning application reference. Any addresses assigned outside of this process will not be officially recognised and may result in difficulties with service delivery.

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