

REPORT OF CHIEF PLANNER

24 Victoria Crescent, Nottingham

1 SUMMARY

Application No: 17/02515/PFUL3 for planning permission

Application by: GDB Design on behalf of Mr J Afsar

Proposal: Timber gazebo adjacent boundary and new 1.8m high brick boundary wall (part retrospective).

The application is brought to Committee because it is considered to be sensitive.

To meet the Council's Performance Targets this application should have been determined by 8th January 2018. An extension of time agreement is in place.

2 RECOMMENDATIONS

1. **REFUSE PLANNING PERMISSION** for the reasons set out in the draft decision notice at the end of this report.
2. That it is expedient to take enforcement action under section 172 of the Town and Country Planning Act 1990, including prosecution if necessary, to secure the removal of the structure, or its reduction in height to bring it within the parameters of permitted development.

3 BACKGROUND

- 3.1 The application relates to 24 Victoria Crescent, a detached house located within the Mapperley Park/Alexandra Park Conservation Area. The site is located on the east side of Victoria Crescent and adjoins Private Road to the rear (northeast). A footpath runs alongside the south east (side) boundary of the site, although it is noted that this has been gated at both ends and does not provide a public right of way. The southern side boundary is shared with no. 22 Victoria Crescent.
- 3.2 The property stands in an elevated position above Victoria Crescent and the garden to the rear is further elevated. Overall, the garden of the application site is approximately 3m higher than that of the adjacent property to the north (no. 28 Victoria Crescent).
- 3.3 A timber gazebo was erected to the rear of the property in 2016. The gazebo stands at a height of approximately 2.8m when measured from ground level adjacent to the northern boundary. It therefore exceeds the maximum height allowance of 2.5m for outbuildings built under permitted development and as such requires planning permission. The structure was brought to the attention of the Local Planning Authority in September 2016 and discussions have since been ongoing with the applicant. The current application was submitted in November

2017 and seeks to retain the gazebo as built. It also proposes some additional screening in the form of a planter box with shrubs, on top of the existing timber enclosure along the northern perimeter of the gazebo.

4 DETAILS OF THE PROPOSAL

The application seeks permission to retain the Timber Gazebo to the rear of the property as described above. The gazebo is approximately 5.5m in length and has a timber roof standing at a height of approximately 2.8m when measured from ground level adjacent to the north side boundary (within the application site). The gazebo includes a timber deck which extends beyond the area of the gazebo, towards the house and is enclosed by a timber balustrade. This element of the structure, if considered in isolation, would not require planning permission because it is not more than 0.3m above the original ground level. The gazebo itself has been erected on the site of a former patio. It is proposed to add a planter box along the top of the existing 1.3m high timber enclosure to the northern boundary as a means of screening. Permission is also sought for a new 1.8m high brick wall along the south and southeast boundaries.

5 CONSULTATIONS AND OBSERVATIONS OF OTHER OFFICERS

Adjoining occupiers consulted:

Notification letters were sent to the following addresses:
11, 22 and 28 Victoria Crescent
62 and 65 Private Road

The application was also advertised by a site notice and a press advertisement

One letter of representation has been received, raising the following objections to the development:

- The structure was built when no. 28 Victoria Crescent was empty and the occupiers did not see the development to challenge it during construction.
- The structure overlooks the garden of no 28 Victoria Crescent and into the rooms with windows in the elevation which include bedrooms and a kitchen
- The structure is unsightly and appears unfinished
- It is questionable as to whether the structure would comply with Building Regulations
- The structure stands at a distance of 13 metres from the south west elevation of 28 Victoria Crescent
- No provision for the drainage of rain water has been included on the structure
- The public footpath adjacent no. 24 has been gated and locked off by number 24. There is reason to believe this is a public right of way.

Additional consultation letters sent to:

Pollution Control: No objection.

6 RELEVANT POLICIES AND GUIDANCE

Nottingham Local Plan (November 2005):

BE12 – Development in Conservation Areas

Greater Nottingham Aligned Core Strategies (September 2014)

Policy 10 – Design and Enhancing Local Identity

Policy 11 – The Historic Environment

7. APPRAISAL OF PROPOSED DEVELOPMENT

Main Issues

- (i) Impact on Residential Amenity
- (ii) Design and impact on the character and appearance of the Mapperley Park/Alexandra Park Conservation Area
- (iii) Impact on Trees

Issue (i) Impact on Residential Amenity (Policy 10 of the Aligned Core Strategies)

- 7.1 The timber gazebo stands adjacent to the north side boundary of the site, which adjoins the garden of 28 Victoria Crescent. The applicant has claimed that the gazebo has no greater impact upon the adjacent property than the previous slabbed patio due to the natural level difference between the properties. It is acknowledged that there is a natural level difference between the properties and this does amount to a degree of overlooking from the application site towards the property at Victoria Crescent. However, it is considered that the nature of the use of a purpose built, covered structure is different to that of an area of surfaced garden. The gazebo provides a defined and specific area for use by the occupiers of the property, which could include the gathering of people and the positioning of outdoor furniture, which in itself is likely to intensify the use of the space. The fact that the gazebo has a solid roof structure means that it could be used in all weather conditions. This intensification of the use of this part of the garden exacerbates the overlooking of and loss of privacy experienced by the occupiers of, the adjacent property.
- 7.2 The applicant was advised that a solid screen of a minimum height of 1.8m (measured from the deck) along the northern edge of the gazebo would prevent this overlooking and reduce the impact upon the amenities of the adjoining occupiers. Plans to demonstrate how this could be achieved were sought, but the applicant has advised that they do not wish to implement the recommended screening. The applicant argues that the screening already in place, together with the proposed planter, will be sufficient to prevent overlooking. However, it is not considered that this would create a screen of sufficient height or solidity to prevent overlooking of the adjacent property.
- 7.3 The applicant has highlighted the fact that if the structure were to be lowered to a height of 2.5m, it would fall within the parameters of permitted development. The applicant therefore argues that the additional height of 0.3m does not have any

significant additional impact. It is acknowledged that the lowering of the gazebo to a height of 2.5m would in fact bring the structure within the parameters of permitted development. The applicant has been advised of this and provided with an option to lower the structure and withdraw the current planning application. However, as the applicant has chosen to proceed with the application, it must be assessed in its current form. It is considered that the gazebo, as built and in the absence of a solid screen along the northern perimeter, has a detrimental impact upon the amenities of the adjacent property as it gives rise to significant overlooking and loss of privacy. This is a material consideration in the determination of the planning application. Given that the structure in its current form requires planning permission, the Local Planning Authority has a duty to consider the impact upon residential amenity when forming a decision. In this instance, the impact on residential amenity is considered unacceptable.

- 7.4 In view of the above, it is considered that the timber gazebo, as built, fails to comply with Policy 10 of the Aligned Core Strategies.

Issue (ii) Design and Impact on the Character and Appearance of the Conservation Area (Policy BE12 of the Local Plan and Policies 10 and 11 of the Aligned Core Strategies)

- 7.5 The timber Gazebo is situated on the higher ground within the application site and is visible from Private Road. Gazebos are common structures in residential gardens. However, it is considered that the elevated position of the gazebo relative to the neighbouring property gives it undue prominence within its immediate context. The structure fails to assimilate into its surroundings and appears as an intrusive and inappropriate built form within the rear garden. It is considered that the structure as built is harmful to the character and appearance of the conservation area. As such, it is considered that the gazebo as built fails to comply with policy BE12 of the Local Plan and policies 10 and 11 of the Aligned Core Strategies.
- 7.6 It is accepted that a lower structure of similar general design could be erected in the same place, as 'permitted development'. However, it is considered that a lower structure would be likely to have a less harmful impact than structure as built.
- 7.7 The application also includes a proposal to construct a 1.8m high brick wall along part of the south boundary and along the length of the southeast boundary. Brick boundary enclosures are common throughout Mapperley Park and as such, subject to approval of appropriate bricks and conformation that there are no tree issues, it is considered that the proposed wall would be acceptable and would preserve the character and appearance of the Conservation Area. This element of the application would therefore comply with Policy BE12 of the Local Plan and Policies 10 and 11 of the Aligned Core Strategies.

Issue (iii) Impact on trees (Policy NE5 of the Local Plan)

- 7.8 The Tree officer has been consulted and it is not considered that the gazebo poses any risk to trees within the site. However, a tree survey is required to understand the potential impact of the proposed boundary wall upon the trees within the site. Given that the application is recommended for refusal, this has not been requested at this stage. It is not possible to understand the impacts on trees and as such it cannot be assumed that the proposed development will be compliant with Policy NE5 of the Local Plan.

Other matters

- 7.9 Concerns have been raised by a neighbour in relation to the stability of the structure and its compliance with Building Regulations. These matters are subject to the separate regulatory building control regime and so are not material to the consideration of this application.
- 7.10 Concern has also been raised about the status of the footpath which runs alongside the application property and which has been gated at both ends. The Public Rights of Way Officer has been consulted in respect of this issue and has confirmed that there is no evidence to prove that this path is a Public Right of Way.
- 7.11 In the event that the gazebo were to be considered acceptable, drainage could be dealt with through a condition.

8. SUSTAINABILITY / BIODIVERSITY

There are no sustainability or biodiversity issues arising from this application.

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: 17/02515/PFUL3 - link to online case file:

<http://publicaccess.nottinghamcity.gov.uk/online-applications/applicationDetails.do?activeTab=summary&keyVal=OYZN9GLYM6100>

2. Representation from 28 Victoria Crescent dated 14.12.18

3. Email from Tree officer dated 4.1.18
4. Email from Rights of Way Officer dated 29.12.17

17 Published documents referred to in compiling this report

Nottingham Local Plan (November 2005)

Contact Officer:

Mrs Zoe Kyle, Case Officer, Development Management.

Email: zoe.kyle@nottinghamcity.gov.uk. Telephone: 0115 8764059



PLANNING

A: 00-00-00

Revisions

gdb design			
architectural services			
11 DAVIES ROAD WEST BRIDGFORD NOTTINGHAM NG2 5JE T: 01792 191570 E: gdb.design@yahoo.co.uk			
Project			
Proposed Garden Structure to: 24 Victoria Crescent, Sherwood Nottingham			
Drawing title OS PLAN			
<input type="checkbox"/> Preliminary	<input type="checkbox"/> For Construction	<input type="checkbox"/> As Built	
<input type="checkbox"/> Planning Issue	<input type="checkbox"/> Building Reg. Issue	<input type="checkbox"/> Contract Issue	
© drawing copyright of gdb design			
Scale 1:1250@A3	Date Nov17	Drawn by gb	Checked by
Job No. 108	Dwg. No.	Rev. 0	

My Ref: 17/02515/PFUL3 (PP-06513883)

Your Ref:

Contact: Mrs Zoe Kyle

Email: development.management@nottinghamcity.gov.uk



**Nottingham
City Council**

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GDB Design
FAO: Mr Gary Barlow
11 Davies Road
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Nottingham
NG2 5JE

Date of decision:

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

Application No: 17/02515/PFUL3 (PP-06513883)
Application by: Mr J Afsar
Location: 24 Victoria Crescent, Nottingham, NG5 4DA
Proposal: Timber gazebo adjacent boundary and new 1.8m high brick boundary wall (part retrospective).

Nottingham City Council as Local Planning Authority hereby **REFUSES PLANNING PERMISSION** for the development described in the above application for the following reason(s):-

1. The timber gazebo, by virtue of its scale, location, proximity to the boundary and lack of solid screening along its northern perimeter, gives rise to significant overlooking of and loss of privacy for, the adjacent property to the north. The timber gazebo therefore has a materially detrimental impact upon the amenities of the occupiers of the adjacent property and as such fails to comply with Policy 10 of the Aligned Core Strategy.

2. The timber gazebo, by virtue of its scale, materials, overall appearance and prominent position within the site fails to preserve or enhance the character and appearance of the Mapperley Park/Alexandra Park Conservation Area and therefore fails to comply with Policy BE12 of the Nottingham Local Plan and Policy 11 of the Aligned Core Strategy.

Notes

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

RIGHTS OF APPEAL

Application No: 17/02515/PFUL3 (PP-06513883)

If the applicant is aggrieved by the decision of the City Council to refuse 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 twelve weeks 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.



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DRAFT ONLY

Not for issue