

<b>APPLICATION NO: 11/01233/FUL</b>		<b>OFFICER: Mr Martin Chandler</b>	
<b>DATE REGISTERED: 5th September 2011</b>		<b>DATE OF EXPIRY: 31st October 2011</b>	
<b>WARD: Prestbury</b>		<b>PARISH: Prestbury</b>	
<b>APPLICANT:</b>	Mr D Billings		
<b>AGENT:</b>	S F Planning Limited		
<b>LOCATION:</b>	Sandford Dene, Lake Street, Prestbury		
<b>PROPOSAL:</b>	Insertion of roof light to west elevation and provision of heat exchanger unit to rear elevation (amendment to application ref: 11/00824/FUL)		

## **Officer report in relation to potential enforcement proceedings**

### **1. Context**

- 1.1. Members will recall the history of this site, specifically in relation to an application which sought retrospective planning permission for the provision of an air source heat pump to the rear of the recently constructed dwelling (ref: 11/01233/FUL). The application was recommended for approval by officers but was refused at Committee on 19 January 2012 for the following reason:
- 1.2. *The heat exchanger unit located on the west elevation of the house has an unacceptable impact on neighbouring amenity. The unit, which is located in close proximity to the western boundary of the application site, omits a type and level of noise that is appreciable from within the adjoining garden of 40 Linden Close. This noise disturbance, combined with the cold exhaust air which permeates the existing boundary fence, creates an unpleasant and unacceptable residential environment contrary to the expectations of local plan policy CP4.*
- 1.3. This decision has never been enforced and the heat pump remains unauthorised. Notwithstanding this, since the decision in January a significant amount of work has been undertaken by officers to get the Authority to a position to make an informed decision as to whether or not enforcement proceedings, if commenced, would be successful. This report sets out what has happened since the committee meeting and goes on to recommend that enforcement action has little prospect of success and that therefore it should not be pursued.
- 1.4. ***It should be stressed that this item is before planning committee at the discretion of officers. Mindful of the committee's decision, it is considered appropriate to have the committee endorse the recommendation to not enforce the breach of planning control. Should committee not endorse this recommendation and request that enforcement action commence, there is a risk of costs being awarded against the Council given the strong advice provided by our Environmental Health team.***
- 1.5. ***Members will not receive reports of this nature for other enforcement cases unless the specifics of the scheme warrant it.***

### **2. What has happened since January 2012**

- 2.1. The first matter to identify is that the boundary fence that was required as part of planning permission ref: 11/00824/FUL has now been installed. Members may recall that the applicant applied to remove the condition that required the installation of the fence (ref: 11/01754/CONDIT) which was refused at the same January committee meeting. The decision went to appeal with the Inspector concluding that the fence was a necessary aspect of the overall development and required the fence to be erected within 1 month of

the appeal decision. The fence has now been installed and inspected by officers – it is compliant with the appeal decision. (The new close boarded fence also reduces the air spillage into the neighbouring garden).

- 2.2. Following the committee decision in relation to the heat exchanger, the applicant also sought to clarify whether or not the unit did in fact require planning permission. Permitted development rights do exist for the installation of heat exchanger units like the one that has been under consideration but in granting planning permission for the dwelling (ref: 11/00824/FUL), all permitted development rights were removed by way of condition. The applicant queried the relevance of this condition to the heat exchanger and legal advice was taken on the matter. The conclusion was that the unit certainly does require planning permission.
- 2.3. Having established that permission was required, it was then necessary to analyse the impact that the heat exchanger was having on the neighbouring property, 40 Linden Close. If enforcement action is taken, this Authority has to be quite clear as to what the impact on neighbouring amenity actually is; there needs to be some objective analysis to support enforcement proceedings of this nature and whilst the committee identified a level of harm when refusing planning permission, it was felt that without specific measurements, the enforcement case would be weak.
- 2.4. To help consider the impact on amenity, the Council's Environmental Health team were enlisted to carry out noise measurements on two separate occasions, once in March 2013 and once in April 2013. The findings of these measurements are attached as appendices to this report.

### 3. Officer comments

- 3.1. Having conducted the noise measurements, officers have discussed the results with the Environmental Health team. When assessing the impact from noise, Environmental Health work to World Health Organisation (WHO) Guidance which advises that within a bedroom, a level of less than 35 dBA Leq is recommended to preserve the restorative process of sleep. The advice goes on to state that the probability of someone being awakened by internal noise peaks of 40dBA is 10%, which rises to 30% for peaks of 70 dBA to 30%.
- 3.2. The following comments have been provided by Environmental Health on the first readings (taken on 19 March 2013);

*Measurements 1 & 2 (both outside): 43.4dB LAeq (with the pump running) versus 41.1dB LAeq (with the pump off) isn't likely to be "unreasonable" or a loss of amenity. It is generally assumed that the ear can only discern a change of 3dB. At Section 7.6.1.2 of the British Standard (BS 8233:1999), gardens are considered; "...In gardens and balconies etc. it is desirable that the steady noise level does not exceed 50 LAeq,T dB and 55 LAeq,T dB should be regarded as the upper limit." So these levels fall within that limit, and there is no need for action on these. [Note: T = specified time level, which for us was 5 minutes measuring time and it was A weighted].*

*Measurements 3,4,& 5 (inside garden facing bedroom): At this time of year when it is around 0 degrees outside, we would be inclined to state that the average person (which is what we would measure against for noise), would not have both bedroom windows open. However, even with both windows open in measurement 3 the measured noise levels fall below the WHO "reasonable" standard for bedrooms **[Officer note – this is in light of the noise peak comments set out above at para 3.1]**. The WHO guidance also states that noise levels for bedrooms should only apply until 7am, so after 7am a higher level should be expected/tolerated. The important comment on measurement 5 is that the pump "may not have been on" - as we couldn't tell if it was off or on, then it is most likely not causing them a loss of amenity or the loss of using their bedroom for sleeping.*

*Measurement 6 (inside garden facing bedroom): The noise levels measured are a bit higher during this time. However, the fan stopped within around 1 minute of beginning the measurement, but the background noise level (L90) continued to be a bit higher than earlier, as you would expect after 7am with an increased background traffic level and people being up and about around the houses.*

- 3.3. The second readings were taken over a weekend period with the equipment left at the neighbouring property. As members will note from appendix 2, the equipment was located in the bedroom window which faces the back garden. Members will note that the measurements are well within the WHO guidance.
- 3.4. From the measurements recorded, Environmental Health have concluded that they do not consider the heat exchanger is having a significant impact on amenity. When considered against the local plan, members will be aware that policy CP4 advises that development will only be permitted where it would not cause unacceptable harm to the amenity of adjoining land users. Having undertaken a thorough monitoring process, the conclusion is that the heat exchanger is not unacceptably harming the amenity of adjoining land users and therefore that it is not contrary to local plan policy CP4. Officers therefore advise that if enforcement action is pursued and subsequently appealed, it would have little prospect of success.

#### **4. CONCLUSION AND RECOMMENDATION**

- 4.1. Officers have given this site a significant amount of consideration since the January 2012 committee decision. This has included successfully defending the appeal which related to the fence, confirmation to the applicant that the heat exchange unit requires planning permission (this included taking legal advice), working closely with the Environmental Health team to take the sound measurements, and working with the Local Government Ombudsman (LGO) in relation to complaints by a neighbour.
- 4.2. It is regrettable that it has taken so long to clarify the situation but unfortunately matters such as these can sometimes become protracted. It is of note that in their response, the LGO does not consider that the Authority's actions in relation to the heat exchange unit have amounted to a delay.
- 4.3. Having reflected on the heat exchanger further, and having carried out an objective assessment of the impact that the unit is having on the neighbouring property, officers do not consider that enforcement action would be expedient. Members will be aware that enforcement action is discretionary (it is a power not a duty) and has to be in the public interest. There also has to be a good prospect of success as there is a right of appeal. When assessed against the provisions of Local Plan policy CP4, and in light of the guidance provided by Environmental Health, officers consider that likelihood of the enforcement action being upheld at appeal would be very slim.
- 4.4. **It is therefore recommended that this Authority does not take any enforcement action against the unauthorised heat exchange unit.**

Survey at 40 Linden Close: 19/03/2013 (meeting on site 06:00)

Start time	End time	LAeq	L90	L10	Total time	Comments
06:13	06:18	41.1	30	45	5 minutes	Outside – air pump off, very little breeze and birds chirping
06:21	06:26	43.4	33	45	5 minutes	Outside - pump operational, very little breeze and birds singing
06:31	06:36	35.2	25.5	38	5 minutes	Inside in rear garden facing bedroom – both windows open
06:38	06:43	34.4	23.5	36.5	5 minutes	Inside in rear garden facing bedroom – window closest to the head end of the bed closed (window closest to matron open)
06:58	07:03	32.8	21	35.5	5 minutes	Inside in rear garden facing bedroom – both windows closed. Pump may not have been on
07:10	07:15	40.4	23	34.5	5 minutes	Inside in rear garden facing bedroom – window nearest to the head end of the bed open. Rumbling type sound heard. 07:11 whooshing air noise ceases. Some ambient traffic noise detected.

**Notes from the MATRON recordings of Mill House, Prestbury, Cheltenham**

Equipment located in Mr and Mrs Cule's bedroom which faces the back garden (40 Linden Close)

Notes by Louise Boyle – Senior Environmental Health Officer:

<u>Date</u>	<u>Time recorded</u>	<u>Start time</u>	<u>Comments</u>
13/04/2013			Note – 03:00 – night time noise – 20 – 23dB LAeq (can be up to 50dB for sleep patterns and movement)
			Just prior to the recording button being pressed – 23dB LAeq
	06.10.12 – 06.16.41		Birds singing in the garden
			06.12.22 – 06.12.44 – time with minimal bird noise – 23 – 24dB LAeq (with birds singing 30 - 31dB LAeq)
			06.12.53 – 06.13.35 - time with minimal bird noise – 23 – 24dB LAeq
			06.13.47 – 06.14.18 - time with minimal bird noise – 23dB LAeq predominantly during this time, up to 24dB LAeq at times
			06.14.50 – 16.15.08 - some bird noise audible – 25 – 26dB LAeq
			06.15.23 – 06.16.02 - some bird noise audible – 25 – 26dB LAeq
			06.16.07 – 16.16.50 – some bird noise audible – 24dB LAeq at times and with more bird song 25 – 26dB LAeq
			Just prior to the recording button being pressed – 20 – 21dB LAeq and 24 – 25dB LAeq
14/04/2013	05.56.18 – 06.02.57		Moving about in the room audible, some quieter parts to identify noise levels from outside. During these times – 20 – 23dB LAeq
	06.33.31 – 06.40.10		Just prior to the recording button being pressed – 20 – 23dB LAeq and 26 – 27dB LAeq – movement in the room.
			06.34.59 – 06.35.07 – 20 – 21dB LAeq – minimal bird song audible
			06.35.12 – 06.36.03 – 20 – 22dB LAeq – limited bird song audible
			06.36.48 – 06.36.56 – 21 – 22dB LAeq
			END OF RECORDINGS