

## Item No. 4

**Enforcement Case Reference No:** E/16/0434

**Developer:** Mr Duncombe  
**Breach:** Breach of condition 11 attached to planning permission P/15/2236/2  
**Location:** Wreake Valley Craftsmen, 25 Rearsby Road, Thrussington, Leicestershire, LE7 4UD  
**Parish:** Thrussington  
**Case Officer:** Sarah Hallam  
**Ward:** Wreake Villages  
**Tel No:** 01509 634736

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This item is referred to Plans Committee at the request of Councillor Poland and Councillor Grimley under the Constitution's rules for enforcement case ward referrals. They consider the history of the case, the significant public interest of the site and the fact the Plans Committee has previously considered issues on the site, warrants its consideration by the Plans Committee.

### Site Location and Description

The site is located at the southern entrance to the village from Rearsby and is within the Limits to Development and outside, but adjacent to, the Conservation Area as defined in the Borough of Charnwood Local Plan. The site is also located 80m to the south west of the Holy Trinity Church, a grade II\* listed building. The site is currently occupied by factory premises which pre-dates 1948 and makes items of timber household furniture from processing the raw material to assembling the end product. The site currently comprises a large workshop building within the central area of the site, which replaced a number of smaller workshops and temporary storage buildings following the grant of planning permission (P/15/2236/2) in February 2016. A more historic range of brick-built two storey buildings run parallel to the roadside and the northern site boundary. The site slopes from the south to the north with the rear of the site being approximately 2.5m higher than Rearsby Road.

To the north east, the site is bounded by Rearsby Road where there is a 2m wide grass verge and low hedge. The south eastern boundary runs alongside a driveway leading to backland dwellings (31, 33 and 35 Rearsby Road) and is bound by a mature conifer hedge for the first part of the driveway and a close board fence along the rest of the driveway. To the west of the site is no. 23 Rearsby Road and its private rear garden.

### Description of the Unauthorised Works

In 2016 planning permission (P/15/2236/2) was granted for the demolition of buildings on the site and erection of extensions for the existing industrial use on the site. As part of this permission a dust extraction unit, located to the front of the site, was also granted permission. Condition 11 was attached to this permission which states;

*“Prior to the installation of any fixed mechanical plant at the site a detailed acoustic assessment must be supplied to, and approved by the local planning authority. The assessment shall examine noise levels generated by said item(s) of plant, how these*

*would affect nearby residential amenity and specify, if appropriate, noise reduction measures to achieve a predicted level equal to or below the measured background (LA90) level at any adjacent dwellings. This acoustic assessment would require to be signed off by the LPA and the findings of such incorporated within the scope of the development as constructed.*

*REASON: For the protection of residential amenity in the vicinity of the site.”*

This condition was partially discharged by permission P/16/1528/2.

Due to concerns about the noise caused by the dust extraction unit a further application (P/17/1543/2) was submitted and subsequently granted planning permission by the Committee on 7th December 2017 for the erection of sound proof boarding around the existing dust extraction unit. In granting planning permission the Committee resolved to receive an update on the effectiveness of the mitigation measures. On 5th April 2018 an update report was provided and it was advised that to ensure a fair and reasonable approach to this matter and given the sensitivity of this case the Council was to instruct an independent noise consultant to undertake an assessment of the extraction equipment to verify the results that had already been collected.

Two independent noise assessments were undertaken on behalf of the Council to establish the current noise level of the dust extraction unit. One assessment was taken during operational hours of the business and the other was undertaken at night when extraneous noise was at its lowest. The initial noise assessment taken during business operation times concluded that the dust extraction plant was found to be 41dB(A) and the second assessment taken at night showed the specific sound level from the dust extraction plant was 42-43 dB(A) which is 1-2dB above the background (LA90) of 41dB(A).

Following receipt of these results the Council took advice in respect of the wording of the condition and the requirements of the condition. It was concluded that when assessing the wording of this condition there are 4 clear components:

1. It required an acoustic assessment to be provided prior to installation of fixed mechanical plant – this was provided in application P/16/1528/2;
2. It required the acoustic assessment to specify, if appropriate, noise reduction measures to achieve a predicted level equal to or below the measured background (LA90) level at adjacent dwellings – the report submitted in application P/16/1528/2 did contain noise reduction measures;
3. It required the acoustic assessment to be approved by the LPA – the report was approved under application P/16/1528/2;
4. It required the findings of the acoustic assessment to be incorporated within the scope of the development as constructed – at present the fitting of damping sheets to the metal panels of the filter unit is the final measure outstanding but this has only partially been implemented as three sides of the unit still require damping sheets to be installed.

Condition 11 does not specifically require the dust extraction plant to be at or below a certain noise level but actually requires that “The assessment shall examine noise levels generated by said item(s) of plant, how these would affect nearby residential amenity and specify, if appropriate, noise reduction measures to achieve a predicted level equal to or below the measured background (LA90) level at any adjacent dwellings”. Therefore from a planning enforcement perspective, if the noise level exceeds the LA90 this does not breach this condition so long as all the noise reduction measures have been carried out. A breach of this condition can only occur if the findings detailed within the acoustic report have not been fully undertaken.

The final noise reduction measure that has not been fully undertaken is the installation of the damping sheets. Mr Duncombe was, more recently, made aware of this issue and given the opportunity to install the damping sheets. On the side elevation facing No. 31 Rearsby Road the damping sheets have now been installed but on the other sides of the unit no damping sheets have been installed and therefore full compliance with Condition 11 has not been achieved.

It has been questioned why the damping sheets have not been installed on the side elevations which face the building, the road and the side facing into the site. Mr Duncombe has advised that these elevations are more difficult to access, as a scissor lift is required to access these areas due to the height of the structure and the fan housing and containers restrict clear access for this lift. In addition the dust extraction unit has maintenance doors on the side elevation facing into the site and free access to the hopper is required at all times. Due to these constraints Mr Duncombe is unwilling to install the damping sheets to these elevations.

As damping sheets have not been installed on all sides of the dust extraction unit full compliance with Condition 11 has not been achieved and therefore this is the matter for consideration in this report.

## **Development Plan Policies**

### Charnwood Local Plan (2011-2028) Core Strategy

Policy CS2 – High quality design requires new developments to respect and enhance the character of the area, protect the amenity of people who live and work nearby and function well and add to the quality of the area.

### Borough of Charnwood Local Plan (adopted 12th January 2004)

Policy EV/1 – Design seeks to ensure a high standard of design for developments, which, inter alia, respects and enhances the local environment, is of a design, layout, scale and mass compatible with the locality and utilises materials appropriate to the locality.

## **Other material considerations**

### National Planning Policy Framework (NPPF)

Paragraph 55 states planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Paragraph 58 states that effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.

Paragraph 127(f) states that planning decisions should ensure that developments achieve a high standard of amenity for existing and future users

### The Crime and Disorder Act 1998

The Crime and Disorder Act 1998 places a duty on the local planning authority to do all that it reasonably can to prevent crime and disorder in its area. The potential impact on community safety is therefore a material consideration in the authorisation of enforcement proceedings.

### Human Rights Act 1998

The issue of human rights is also a material consideration in the determination of planning applications and enforcement issues. Article 8 of the Human Rights Act 1998 requires respect for private and family life and the home while Article 1 of the First Protocol provides an entitlement to peaceful enjoyment of possessions. However, these rights are “qualified” and it is necessary to consider whether instigating a prosecution would interfere with the developer’s human rights. If it would, the Committee must decide whether any interference is in accordance with the law, has a legitimate aim and is proportionate.

The impact on the human rights of the developer and their business must be balanced against the public interest in terms of protecting the environment and the rights of other people living in the area. In this case, the technical breach of full compliance with Condition 11 not being achieved and the noise level of the unit being 1-2 dB(A) above the background (LA90) of 41 dB(A) is not considered to have a significant adverse impact upon the amenity of the occupiers of No. 31 because an increase or decrease of 3 decibels is the minimum perceivable by most adults to any change in loudness under normal conditions.

## **Relevant Planning History**

P/15/2236/2 - Demolition of two industrial buildings and office block. Erection of 2 extensions to industrial unit (Class B1c) and change of use of first floor of existing building from industrial (Class B1c) to offices (Class B1a). Formation of access route and car parking to rear of site and new vehicular access onto Rearsby Road. GRANTED

P/16/1528/2 - Discharge of Conditions 5, 6, 11, 12 and 13 of P/15/2236/2. Window details, obscure glazing, sound Assessment, materials, screen details. GRANTED

P/17/0560/2 - Non-material amendment to P/15/2236/2 - for windows to be fixed closed on phase 1 building, remove timber cladding from compound to front of site, paint extraction unit brown, add lagging to ducting, install additional ducting between buildings, add flue to polish shop, add wood burner chimney, carry out additional landscaping and affix external lighting to exterior of buildings. WITHDRAWN

P/17/1543/2 - Erection of sound proof boarding around existing extraction unit. GRANTED

P/17/1544/2 - Retention of windows in side elevation of building and colour coating of the extraction and ventilation unit, lagging installed on the ducting pipe and ducting over the roof between buildings, wood burning flue and lighting currently installed on the building; to not install the timber cladding on building as approved in application. GRANTED

## **Responses of Statutory Consultees**

### Borough Council's Environmental Health Department

The Council's Environmental Health Officer has advised that following the installation of the damping sheets to the elevation that faces No. 31 they are of the opinion that subjectively the noise from the dust extraction plant does seem less noticeable which may be due to the fact that the tonal element of the noise (at 400 HZ) has been reduced. A reduction of around 1 dBA was measured but this assessment was undertaken on the driveway next to the patio of No. 31, and was therefore slightly closer to the noise source than previous measurements. It was however noted that the tonal element was still present towards the entrance to the driveway. The Council's Environmental Health Officer has also advised that an increase or decrease of 3 decibels is the minimum perceivable by most adults to any change in loudness under normal conditions.

### **Other Comments Received**

Concern has been raised by neighbouring residents with the planning enforcement team, regarding the noise levels of the dust extraction unit.

A letter has been sent from the planning enforcement team to all residents making them aware of the recommendation to take no further action and the matter being considered by the Plans Committee. One resident has responded and considers that until all the damping sheets have been installed this case should not be closed.

### **Consideration of the Planning Issues**

The breach of planning control relates to the developer not fully complying with Condition 11 attached to planning permission P/15/2236/2 which required the implementation of the noise reduction measures identified in the approved noise assessment report. The imposition of this condition on the original planning permission was considered to be necessary and reasonable to protect residential amenity in the vicinity of the site. The

developer has carried out all of the identified measures except that the damping sheets have not been fitted to all elevations of the dust extraction unit.

The noise assessment report submitted in the discharge of conditions planning application P/16/1528/2 was approved on 20 September 2016 and within that report a number of noise reduction measures were required to be undertaken seeking to achieve a predicted noise level equal to or below the measured background (LA90) level at adjacent dwellings. All the requirements except for the fitting of the damping sheets to three elevations of the dust extraction unit have been undertaken.

Condition 11 does not itself require a specific noise level to be achieved; rather, that the approved measures are to be implemented. If the damping sheets had been installed to all sides of the dust extraction unit then full compliance with the condition would have been achieved.

The Council needs to consider whether or not to take formal enforcement action to require the developer to comply fully with condition 11 and fit damping sheets to the remaining 3 sides of the unit. In doing so the Council must consider the reason for imposing the condition in the first place i.e. what it was the condition sought to protect/what impact it was to mitigate. The Council must also consider the level of harm the breach of planning control causes and to act proportionately as to whether further action should be sought. Such formal action would, in this case, be the service of a Breach of Condition Notice requiring the damping sheets be installed on the other elevations it is missing. As a matter of fact the local planning authority cannot require the removal of the dust extraction unit as it benefits from planning permission.

As discussed above the condition was imposed to protect residential amenity, it does not specify an actual noise level or a maximum noise level that the unit should operate at. However as a means of assessing the impact of the development on residential amenity and the reasonableness of taking formal action, it is considered appropriate to consider the current noise levels of the extraction unit from the independent assessments commissioned by the Council. As explained earlier two assessments were undertaken - one during operational hours of the business and the other was taken at night when extraneous background noise was at its lowest. The initial noise assessment taken during business operation times concluded that the dust extraction plant was found to be operating at 41dB(A) and the second assessment taken at night showed the specific sound level from the dust extraction plant was 42-43 dB(A) which is 1-2dB above the LA90 of 41dB(A). The Council's Environmental Health Officer has advised that an increase or decrease of 3 decibels is the minimum perceivable by most adults to any change in loudness under normal conditions.

Furthermore the Council's Environmental Health Officer advises that since the two noise assessments were undertaken, the installation of the damping sheets on the side elevation (south eastern elevation) of the dust extraction unit that faces No.31, and its outside patio area appears to have reduced the tonal element of the noise (at a frequency of 400 HZ) and provides a slight measurable improvement in noise levels experienced. This tonal element is however still audible towards the entrance to the driveway, which is adjacent to the side wall of No.31 but this elevation does not contain any window openings nor is there usable garden area for sitting out and relaxing in this area.

As the elevations of the dust extraction unit where the damping sheets have not been installed face towards the woodworking building (south western elevation), the main road (north eastern elevation) and into the site (north eastern elevation) it is considered unlikely, if damping sheets were installed on these elevations, that a change in noise levels will be audible in the patio area and rear garden of No.31 or the private amenity space of the other neighbouring residential properties.

In considering whether to take formal action it is firstly necessary to assess Condition 11 as to whether it is enforceable. In this instance it is considered that the condition is enforceable. The condition however does not require that the noise reduction measures required by the acoustic assessment report be maintained and/or retained in perpetuity. This should be considered when assessing whether to take formal action against the damping sheets not being installed on three sides of the dust extraction unit as at any time in the future any of the approved noise mitigation measures that have already been installed could fail, not be maintained or be removed and the Council would not have any control over this.

Paragraph 58 of the NPPF states that local planning authorities should act proportionately and that enforcement action is discretionary. The Council must be reasonable in the decision it makes fully considering the complainants concerns along with the developer's rights. On balance, taking the above assessment into account, which includes:

- the Environmental Health Officer's advice that an increase or decrease of 3 decibels is the minimum perceivable by most adults to any change in loudness under normal conditions.
- that the most recent noise assessment of the dust extraction unit was 1-2 dB above the LA90 of 41 dB(A)
- that the condition does not require a specific noise level to be achieved, and;
- that the condition does not require the noise mitigation measures to be maintained and/or retained in perpetuity

It is considered unlikely that the installation of the damping sheets on the three elevations that face away from the closest residential property will have an audible change in noise levels of the dust extraction unit experienced at No. 31 Rearsby Road.

## **Conclusion**

The condition was imposed to protect residential amenity in the vicinity of the site. The condition did not require a specific noise level to be achieved but the original assessment considered the background (LA90) to be 41dB(A). The most recent noise assessment indicates that the dust extraction unit is within 1-2 dB of the LA90. The Council's Environmental Health Officer has advised that an increase or decrease of less than 3 dB will not be perceivable by most adults

Therefore it is officers view that the purpose of the condition has been achieved and it would be not be reasonable, proportionate or necessary to require the 3 remaining sides of the unit to be fitted with damping sheets, particularly as the condition does not require the noise mitigation measures to be maintained or retained in perpetuity, does not require a specific noise level and in the Environmental Health Officer's opinion the installation of the missing damping sheets would not make a significant audible change in noise levels

due to these elevations facing away from the neighbouring property. Therefore in this instance, it is not considered reasonable for the local planning authority to take formal action and it is recommended that no further action be taken.

**RECOMMENDATION:-**

To take no further action for the following reason;

1. The requirements of Condition 11 attached to planning permission P/15/2236/2 have not been fully undertaken as the damping sheets, which the acoustic assessment that was approved pursuant to this condition recommended, have not been installed to all sides of the dust extraction unit but in not carrying out this final step it is not considered that there will be an audible change detectable by the human ear in noise level. In addition Condition 11 does not require that a specific noise level be achieved or that the noise mitigation measures be maintained and/or retained in perpetuity and therefore it is not considered reasonable for the Council to pursue this matter any further.

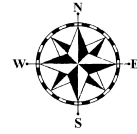




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**Reference No:** E/16/0434  
**Location:** Wreake Valley Craftsmen, 25 Rearsby Road, Thrusington  
**Scale:** 1:1250

