Report No. 1

REPORT TO THE EAST AREA PLANNING COMMITTEE

Date of Meeting	24th October 2013
Application Number	13/00714/FUL
Site Address	M & Co (now Morrisons) 134 High Street Marlborough SN8 1HN
Proposal	Installation of external plant to the rear and first floor. External alterations.
Applicant	Mr Paul Kettlewell
Town/Parish Council	MARLBOROUGH
Grid Ref	418806 169182
Type of application	Full Planning
Case Officer	Rachel Yeomans

Reason for the application being considered by Committee

This application has been called into committee at the request of Councillor Fogg following concerns expressed by neighbours.

1. Purpose of Report
To consider the recommendation that the application be approved with conditions.

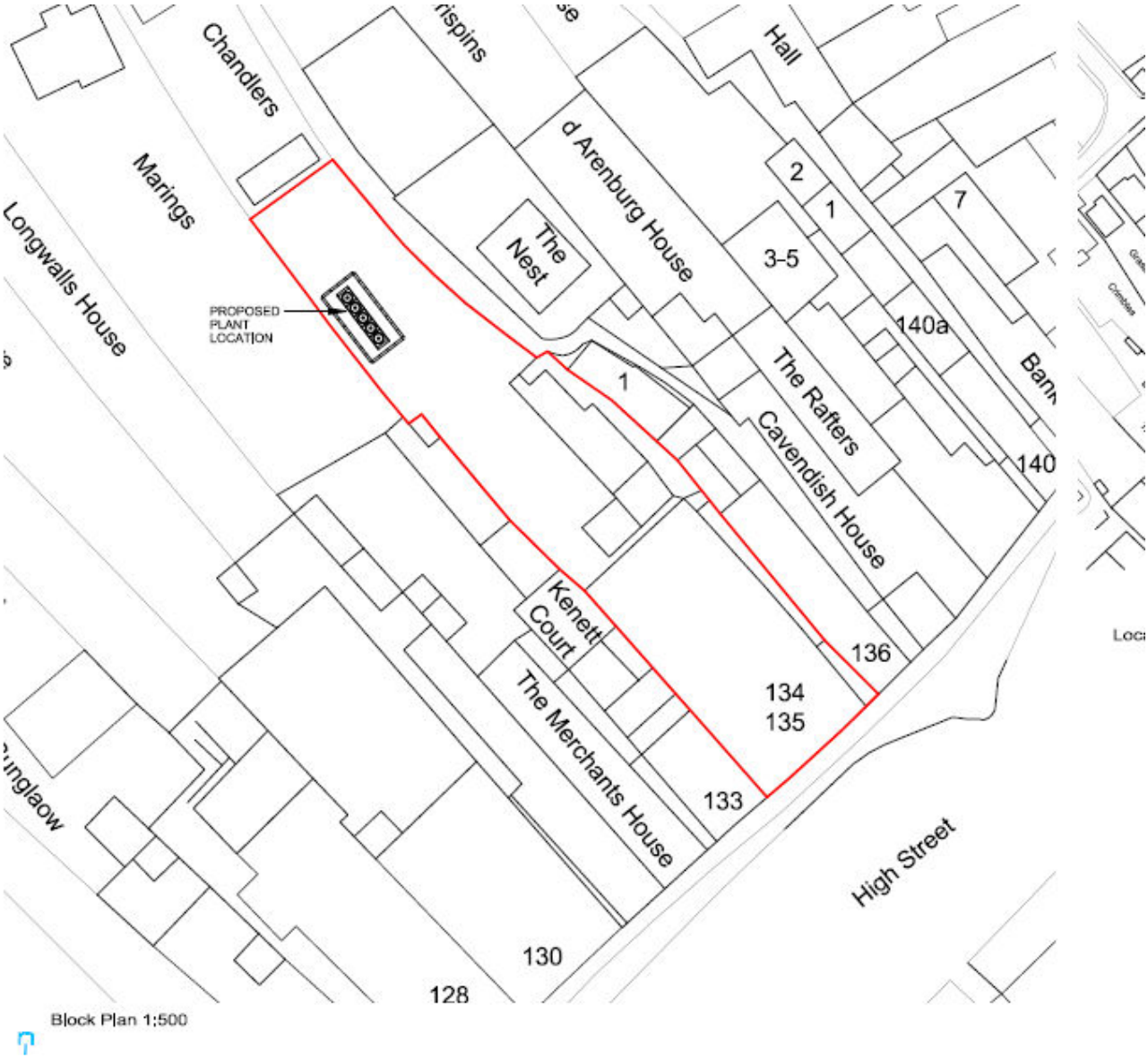
2. Report Summary
The key planning issues are considered to be;

- Impact on residential amenity and in particular whether the noise emanating from the plant together with the proposed opening hours would result in significant harm to the amenities of neighbouring occupiers.
- Visual impact of the proposed plant and alterations
- Whether the proposals would preserve or enhance the character or appearance of the conservation area and the setting and character of the grade II listed building.

3. Site Description

The application site is a located at the north-east end of the main High Street in Marlborough on the northern side. The plant itself is proposed to be installed on an existing concrete slab, where plant was previously approved and also within existing housing on the first floor on the rear of the building (externally but within a lean-to structure). There is a public footpath to the northeast of the site that links the High Street with neighbouring residential properties along Back Lane to the north. The site is surrounded by commercial and residential properties on the High Street and residential properties along Back Lane and Chandlers Yard.

The site itself is a retail unit formerly 'M & Co' but prior to that, has been a Marks and Spencers food store and previously a Somerfield store. Plant was installed for refrigeration, air conditioning and air extraction purposes for the Somerfield store and then updated under previous planning permission K/55894/F in 2007. The proposed development lies within the curtilage of a grade II listed building, the designated Marlbrough Conservation Area and the Marlborough Area of Special Quality.



Site location plan and existing concrete slab showing location of condenser plant

4. Relevant Planning History

K/32452 –Planning permission was approved in 1996 for alterations to the shopfront and the provision of three condensing units to the rear.

K/33921/L & K/33922 – Planning permission and listed building consent were refused in March 1997 for the erection of an acoustic screen at the rear of the property. This was due to the design of the proposed wall and the proposed materials which were considered would have a detrimental impact on the listed building and its setting, the conservation area and would have been intrusive in views from the adjoining dwelling.

K/34437 – Planning permission was refused in July 1997 for the retention of the existing noise attenuation features on the grounds that the level of noise and disturbance created by the refrigeration equipment housed within the extension was unacceptably high, resulting in loss of amenity for the occupiers of the adjoining residential property.

K/35170 & K/35169/L – Planning permission and listed building consent were granted in January 1998 for an amendment to noise attenuation features and concealment of the existing roof mounted extract fans.

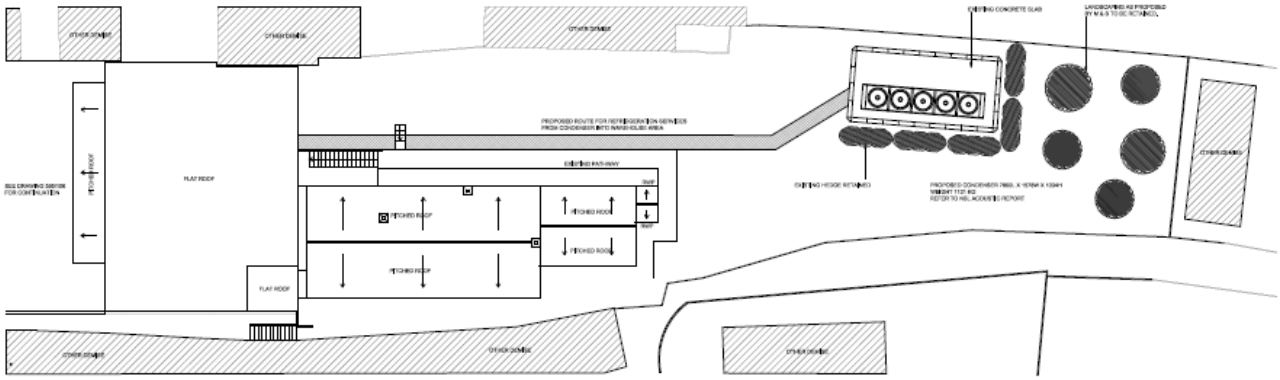
K/38586 – Planning permission was granted in March 2000 for a variation of the noise attenuation condition attached to planning permission K/35170. This was subject to a new condition that the structures containing the condensing units must be acoustically treated and/ or the condensing units silenced to ensure that the rating level (equivalent continuous A weighted sound pressure level (LAeq,t) adjusted for acoustic character) from any plant or machinery does not exceed 41dB on any day at the boundary of any domestic properties within 100m of the site.

K/55894/F – Planning permission was granted in April 2007 for a new condenser unit enclosed within an acoustic plant screen. This followed extensive investigation and noise monitoring by the Environmental Health Team at the request of committee following allegations that the measurements provided by the applicants were inaccurate. In his comments at this time, the Senior EHO advised that ‘the predicted noise level for the plant in night-time mode is 25dB(A) at ten metres. This is extremely low and the actual noise levels experienced in the neighbouring properties will be significantly below this due to the further attenuation offered by garden walls.... The background noise levels during the day are typically 40dB(A) and the maximum rated noise level at the closest boundary is 43dB(A). This is well within the 5dB difference recommended in BS4142.’

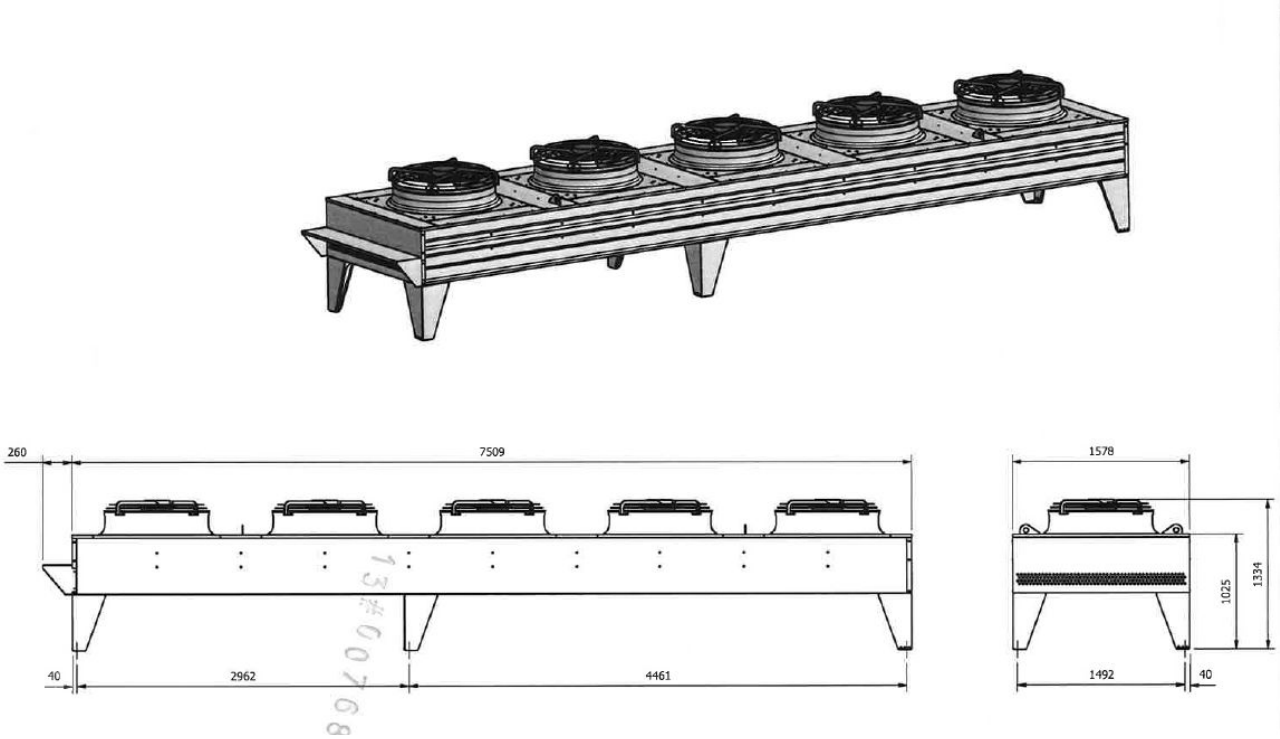
Since this planning permission was granted, the Environmental Health Team have reported complaints by two parties on one occasion only. Following investigation, the noise levels were found to be excessive and this was due to plant failure. The matter was rectified and no subsequent complaints were received.

5. The Proposal

The current application proposes the installation of new condenser plant on the existing concrete slab at the rear and for the purposes of assessing the impact of the proposals as a whole, also includes the installation of air conditioning units within the existing housing upon the roof at first floor level. The application includes very modest external alterations to the existing building including the installation of four small vents.

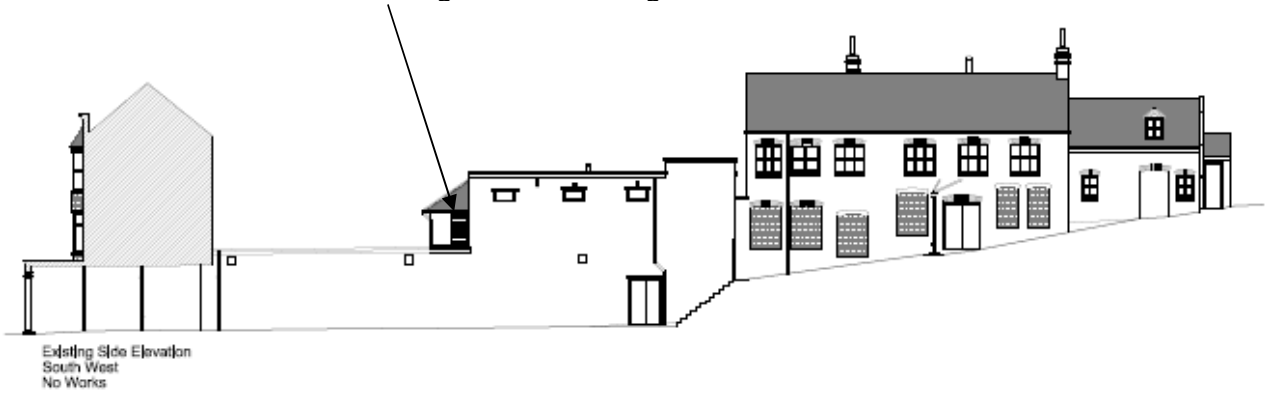


Plan showing positioning of proposed condenser plant to rear.

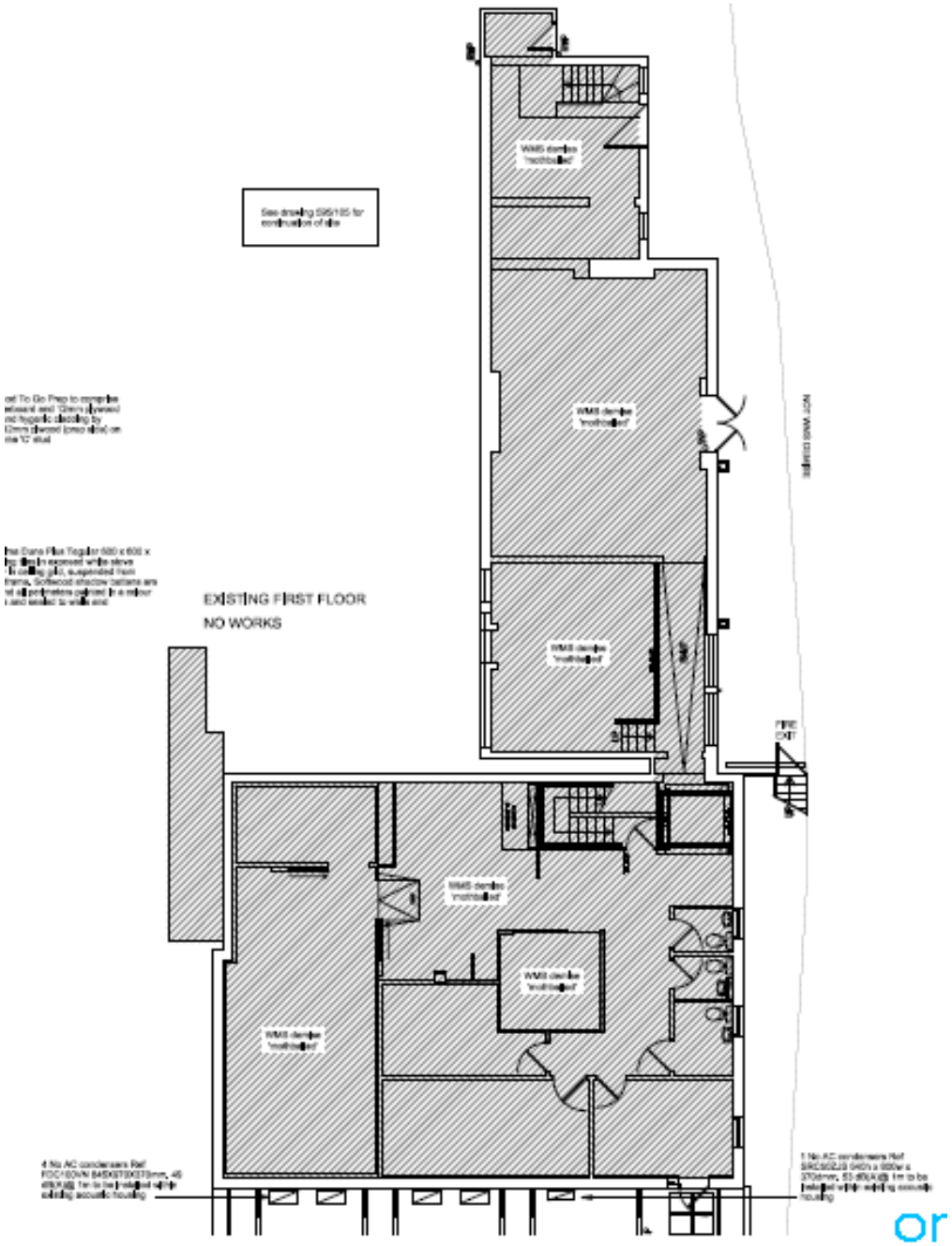


Appearance of condenser plant to rear.

New ac units installed within existing lean-to housing



Elevation showing existing lean to housing on roof at first floor level



Plan to show positioning of 5 x new air conditioning units within existing housing (at bottom of plan)

6. Planning Policy
Kennet Local Plan 2011 – Policies PD1 (Development and Design), HH11 (Marlborough Area of Special Quality)

The National Planning Policy Framework – with particular regard to
Chapter 1: Building a Strong, Competitive Economy
Chapter 2: Ensuring the Vitality of Town Centres
Chapter 7: Requiring Good Design
Chapter 11: Conserving and Enhancing the Natural Environment.

In particular, paragraph 123 sets out that planning decisions should aim to:

● avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;

● mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;

● recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established; and

● identify and protect areas of tranquillity which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

Chapter 12: Conserving and Enhancing the Historic Environment

7. Additional Statement by the applicant

The applicant has responded to a number of requests to provide additional information including the following data:

'Technical Note received on 6-8-2013: AC Plant

Further to our earlier discussion regarding the AC enclosure at roof level, we confirm having predicted the noise impact of locating the AC units within the existing acoustic enclosure.

Based on the nearest residential property being 12m from the enclosure and with acoustic louvres approximately 200mm – 300mm deep, the following noise levels at the nearest residence are predicted:

Period	**Predicted noise level at residence**	**Existing minimum background noise level, LA90***
Daytime	23dB(A)	24dB(A)
Night-time	18dB(A)	19dB(A)

*Based on environmental noise survey undertaken in rear garden of store

It can be seen that noise from the AC units is predicted to be below the prevailing background

noise level, based on our environmental noise survey undertaken in the rear yard, in accordance with the requirements of Wiltshire Council.

No correction for reflections has been included in our assessment; the predictions are based on an opening (the acoustic louvres) in the wall. There is no reflective surface behind the louvre other than the internal room itself, which is accounted for in the calculations. ‘

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‘Technical Note received on 28-8-2013: Refrigeration plant noise readings

Further to our recent site surveys to measure noise from the installed equipment, we can confirm the following:

Measurements were taken between 05.00 and 06.00 hours on Friday 23rd August 2013. Readings were taken with the unit on and off at 10m from the unit and at the site boundary.

Short measurements were taken so as to exclude extraneous noise sources (e.g. distant road traffic) where possible.

Location	**Plant On**	**Plant Off**
10m from unit	30.2dB(A)	30.9dB(A)
Site boundary	34.8dB(A)	34.6dB(A)

It can be seen that, at 10m from the unit, the reading with the unit on is lower than the background reading. It can be inferred that this is due to a variation in the background noise climate at the time and that turning the unit on did not elevate the noise level. It can therefore be determined that the contribution from the equipment is no louder than a level 10dB below the background reading, i.e. at 10m the plant is no louder than 20dB(A) and is likely to be lower.

At the site boundary, the small variation in noise level with the plant on and off is, again, likely to be due to a variation in the background noise climate. As such, the plant noise level is no louder than 25dB(A) and likely to be lower.

Whilst compliance with the local authority criterion of 19dB(A) at the boundary cannot be conclusively demonstrated due to the relatively high background noise climate at the time, plant noise is likely to be in compliance.

It is noted that readings could not be taken earlier (i.e. before 05.00 hours) when background noise levels would typically be quieter due to ongoing overnight roadworks on the High Street.’

8. Consultations

Marlborough Town Council – Support this application subject to written assurances from Morrisons that concerns around refrigeration and air conditioning have been addressed and resolved. In response to the additional information, a ’no objection’ response has been received.

Wiltshire Highways – No objections

Wiltshire Council Archaeologist – No objections

Wiltshire Council Environmental Protection Officer – Initially requested additional information including additional noise survey information and clarification on a number of technical matters. Following several site visits to consider neighbour concerns including noise levels and the ‘stepping up’ of the operational plant which was occurring on warmer afternoons, Environmental Protection Officers are now satisfied that from the evidence supplied, the impact on amenity would not be significant to warrant refusal of planning permission. Conditions are recommended in the

event Members are minded to grant planning permission, as a safeguard to limit noise impact. The Senior EPO provides a detailed explanation as follows;

'As you are aware, while this application has been out for consultation the equipment has been installed. There have been some teething problems with the condensers in the back garden but I believe that these are now resolved. I am aware that some members of the public have concerns about the sound levels produced by these condensers and the associated documents that have been submitted. I will therefore now go into quite a lot of detail regarding this matter.

Condensers to the rear of the premises
When this application was first made the applicant asked for some guidance as to what target they should use when carrying out the required noise assessment. They were advised that they should aim for a target of the sound level from the equipment not exceeding the background noise level at the quietest time that it was in operation. It may be important to make it clear here that this recommendation was guidance for the acoustic consultants in this specific case.

The noise consultants carried out background noise measurements and found that the lowest background noise level was 19dB (A) at night and 24dB (A) in the day. It should be noted that these are extremely low background noise measurements and are exceptionally low for a town centre location. These levels, particularly the daytime level of 24dB are met infrequently and for short periods, the majority of the time the background noise level is higher than this.

Following the problems after installation the equipment has now been set so that it works at a maximum of 44% of available duty. The applicants have had a noise assessment carried out to measure the sound level against background when it is working at this maximum available duty. The results have been submitted to the planning department in the NSL document dated 28/08/2013. This department accepts the information set out in the document as evidence that the guidance provided to the applicants acoustic consultant is being complied with.

Some local residents have expressed that they do not believe the document is evidence that our guidance is being complied with. I therefore feel the need to explain the following.

Where two noise levels are operating at the same time they cumulatively contribute to the equivalent continuous noise level (LAeq) except where there is a difference of 10dB or more between the two noise levels. When there is a difference of 10dB or more the lower noise level ceases to contribute to the overall dB level. In this case, when referring to the NSL document dated 28/08/2013 we can see that the measured sound level does not increase when the equipment is on compared to when it is off. The background noise level is considered as a noise source itself. Because the sound level does not increase when the equipment is switched on we can see that the contribution of the equipment is 0. Therefore the sound level attributed to the equipment must at least 10dB below the sound level that was measured when the plant was off. These calculations are based on a generally accepted rule but if anyone would like further information I would refer them to the following guidance document: Horizontal Guidance for Noise. Part 2 – Noise Assessment and Control published by the Environment Agency.

When the survey associated with the NSL document dated 28/08/13 was carried out the engineers ensured that the equipment was working at its full operating (daytime) duty of 44%. The document therefore shows that when operating at its maximum duty the condensers are producing a maximum sound level of 25dB. It is important to note that at night time when the shop is closed the equipment would not be working at anywhere near this level.

I visited the site with a colleague on 03/09/2013. The visit was arranged so that we could have a better understanding of the set up of the equipment and so that we could make a subjective assessment of the equipment working at maximum duty. It was not practical or necessary for us to carry out a further environmental noise survey using digital monitoring equipment due to the length of time a full assessment would take, the fact that one had already been completed by NSL and because any survey is dependent on all noise sources in the environment at the time of the survey

therefore carrying it out in the middle of the working day would be impractical. Engineers were there to ensure that it was working at maximum available duty. Our subjective assessment was that the sound level was not at a level that would cause loss of amenity at neighbouring properties.

It should be noted here that a sound level being below background does not mean that the sound will not be audible. The LA90 which is used for background noise measurements is a measurement of general noise; the fan noise is a specific noise which may therefore be audible even if the decibel level is below background. Sound from the equipment will at times be audible in gardens directly adjacent to the equipment however we do not to consider that this sound level is likely to cause loss of amenity.

British Standard 8233 gives give standards good and reasonable acceptable levels of noise for residential properties. The document recommends that 'in gardens and balconies etc. it is desirable that the steady noise level does not exceed 50LAeqT dB and 55 LAeq, T dB should be regards as the upper limits.' It can be seen that the sound levels from the condensers when working at maximum level are resulting in LAeqs significantly below these guidelines.

In respect of the air conditioning plant, the technical note confirms that at the nearest residence, the noise levels with the units running should be at or below the existing lowest background noise levels and this consequently gives no particular cause for concern in respect of neighbour amenity. A condition is recommended in the event Members are minded to grant planning permission to limit noise levels accordingly.

To ensure that the equipment is operated and maintained so that the sound levels do not exceed those set out in the submitted documents I recommend that conditions are included in any planning permission granted. Great consideration has been given to the wording of the conditions to ensure that the conditions are enforceable should the need arise in the future.

9. Publicity

This application has been publicised by means of a site notice, neighbour letters and a site notice. A further notification and opportunity for consultation has been permitted to interested parties following the receipt of additional technical information and a modest change to the positioning of the rear plant.

Letters of representations have been received from 5 neighbouring addresses. Three of these express objections to the application and two of these neighbours have submitted numerous letters which are available to view on file and on the Council's website. Two of the neighbours have expressed no objection to the principle of the proposed development provided that the machinery does not emit excessive noise levels and are at least as low as equipment installed for Marks and Spencers; opening hours should be restricted; the hedge and tree screening must be left in situ and the area at the rear should be maintained on a regular basis.

The main objections raised can be briefly summarised as follows;

- The original noise assessment is flawed – background noise measurements taken from wrong location (in High Street) and affected by roadworks taking place. No adjustment was made to account for the amplification of the noise due to reflection. The topographical characteristics of the site, the position and size of associated buildings do not suggest that reflected noise adjustment should be assessed as zero.
- The application is inaccurate and has not be thoroughly researched.
- The plant will be visible from neighbouring windows.
- The noise assessment calculations are all based upon daytime noise from 7am until 11pm seven days a week – this does not accord with our interpretation of 'daytime'. [Officer note: The 'daytime hours' are taken from standardised noise guidance for day time/ night time periods for the purposes of noise calculation.]
- The extended opening hours are totally unacceptable given that this is a residential area.

- Although the M&S plant was quieter than the Somerfield plant, there were many times when the noise was unacceptable.
- Kennet Court is not taken account of in the noise calculations and has a window at second floor level which could be affected.
- Noise and vibration calculations should be carried out for plant behind the louvers, particularly in respect of proposed longer trading hours. If including extract equipment for food preparation, adequate filters should be provided.
- Sound insulation should be requested internally to prevent noise from banging of storage doors, staff room and clattering of metal trolleys, which are very noticeable in the early hours. [Officer note: the proposal does not require change of use planning permission therefore this request would not be a material planning consideration in respect of the current application]
- The fact that the units are already up and running indicates that this is a 'done deal' and will not be given proper consideration.
- Survey figures clearly show noise levels would be raised significantly above background levels in the Marlings.
- The Sound Power Level quoted in the specifications for the proposed refrigeration machine in this application is 60dB(A) combined with a Mean Sound Pressure Level of 28dB(A) at 10 metres, which is a significant increase above the existing background noise levels and will detrimentally affect amenities of neighbouring residential properties 25 hours a day The decibel (dB and dB(A) is a logarithmic scale, a 20dB increase in dB units increases the Sound energy by a factor of 100.
- Due to poor thermal insulation characteristics the excessively large refrigeration capacity required will cause excessively high levels of noise. The building is not suitable as a chilled/ frozen goods retail facility of the type proposed for this reason.
- Food stores on this site, including M&S have been the subject of noise nuisance complaints and noise nuisance enforcement procedures.
- Noise from this type of operation caused by the refrigeration plant and machinery combined with the air conditioning units on the roof plus the extractor vents on the rear wall, especially with the proposed extended opening hours to 11pm 7 days a week, will be unacceptable on this site surrounded by residential homes and gardens and would spoil and interfere with their legitimate use and enjoyment.
- The amended plans do nothing to allay concerns previously raised.
- Ample opportunity existed when the Condenser unit commenced full operation in August for the applicant to demonstrate compliance with local authority criterion but they did not. On the contrary, they demonstrated they could not.
- What the applicant has demonstrated for certain is that when neighbouring residents have their windows open and are spending time in their gardens on hot sunny days, the units will be running so fast and long it will be the worst case scenario for this quiet residential neighbourhood. The application is a classic candidate for rejection and the authority should stand by its noise criterion and deny approval.
- With reference to the EHO's recommendations, that the 'rating noise' level limit of the condensers at 10m should not exceed 'background noise' level measured of any ten minute period. 34dB(A), the lowest background noise level in the afternoon at 10m from the condensers equates to 54dB(A) at 1m from the condensers, 35.9dB(A) at the nearest residence and 44.5dB(A) at the boundary with The Marlings garden which is twice as loud as the lowest afternoon background noise level and four times as loud as the lowest daytime background noise level measured by NSL.
- The proposed conditional limit would apply 365 days a year and allows the noise level to rise in this widely acknowledged 'exceptionally quiet residential area' to noise levels only experienced in the High Street.
- NSL (in technical note of 28-8-13) that the rating noise level of the condenser at 10m will be no louder than 20dB(A) and likely to be lower and at the boundary 25dB(A) and likely to be lower and will not exceed the lowest background noise at the boundary of the site (in compliance with the Wiltshire Council recommended target). This being the case, why does the EHO recommendation allow a rating noises so much higher , at least 14dB(A) and to

be assessed 10m from the condensers. The rating noise should not be allowed to add to background noise and therefore should be assessed at the boundary. Why would you allow more noise on the site than is necessary or required?

10. Planning Considerations

The main issue associated with this application is the impact of the proposed condenser and air conditioning units on the amenity of neighbouring residents and the compatibility of this type of plant with this quiet residential location.

The site is visually well screened from public viewpoints and subject to the retention of the existing landscaping, there are no particular concerns regarding the impact on the appearance of the conservation area or the setting of the listed building.

10.1 The principle of the proposal and impact upon residential amenity
The use of the site as a supermarket does not require planning permission as this falls within the existing permitted A1 use of the site. The site is located within a town centre location where such businesses may be reasonably expected to be found and the occupancy of this retail unit by Morrisons could be considered to enhance Marlborough's vitality and support one of the underlying key principles of the NPPF, to build a strong, competitive economy. It is of note that previous occupiers of this site (Marks and Spencers and Somerfield) had plant/gained planning permission for plant in this location subject to conditions. Listed building consent (based on whether the impact would preserve the special interest of the listed building and its setting only) has already been granted for the works and the proposed new signage is the subject of a separate application for advertisement consent.

In respect of the current application, clearly the presence of residential properties and their gardens at the rear of the High Street is an important consideration and the installation of the plant under consideration should be subject of scrutiny to ensure that the health and quality of life of neighbouring occupiers is not significantly harmed and the NPPF recommends that mitigation measures are considered to help address concerns. Whilst the site is located on the main High Street, it is recognised by neighbours, residents and the applicants that noise levels at the rear of the High Street are exceptionally low for this type of location. This is backed up by the background noise readings. Criticism was made of the original noise assessment submitted by the applicants and since this time, further calculations and technical information has been provided to gain a full understanding as to the type of equipment, how it operates, the tonal nature of the noise, mitigation measures and the safeguards in place to ensure it does not operate above any agreed levels. Several site visits have been carried out to assess the plant operating at capacity in situ, and to understand the 'teething problems' of the stepping up of the plant on warm afternoons. It is believed this latter issue has now been resolved but in the event that this caused future issues, it may be possible to deal with this either through the recommended conditions or through Environmental Protection legislation.

Environmental Protection Officers are satisfied that from the evidence provided, together with their site evaluations to assess the noise for themselves at the maximum operating capacity, that the proposals would not result in any significant loss of amenity to neighbouring occupiers. In response to criticisms over their recommended conditions and for clarity, the following points are made;

1) The acoustic hood is fitted – this is the metal casing that can be seen around the top of the compressor fans. The metal is perforated inside so that it will absorb some noise.

2) In response to the neighbour criticism over the EPO recommended noise restriction condition; 10m is the distance to the boundary which has the nearest residential property (The Nest) on the other side of it. We therefore are requiring that they meet the limit set at this distance. 10m is the distance that has been used in the submitted assessments. It would not be reasonable to set the limit at 3m which is the distance to the boundary to the

south west. There are no residential properties adjacent to this boundary.

We could not term the condition ‘at the boundary’ because firstly this does not define which boundary and secondly the boundary is a substantial brick wall. Any measurements would need to be taken 3 ½ m away from this wall to prevent reflections affecting the measurements.

The condition includes that the cumulative “rating noise” level does not exceed the “background noise” level measured of any ten minute period measured at 10m from the condensers. This should ensure that the noise resulting from the plant should not exceed average background noise levels as it was noted from the noise survey data that there were infrequent occasions where the lowest background noise level was unusually low (24dB daytime and 19dB night-time).

11. Conclusion

The application has been the subject of particular and detailed scrutiny to ensure that sufficient evidence has been obtained to enable full and proper evaluation, supplemented through a number of site visits. It is concluded that the noise levels emanating from the proposed plant would not cause significant harm to the amenities of neighbouring occupiers such that would warrant a refusal of planning permission. There are no other issues which raise any particular concerns.

RECOMMENDATION

Approve with conditions

1 All soft landscaping comprised in the approved details of landscaping in respect of the discharge of condition number 2 relating to planning permission K/55894/F shall be maintained in situ, free from weeds. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise first agreed in writing by the local planning authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

2 The store shall not be open to members of the public outside the hours of 07:00 and 23:00 from Mondays to Sundays inclusive.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenities of the area.

3 The condensers to the rear of 134-135 High Street, Marlborough which serve the refrigeration equipment shall be set to work at no more than 44% of maximum duty. The condensers shall be operated and maintained to ensure that the cumulative "rating noise" level does not exceed the "background noise" level measured of any ten minute period. The "rating noise" level shall be assessed at 10m from the condensers. The meaning of "rating noise" and "background noise" referred to in this condition shall be taken from British Standard 4142: 1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

4 The air conditioning units in the acoustic enclosure at roof level of 134-135 High Street, Marlborough shall be operated and maintained to ensure that the cumulative "rating noise" level does not exceed the "background noise" level measured of any ten minute period. The "rating noise" level shall be assessed at 12m from the condensers. The

meaning of "rating noise" and "background noise" referred to in this condition shall be taken from British Standard 4142: 1997 Method for Rating Industrial Noise Affecting Mixed Residential and Industrial Areas.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

5 Any delivery lorries serving the store shall not be loaded or unloaded outside of the hours of 08:00 to 20:00 Monday to Saturday and 10:00 to 20:00 Sundays.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

6 The development hereby permitted shall be carried out in accordance with the following approved plans:

p595/102 received on the 20th May 2013

595/103 received on the 31st May 2013

595/106 received on the 20th May 2013

595/104A received on the 20th May 2013

595/105B received on the 9th August 2013

595/101A received on the 3rd July 2013

595/105A received on the 3rd July 2013

RF-NB105.dwg received on the 31st May 2013

595/107 received on the 31st May 2013.

Noise Survey and Impact Assessment dated 14th June 2013 (insofar as not superseded by additional noise data following maximum capacity of plant change to 44% to deal with 'stepping up')

Raw Noise Data received on the 24th July 2013

AC Plant Noise Technical Note dated 6th August 2013

Refrigeration Plant Noise Readings received on the 28th August 2013

Technical data (3 sheets) for Mitsubishi Air Conditioning Units received on the 30th May 2013.

REASON: For the avoidance of doubt and in the interests of proper planning.