

**Q** My wife and I are in our sixties and rent from a housing association. We moved to a new home in 2012 after requesting a quiet location, but in 2014 the developer created a play area next to our house. The noise is so intrusive that we can no longer have our windows open or sit outside. The council gave us a noise meter and the environmental department agreed that it was intrusive, but because the play area had been approved by planning, what felt it would be a difficult issue to pursue. What can we do?

**Ron Meyler, via email**

**A** There is nothing the council can do in terms of planning enforcement unless there were conditions attached to the permission that limited, for example, the hours of operation. You could complain to the Local Government Ombudsman that the permission should not have been granted, but unless there were objections to the plans based on noise concerns, it's unlikely it would find in your favour. So the only options are to consider whether the noise is a statutory nuisance or a common-law nuisance.

A statutory nuisance exists if either a common-law nuisance (see below) exists or the nuisance is prejudicial to health. The local authority has a duty to investigate whether a statutory nuisance exists once notified, if it does, it has a duty to serve an abatement notice. If it fails to do so, you can apply to the magistrates' court for an abatement order. You'd have to get your own noise expert to prepare a report and assessment, based on readings taken by the council's environmental health officer (EHO).

The EHO will decide whether a statutory nuisance exists. Factors include noise level, duration, frequency, time of occurrence and "character of the locality". The council's view of whether to serve an abatement notice shouldn't be coloured by the fact that its planners gave permission for the play area.

To make a successful common-law nuisance claim, you'd need to apply to court and show that the damage is substantial and unreasonable. The court could order an injunction to stop the nuisance and/or damages for loss of value to your home. You would have to show that the noise would be a nuisance to anyone, irrespective of their position in life, age or state of health.

The fact that a defendant may have planning permission is not a defence. There is no single noise level that amounts to a common-law nuisance: it is a combination of scientific measurements and guidelines set out above. You will need an acoustic specialist to support your claim. You'd have to fund a common-law nuisance claim, but if you were successful, you could expect to recover some (though not all) of your costs.

**Alex Ground is a partner at Russell-Cooke Solicitors; russell-cooke.co.uk**

**Q** We have a kitchen extension with a polycarbonate roof that leaks. It is 25 years old. We would like a glass roof and wonder if we need planning permission to replace the polycarbonate with glass. What procedures need to be followed and how much would it cost?

**VW, via email**

**A** I am concerned that your structure may not be legal. Sometimes Divers fit kitchens in a fully glazed conservatory, but this does not meet building regulations because conservatories are not generally classed as habitable rooms. Hopefully, your conservatory is a solid structure with a few glazed openings.

The only planning issue here is whether your house is listed. If not, no permission is needed. The glazing must meet building regulations, however, so your installer or architect should complete a building regulation application. The key issue is

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safety. Ensure that the glass is away from work surfaces, so fat and steam don't collect on it. (This goes back to the issue of why kitchens shouldn't be in conservatories.) The glazing should be laminated to ensure that if it is cracked, glass won't fall on you.

If you have a large space to glaze, the glass will need to be thick, to avoid flexing, or subdivided. Also consider heat loss and gain. The best option is low-emissivity glass from Pilkington; Saint-Gobain is another leading supplier. This is most effective as triple-glazed units, but also works as double glazing.

As more weight is being introduced, the roof should be inspected by a structural engineer. It may need to be strengthened. The glazing can be set into a timber sub-frame with flashing. Prices start at about £300 a sq metre, plus installation costs; the total for a simple large rooflight would be about £2,500, including fitting. This increases if you need additional steels or timbers for support. Ask the glass suppliers about approved local fitters.

**Francis Shaw is the managing director of Shaw & Jagger Architects; shawandjagger.com**



**Q** We are providing our daughter with a substantial deposit to buy her first flat with her partner. Are we able to protect the money from him, as he is contributing significantly less to the purchase price, in the event of them separating and selling the property?

## QUESTION OF THE WEEK

**AN, by email**

**A** This is a common question – particularly as soaring property prices have led increasing numbers of young people to rely on the bank of mum and dad to get a toehold on the housing ladder.

One of the best ways of securing your investment is to set up a loan against the property and register a legal charge against the title. The flat could then not be sold without your consent and your confirmation that the terms of the loan have been fully complied with.

The terms should be documented, but this need not be a complicated agreement. You would have the option to charge interest on the loan, if you wish, and could even demand regular repayments of interest to see an immediate return, although this might create income-tax implications.

A loan would only protect your initial investment and would not see a return on any uplift in the value of the property. If the home is being purchased with a mortgage, the lender will need to consent to you taking a second charge. Its loan would take priority, and there is always a risk that the lender ranked last would not be able to

collect their investment in full on a sale. Another option is to put in place a "declaration of trust", which should be done immediately on completion of the purchase. This is a legal document that will clearly identify the contributions made towards the purchase price and how much each party is entitled to when the property is sold.

If, for example, the flat was being bought for £500,000 and your daughter, with your assistance, was contributing £375,000, the declaration of trust could stipulate that she owns either 75% of the equitable interest in the property or a fixed amount equal to her contribution. The remaining 25% may belong to the partner or to the couple in equal shares, taking into account other contributions.

If the flat is being purchased with the assistance of a mortgage, the equitable shares would be after deduction of the mortgage amount. Legal costs and estate agents' fees are also deducted when calculating the sale proceeds. The existence of the declaration of trust can be noted against the property's title held by the Land Registry, which will ensure that the flat cannot be sold without your involvement.

Which ever option you choose, it is important to seek financial and legal advice first, to make sure you are protected in a way that best suits your circumstances.

**Clare Andrews is property partner at Barlow Robbins LLP; www.barlowrobbins.com**

## TOP TIPS

You can keep more than you realise in the deep freeze. Here are five essentials that do well on ice.

**Milk** Freeze in an airtight container, with space for expansion as the milk freezes. Use within six months.

**Butter** Can be frozen for up to three months.

**Fresh herbs** These last for up to six months in the freezer. Freeze in a single layer on a baking sheet, then pop into bags when frozen. Delicate herbs such as coriander should be chopped, put into

ice-cube trays and covered in water before freezing.

**Onions** They can be chopped up and frozen in bags, then added to recipes straight from the freezer. They will keep for six months.

**Wine** Freeze in ice-cube trays or freezer bags that seal tightly – alcohol won't freeze solid. Once defrosted, it's best for cooking with. Use within six months.



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# Home help

Worried about the bank of mum and dad being fleeced by the in-laws, or just fixing the kitchen roof? Let our experts offer advice