
Appeal Decision

Site visit made on 17 June 2025

by **Thomas Courtney BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8th July 2025

Appeal Ref: APP/X1545/W/24/3354918

Manor Farm, Walden House Road, Great Totham CM9 8PN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Andrew Marven (Q Square) against the decision of Maldon District Council.
 - The application Ref is 24/00498/VAR.
 - The application sought planning permission for the extension to workshop without complying with a condition attached to planning permission Ref 19/00472/FUL, dated 19 July 2019.
 - The condition in dispute is No 7 which states that: the premises shall only be used as a workshop for quad bikes and for no other purpose including any purpose as defined within any Class of the Schedule to the Town & Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order) and for no other purpose.
 - The reason given for the condition is: in the interests of the character and appearance of the rural area and the amenity of the occupiers neighbouring residential properties, in accordance with Policies D1, S1, S8, D2 of the Maldon District Approved Local Development Plan, and the NPPF.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant. This application is the subject of a separate decision.

Main Issue

3. The main issue of the appeal is the effect varying the condition would have on the description of development and operative part of the permission.

Reasons

4. The appeal proposes to vary Condition 7 to state that the premises shall only be used for uses falling with Class E(g) and for no other purpose including any purpose as defined within any Class of the Schedule to the Town & Country Planning (Use Classes) Order 1987 (as amended)(or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order) and for no other purpose.
5. Having regard to the Finney judgement¹ (*Finney*) the courts established that an application under Section 73 of the Town and Country Planning Act 1990 (s73)

¹ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (UK) Limited [2019] EWCA Civ 1868

may not be used to obtain a permission that would cause conflict and require a variation to the terms of the operative part of the planning permission, which includes, the description of the development for which the original permission was granted.

6. The original permission was granted for an “extension to workshop”. Condition 7 restricts the use of the building to the repair and maintenance of quad bikes only. The appellant contends that varying Condition 7 would not alter the description of development but would simply amend a condition regulating how the building is used. It is argued that *Finney* does not apply because the description of development does not explicitly limit the use of the building.
7. However, the restriction imposed by Condition 7 defines a fundamental aspect of what was permitted, namely the specific activity for which the additional workshop floorspace was justified. Removing this restriction would materially broaden the nature and scope of the use beyond what was originally approved.
8. I acknowledge that the description itself does not specify the use in detail. However, the condition is integral to defining the operative nature of the development permitted. The restriction to a quad bike workshop formed the basis for assessing the impacts and justifying the acceptability of the extension in this location. Furthermore, I note that the original quad bike business use ceased trading at the site in 2022. Without Condition 7, the building could be occupied by a broad range of Class E(g) uses, which are materially different in character and impact from the former single-purpose use.
9. The proposed variation would effectively enable a change of use by opening the site to any use within Class E(g), such as offices, light industrial or research uses, without any clear assessment of the likely intensification of activity, parking demand, noise or effects on the living conditions of neighbouring occupiers. In my view, this would go beyond a minor variation of a condition and would in practice alter a fundamental aspect of the approved development’s operation and impact.
10. It would not be feasible to control all prospective uses and potential impacts through the imposition of planning conditions as suggested by the appellant. What’s more, the appellant highlights that there are no restrictions in place on the adjoining unit. I have limited information regarding the adjacent unit and have not been supplied with any details relating to its use. In any case, each appeal is assessed on its own merits.
11. Consequently, having regard to the principles established in *Finney*, the proposal falls outside of the scope of s73 and cannot be determined through s73. Any wider or alternative use of the building should properly be the subject of a fresh planning application to allow the local planning authority to fully assess its impacts on living conditions, parking and highway safety against current development plan policy.
12. For these reasons, the appeal must therefore be dismissed and I am not required to consider further the matters in dispute between the parties.

Conclusion

13. For the reasons given above the appeal should be dismissed.

Thomas Courtney

INSPECTOR