

Section 73 Application

Removal of Condition 3 of Planning Permission
26/00272/FUL

The Halewood Shopping Centre, Leathers Lane, Halewood,
Knowsley

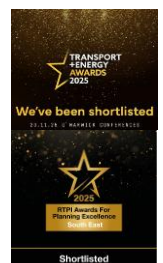


September 2026

INSTAVOLT



Lone Wolf Planning



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Contents:

1. Introduction
2. Condition 3 and the Council's Decision-Making Record
3. Permitted Development Rights
4. The Planning Fallback and the Proper Baseline
5. The Planning Inspectorate's Approach
6. Development Plan and National Policy
7. Enforcement and Expediency
8. Conclusion

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1. Introduction

- 1.1 Lone Wolf Planning Ltd. submits this application under section 73 of the Town and Country Planning Act 1990 on behalf of InstaVolt Ltd. It seeks the removal of Condition 3 attached to planning permission 26/00272/FUL at the Halewood Shopping Centre.
- 1.2 The underlying permission is for the installation of four rapid electric vehicle charging stations, including one accessible bay, together with ancillary equipment. The section 73 application does not alter that operative description or the approved physical layout. It concerns only whether the additional planning control imposed by Condition 3 is necessary and reasonable.
- 1.3 Condition 3 requires a Noise Impact Assessment before the charging units are installed. The assessment must address the 23:00-07:00 period and consider charging equipment, vehicle movements, door slams and customer activity. Any mitigation identified by that future assessment must then be implemented before first use and retained for the lifetime of the development.
- 1.4 The issue is not whether noise and residential amenity are legitimate planning considerations. They plainly are. The issue is whether this particular condition is needed to make this particular development acceptable when the lawful planning baseline, the Council's own assessment and the August 2026 NPPF are considered together.
- 1.5 The central points are:
 - ✎ the Council's general residential-amenity assessment concluded that the chargers, within this existing shopping-centre car park, would not have an additional impact on noise levels or residential amenity compared with the existing car park, while Environmental Health's residual concern was confined to potential effects during the 23:00-07:00 period;
 - ✎ the Council's own report acknowledged permitted development rights for EV chargepoints but did not carry that material consideration into the residential-amenity or conditions analysis;
 - ✎ Part 2 Class E now permits charging upstands and substantial associated equipment in qualifying off-street car parks, without a planning condition controlling operating hours or requiring a bespoke Noise Impact Assessment;
 - ✎ the car park contains 109 regular spaces, in addition to disabled and other parking provision, so the lawful Class E baseline is not merely four alternative chargers: it is potentially many dozens of charging upstands across the car park, subject to the



detailed limitations of Class E;

- ✎ the local policies cited in the reason for Condition 3 control unacceptable or significant noise effects; they do not themselves require this particular assessment. The issue is whether the Council's residual night-time concern made Condition 3 necessary and reasonable when weighed against the Class E baseline; and
- ✎ under NPPF Policy DM6, a condition must be necessary and reasonable. On the evidence before the Council, Condition 3 fails those tests.

2. Condition 3 and the Council's Decision-Making Record

Condition 3

Prior to installation of the electric vehicle charging units, a Noise Impact Assessment must be submitted to and approved by the Local Planning Authority. It is required to consider night-time operation, including equipment noise, vehicle movements, door slams and customer activity, and to identify any mitigation needed to avoid a significant adverse impact on nearby residents.

Reason: residential amenity and prevention of noise nuisance, with reference to Core Strategy Policies CS2 and CS19 and Saved UDP Policy ENV2.

- 2.1 The delegated report records that the application site is the car park to the south of the Halewood Shopping Centre. It contains 109 regular car parking spaces, together with disabled bays, motorcycle parking and other marked areas. The proposal occupies only a small part of that much larger operational car park.
- 2.2 The four approved charging points sit in the south-western part of the car park. The chargers are approximately 2.2 metres high. The delegated report identifies the nearest residential property as approximately 20.5 metres from the proposed EV bays.
- 2.3 The residential amenity assessment concludes that, because the development sits within the existing shopping-centre car park, the charging points would not have an additional impact on noise levels or residential amenity compared with the existing car park. Environmental Health raised no objection in principle, but separately identified an unresolved concern about night-time operation between 23:00 and 07:00. No neighbour objection was received.





Figure 1: Existing Halewood Shopping Centre car park and surrounding context

- 2.4 Environmental Health nevertheless requested a condition because the submitted equipment figure of ≤ 65 dB did not state the distance at which it was measured. The consultee also identified potential night-time disturbance from vehicle movements, door slams, conversations and other customer activity. The report says that a noise assessment would be unlikely to be required if night-time operation were removed.
- 2.5 The consultee therefore identified a potential night-time effect requiring further assessment; it did not conclude that significant adverse harm would occur. The concern is also materially wider than equipment noise: much of the activity listed in Condition 3 - vehicle movements, doors closing and conversations - is ordinary activity already associated with use of a large public car park.
- 2.6 The report's Highways section separately states that there are permitted development rights for EV chargepoints and that the chargepoints themselves would be permitted development if they were not linked to the feeder pillars and bollards. This acknowledges the fallback, but incompletely: the broadened Class E right already in force also permits qualifying equipment necessary for permitted upstands and one unit of equipment housing, subject to its detailed limitations. The material consideration was therefore before the decision-maker. However, the report did not define the full contemporary scope of the Class E baseline, assess its noise implications, or explain why Condition 3 remained necessary when directly comparable EV charging infrastructure could lawfully be installed without that condition.
- 2.7 This is the central defect in the reasoning. The fallback was acknowledged in one topic



section and then effectively compartmentalised away from the very topic - noise and residential amenity - for which it was most material.

3. Permitted Development Rights

3.1 Part 2 Class E of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, grants planning permission for EV charging infrastructure within areas lawfully used for off-street parking. The right was materially expanded by the 2025 amendment Order, which came into force on 29 May 2025. In summary, Class E permits:

- ✎ the installation, alteration or replacement of an upstand with an electrical outlet for recharging electric vehicles within an area lawfully used for off-street parking;
- ✎ in a non-domestic off-street car park, equipment necessary for the operation of a permitted upstand and one unit of equipment housing, subject to the specified dimensional and siting limitations; and
- ✎ upstands up to 2.7 metres high outside the curtilage of a dwellinghouse or block of flats, with no more than one upstand for each parking space.

3.2 The conditions attached by Class E itself concern removal and reinstatement when the charging point is no longer needed. Class E does not impose an operating-hours restriction and does not require a Noise Impact Assessment before installation or operation.

3.3 The approved InstaVolt chargers are approximately 2.2 metres high. They are therefore closely comparable in scale to charging upstands which Class E expressly allows up to 2.7 metres high. The fallback is not an abstract comparison with some materially different form of development: it concerns the same type of EV charging apparatus in the same lawful car park.

3.4 The scale of the baseline is particularly important. The Council records 109 regular parking spaces, before disabled and other marked parking is counted. Class E allows up to one charging upstand per parking space, subject to its detailed limitations. It follows that the planning baseline is capable of accommodating many dozens of charging upstands across this car park without the bespoke planning noise control imposed on the four units permitted by 26/00272/FUL.

3.5 It is not necessary for every one of the 109 spaces to be shown capable of accommodating a Class E installation in order for the point to be material. Even a



materially smaller proportion would dwarf the four permitted chargers. The lawful baseline is therefore substantially more intensive than the development subject to Condition 3.

4. The Planning Fallback and the Proper Baseline

- 4.1 Permitted development rights are capable of constituting a planning fallback and are a material consideration where there is a real prospect of their exercise. The Court of Appeal in *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314 confirmed that the question is whether there is a real prospect of the fallback being implemented; there is no requirement for a developer to set out precisely how every available permitted development right would be used.
- 4.2 That threshold is comfortably met here. The applicant is an established EV chargepoint operator; planning permission has already been sought and granted for charging infrastructure at the site; there is a large lawful off-street car park; and national permitted development rights are expressly designed to facilitate precisely this type of installation. The prospect is plainly more than theoretical.
- 4.3 The proper comparison is therefore not between four chargers subject to Condition 3 and a scenario with no chargers. It is between the approved four-charger scheme and a lawful baseline in which comparable charging upstands can be installed elsewhere across the same car park - and, in an appropriate layout, can replace or supplement the proposed provision - without a bespoke planning noise assessment or hours restriction.
- 4.4 The existence of the fallback does not mean that planning authorities can never impose a noise condition on EV infrastructure. It means that the condition must do real planning work. There must be a site-specific harm which makes the full-permission scheme unacceptable without that control. No conclusion was reached that unacceptable or significant adverse harm would occur here; rather, the question of night-time effects was left unresolved.
- 4.5 The Council's general residential amenity assessment concluded that the chargers would not have an additional noise or amenity impact compared with the existing car park, while Environmental Health retained a discrete concern about potential effects during the 23:00-07:00 period. That position is difficult to reconcile with a condition requiring a later acoustic assessment unless, against the Class E baseline, that night-time control can still be shown to be necessary and reasonable.



5. The Planning Inspectorate's Approach

- 5.1 The Planning Inspectorate's Inspector Training Manual (ITM) is internal training material rather than Government policy or guidance. It is nevertheless directly instructive as to the approach Inspectors are trained to take when considering appeals against conditions and planning fallback positions. Its relevant guidance is founded on the established case law referred to below and is directly relevant and consistent with the approach advanced in this application.
- 5.2 The ITM's 'Approach to decision making' chapter expressly identifies the exercise of permitted development rights as a potential fallback. It states that, once a fallback has been put forward, it needs to be addressed, even where only limited detail is provided. Referring to Mansell, it confirms that there is no legal requirement for a landowner or developer to say precisely how available permitted development rights would be utilised. The relevant threshold is whether there is a 'real prospect' - more than a merely theoretical possibility - of the fallback occurring (ITM, Approach to decision making - part 1, paras 246-253).
- 5.3 The ITM goes further. It directs Inspectors to compare the nature and content of the alternative development with the appeal proposal, to consider whether the fallback would have similar, lesser or greater effects, and to give clear reasons for the weight attributed to it. It states that the weight to be given to the potential fallback should be the main focus when such an issue is material to the outcome (paras 252-256). The Inspectorate's methodology is therefore not to acknowledge permitted development rights in passing and then set them aside; it is to undertake the comparison which was absent from the Council's consideration of Condition 3.
- 5.4 Applied here, the fallback readily passes the Inspectorate's threshold. This is not an abstract possibility involving a different land use or a speculative operator. InstaVolt is an established EV charging operator; permission has already been granted for EV charging at this site; the land is an existing lawful off-street car park; and the GPDO expressly permits the same broad form of charging infrastructure. Moreover, the Council itself expressly acknowledged the existence of EV charging permitted development rights in its officer report. The prospect of Class E rights being exercised is plainly more than theoretical.
- 5.5 The ITM's separate 'Conditions' chapter is equally helpful. It instructs Inspectors that each condition must satisfy the policy tests and that conditions should be tailored to tackle



specific problems rather than used to impose broad unnecessary controls. On necessity, it states that the decision-maker should be able to show why permission would have to be refused if the condition could not be imposed, and that a condition should not be wider than necessary to achieve its objective (ITM, Conditions, paras 30-36). That approach is difficult to reconcile with Condition 3 where the Council's general amenity assessment found no additional impact, the only unresolved issue was potential night-time effects, and comparable Class E charging could occur without equivalent planning control.

- 5.6 The 'Appeals against Conditions' chapter identifies the same questions an Inspector should ask when determining a section 73 appeal: is the condition necessary; what would be the effect of removing it; would removal affect the acceptability of the original development; would it lead to significant harm; and does the condition still serve a useful purpose having regard to the current development plan and material considerations (ITM, Appeals against Conditions, paras 56-59). Those questions favour removal here. The physical scheme remains unchanged; the Council had not concluded that night-time operation would cause significant harm, but had instead left that matter for later assessment; and the lawful Class E baseline allows materially more extensive comparable charging infrastructure without the bespoke noise-control regime imposed by Condition 3.
- 5.7 Accordingly, the Inspectorate's own trained approach reinforces the case advanced in this statement. Permitted development does not automatically invalidate every condition imposed on a full planning permission; rather, the lawful fallback must be properly confronted and the condition must still be shown to be necessary and reasonable in that context. A decision to retain Condition 3 without grappling with the scale and effects of the Class E fallback would be difficult to reconcile with the approach Inspectors themselves are directed to apply on appeal.

6. Development Plan and National Policy

National Planning Policy Framework - DM6

- 6.1 The August 2026 NPPF now contains the planning-condition tests as an express national decision-making policy. Policy DM6 states that planning conditions should only be attached where they are necessary to make development acceptable in planning terms, relevant, sufficiently precise to be complied with and enforced, and reasonable in all



other respects.

- 6.2 DM6 also states that conditions should not restrict national permitted development rights unless there is clear justification. Condition 3 does not formally remove or restrict Class E rights, so DM6(2)(c) is not relied upon as a direct prohibition. It nevertheless reinforces the importance of the national permitted development regime as a material baseline when applying the DM6(1) tests of necessity and reasonableness. Here, four consented charging units are subjected to a materially more onerous planning-control regime than applies to closely comparable Class E development in the same car park. That asymmetry requires a clear, site-specific justification.
- 6.3 The delegated report does not provide sufficient justification. It identifies a potential night-time concern and a desire for further assessment, but it does not conclude that night-time operation would cause unacceptable or significant adverse harm. A condition cannot become necessary merely because a consultee requests it; the decision-maker must be satisfied that it is needed to make the development acceptable, taking the Class E fallback into account.
- 6.4 Condition 3 therefore fails the necessity test and, when judged against the lawful Class E baseline, the reasonableness test. The principal objection is to the need for the assessment requirement itself, not to the timing of its discharge.

NPPF Policies DM7 and P3

- 6.5 Policy DM7 requires development to be assessed as a land use and says that separate regulatory regimes should be assumed to operate effectively unless there is clear evidence to the contrary. Planning decisions should not duplicate or extend those controls.
- 6.6 Policy P3 requires development to avoid unacceptable pollution effects and, specifically for noise, to mitigate potential adverse effects and not result in noise exposure at the significant observed adverse effect level. The national policy is not a requirement for silence, nor does it establish a policy objection to every incremental change in background noise.
- 6.7 The Council did not conclude that the identified night-time effects would reach an unacceptable or significant observed adverse effect level. Instead, it left the question to a later assessment. Condition 3 therefore operates as a precautionary additional planning control rather than as mitigation of an identified unacceptable land-use effect. That is difficult to reconcile with DM6, DM7 and P3 read together.



Core Strategy Policy CS2

- 6.8 Policy CS2 is not a basis for a precautionary noise assessment in every case. It seeks, among other things, to reduce carbon emissions, recognise the role of new technology, minimise negative impacts on noise and vibration, and mitigate those impacts appropriately. Its decision threshold is an “unacceptable impact”.
- 6.9 The Council's general assessment found no additional noise impact over the existing car park during its established daytime use, while the residual concern was confined to potential night-time effects. Properly applied, CS2 requires unacceptable impacts to be addressed but does not establish that this particular control is necessary. Against the Class E fallback, removal of Condition 3 does not conflict with CS2. The policy also positively recognises the role of new technology and carbon reduction, both directly relevant to public EV charging infrastructure.

Core Strategy Policy CS19

- 6.10 Policy CS19 requires development to avoid unacceptable impacts on existing residents, business occupiers and future occupiers. Its supporting text identifies noise as one type of effect which may affect amenity. Again, the policy test is unacceptability, not the mere existence or possibility of noise.
- 6.11 There is no evidence in the delegated report that the Council concluded the permitted development would produce an unacceptable amenity effect. Its general finding was that the chargers would not create an additional noise impact compared with the existing car park, while the residual concern was confined to potential night-time effects requiring further assessment. That distinction does not establish an unacceptable impact under CS19. Removal of Condition 3 therefore accords with the policy when the Class E fallback is taken into account.

Saved UDP Policy ENV2

- 6.12 Saved Policy ENV2 states that development causing an unacceptable increase in noise or vibration will not be permitted and allows conditions where effective noise insulation or other required mitigation is necessary. Its supporting procedure states that a noise assessment will be required as part of the planning application where a development would be likely to generate significant levels of noise.
- 6.13 That wording assists this application. The Council did not conclude that the four chargers were likely to generate significant noise; instead, the question of potential night-time effects was left to a post-permission assessment. If ENV2 had truly required a Noise Impact



Assessment to establish whether the development was acceptable, its own supporting text indicates that assessment should have formed part of the application-stage evidence, not been deferred until after acceptability had already been determined.

- 6.14 ENV2 is therefore consistent with removal of Condition 3 when applied to the facts of this case. To the extent that any older local policy were interpreted as requiring a precautionary control irrespective of the DM6 tests or the P3 thresholds, Annex A of the August 2026 NPPF provides that materially inconsistent development-plan policies, or parts of them, should be given very limited weight.

Consistency of the Development Plan with National Policy

- 6.15 It is not contended that Policies CS2, CS19 or ENV2 are materially inconsistent with the August 2026 NPPF. Properly read, each is broadly consistent with Policy P3 because each is directed towards unacceptable or significant noise effects and mitigation where necessary. None requires precautionary acoustic control merely because development is capable of generating some noise.
- 6.16 The inconsistency lies in the Council's application of those policies. None justifies Condition 3 merely because potential night-time effects were identified for further assessment. The Council's general amenity assessment found no additional impact, its residual concern was limited to night-time operation, and it did not conclude that unacceptable or significant adverse harm would occur. Against a materially more extensive Class E fallback with no equivalent acoustic control, DM6 still requires Condition 3 to be shown necessary and reasonable. If the local policies were instead interpreted as requiring Condition 3 regardless of those national tests, that interpretation would be materially inconsistent with DM6 and P3 and, under Annex A, the inconsistent part should be given very limited weight.

7. Enforcement and Expediency

- 7.1 There is a further practical reason why Condition 3 is a poor planning control in this location. Class E rights remain capable of being exercised elsewhere in the same car park. The approved four chargers could therefore operate in an acoustic environment containing other, closely comparable EV charging upstands which are not subject to Condition 3.
- 7.2 That does not mean that a subsisting planning condition becomes legally unenforceable



merely because permitted development exists nearby. While Condition 3 remains on the permission, it is capable of enforcement. The point is one of planning purpose and expediency: what material amenity benefit is achieved by enforcing a bespoke acoustic control against four units if materially similar lawful units can operate alongside them without that control?

- 7.3 NPPF Policy DM8 expressly requires enforcement decisions to take account of the impact of the breach and the extent to which the breach would otherwise be acceptable. If Class E chargers and ordinary car-park activity form part of the same night-time acoustic environment, the practical planning benefit of source-specific enforcement against these four units would need to be considered in that context. That does not make enforcement impossible; it bears on expediency and planning purpose.
- 7.4 The difficulty is even clearer because Condition 3 extends beyond equipment noise to vehicle movements, door slams and customer activity. Those are ordinary incidents of the existing car-park use and would also accompany Class E charging. A condition focused on those activities would control only one element of the wider acoustic environment, and its ability to secure a materially different overall acoustic outcome is therefore limited.
- 7.5 This is not put forward as a reason to disregard a condition after it has been imposed. It is a reason to remove the condition now. The section 73 process exists to reconsider whether a condition remains justified. Against the lawful baseline, Condition 3 does not perform a necessary or proportionate land-use function.

8. Conclusion

- 8.1 Condition 3 should be removed.
- 8.2 The Council accepted that, during daytime hours, the proposed charging points would not have an additional impact on noise levels or residential amenity compared with the established use of the shopping centre car park. Environmental Health raised no objection to the development in principle and expressly advised that a noise assessment would be unlikely to be necessary if the chargers did not operate between 23:00 and 07:00. The sole residual concern underlying Condition 3 therefore relates to night-time operation.
- 8.3 That distinction does not, however, justify Condition 3 when the lawful permitted development baseline is considered. Class E does not confine permitted charging



upstands to daytime operation. Consequently, charging infrastructure capable of operating during precisely the 23:00–07:00 period which concerned Environmental Health could lawfully be installed elsewhere across this car park without an acoustic assessment, without an hours restriction and without equivalent planning control over vehicle movements, door closures or customer activity. Condition 3 therefore subjects four expressly permitted chargers to a night-time noise control which the planning system has chosen not to impose upon the materially similar Class E fallback.

- 8.4 With 109 regular spaces alone, the lawful planning baseline is capable of accommodating many dozens of charging upstands across the car park, subject to the detailed limits of Class E. That describes the legal capacity of the right rather than asserting that every space would in practice be converted. The realistic fallback need not involve exercise of Class E to its theoretical maximum: there is, at minimum, a real prospect of comparable charging upstands being installed elsewhere in this large lawful car park without a planning hours restriction or a pre-installation Noise Impact Assessment.
- 8.5 The local policies cited in the reason for Condition 3 do not themselves require this control. CS2, CS19 and ENV2 are concerned with unacceptable or significant noise effects. The Council accepted that, during daytime hours, the charging points would not materially add to the established noise environment of the shopping centre car park, while Environmental Health's residual concern was confined to potential effects during the night-time period between 23:00 and 07:00. ENV2 itself anticipates assessment where development is likely to generate significant levels of noise. The issue is therefore not whether night-time noise can ever be a material consideration, but whether it was necessary and reasonable to impose this particular assessment requirement on four chargers when materially similar charging infrastructure could be installed elsewhere across the same car park under permitted development rights without equivalent night-time noise controls.
- 8.6 NPPF Policy DM6 requires a condition to be necessary and reasonable. Its separate caution against restricting national permitted development rights reinforces the importance of the national permitted development regime, although Condition 3 does not itself remove Class E rights. Policies DM7 and P3 reinforce the need for proportionate, effect-based control rather than duplication. Here, the identified issue is a residual night-time concern, not an established unacceptable noise effect.
- 8.7 Condition 3 was not necessary to make the development acceptable in planning terms and is not reasonable when judged against the lawful Class E baseline. Its removal would



leave the physical development unchanged and would not create conflict with the development plan or the national decision-making policies in the NPPF.

- 8.8 Planning permission should therefore be granted under section 73 without Condition 3, with the remaining relevant conditions and approved plans carried forward as appropriate.

Key references

- 🐾 Town and Country Planning Act 1990, section 73.
- 🐾 Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2 Part 2 Class E, as amended by SI 2025/560.
- 🐾 National Planning Policy Framework, August 2026: Policies DM3, DM6, DM7, DM8 and P3; Annex A.
- 🐾 Knowsley Local Plan: Core Strategy (2016): Policies CS2 and CS19.
- 🐾 Knowsley Replacement UDP (2006): Saved Policy ENV2.
- 🐾 Mansell v Tonbridge and Malling BC & others [2017] EWCA Civ 1314.
- 🐾 Maidstone BC application 25/500939/FULL (Staplehurst Nurseries) - section 73 permission removing an EV charging operating-hours condition.
- 🐾 Planning Inspectorate, Inspector Training Manual (correct at 4 February 2025): Approach to decision making - part 1, paras 246-256; Conditions, paras 30-36; Appeals against Conditions, paras 56-59.
- 🐾 Gambone v Secretary of State for Communities and Local Government; Schneck v SSHCLG & West Berkshire DC [2022] EWHC 3335 (Admin).

