



Appeal Decision

Site visit made on 3 May 2022

by **Helen Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th June 2022

Appeal Ref: APP/G1630/W/22/3290655

Evington Manor, Tewkesbury Road, Coombe Hill, Gloucester GL19 4AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (the Act) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John McCreadie of New Dawn Homes Ltd against the decision of Tewkesbury Borough Council.
 - The application Ref 21/00063/FUL, dated 24 February 2021, was refused by notice dated 25 October 2021.
 - The application sought planning permission for replacement dwelling with attached garage, without complying with conditions attached to planning permission granted under appeal Ref APP/G1630/W/17/3187667, dated 13 July 2018 (following refusal under application Ref 17/00478/FUL, dated 2 May 2017, refused by notice dated 26 September 2017).
 - The conditions in dispute are Nos 1, 8 and 9. Condition No 1 states that '*Unless modified by the conditions below the development hereby permitted shall be carried out in accordance with the following approved plans: 100; 101; 102; 103; 104; 105 Rev B; 106; Figures 4 and 5*'. The reason given for the condition is to provide certainty as to what has been permitted. Condition No 8 states that '*No further demolition, ground works, or site clearance, including those required by 11 of this decision, shall take place after the date of this decision until a protected species method statement including a timetable for implementation has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the timetable approved as part of the protected species method statement referred to above. Upon implementation of the approved details specified in this condition, those details shall thereafter be retained*'. The reason given for the condition is that it is necessary to condition the submission of a protected species method statement to mitigate any impacts of the development [which had commenced]. The protected species could potentially be affected by any further demolition, ground works or site clearance. Condition No 9 states that '*The existing dwelling and outbuilding known collectively as Vine Tree Farm, shown as dotted outlines on the approved block plan no.105 Rev B, shall be demolished and all resultant debris and materials shall be removed from the site within one month of the dwelling hereby permitted being occupied or within one month of the bat house hereby permitted being implemented whichever is the later unless a different period of time has been agreed in writing with the local planning authority*'. The reason given for the condition is that the proposal is for a replacement dwelling in an area where a new dwelling would otherwise normally be restricted, so it is necessary to condition the demolition of Vine Tree Farm. The ground levels within the Wildflower Paddock area are required to be restored to that indicated to ensure that flood risk elsewhere is not increased.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A replacement dwelling has been constructed on site and has been occupied. The original dwelling remains in place. The original dwelling is referred to as Vine Tree Farm, with the replacement dwelling referred to as Evington Manor.
3. Condition 9 of the existing permission requires the demolition of Vine Tree Farm. The appellant seeks to remove condition 9 to allow Vine Tree Farm to be retained. They propose to use the western section (referred to as the 'hay loft') as a bat roost and the main section of the building, across two floors, as a store ancillary to Evington Manor. In association with the proposed removal of Condition 9, the appellant also seeks to vary Conditions 1 and 8, to allow the approved plans to be amended and the Protected Species Method Statement to be revised in line with the proposed retention and use of Vine Tree Farm.
4. The Development Plan for the area currently comprises the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy December 2017 (JCS) and saved policies of the Tewkesbury Borough Local Plan to 2011 (TBLP). The policies most important to the determination of this appeal remain broadly consistent with the National Planning Policy Framework (the Framework) so I afford them full weight. The Tewkesbury Borough Plan 2011-2031 (TBP) is at an advanced stage of examination and the policies within it, which are most important to the determination of this appeal, are broadly consistent with the Framework. Therefore, in accordance with Paragraph 48 of the Framework, I afford the policies within the emerging TBP moderate weight.
5. Recent case law¹ established that if amending a condition would result in a conflict with the original description of development, then that amendment would be beyond the powers of s73 of the Act. The original description of development in the permission subject to this appeal includes the term 'replacement dwelling'. The proposed removal of condition 9 would result in Vine Tree Farm remaining on site, but no longer used as a dwelling. Therefore, consideration has been given to the relevance of the case law to this appeal. Both parties were given the opportunity to comment. I have considered the information submitted and am satisfied that the case law does not need to be applied in this case and the proposal can be considered under s73 powers.

Main Issues

6. The main issues are:
 - The effect of the proposal on the character and appearance of the site and surrounding area;
 - The effect of the proposal on the likelihood of flooding in the area;
 - The effect of the proposal on biodiversity and protected species; and
 - Whether the retention of Vine Tree Farm is acceptable with regard to policies which control the location of dwellings, including replacement dwellings.

¹ John Leslie Finney v Welsh Ministers, Carmarthenshire County Council and Energiekontor UK Limited [2019] EWCA Civ 1868. Commonly referred to as 'Finney'.

Reasons

Character and appearance

7. The site is a large rectangular plot, accessed from the A38 highway via a long driveway which also serves neighbouring properties. The replacement dwelling of Evington Manor is located in the eastern half of the site, with Vine Tree farm in the western half. Due to the topography, the site slopes down significantly from its eastern boundary. A Public Right of Way (PRoW) crosses the site roughly in the middle. The site is located within a Landscape Protection Zone (LPZ) where special protection is given to the ecology and visual amenity of the river environment. This part of the LPZ is characterised by a mix of residential curtilages and agricultural fields and paddocks that are visually contained with hedgerows and trees. The surrounding area is characterised by small clusters of dwellings in a predominantly rural landscape.
8. Vine Tree Farm is extremely visible from the PRoW which crosses the site very close to it. It is also visible from nearby locations including the shared driveway and the road along The Wharf, particularly close to the car park at the end, which serves a nature reserve and the Canal. Vine Tree Farm is intermittently visible from the Canal towpath, but this is restricted by intervening vegetation, particularly when in full leaf.
9. Vine Tree Farm has been a part of the landscape for many years. It will previously have had some architectural merit, a matter recognised in comments from the Council Conservation Officer. At present it is in an extremely poor state of repair. There are numerous missing and loose tiles and bricks, broken and boarded up windows, and detached guttering. Internally, sections of the ceiling are falling down and plaster is coming away from the walls. In its current state, Vine Tree Farm has a detrimental impact on the character and appearance of the site and its surrounding area, particularly when viewed at close quarters from the PRoW.
10. No structural survey has been provided with this appeal. I am therefore unable to consider whether Vine Tree Farm can be retained, and used as an ancillary store as is proposed, without significant works to make it safe and visually more attractive, both for the occupants of Evington Manor, and users of the PRoW. Whilst repairs could potentially be undertaken, the appellant has confirmed that no building work is proposed to be carried out to Vine Tree Farm. In addition, any works to make the building safe and visually more attractive would be likely to have implications with regard to biodiversity and protected species, which is considered in a later section.
11. If Vine Tree Farm were retained and used as a proposed bat roost and ancillary store, it would still have the appearance of a dwelling. It would therefore be read as a second dwelling on the site, intensifying the built form in this rural landscape. It would also be of a disproportionate size for an ancillary store, even for a site of this size.
12. I also note that the Inspector who granted the existing permission considered the proximity of the PRoW to be sufficient justification to restrict permitted development rights for means of enclosure at the site, to prevent the potential for them to have an adverse visual impact. The adverse visual impact of Vine Tree Farm, both as significant built form within the landscape and as a mostly derelict structure, would be significantly more than any means of enclosure.

13. The site is near Grade II Listed Evington House. Due to the separation distance and intervening buildings and vegetation, the retention of Vine Tree Farm would have no material impact on the setting of the listed building and as such its special interest and significance would be preserved.
14. Taken together, I conclude that the above factors mean that the retention of Vine Tree Farm would result in unacceptable harm to the character and appearance of the site and its rural surroundings, within the LPZ. Consequently, the proposal would not comply with Policy SD6 of the JCS, saved Policy LND3 of the TBLP, and emerging Policies LAN2 and RES9 of the TBP, which together, amongst other things, seek to prevent detrimental impacts on landscape character. Furthermore, it would not accord with the Framework which seeks to protect valued landscapes and recognise the intrinsic character and beauty of the countryside.

Flooding

15. The Council Sustainable Drainage Engineer had no comment to make on the application subject to this appeal, but I am informed that Vine Tree Farm, together with the western half of the site, is located within Flood Zones 2 and 3. Framework Paragraph 167 specifies that when determining any planning applications (and by extension, any appeal) authorities should ensure that flood risk is not increased elsewhere. It also requires applications within flood zones 2 and 3 to be supported by a site-specific flood-risk assessment. The appellant says that parts of the garden and the hay loft have flooded in the past but the main part of Vine Tree Farm does not flood. They also state that the introduction of a wildlife pond has improved the situation regarding flooding.
16. It is evident from both the plans, and my site visit, that the ground floor level of Vine Tree Farm is similar to the level of the grassed area around it, with land to the west being lower. However, regardless of any matters related to levels, the approved plans show Vine Tree Farm as being removed and its footprint being part of the wildflower paddock. Vine Tree Farm covers a ground area many times greater than the approved bat house. Consequently, retention of Vine Tree Farm would mean that the area of the site containing hard surfacing and built form would be significantly greater than the approved scheme. This inevitably has implications for surface water infiltration and run off.
17. The assessment of the existing permission was on the basis of the new dwelling as a replacement, with the removal of Vine Tree Farm required by condition. Therefore, the retention of Vine Tree Farm, in addition to the replacement dwelling at Evington Manor, is a different situation. No formal or site specific flood risk assessment has been provided for this situation.
18. I conclude that insufficient information has been provided to demonstrate that the proposed retention of Vine Tree Farm would not result in an increase in flooding risk within the site and elsewhere. Consequently, I am unable to conclude that the proposal would comply with Policy INF2 of the JCS and emerging Policy ENV2 of the RBP, which together, amongst other things, seek to ensure that development does not increase flood risk. Furthermore, it has not been demonstrated that it would accord with Framework Paragraph 167.

Biodiversity and protected species

19. The site is in relatively close proximity to both the Coombe Hill Canal, which is designated as a Key Wildlife Site, and to a Site of Special Scientific Interest (SSSI).
20. According to the appellant Vine Tree Farm provides a habitat for roosting bats and nesting Swallows. A one page document referred to as 'updated ecology bats' has been provided, but the document does not specify the name or qualifications of the person who produced it. Regardless of this, I have no reason to question the presence of bats and birds, which does not appear to be a recent occurrence. Bats were evidently present at the time of the original permission when demolition and a replacement bat house were conditioned.
21. I acknowledge the advice from an ecologist² contacted by the appellant, and the generic advice of Natural England, that the retention of existing bat roosts is preferable to losing them and making compensatory provision elsewhere. Despite this, the loss of Vine Tree Farm and the associated compensatory provision proposed under the existing permission has been considered acceptable.
22. The Council ecologist has not raised any specific objections to the proposal to retain Vine Tree Farm as a bat roost, but requested additional information in order to ascertain what, if any, additional works would be required to the building and whether a license would therefore be required, due to disturbance to roosting bats. The appellant states that if maintenance works were required in the future, an appropriate licence application would be made.
23. However, no substantive information has been provided to allow me to consider if it would be possible to retain and safely use Vine Tree Farm without some works being necessary. I also have insufficient information to reach a conclusion on how the proposed uses of Vine Tree Farm would work together. For example, it is reasonable to expect that the ancillary store use would require some form of lighting, which could impact negatively on its use as a bat roost.
24. Therefore, I conclude that insufficient information has been provided to demonstrate that the proposed retention of Vine Tree Farm and its dual use as a bat roost and ancillary store, would not result in harm to biodiversity and protected species, or that any harm could be adequately mitigated or compensated for. Consequently, I am unable to conclude that the proposal would comply with Policy SD9 of the JCS and emerging Policy NAT1 of the TBP, which together, amongst other things, seek to ensure the protection and enhancement of habitats and species of importance to biodiversity. Furthermore, it has not been demonstrated that the proposal would accord with Framework Paragraph 180 which sets out that planning permission should be refused where significant harm to biodiversity cannot be avoided, or adequately mitigated or compensated for.

² The appellant makes reference to comments made by 'the LPA's consultant ecologist'. These comments seem to be the same comments as made by the ecologist contacted by the appellant. No information has been provided to confirm that this ecologist works for the Council or that he made formal comments on the application.

Location of dwellings, including replacement dwellings

25. It is clear that under Policy SD10 of the JCS, with its intrinsic reference to SP1 and SP2 of the JCS, that an additional or new dwelling would not have been permitted at the site. Only a replacement dwelling would have been permitted.
26. A reasonable interpretation of the word 'replacement' would generally include the removal of the element that was being replaced. However, I acknowledge that neither saved Policy HOU7 of the TBLP or emerging Policy RES9 of the TBP, which relate to replacement dwellings, expressly require demolition of the original dwelling in the policy wording. The reasoned justification for both policies makes it clear that if a different location is justified for the replacement, a legal agreement would be used to secure demolition of the original dwelling. Whilst this seems to indicate the intention of the policy, supporting text does not have the weight of policy.
27. The appellant argues that Vine Tree Farm would no longer be used as a dwelling, so there would not be two separate dwellings on the site. Whilst this is technically the case in terms of the proposed use, as set out above, Vine Tree Farm would still have the appearance and built form of a dwelling and would be disproportionately large for an ancillary store.
28. Regardless of the lack of a specific policy requirement to demolish, the Inspector who granted the existing permission considered it necessary to secure the removal of Vine Tree Farm. I have no evidence to suggest that they imposed Condition 9 only to avoid 2 buildings in use as dwellings being on the site. If that had been the case, the Inspector could have attached a condition to preclude the use of Vine Tree Farm as a dwelling. The Inspector who granted the existing permission considered it reasonable and necessary to secure the demolition of Vine Tree Farm, or they would not have imposed the condition. I have been presented with no information which leads me to reach a different conclusion.
29. I could attach a condition to restrict the use of Vine Tree Farm to the proposed bat roost and ancillary storage and preclude its use as any form of dwelling. However, this would not overcome all of the issues set out above.
30. As Vine Tree Farm would no longer be a dwelling, I find no specific conflict with the wording of Policy SD10 of the JCS, saved Policy HOU7 of the TBLP or emerging Policy RES9 of the TBP. However, for the reasons set out above, I still find it necessary to secure the removal of Vine Tree Farm.

Other Matters

31. I am aware of the precedent value of planning decisions and note the reference to other permissions, the details of which are not before me. However, the referenced sites and proposals appear to be quite different and direct parallels are not easily drawn. I have determined this appeal on its own merits, impacts, circumstances, and situation, in accordance with the development plan.
32. The proposed ancillary store would be convenient for residents of Evington Manor, but this does not overcome the harm identified. Reference has been made to an historic access and track from Vine Tree Farm to The Wharf car park. I have no details on the status of this but acknowledge that no additional paths have been applied for under the application subject to this appeal.

Conclusion

33. The removal of Vine Tree Farm is both reasonable and necessary, therefore Condition 9 needs to be retained to secure its demolition. By extension, it is both reasonable and necessary to secure the approved site layout, replacement bat roost and protected species method statement, so conditions 1 and 8 also need to be retained in their current form and not varied.
34. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

Helen Davies

INSPECTOR