



Appeal Decision

Site visit made on 4 June 2024

by N Teasdale BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2024

Appeal Ref: APP/H4505/W/24/3337254

Orchard House, Saltwell Road South, Gateshead NE9 6DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant full planning permission.
 - The appeal is made by Mr and Mrs Debbie and Jason Johnson against the decision of Gateshead Metropolitan Borough Council.
 - The application Ref is DC/22/00072/FUL.
 - The development proposed is new ancillary dwelling within existing grounds of Orchard House.
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Decision

1. The appeal is allowed, and planning permission is granted for new ancillary dwelling within existing grounds of Orchard House at Orchard House, Saltwell Road South, Gateshead NE9 6DT in accordance with the terms of the application, Ref DC/22/00072/FUL, subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the site and surrounding area, including whether it would preserve or enhance the character or appearance of the Saltwell Conservation Area (CA) as well as the setting of Orchard House which is a non-designated heritage asset.

Reasons

3. The appeal site relates to Orchard House which is a large Victorian Villa, set within extensive, mature gardens at the western end of Whinney House Dene. Whinney House Dene wraps around Orchard House to the garden area which is covered extensively in mature trees. It is understood that Orchard House has been extended towards Saltwell Road South located to the west and sub-divided into two houses with the smaller house known as Appleby House occupying the west part of the house and smaller garden fronting onto Saltwell Road South. The principal elevation of Orchard House is to the south, overlooking the lawn area which is surrounded by mature trees.
4. The proposed development seeks planning permission to erect a two-storey self-contained ancillary dwelling within the grounds of Orchard House on the lawn area to the direct south of the property. The appellant has put forward some personal circumstances in terms of need/requirements for the additional accommodation which I have had due regard to. The proposed dwelling would be of a modern design, set over two floors with a flat roof and integral garage which would be built into the land. It would comprise a mix of brown cladding

with stone pillars on the corners of the property with large areas of glazing proposed to the front and rear elevation along with a balcony created to the first-floor front elevation which would face Orchard House.

5. The appeal site is located within the CA and is within the setting of Orchard House which is a non-designated heritage asset. I therefore have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Moreover, the National Planning Policy Framework (the Framework) advises that great weight must be given to the conservation of designated heritage assets and any harm which is less than substantial must be weighed against the public benefit of the proposal. Paragraph 209 of the Framework also explains that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
6. The CA is noted for its 'leafy suburb' which retains an impressive arcadian feel whereby trees are a major contributor to the area's character. The Interim Planning Advice Note 17 which forms part of the Conservation Area Character Appraisals (IPA17) makes several references to grand villas set in sizable grounds. Whilst the area has been subject to change, its seclusion survives since it still consists of large buildings in grounds with much mature tree cover.
7. The existing house, and its setting forms part of the extensive Victorian development of the area and is typical of the scale, design, and quality of such developments. It therefore positively contributes to the significance of the CA. The Officers' report explains that Orchard House is deemed to be a non-designated heritage asset. Based on the evidence before me and my own observations onsite, I have no reason to disagree.
8. As referred to above, the appeal site contains a large plot with extensive space to the south and southwest of the site. Whilst the proposed development would utilise this space to the south for the erection of a dwelling which is of a good size and thus would increase the density of built development, the size of the plot is large and capable of accommodating a sizable dwelling. It would also still provide extensive space/grounds for the host property. I appreciate the Councils' comments in terms of subdivision of the land. However, the proposed dwelling would be ancillary to Orchard House, utilising the same access to and from Saltwell Road South, which is via a tall, gated entrance and thus would merely sit within the grounds. There are also no physical features proposed to separate the two properties from one another such as fencing/walls which I have considered accordingly.
9. The proposed development would be set to the south of Orchard House and at my site visit, I noted that views into the site were restricted from outside of the site particularly when viewed from Saltwell Road South and Belle Vue Bank. This is due to the overall positioning within the site, extensive coverage of mature trees, high stone wall, tall, gated entrance, and the positioning of surrounding properties along Belle Vue Bank which further restrict views. On this basis, the dwelling would have very limited impact upon the street-scene. Even when trees are not in leaf, the substantial amount of tree

coverage/vegetation that exists and the dwellings overall positioning within the site would still mean that views would be restricted where it is likely that only glimpsed views of the development may be possible from outside of the site. Notwithstanding and even if some further views were available in the winter months when trees are not in leaf, the proposed dwelling would not appear as a discordant addition in this residential setting where there are a mix of other architectural styles of dwellings nearby of varying ages in addition to the Victorian development that exists. Its contemporary design and materiality is different from surrounding properties but differentiates old from new thereby creating interest.

10. Even if I accepted the Councils' claims in terms of subdivision of the land, the positioning within the site and the extensive tree coverage and access arrangements coupled with the level of space/grounds that would remain between both properties, means that it would be very difficult to establish that the grounds were subdivided. It would therefore not significantly erode the special qualities of the CA.
11. I note the appellants' recent claims that the development would not result in any tree loss although based on the information before me and my own observations onsite, I am not sufficiently satisfied that this would be the case. That said and even if a number of trees were to be removed to facilitate the proposed development as indicated within the Arboricultural Report, it would result in minor tree loss of low value and a significant proportion would still remain as to not result in any significant adverse impact. I am therefore satisfied that the proposal can be constructed without direct harm taking place providing the tree protection and methodology recommendations are carefully followed which I have conditioned. The trees removed can be replaced elsewhere on the site and I have attached a landscape condition to this effect. Overall, the site would still retain its overall spacious arcadian feel, characterised by large mature landscaped plots with large footprint dwellings.
12. As previously set out, the proposed dwelling would be of a modern design with a flat roof form which acts to reduce its overall height/massing and it would have an integral garage. Its overall size and scale whilst of a good size would still be subordinate to Orchard House and its modern palette of materials ensures that the new dwelling is of its own time as to not compete/interfere with Orchard House. The flat roof form, cladding and large areas of glazing would create a minimalistic appearance which would allow it to blend in well with the existing tree coverage and landscaped context. It would also give a visual 'nod' to the more traditional architectural design of Orchard House via the stone pillars proposed which are proportionate to the rest of the building and would not be harmful.
13. The integral garage is set further back from the main elevation and built into the land. Such features help to reduce its massing on the building, and I do not find the garage to be an overly dominant feature on the property. The external lighting proposed are not uncommon features associated with a property of this nature and are not of a size or scale to be harmful in terms of visual amenity or lead to harmful light spillage/pollution. The external lighting is also the subject of a planning condition and thus further consideration would be given. Whilst materials of the building have been specified on the plans, I find it necessary to attach a condition relating to the details of the access in terms of design and materials to be used which would connect to the existing driveway. This would

- not only ensure a satisfactory appearance but would also allow consideration to be had to nearby trees including any potential impact.
14. In coming to these conclusions, I have had due regard to the positioning of the dwelling in front of the main elevation of Orchard House, but I cannot agree that the proposed dwelling would lead to an incongruous feature within this setting which is in any case very well contained. I am aware of concerns in terms of the internal layout and functionality although based on the plans provided and the appellants' personal circumstances and requirements put forward in relation to the dwelling, then I raise no particular concern in this regard nor is there any compelling evidence to persuade me to question the layout/functionality.
 15. I appreciate that views of the site can be had from Appleby House which occupies the western part of Orchard House. However, there would be a good distance from the two properties and this, coupled with my findings as set out above, then I am satisfied that the proposed development would not be a harmful form of development in this context or appear unduly overbearing. Some glimpse views from the rear of the properties along Alderley Road may also be available particularly when trees are not in leaf given their relationship and proximity with the site although again for the same reasons, I do not find the development to be harmful. The properties located to the direct south of the site have a gable elevation facing onto the appeal site and at my site visit, I observed that the windows on this elevation were indeed frosted glass and thus the existing occupiers would not be unduly harmed by the proposed development.
 16. Notwithstanding my earlier comments in relation to the sub-division of the land. IPA17 sets out that there is a general presumption against change involving the sub-division or further sub-division of gardens and grounds, which would contribute to an increased density of development in the CA. It explains that sub-division and development of this nature would result in an erosion of the character of the area and often result in a loss of tree cover. This however cannot always be assumed to be the case or always be harmful as it depends upon the site context and the proposed development. Further, I note that the policy is set out in general terms which to my mind allows for a level of flexibility to be had on a case-by-case basis. Policy MSGP25 of the Site Allocations Development Management Policies Making Spaces for Growing Places, 2021 relates to conservation and enhancement of heritage assets and sets out to provide more detail on such developments. Amongst other matters, it explains that development which results in the sub-division of gardens and grounds within CA's will be permitted where: a) there is a historic evidence to demonstrate that the garden or ground was previously sub-divided into physically separate plots; or b) the development will not harm the historic environment; or c) the development contributes to the restoration of a historic garden or parkland.
 17. For the above reasons and even if the proposed development amounted to subdivision of the land, I find that the proposed development would not unacceptably affect the character and appearance of the site and surrounding area and would preserve the character and appearance of the CA. For the same reasons, it would also preserve the setting of Orchard House which is a non-designated heritage asset. As such, it would comply with Policy MSGP25 part b and thus considered acceptable. For the same reasons, it would also comply

with Policy CS15 of the Planning for the future Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030, 2015 which relates to place making as well as the guidance contained within the Framework relating to achieving well-designed and beautiful places and conserving and enhancing the historic environment.

Other Matters

18. I have reviewed all matters raised by the Council including third party representations as part of my decision and acknowledge the concern regarding impact of the size of the trees on the proposed new dwelling having regard to level of shading and thus potential for pruning and tree removal in the future. There is however no substantive evidence before me to demonstrate that this would be the case or be so detrimental where it would lead to pruning/tree removal. Further, the trees would have a level of protection by virtue of their location in the CA and the protection of retained trees via condition is considered appropriate in this case.
19. In terms of residential amenity, there would be a good level of separation distance between the proposed dwelling and Orchard House and Appleby House whereby it is not considered that the proposed dwelling would detrimentally impact upon the outlook or privacy of the two properties. Additionally, given the distance between the proposed dwelling and Appleby House and Orchard House coupled with the level of tree coverage which exists within the grounds, it is not considered that the dwelling would lead to a loss of natural light or sunlight. For the same reasons, the proposed dwelling would not cause unacceptable disturbance, through an increase in noise and odour or conflict with the adjoining uses which are all residential.
20. The proposed dwelling would be located in close proximity of trees although future occupiers would still have sufficient levels of light and outlook generally particularly when taking into account the large amount of glazing proposed and access to a balcony area which overlooks the garden area.
21. I acknowledge the concern regarding more vehicles entering and leaving the property as well as traffic and parking congestion. Whilst I am unable to control the existing situation in the determination of this current appeal including car parking matters, the proposed development would provide 1 dwelling which would be ancillary to the main property and thus would not generate a significant increase in trips, traffic, or parking over and above that of the existing site. Further, the integral garage would allow for car parking provision.
22. The application was supported by an Ecological Impact Assessment including a Biodiversity Baseline & Biodiversity Net Gain Calculation and a completed copy of the Defra biodiversity net gain metric. The proposed development is predicted to achieve a net gain in biodiversity of 0.45 habitat units via the retention and enhancement of woodland. It is considered achievable for the proposed development to follow the mitigation hierarchy and deliver measurable net gain for biodiversity, subject to suitably worded conditions which I have applied.
23. There may have been previous applications/enquiries made in relation to the site in question which may have related to a similar proposal. This would not however alter my findings in relation to the above main issue. Concerns have also been raised regarding the requirement/need for the development including

internal arrangements and accessibility/refuse matters. As set out above, based on the plans provided and appellants' personal circumstances and requirements put forward, then I raise no particular concern in this regard. The existing property at Orchard House may provide significant levels of accommodation although this would not alter my overall findings and it is not my role within the context of this appeal to ascertain if other permissions have been sought for the main property. The proposal as applied for relates to an ancillary dwelling which I have assessed accordingly. This element forms part of the description of development and any alterations/future uses would require further assessment in its own right.

24. The site is not situated on potentially contaminated land based on previous historic use. The area has been occupied by open space/ garden areas associated with the adjacent Orchard House and overall, the potential level of contamination possibly being a hazard to site operatives and future site users is considered to be low and significant contamination of soils and made ground beneath these areas is not anticipated. Consequently, it is unlikely that the development area may be affected by ground contamination, and I have no particular concerns in this regard. Concerns raised relating to solar gain including any potential difficulties have also not altered my findings.
25. In considering this appeal, I have had due regard to the Public Sector Equality Duty (PSED) set out under Section 149 of the Equality Act 2010, in particular the need to eliminate discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. Following careful consideration of the family circumstances, I am satisfied that the outcome of my decision is proportionate and necessary.

Conditions

26. I have considered the Council's suggested planning conditions in their statement of case and in light of the Framework and Planning Practice Guidance. As a result, I have amended these where necessary for clarity.
27. The standard time for commencement of development is necessary as well as a plans condition in the interests of certainty and to ensure that any material and non-material alterations to the scheme are properly considered. The Councils' suggested condition relating to materials is covered under condition 2 and thus not considered necessary and has therefore been omitted. I have however included a condition relating to the construction and detail of the access road in terms of its design and materials to be used to ensure the development is of an appropriate design and quality whilst also having regard to any nearby trees which could potentially be impacted. A condition relating to tree protection and arboricultural method statement is necessary to ensure the satisfactory protection of trees, shrubs, and hedges. The Councils' suggested conditions in this regard has been covered by one condition which has also been amended to refer to the British Standard BS 5837: Trees in relation to design, demolition, and construction - Recommendations (or in an equivalent British Standard if replaced). I have attached a condition relating to the replacement of trees which I find necessary in the interests of the general amenities of the area and character and appearance.
28. A Construction Environmental Management Plan condition is necessary to avoid/minimise adverse impacts on biodiversity. Conditions relating to bats and

birds are necessary in order to compensate for the present potential roost sites and in order to enhance the value and function of the site for nesting birds. Conditions relating to biodiversity net gain are required to ensure the development achieves measurable biodiversity net gain. I find a condition relating to external lighting to be necessary to maintain the value and function of the site for roosting, foraging and commuting bats. Finally, conditions relating to coal are necessary to ensure there is adequate land stability.

Conclusion

29. For the above reasons and having had regard to the development plan as a whole, the appeal should be allowed.

N Teasdale

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development must be begun within three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No. 558-19-000; Proposed Site Plan Drawing No. 558-19-003 Revision A; Proposed 2 Bed Garage Apartment Drawing No. 558 19 001 Revision G; Proposed 2 Bed Garage Apartment Elevations and Roof Plan 558 19 002 Revision A.

Any material change to the approved plans will require a formal planning application to vary this condition and any non-material change to the plans will require the submission of details and the agreement in writing by the Local Planning Authority prior to any non-material change being made.

- 3) No development shall take place until the construction and detail of the access road in terms of its design and materials to be used has been submitted to and approved in writing by the Local Planning Authority.

The development shall be implemented in accordance with the details as approved under this condition.

- 4) No site clearance, preparatory work or development shall take place until the scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been implemented and the scheme for the protection of the retained trees shall be carried out as approved.
- 5) Where trees are removed, the development shall not be occupied until a scheme of their replacement planting has been submitted to and approved in writing by the Local Planning Authority.

The development shall be implemented in accordance with the replacement planting as approved under this condition.

- 6) No development shall take place (including ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following. a. risk assessment of potentially damaging construction activities. b. identification of "biodiversity protection zones" e.g. tree protection zones, retention and protection of trees with suitability for roosting bats. c. practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements e.g. Invasive Plant Species Method Statement, measures to protect wildlife from becoming trapped in any excavations/pipes during construction, no artificial lighting of adjacent habitats including the woodland on site. d. the location and timing of sensitive works to avoid harm to biodiversity features. e.g. no vegetation clearance to be undertaken between

March and September (inclusive) unless immediately preceded by a nesting bird check undertaken by a suitably qualified ecologist. e. the times during construction when specialist ecologists need to be present on site to oversee works. f. responsible persons and lines of communication. g. the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person. h. use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.

- 7) Prior to the first occupation of the dwelling, a scheme for the provision of a minimum of 1 no bat roost feature including the specification and precise locations (as identified on a plan and elevation drawing of the property) shall be submitted to and approved in writing by the Local Planning Authority.

The bat roost features, approved under Condition 7, shall be wholly installed in full prior to the first occupation of the dwelling hereby approved.

- 8) Prior to the first occupation of the dwelling, a scheme for the provision of a minimum of 1 no bird nesting feature including the specification and precise locations (as identified on a plan and elevation drawing of the property) shall be submitted to and approved in writing by the Local Planning Authority.

The bird nesting features, approved under Condition 8, shall be wholly installed in full prior to the first occupation of the dwelling hereby approved.

- 9) Notwithstanding the submitted information, no development shall commence on site (including site clearance works) until a Biodiversity Net Gain (BNG) Design Stage Report has been submitted to and approved in writing by the Local Planning Authority. The Biodiversity Net Gain Design Stage Report shall be prepared in accordance with the Biodiversity Net Gain Report & Audit Templates (CIEEM, July 2021) and shall include the following: baseline conditions including important ecological features and baseline metric calculations; • full justification of how each of the BNG principles has been applied as part of the net gain assessment; • description of the proposed design and how it has been informed by relevant local and national biodiversity policies; • completed metric spreadsheet including the full calculations that lead to the final biodiversity unit score; • confirmation that the proposed development will deliver at least the predicted net gain of 0.45 habitat units; • Project Implementation and Construction Plan including drawings, management proposals, and a timetable for implementation; Biodiversity Net Gain Management and Monitoring Plan (BNG MMP) providing: - detailed management and maintenance information for years 1-5; - broader management aims for the lifetime of the BNG commitment (e.g. the lifetime of the project impacts or 30 years); - proposals for monitoring, audit reporting procedures and options for remedial works if needed; - roles, responsibilities and competency requirements of those involved in implementing the BNG MMP; and - details of the legal, financial and other resource requirements for delivery of the BNG MMP.

The approved BNG Design Stage Report will be implemented in full for the duration of the site clearance and construction phase, and, where appropriate, the life of the development.

- 10) Prior to first occupation of the dwelling, a Biodiversity Net Gain Audit Report shall be submitted to and approved in writing by the Local Planning Authority. The Biodiversity Net Gain Audit Report shall be prepared in accordance with the Biodiversity Net Gain Report & Audit Templates (CIEEM, July 2021) and shall include the following: • project conditions including an 'As-Built Habitat Plan' based upon the specific conditions at the time of the audit (not proposed or predicted conditions) using the same habitat classification as the Habitat Baseline Plan; • audit report including BNG Metric with all assumptions made in the calculations being clearly identifiable; • a detailed evaluation of the project's compliance with each of the BNG Good Practice Principles; and • a conclusion including: o clear statement to confirm the final biodiversity units delivered and whether this meets the projected units and the stated minimum above baseline conditions; o clear statement on whether all indicators relating to the BNG Principles have been met; and o clear statement as to whether any remedial measures are required to deliver on BNG commitments and how these will be implemented and reported.

The approved BNG Audit Report and associated commitments will be implemented in full for the lifetime of the BNG commitment (e.g. the lifetime of the project impacts or 30 years).

- 11) No external lighting shall be installed without, prior to occupation, a "lighting design strategy for biodiversity" (prepared in consultation with a suitable qualified ecologist for the site being submitted to and approved in writing by the Local Planning Authority. The strategy shall: • identify those areas/features on site or adjacent to site that are particularly sensitive for bats and that are likely to cause disturbance in or around their resting places (including retained trees with suitability for roosting bats and any bat roost features installed as part of the proposals) or along important routes used to access key areas of their territory, for example, for foraging; and • show how and where external lighting will be installed (through the provision lighting contour plans and technical specifications where appropriate) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.

Any and all external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed without prior consent from the Local Planning Authority.

- 12) Prior to commencement of the development hereby permitted, no works shall commence on site until any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full, in order to ensure that the site is safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

- 13) Prior to the occupation of the development, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for approval in writing. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

End of schedule