

**Application Number:** 18/00823/FUL

**Proposal:** Removal of condition 10 of planning permission 03/01701/FUL which restricts the use of the property to a single dwelling house as defined by Class C3 (a).

**Site:** 222 Mottram Road, Stalybridge

**Applicant:** Mr T Price

**Recommendation:** Approve

**Reason for report:** At the request of Councillor Dickinson who objects to the proposals on the grounds of residential amenity and highway safety.

## **1. APPLICATION DESCRIPTION**

- 1.1 The applicant seeks full planning permission for the removal of condition 10 of planning permission 03/01701/FUL which granted planning permission for the erection of a 1no. detached dwellinghouse.
- 1.2 Condition 10 of the permission read as follows: The property shall only be used as a single dwellinghouse as defined by Class 3 (a) of the Town and Country Planning (Use Classes) Order 1987.' Reason: To define the permission.

## **2. SITE & SURROUNDINGS**

- 2.1 The premises to which the application relates is a large detached property located within a residential area on the edge of the built up boundary.
- 2.2 The premises are a 2 storey brick built building with private gardens to the front and rear and off road car parking in front of the property. The property is accessed via an unadopted track off Woodend Lane.

## **3. PLANNING HISTORY**

- 3.1 03/01701/FUL – Erection of 1no. detached dwellinghouse – Approved, 04.02.2004, subject to conditions.

## **4. RELEVANT PLANNING POLICIES**

- 4.1 Unallocated site

### **4.2 Part 1 Policies**

Policy 1.4: Providing More Choice and Quality Homes  
Policy 1.5: Following the Principles of Sustainable Development.  
Policy 1.12: Ensuring an Accessible, Safe and Healthy Environment.

### **4.3 Part 2 Policies**

H4 Type, Size and Affordability of Dwellings  
H9 Backland and Garden Development

H10 Detailed Design of Housing Developments  
T1 Highway Improvement and Traffic Management

## **5. OTHER POLICY**

5.1 National Planning Policy Framework (2018)

5.2 Planning Practice Guidance (PPG)

This is intended to complement the NPPF and to provide a single resource for planning guidance, whilst rationalising and streamlining the material. Almost all previous planning Circulars and advice notes have been cancelled. Specific reference will be made to the PPG or other national advice in the Analysis section of the report, where appropriate.

## **6 PUBLICITY CARRIED OUT**

6.1 Neighbour notification letters were issued on the 5 October 2018 in accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Council's adopted Statement of Community Involvement.

## **7. RESPONSES FROM CONSULTEES**

7.1 Ward Councillors - 1 letter from all ward councillors, Cllr Liam Billington, Cllr Doreen Dickinson and Cllr Clive Patrick making the following comments:

- The house in question was a back land and garden development. UDP policy H9 states that no serious detriment will occur to the character of the area enjoyed by other residents and the fact that the only access to the property is a 12ft wide steep farm track with no passing areas, the property was passed with two extra conditions; that the property should be used for residential only class 3a and there should be a yellow box junction or a keep clear box at the end of the track coming out on to Woodend Lane.
- The main reason it had to be residential only class 3a and not used for any business purposes class 3b was the farm track access, which would have been a very serious detriment to the area enjoyed by other residents and would not comply with UDP policy H9.
- Since the original application the reasons for the conditions have not improved and have got seriously worse, our objections are as follows:
- 224 Mottram Rd (next door) has a license to be a care home for four 16/17 year old's with mental health or autism problems and two carers. If planning is granted there will be two care homes next to each other for vulnerable people with no proper access.
- Planning regulations on dwelling houses states that if you have a high concentration of shared homes this can cause problems, We would consider two next door to each other is high concentration.
- Six people living in a large bungalow seems an average family (two parents and four young adults), except it is not two parents because the four young people needing care presumably have parents so that's eight people visiting without medical staff, relatives, or friends that is just one dwelling, if 222 get permission then all these people double that is a lot of people using a farm track daily, which will certainly impact on residents there now.
- The un-adopted steep access track since the original application has got progressively worse, there is no lighting, massive pot holes and no passing places for cars. The refuse lorry does not go up it, therefore to have vulnerable

people using this road would be lethal and there is no other access. If elderly they would be virtual prisoners.

- Although not a planning consideration the house is built on Bissell Estate land and when 222 was built there was a covenant put on to say the house could not be used for business.

Head of Environmental Services – Highways - No objection as I do not consider there would be an unacceptable impact on highway safety, and the residual cumulative impacts on the road network would not be severe.

Head of Environmental Services – Environmental Health – No objections.

## **8. SUMMARY OF THIRD PARTY RESPONSES RECEIVED**

- 8.1 In response to the application letters have been received from 9 different properties making the following comments:

### **Policy**

Paragraph 91 of the NPPF states that Planning policies and decisions should aim to achieve healthy inclusive and safe places which are safe and accessible so that crime and disorder and the fear of crime do not undermine the quality of life or community cohesion.

The Tameside Local Plan will replace the UDP 2004 and contains inter alia the following aims and aspirations;

1. Avoid locating developments in locations that could adversely affect people's health;
2. Promote community safety;
3. Reduce actual levels of crime and anti-social behaviour;
4. Reduce the fear of crime; and,
5. Enable housing growth and deliver a mix of high quality housing to meet local needs.

Should planning permission be granted for this application then it would be in direct conflict with Tameside's own proposed framework in that it would actively encourage the housing of people with unpredictable, questionable and unstable mental capacity, drug abusers and alcoholics both past and present. The very use of the premises would put fear into the minds of the adjoining owners which may adversely affect their health.

### **Highway**

Access to the site is via an unmade unadopted single file old farm track shared with limited width, no lighting, absence of footways and absence of formal provision for vehicles to pass and no traffic calming devices at the junction of Mottram Road and Woodend Lane.

The proposed use would generate traffic movements by visitors, staff and deliveries resulting in a material increase in traffic and would thereby have an adverse effect on highway safety.

The increase in traffic would pose a risk to children and other house owners and more than likely cause damage to properties adjacent to the access way.

Service and emergency vehicles would have difficulty using the access way. The turning circle on the lane by 224 and 226 is constantly in use and too small to accommodate the ambulances and larger disability vehicles we presume would be necessary for the residents.

As the site is not in walking distance of shops the occupants would have dependence on journeys by private vehicles

Entry into and exit from the private single lane access onto Woodend Lane is difficult. The Keep Clear notice is generally ignored, making turning into the lane hazardous.

The lane had a 2 ton weight restriction sign at the entrance until this was demolished by an 18 tonne skip loader gaining access.

### **Nature of the use**

The applicant has not defined the type of care within C3b and without such definition the relevant objections to any such category of use cannot be made.

The number of carers has not been defined nor has any information been given regarding any management requirements.

The evidence produced to-date is insufficient to demonstrate on the balance of probabilities that this would be a single household and would more than likely therefore fall into class c2.

Concerned that staff and residents will probably not live as a single household and the use will therefore fall into the residential institutions.

### **Amenity**

The house is in an area of predominantly family homes. The proposed use would be run as a business and dependent on the nature and character of the occupants may well cause an increase in crime and anti-social behaviour and therefore impact on the adjoining owners right to respect for a private and a family life and for the home.

The proposed use would be completely out of character for the area as a whole and would harm the amenities of the neighbouring properties by threats of violence and unacceptable social activities noise and disturbance and an intrusion into their privacy and general safety.

Concerned that both of the properties on the site will be used for commercial purposes as "hostels" which is what they would actually become. This would magnify the dangers.

This is a very quiet residential area.

This use would deprive the area of two properties which would attract new business owners who might create much needed employment opportunities in the area. Such use would be completely incongruous with existing properties in the area

### **Other Matters**

I would also like to know whether the applicant obtained planning permission for converting the garage at 224 into a residence which he has allegedly done.

Residents have to take refuse bins on foot to the footpath on Woodend Lane, at the side of the track entrance. I cannot see how anymore refuse bins would be able to be placed here and the track is not big enough or strong enough surface to drive down.

The people needing residential care would not be best served by its location.

Why are we not consulted as access to our house is via the lane. Has the farmer been consulted who keeps livestock/ grows produce on the field adjacent to the road as his livelihood may be impacted.

About 6 months ago a company were buying both properties and using for young adults with mental health and disabilities...we had lots of disruption with cars coming and going.

We are on a band G (£2545.45) council tax along with our neighbours for our houses and area. If you oblige the resident with C3 (b) our area will no longer be as it is.

This property is proving difficult to sell as the owner is asking too much money for it.

Why was the restriction placed on the planning permission when it was granted?

It is essential that a site visit, by vehicle, is made by members of the Planning Committee and not just officers.

## **9. ANALYSIS**

9.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 require that applications for planning permission are determined in accordance with the development plan unless material planning considerations indicate otherwise. Material planning considerations include the NPPF.

The site is unallocated on the Proposals Map associated with the Unitary Development Plan for Tameside (2004). In accordance with the revised NPPF and Tameside UDP policies the main issues raised by the application relate to the following:

- The principle of development ;
- The use of the property;
- The impact on highway safety;
- The impact upon the residential amenity of neighbouring properties;
- The impact on the character of the site and the surrounding area; and,
- Other matters

9.2 These are considered in more detail below.

## **10. PRINCIPLE OF DEVELOPMENT**

10.1 Section 38 of the Planning and Compulsory Purchase Act 2004 states that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. Consideration will also be necessary to determine the appropriate weight to be afforded to the development plan following the publication of the National Planning Policy Framework. Paragraphs 212 - 217 of the NPPF set out how its policies should be implemented and the weight which should be attributed to the UDP policies.

10.2 Paragraph 213 confirms that due weight should be given to relevant policies in existing plans according to their degree of consistency with the NPPF. At the heart of the NPPF is the presumption in favour of sustainable development.

10.3 Although objections have been received stating policies from the emerging Local Plan these are not adopted policies and cannot be taken into account as a material consideration until such a point as that document is formally adopted.

## 11. THE USE OF THE PROPERTY

- 11.1 The current use of the property is as a dwellinghouse (whether or not as a sole or main residence) by a single person or by people living together as a family as defined under use class C3 (a) Town and Country Planning (Use Classes) (England) Order 1987. The application property is a large detached 5 bedroom dwelling which provides generous sized accommodation and outdoor space and would suit a large family.
- 11.2 It would normally be possible to use the building and curtilage for the other sub category uses falling within Use Class C3 without requiring planning permission. A condition was attached to the planning permission granted for the 'dwellinghouse' in 2004 restricting the movement from C3(a) to C3(b). Use Class C3(b) is defined as use as a dwellinghouse (whether or not as a sole or main residence) by not more than 6 residents living together as a single household (including a household where care is provided for residents). This application is to remove the restriction placed on the original application preventing the property being used as sub category C3(b).
- 11.3 Objections have been received that the applicant has not defined the type of care within use class C3b, or the number of carers and has not provided any information regarding management requirements. There is concern by neighbouring residents that there is insufficient evidence produced to demonstrate that this would be a single household and that it would be run as a business and would more than likely therefore fall into class C2 as a residential institution.
- 11.4 In response to these concerns what should be confirmed is that this is not an application for a change of use. This is confirmed in National Planning Practice Guidance which states that movement from one primary use to another within the same use class is not development, and does not require planning permission. As the principle use of the property will still remain within Use Class C3 as a dwelling house. The application is only to remove the restriction preventing the element of care as defined by C3(b) for any future occupiers.
- 11.5 Care is defined in the 1987 Use Classes Order (as amended) as "*Personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or past or present mental disorder*". Whilst the DCLG Circular 08/2010 provided guidance on interpreting a C3(b) use, stating that such uses are for a "*single household receiving care*", it did not redefine "*care*".
- 11.6 The differences between this and the more general 'Residential Institution' Use Class C2 which covers: (1) Use for the provision of residential accommodation and care to people in need of care (other than a use within class C3 (dwelling houses)); (2) Use as a hospital or nursing home; and, (3) Use as a residential school, college or training centre should be noted.
- 11.7 It would be incorrect to consider this application as being for a C2 use which has the potential to be more harmful as the number of residents is not capped at 6 and if the application is approved and its subsequent use is not considered to fall within C3(b) then that would be dealt with through enforcement at that time. It is not possible to require details of the type of residents or the type of care to be provided at the property. What is important is the fact that if the restriction is removed and permission is granted any future occupier must comply with a use that complies with Class C3b or C3a.
- 11.8 The property is a substantial property and able to accommodate a large family unit, which under Use Class C3(a) the number of family members living there could not be restricted. Use Class C3(b) requires residents to live together as a single household be caps the occupiers at no more than 6. When this is considered in relation to the fall-back position of

that this substantial dwelling could accommodate the removal of the restriction to allow C3(b) use would not be any more intensive than the potential from the existing use.

- 11.9 Having regard to the above, since the application is made specifically for the removal of the condition to allow C3(b) the main issue to consider is whether the element of “care” would be harmful to residential amenity, the character of the area, and highway safety which are discussed in more detail below.

## **12. THE IMPACT UPON THE RESIDENTIAL AMENITY OF NEIGHBOURING PROPERTIES**

- 12.1 UDP Policy H10 requires new development to be of high quality, provide a good standard of amenity for future occupiers, and for there to be no unacceptable impact on the amenity of neighbouring properties.
- 12.2 There have been objections raised that due to the nature of the proposed use and potential character of the occupants there would be an increase in crime and anti social behaviour and this would impact on the adjoining owners right to respect a private family life and on the wider amenity of the area and general safety.
- 12.3 The proposed use is as a residential use and the property has been shown to be sufficient size to provide for acceptable living accommodation for the maximum number of residents allowed under the proposed use. It is a substantial property that could house a large family and it is not therefore considered that the level of noise and disturbance associated with the proposed use would be unacceptable or above the level that could be associated with its current permitted use.
- 12.4 National Planning Practice Guidance provides guidance regarding use classes. The Town and Country Planning (Use Classes) (England) Order 1987 (as amended), groups common uses of land and buildings into classes. The uses within each class are, for planning purposes, considered to be broadly similar to one another. The Government therefore treats a dwelling house that falls within Use Class C3 (a), (b) or (c) as being broadly similar to one another’ in terms of their land use implications such as traffic, car parking and amenity.
- 12.5 With regard to concerns about increased crime and anti-social behaviour, these concerns are acknowledged however there is no evidence to suggest that the application would increase this and in line with paragraph 91 of the NPPF (2018) the application would work to increase diversity and inclusiveness and would promote social interaction in the area.
- 12.6 One such use that would otherwise be prevented by the existing condition is the ability for a disabled individual with additional needs to live within their family unit with care staff also residing at the property. To disallow this use due to the fear of antisocial behaviour would be discriminatory and contrary to the policies within section 8 of the NPPF (2018).
- 12.7 It is considered that the concerns are not so great so as not to prejudice community cohesion and the creation of an inclusive environment outweighs the fears expressed and it is considered that the proposed development would not result in a significant adverse impact on the residential amenity of any of the neighbouring properties.

## **13. THE IMPACT ON THE CHARACTER OF THE SITE AND THE SURROUNDING AREA**

- 13.1 The area surrounding the application is residential and lifting the restriction currently imposed on the property would not change the overall use of the property. As defined in the Use Classes order, family houses and 6 people living together as a family unit with care

fall within the same C3 use class and the land use impact is very similar otherwise they would not fall within the same use class.

- 13.2 It has been raised that the adjacent property (224 Mottram Road), and in the same ownership as the application property, has a license with the Care Quality Commission. The concern expressed is that a high concentration of shared homes can impact on the character of the area. It has been confirmed that this license was rescinded by the applicant in December 2017 and is no longer in place. The license was for caring for adults up to 65 years of age and for adults with learning difficulties. As the license for 224 Mottram Road has been rescinded there will not be a concentration of such uses within the area.
- 13.3 As the application is not for a change of use and the property will still fall within Use Class C3 as a dwelling house for the above reasons it is not considered there would be any significant impact on the character of the area removing the restriction and allowing C3(b) use.

#### **14. THE IMPACT ON HIGHWAY SAFETY**

- 14.1 The property is accessed via an un-adopted single carriageway road with no pavement or street lighting that serves 9 residential properties (including the application site). The road is narrow with limited space for vehicles to pass and no access for refuse lorries.
- 14.2 Comments received have highlighted the substandard nature of the access road and junction where it meets the adopted highway at Woodend Lane and there is concern that any increase in traffic would only exacerbate the situation.
- 14.3 The National Planning Policy Framework is clear in its assessment of application in terms of highways that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 14.4 When the application to construct the dwelling was approved in 2004 no objections were raised in highways terms and the addition of 1 dwelling accessed via the un-adopted access road was considered acceptable in highways terms. It has been suggested that the condition was originally imposed due to concerns about the access arrangements. It is therefore important to consider the access implications of a C3a use compared to a C3b use, considering the proposal against the fall-back position of the existing use of the property and what additional impact would be caused by the removal of the restriction.
- 14.5 The number of people living in a family house under Class C3a is unrestricted. For a C3b use only six people can live together where care is provided. The property is a substantial 5 bedroom dwelling that has the ability to accommodate a large extended family unit in excess of the 6 residents that would be allowed if the restriction was lifted. When you compare a Class C3a use with a Class C3b use there is very little difference between them in terms of traffic and car parking. It is further argued that this is why the Government has grouped both C3a and C3b uses together within the Class C3 – dwellinghouse use.
- 14.6 The Council's highways engineer has assessed the application and for the above reasons does not consider that the proposal would cause harm to highways safety and that due to the fall-back position there would be no severe cumulative impact on the surrounding highways network. As such the proposal raises no objection in highways terms and accords with policy. The request for the members of the planning committee to carry out a site visit has been passed on to democratic services.



## **15. OTHER MATTERS**

- 15.1 With regard to refuse, it is understood that refuse bins are taken on foot to Woodend Lane, at the entrance to the access road. The application would not increase the number of bins in this location as the principle use is not changing and there will not material change of use at the property.
- 15.2 Concern has been raised in terms of the sustainability of the location. As the principle use of the property is not changing the location of the property in terms of acceptability for a residential house has already been established and is not a material consideration when determining this application.
- 15.3 Objections regarding the loss of value to existing properties and concern about the character of the residents are not material considerations to be considered when assessing a planning application.
- 15.4 With regard to the issue with the existing garage being converted, the residents have been advised to raise this as a formal enforcement action which has not been forthcoming.

## **16. CONCLUSION**

- 16.1 For the above reasons the proposal is not considered to cause harm to the character of the area or impact significantly on residential amenity and the highways impact has not been found to be unacceptable. The proposal is considered to be in accordance with the requirements of both national and local policies and is considered to be acceptable.

## **17. RECOMMENDATION:**

Approve subject to the following condition:

1. The car parking facilities indicated on the approved plan shall be provided and thereafter kept unobstructed and available for their intended purposes.