

**MINUTES OF THE MEETING OF THE DEVELOPMENT CONTROL COMMITTEE HELD BY
REMOTE VIDEO CONFERENCE ON THURSDAY, 25 JUNE 2020 COMMENCING AT 6.00 PM**

PRESENT (BY REMOTE LINK)

L A Bentley Chair
Mrs L M Broadley Vice-Chair



COUNCILLORS

G A Boulter
F S Broadley
M L Darr
Miss P V Joshi
C D Kozlowski
Mrs H E Loydall
R E R Morris
Dr I K Ridley

OFFICERS IN ATTENDANCE (BY REMOTE LINK)

S J Ball Trainee Solicitor (acting as the Democratic Services Officer)
D M Gill Head of Law & Democracy / Monitoring Officer
R Redford Development Control Manager
A Thorpe Head of Built Environment
S Tucker Democratic & Electoral Services Manager / Deputy Monitoring Officer

OTHERS IN ATTENDANCE (BY REMOTE LINK)

S Bandawa Public Speaker (Applicant/Agent)

6. APOLOGIES FOR ABSENCE

An apology for absence was received from Councillors Mrs S Z Haq, J Kaufman and Miss A Kaur.

7. APPOINTMENT OF SUBSTITUTES

Councillor M L Darr substituted for Councillor J Kaufman.

8. DECLARATIONS OF INTEREST

None.

9. MINUTES OF THE PREVIOUS MEETING

By affirmation of the meeting, it was

UNANIMOUSLY RESOLVED THAT:

The minutes of the previous meeting held on 21 May 2020 be taken as read, confirmed and signed.

10. REPORT OF THE DEVELOPMENT CONTROL MANAGER (JUNE 2020)

Development Control Committee (Remote Video Conference)
Thursday, 25 June 2020

Chair's
Initials

10a. APPLICATION NO. 20/00041/COU - 5 & 7 TOLLGATE CLOSE, OADBY, LEICESTERSHIRE, LE2 4TZ

Mr S Bandawa spoke upon the application on behalf of the applicant.

The Committee gave consideration to the report (as set out at pages 8 - 16 of the agenda reports pack) with reference to the Officers' Presentation (as set out at slides 3 - 5) which asked it to determine a change of use application of two semi-detached houses (C3) to be used to accommodate children as a children's home in a residential area (C2).

The Committee also gave consideration to an additional Letter of Representation received from Gately Legal on behalf of Bloor Homes Limited date 24 June 2020 (as set out at Appendix 1) and the Updated Officer's Recommendations of 25 June 2020 ("the Updated Recommendations") (as set out at Appendix 2) in relation to the application.

The meeting was suspended at 6:25 pm to resolve a minor technical issue with the hosting technology and was reconvened at 6:27 pm.

It was moved by the Chair, seconded by Councillor G A Boulter and

RESOLVED THAT:

The planning conditions (1) - (5) as recommended in the report (as set out at pages 14 - 15 of the agenda reports pack) be wholly substituted for the revised planning conditions (1) - (4) as recommended in the Updated Recommendations (as set out at pages 1 - 2 of Appendix 2).

Votes For	8
Votes Against	0
Abstentions	2

It was moved by the Vice-Chair, seconded by Councillor G A Boulter and

RESOLVED THAT:

The application be GRANTED planning permission in accordance with the submitted documents and plans subject to the prescribed conditions (as amended).

Votes For	8
Votes Against	2
Abstentions	0

THE MEETING CLOSED AT 6.58 PM



Chair

Thursday, 27 August 2020

*Printed and published by Democratic Services, Oadby and Wigston Borough Council,
Council Offices, Station Road, Wigston, Leicestershire, LE18 2DR*

(This page is left intentionally blank)

Michael Smith
Oadby & Wigston Borough Council
Council Offices
Station Road
Wigston
Leicestershire
LE18 2DR

Date 24 June 2020

Our ref: RJZW\40036105.1\058632.572\JZS

Direct tel: +44 (0) 115 983 8251

E-mail: robert.waite@gateleylegal.com

BY EMAIL ONLY: planning@oadby-wigston.gov.uk

Dear Sirs

**Application Reference 20/00041/COU
5 & 7 Tollgate Close, Oadby, Leicestershire LE2 4TZ - Change of Use of 2 dwellings to 1 x care unit (use class C2) (“the Care Unit”)**

We are instructed by Bloor Homes Limited (**BHL**) to object to this proposed development.

The circumstances in which the application has been made are a source of serious concern to BHL. There are, moreover, cogent planning objections to the proposed change of use arising from:

- The policies in the adopted Development Plan;
- National Planning Policy; and
- The unlawfulness of the proposed planning conditions.

The application has been made in unusual circumstances. Cottage Farm is an ongoing new residential development, approved by Oadby and Wigston Borough Council (**OWBC**) as a sustainable development and a contributor to much needed housing within the Borough.

There was no requirement for any C2 community facility of the type for which planning permission is now being sought when the Cottage Farm development was approved. As a number of residents have pointed out, by applying for such a change of use before much of the development has been completed or occupied, the Applicant is ambushing OWBC and the local community before it has formed according to the approved application for the Cottage Farm development as a whole.

Such applications are premature in the sense that those new residents who have not yet occupied the new homes and might otherwise have had the opportunity to express an opinion about the proposal are denied the chance to do so.

The change of use of two units from C3 residential use to a single C2 unit moreover undermines the delivery of much-needed housing in this first phase of the scheme.

There is also a lack of transparency in respect of the nature of the proposed operation of the Care Unit. Even in the description of the development itself, reference is made to “OFSTED” however according to the Report to Committee, when OWBC’s officers contacted OFSTED, that organisation did not endorse the proposal or express support for – or indeed knowledge of – the proposed Care Unit. It is, moreover, as Officers have advised in the Report, not part of the function of OFSTED to directly refer children for care or support in the manner that the application sought to suggest.

Park View House
58 The Ropewalk
Nottingham NG1 5DW
DX 15491 Nottingham 2
0115 983 8200
gateleylegal.com

That was not only misleading the local planning authority in a material particular but was a mis-description of the development itself given the apparent attempt by the applicant to party-in-aid a non-existent endorsement from OFSTED in the very words it chose to describe the development.

These disturbing circumstances should, in BHL's respectful view, be of some concern to OWBC in their own right, and we have drawn OWBC's attention to certain further concerns respecting A & R Guardianship Limited (the applicant) in explaining why the proposed planning conditions would be unlawful below.

The approach adopted by this applicant is in any event not one which OWBC should encourage, where recently approved new housing development is underway and the new community for which it provides is only in the process of taking shape. The degree of concern which Members will have seen on the part of those new residents who are already in occupation of their new homes partly reflects this sense of unfair and premature intervention in the development which should be allowed to be carried out within the approved consent, and for its new population to settle in before any such change were to be put forward.

The Development Plan

OWBC's recently adopted 2019 Local Plan provides at Policy 6 (High Quality Design and Materials) states that:

"Proposals for new development and major refurbishment must create a distinctive environment by:

...

Protecting local amenity, including, resisting development that has unacceptable contributions towards air quality, noise, vibration, smell, light or other pollution, loss of light or overlooking"

And then, so far as it makes policy provide for "Community Facilities", these are addressed in Policy 7 as follows:

"All development proposals must support and enhance community services and facilities where appropriate by:

- Providing on-site and/or contributing towards new or enhanced community facilities off-site to meet any needs arising from proposed development..."

Policy 7 goes on to state:

"The Council will support community facilities where:

- There is good access by pedestrian routes, cycle routes and public transport;
- They encourage co-location of community uses;
- Sufficient car parking is already available or can be provided to meet the needs of the development;
- Residential amenity can be protected from detrimental impact in terms of noise, traffic and hours of use; and
- The external appearance of the building can provide a sense of place and can positively reflect the character and appearance of its surroundings.

Generally, town centre, district centre and local centres will be the most appropriate locations for community facilities"

There is therefore no support for a community facility such as the Care Unit outside a town, district or local centre, and to suggest that the character of the use is broadly comparable to/consistent with the C3 residential use of the two houses in question is not tenable given that the Care Unit would be occupied by 5 children/young people (a far higher number of children than was assumed to be generated from the new C3 housing when the Cottage Farm scheme was approved by OWBC), those children would not be in the immediate care of parents or long-term carers or with siblings, and the care provision will involve a shift system whereby care staff will be present in rotation 24 hours per day.

OWBC has a duty to consider whether the development accords with the development plan, looking at it as a whole – see *R (Milne) v Rochdale MBC (No 2)* [2000] EWHC 650 (Admin), [2001] JPL 470, [2001] Env LR 22, (2001) 81 P & CR 27 per Sullivan J at [46]- [48]. There may be some points in the

plan which support the proposal but there may be some considerations pointing in the opposite direction.

In this case when the local plan is read fairly and as a whole the provision of a Care Unit in this location does not accord with the adopted plan. Moreover, no provision was made for a C2 use within this part of this development when reserved matters approval for BHL's residential scheme was approved by OWBC itself as recently as 2017. The Care Unit does not meet any need identified when the Cottage Farm development was approved.

The Local Plan does however express strong policy support for the importance of protecting the amenity of residential property, and as far as the impact of C2 uses is concerned, the need to do so is far more widely expressed within the policy than merely by reference to available parking spaces.

Members would have to be confident that the nature of the proposed use would not, by reason of noise, disturbance, light pollution or other factors, harm the residential character of this part of the new development, or the amenity of the new homes surrounding it.

Given that this is a 24-hour use to be manned by employees – presumably on a shift system – attending at the premises in order to provide care and support to the five young people who would be resident there, there is a relative lack of detailed information with the application that would enable OWBC to safely reach any such conclusion. On the contrary, there is every likelihood that the development will prejudice amenity and it is plainly contrary to both Policy 6 and Policy 7.

National Planning Policy

Paragraph 127 of the National Planning Policy Framework (**NPPF**) requires that decisions on planning applications should:

- “(f) create places that are safe, inclusive and accessible and which promote health, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.”

The sudden change of use of two new residential homes within a partially completed new residential community recently authorised by its own planning permission would undermine the creation of the very type of community which OWBC authorised when it granted planning permission for the Cottage Farm Scheme. It would also be contrary to paragraph 127 of the NPPF and the community cohesion and resilience which BHL would wish to build within its new residential estates would be prejudiced part way through that process.

The Unlawfulness of the Proposed Planning Conditions

These concerns are compounded by the proposed planning conditions set out in the report to Committee, two of which are unlawful. Insofar as those conditions aim at outcomes which cannot be lawfully achieved it follows that the use of conditions cannot overcome the objections to the proposed Care Unit and that the logical and lawful conclusion should be that planning permission ought to be refused.

Proposed condition 2 states as follows (emphasis added):

The development hereby approved shall only be operated by A&R Guardian Services,
as the applicant, in accordance with the submitted and approved details.

Reason: To ensure the development is used solely by the applicant in accordance with their operations as set out and considered as part of this application”.

What is proposed is therefore a “personal” planning permission, but it would be “personal” to a corporate entity not an individual person whose personal circumstances have been material to the determination of a planning application.

The national planning practice guidance (**NPPG**) confirms that:

“Planning permission usually runs with the land and it is rarely appropriate to provide otherwise. There may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. For example, conditions limiting benefits to a particular class of people, such as new residential accommodation in

the open countryside for agricultural or forestry workers, may be justified on the grounds that an applicant has successfully demonstrated an exceptional need”.

None of that exceptionality arises in respect of this proposal.

Moreover, the guidance goes to confirm that “A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company”

A & R Guardianship Services Limited is a company formed in 2014, which cannot have had time to establish a positive track record in the care sector accordingly in any event. It would fly in the face of the NPPG to grant planning permission on the basis that the use thereby authorised could be meaningfully restricted to its current management if that was the intention.

Draft condition 4 then goes on to suggest that: “Upon the termination of the lease, and or vacation of the unit by the occupier specified in Condition 6 [*presumably 3 is meant*] or the closure of the development hereby permitted, the units shall be returned to their previous uses as residential dwellings falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 2015 (as amended) or any subsequent amendment to the Order.

Reason: To ensure the units are returned to the use within Use Class C3...”.

However a planning condition imposed on a permanent planning permission cannot itself require reversion to a former use; if that would be a material change of use it would require planning permission.

The implication of the proposed condition however is that the retention of the two new houses as C3 residential units is at least a medium term objective of OWBC; the only way to achieve that is to simply refuse planning permission so that the houses remain as C3 units as OWBC clearly intended them to be when it authorised the Cottage Farm development as a whole.

Finally draft condition 2 refers again to “OFSTED” and seemingly requires that organisation to have a role in the referral of children to the Care Unit (“..to accommodate children from OFSTED as a children’s home ...”) even though as we understand it and the report to committee suggests, OFSTED denies that it has such a role either in relation to this Care Unit or to such to care units in general.

It follows that such condition cannot have the effect which the stated “Reason” for it is aimed at namely “ To ensure any future use of the premises does not adversely affect the amenities of the locality in accordance with Policies 6,11 and 34 of the Oadby and Wigston Local Plan 2011-2031”.

The way to protect amenity as the local plan plainly requires is to simply refuse planning permission accordingly.

Conclusions

There are therefore a number of serious concerns respecting both the circumstances in which this application has been made, and the evident lack of planning policy support for the late introduction of such a change of use into a newly emerging residential community which has been recently authorised by OWBC when it approved the Cottage Farm development.

We would respectfully, but strongly, disagree with the recommendation made in the Report to Committee, and would invite OWBC to refuse planning permission for the proposed development.

BHL reserves its position and we write without prejudice to any argument which may be advanced or any step which may be taken by it in the future.

Thank you for taking time to read this letter.

Yours faithfully



Gateley Legal

Appendix 2

Officer's Recommendation

20/00041/COU

5 & 7 Tollgate Close
Oadby
Leicestershire
LE2 4TZ

Determination Date: 13 May 2020

Proposal: Change of use of two semi-detached houses (C3) to be used to accommodate children as a children's home in a residential area (C2).

Case Officer: Michael Smith

Overall Consultation Expiry Date: 7 May 2020

RECOMMENDATION: GRANTS

Subject to the following condition(s)

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: To conform with Section 91 (1) of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) or the provision of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or any orders revoking and re-enacting those Orders, this permission shall relate to the use of the premises as a children's home within Use Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose including any other purpose within Use Class C2 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: To ensure any future use of the premises does not adversely affect the amenities of the locality in accordance with Policies 6,11 and 34 of the Oadby and Wigston Local Plan 2011-2031

- 3 The development hereby approved shall only be operated by a person or body regulated to provide residential childcare by the regulatory body for the provision of children's residential facilities currently in force (OFSTED or any successor).

Reason: To ensure the development is in accordance with their operations as set out and considered as part of this application.

- 4 The development hereby permitted shall be carried out in accordance with the approved plans and particulars listed in the schedule below. (The other wording is confusing and unnecessary)

Application Form and accompanying letter from A&R Guardian Services Ltd submitted to and received by the Local Planning Authority on 11 February 2020
Additional information on the proposals as set out in the e-mail received by the Local Planning Authority on the 28 April 2020
Site location and block plan received by the Local Planning Authority on 19 March 2020

Reason: For the avoidance of doubt as to what is permitted by this permission and in the interests of proper planning.

The reasons for the condition(s) are:

Reason for the grant of planning permission:

Note(s) to Applicant :

- 1 You are advised that any amendments to the approved plans will require either a non-material amendment application, a Minor Material Amendment application or a new planning application. If this is the case then you should allow at least 8 weeks before the intended start date to gain approval for such amendments. Further advice can be obtained by contacting the Planning Section of the Council on any amendments (internal or external).
- 2 The Application as submitted was, on balance, considered to be acceptable and whilst discussions with the applicant were held to seek a higher quality of development the originally submitted development is not considered to be bad enough to warrant refusal of the application. The Local Planning Authority has therefore acted pro-actively to secure a sustainable form of development in line with the requirements of the National Planning Policy Framework (paragraph 38) and in accordance with the Town and Country Planning (Development Management Procedure) (England) Order 2015.
- 3 Appeals to the Secretary of State

If you are aggrieved by the decision of your local planning authority to refuse permission for the proposed development or to grant it subject to conditions, then you can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

If you want to appeal against your local planning authority's decision, then you must do so within 6 months of the date of this notice.

Appeals can be made online at: <https://www.gov.uk/planning-inspectorate>.

If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the local planning authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under a development order.

If you intend to submit an appeal that you would like examined by inquiry, then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planninginspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

Purchase Notices

If either the local planning authority or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances, the owner may serve a purchase notice on the Council (District Council, London Borough Council or Common Council of the City of London) in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of Part VI of the Town and Country Planning Act 1990.