

**Application Number**

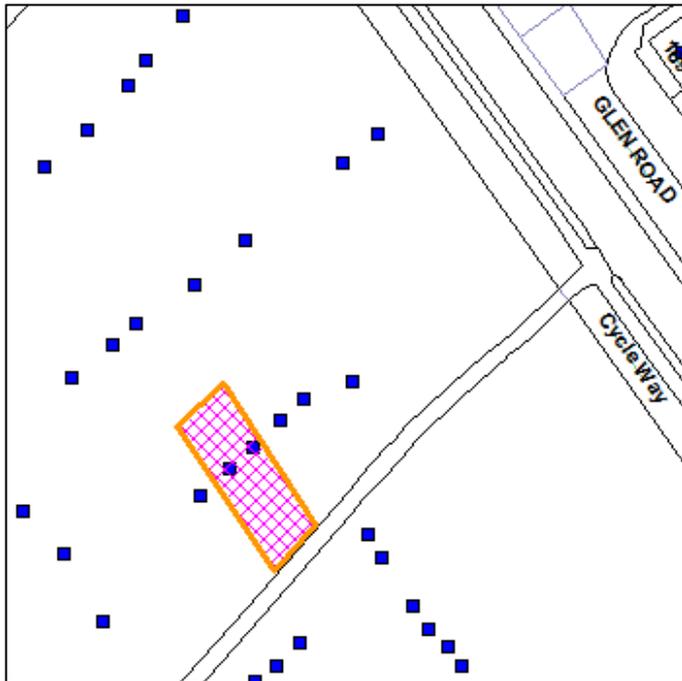
**Address**

**Report Items**

**a. 20/00041/COU**

5 & 7 Tollgate Close  
Oadby  
Leicestershire  
LE2 4TZ

<b>a.</b>	<b>20/00041/COU</b>	5 & 7 Tollgate Close Oadby Leicestershire LE2 4TZ
	<b>18 March 2020</b>	Change of use of two semi-detached houses (C3) to be used to accommodate children from Ofsted as a children's home in a residential area (C2).
	<b>Case Officer</b>	Michael Smith



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## Site and Location

This application relates to a pair of new semi-detached three bedroom dwellings located on the Bloor Homes residential development estate, Cottage Farm. The estate, located off Glen Road in Oadby, is currently under construction with the two properties being part of the early phase of the development.

## Description of Proposal

The proposal involves the change of use of the two properties from single residential dwellings within Use Class C3 to a use falling within Use Class C2 to be used to accommodate children as a children's home in a residential area.

The decision that the proposal, involves the change of use from a C3 residential dwelling to a C2 use, was based on the consideration that the proposal involves 5 of the 6 bedrooms being occupied by residents but the sixth bedroom will be used as an office and the use will be providing on site 24 hour care with a rotation of staff. Use Class C2 Residential institutions being defined as - Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres.

The applicants, in support of the proposals, have provided the following information about the proposed use:

In their original submission they advised that the occupation of the properties would be for children refereed to them by OFSTED.

They also stated that the application relates to 2 x 3 bedroom properties 5 bedrooms of which would be used to accommodate 1 child per bedroom and the sixth bedroom would be used as a manager's office / staff office. The children would be looked after 24/7 by carers in a shift pattern of day and nightshift staff.

In addition they have provided the following information:

- “1. In this establishment we will be looking after children of age 8-17 years, these may be children with Learning Disabilities or of Emotional Behaviour Disorder. The idea is these children need to be raised in a homely environment in the same way I would live with my children whether they have learning disability or not.
2. These children may be coming from broken homes and they are under social services but needs to be cared for so that they could get along with their lives by attending school and focus on what they want to do just like an another child raised by his or her parents.
3. So us as an organisation we come in to provide a home and family environment for them and Carers who look after them 24/7. In other words similar to foster parents.”

The statutory determination period for this application expired on the 13 May 2020 and it is intended to issue a decision as soon as practicably possible after the Committee meeting.

## Relevant Planning History

The sites have no relevant planning history.

## **Consultations**

Care Quality Commission – Comment:

As the independent regulator of health and adult social care, we would be unable to comment on the attached consultation request.

The CQC is the independent regulator of health and adult social care services in England. We make sure that the care provided by hospitals, dentists, ambulances, care homes and home-care agencies meets government standards of quality and safety. For more information please visit our website by clicking [here](#). Our remit is defined by the Health and Social Care Act (HSCA) 2008 and gives us the responsibility for checking that every care provider registered with us meets important standards of quality and safety. If we find evidence that the provider has not met the requirements of the regulations, we will take action where necessary.

OFSTED – Ofsted has no involvement in applicant's planning permission applications. In regards to the other query Ofsted does not refer children to social care provisions, these referrals are done through the Local Authority.

East Leicestershire and Rutland CCG – No comments received.

Leicestershire County Council Social Services – No comments received.

## **Representations**

Neighbours have been informed and a site notice placed with 17 letters of objection being received at the time of writing this report. The date for the receipt of comments expired on the 7 May 2020.

The reasons for objection can be summarised as follows: -

- \* We were told by Bloor Homes that Cottage Farm will be a residential development only. Planning permission was granted by the council for Bloor Homes to build 3 and 4 privately owned housing, therefore, clearly this development was meant to be family properties and not even starter houses, never mind a business of this type.
- \* Moreover, the building is not suitable for this type of business as they are two semi detached houses and structure is not allowed to be amended without Bloor Home approval.
- \* This type of business is not appropriate in Cottage Farm due to noise and general disturbance it would cause in an extremely quiet cul de sac where these properties are located right in the middle.
- \* Disturbance would be caused through the type of children they would house (research suggests this) and also increased traffic through careers, family visitors and friends of five different children. This would be greater than two families.
- \* Furthermore, not all residents will be aware of the application due to the fact that many have exchanged contracts and not yet moved into the property. Therefore, they won't be able to voice their opinions.

- \* Also, I was told by my neighbour who inquired about this matter with Bloor Homes that they are unaware about this.
- \* Moreover, only 13 houses were consulted yet, there are far more properties in the proximity which would be affected.
- \* Although we feel that there may be a need for this type of care for children, and are sympathetic to the difficult situation these children clearly have found themselves, we firmly believe that this is not the right location or neighbourhood for this type of children's care home, which we will outline below.
- \* According to the Deeds of our Property, and we believe, all other properties on this development, the houses should only be used as family residential homes.
- \* However, if this is why the company have sought planning permission, I expect all residents, purchased these houses on the understanding that they were only going to be used as private family residential houses due to this clause, which makes this very clear. Therefore, we do not think it is acceptable for this planning permission to be granted to change this critical element of the Deeds and a key consideration of why we purchased a new build property.
- \* We also find this unacceptable as this is so soon after the purchase of the houses. Most the houses on the development were completed less than a year ago, with ourselves only being 7-8 months; we do not believe it is satisfactory for this element of the Deeds to be overturned.
- \* We would also like to raise the fact that Oadby & Wigston Borough Council granted the original planning permission to Bloor Homes Ltd for 150 dwellings for C3 use, with Bloor Homes Ltd development plan for the private residential only containing three and four bedroom houses. This therefore is also going against the original planning permission granted to Bloor Homes Ltd, and this development was clearly not meant to have a property of this type.
- \* Furthermore, with the timing of this application being so close to the sale of the properties and the fact no one has taken residence in properties since they were purchased, we can only conclude that the owners did not intend to inhabit the houses as set out in the Deeds.
- \* We also have further points, which we are in no doubt you will be aware, but would also like to raise as consideration in the planning application process.
- \* This is very much a new development with Phase 1 only partly completed. Therefore, there a large number of future residents, who have exchanged contracts and are now awaiting completion of their new build houses, who will not be aware of this planning application. Therefore, they are not being given the chance to be able to review and voice their opinion if they wish to do so.
- \* Sales Office on site is closed.

In addition a letter has been received from the developer, Bloor Homes, which includes copies of letters sent to the owners of the two dwellings which also raises concerns about the proposals as follows:

*"We are aware of the current planning application 20/00041/COU and we write to advise the authority that we have today sent letters (attached) to the owners of the properties that the proposed activities in the applications they have submitted would place them in breach of covenants contained in their purchase contracts. We also confirm it would be our intention to enforce these covenants in the high court."*

Councillor J Kaufman has requested that the application be determined by the Committee on the grounds of concerns for local residents.

## **Relevant Planning Policies**

### National Planning Policy Framework

### Oadby and Wigston Local Plan

Local Plan Policy 6	:	High Quality Design and Materials
Local Plan Policy 11	:	Housing Choices
Local Plan Policy 26	:	Sustainable Transport and Initiatives
Local Plan Policy 34	:	Car Parking

### Supplementary Planning Document/Other Guidance

Leicestershire Highways Design Guide

## **Planning Considerations:**

The main issue to consider in the determination of this application is as follows:

\* The impact of the proposal on neighbouring residential properties.

Nos 5 and 7 Tollgate Close are a pair of semi detached 3 bedroom dwellings located on the new Bloor Homes housing development off Glen Road in Oadby. The housing estate contains a mixture of house types, sizes and tenures and is located on the edge of the urban area of Oadby with good access to services and facilities.

With regards to the properties themselves, the proposals require no external alterations to the properties. Each has a separate rear garden area and space on the front to accommodate 2 x 2 cars, which is in accordance with the Leicestershire County Council Highways Design Guide and should be adequate for the use proposed.

Oadby and Wigston Local Plan Policy 11 – Housing Choices; suggests that the Council 'will support the development of ... specialist care accommodation ... that meets an identified need and is proposed in appropriate sustainable locations'. The Policy goes on to suggest that all residential proposals will need to reflect / respect the character of the area in which they are located.

Policy 26 – Sustainable Transport and Initiatives suggests that all new development proposals should be located and designed to reduce the need to travel by private modes of transport, and, that where the development proposal is of a significant scale, it must be accompanied by a transport assessment and / or a travel plan.

Policy 34 – Car Parking suggests that all new development proposals will be required to provide car parking and servicing space in accordance with the parking standards as set out in the Leicestershire Highways Design Guide (or equivalent).

Considerable objection has been received from existing residents most of whom have only just purchased the properties and indeed some of the nearby dwellings have yet to be occupied. However, the fact that this is a new housing development as yet incomplete and, therefore, not fully occupied and not a well established residential area does not preclude this type of use being proposed and accepted. It is evidently a use that is considered appropriate in a primarily residential area whether it is new or much more established.

The applicants have advised that there is considerable demand for the provision of this type of accommodation to accommodate young people up to the age of 18. The proposal would see the properties occupied by up to 5 children between the ages of 7 and 18 with on site 24/7 care provided. The applicants have also advised that the children may be coming from broken homes and are under social services care but need to be cared for in order that they can be raised in a homely environment and attend local schools. It is proposed that one of the bedrooms be used as an office and to accommodate staff who will be on site 24/7. In essence this is a primarily residential use which would be most suited to a residential area rather than a commercial or industrial location. Housing development on this site has been allowed as it is considered to be a suitable sustainable location for housing with good access to services including local schools and facilities.

Concerns have, however, been raised that this is not a suitable location for this type of use as well as about potential noise and disturbance to other local residents, the amount of traffic that the use might generate and the fact that when neighbours purchased their property the developers Bloor Homes included a covenant on the properties within the development that they should be used only as single residential dwellings. In addition, reference has been made to a previous Care Quality Commission (CQC) report on the applicants company which highlights some deficiencies in their operation of other premises. The CQC has responded to our consultation as indicated setting out it is unable to comment on this particular proposal. Nevertheless, they have stated that their remit gives them the responsibility for checking that every care provider registered with them meets important standards of quality and safety. If they find evidence that the provider has not met the requirements of the regulations, they will take action where necessary.

Clearly with any residential property the possibility exists that residents including any children could cause noise and disturbance to neighbouring occupiers, however, this could equally apply to a single family with a number of children and there is no way of assessing that the children to be accommodated within these two properties would cause any greater noise and disturbance than any other family.

It has already been considered that as the two properties each have two car parking spaces this level is sufficient to accommodate any staff visiting the site. There is no suggestion that using the two properties as proposed would in any way lead to an increase in traffic coming to and from the properties, indeed it is possible that occupation of the two dwellings independently would increase traffic movements.

With regard to the covenant on the use of the properties imposed by the developers Bloor Homes we have received a communication from the developers legal officers who have advised that (i) the covenant on the use of the properties as single dwellings does exist, (ii)

that they have advised the owners of the two dwellings accordingly and (iii) that they intend to enforce the terms of the covenant should the use commence.

The covenant was imposed by the developers and not the Local Planning Authority resulting in the LPA having no rights to enforce the terms and conditions of the Covenant. As a result this does not preclude the LPA from issuing a favourable decision on the application even though Bloor Homes may stop the development by other legal means.

### Conclusion

In conclusion, although the application is for a change of use from a C3 residential dwelling to a C2 use, in this case the use proposed is for the provision of residential accommodation with care to people in need of care, which in itself is an appropriate use in a residential location.

Notwithstanding any decision reached on the application, it is likely that the developers Bloor Homes will enforce the terms of their covenant on the two properties and seek to stop the use commencing, however, from a planning perspective there are no reasonable grounds to refuse this application.

It is, therefore, recommended for approval subject to conditions.

### Implications Statement

Health	No Significant implications
Environment	No Significant implications
Community Safety	No Significant implications
Human Rights	The rights of the applicant to develop his property has to be balanced against the rights of neighbours.
Equal Opportunities	No Significant implications
Risk Assessment	No Significant implications
Value for Money	No Significant implications
Equalities	No Significant implications
Legal	No Significant implications

### Recommendation

For the reasons set out in the above report, **PERMIT** subject to the following conditions:

- 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

**Development Control Committee**  
25 June 2020

to accommodate children from Ofsted as a children's home in a residential area (C2) as described in your application and for no other purpose including any other purpose within Class C2

**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&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.

- 4 Upon the termination of the lease, and or vacation of the unit by the occupier specified in Condition 6 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 for residential dwellings.

- 5 Unless otherwise first approved in writing (by means of a Non-material Amendment/Minor Material Amendment or a new Planning Permission) by the Local Planning Authority the development hereby permitted shall be carried out in accordance with the approved plans and particulars listed in the schedule below.

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.

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.

**Development Control Committee**

25 June 2020

## **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](mailto: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.

**BACKGROUND PAPERS**

**a. 20/00041/COU**