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**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.

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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**