

**Planning Committee 19 March 2019**  
**Report of the Interim Head of Planning**

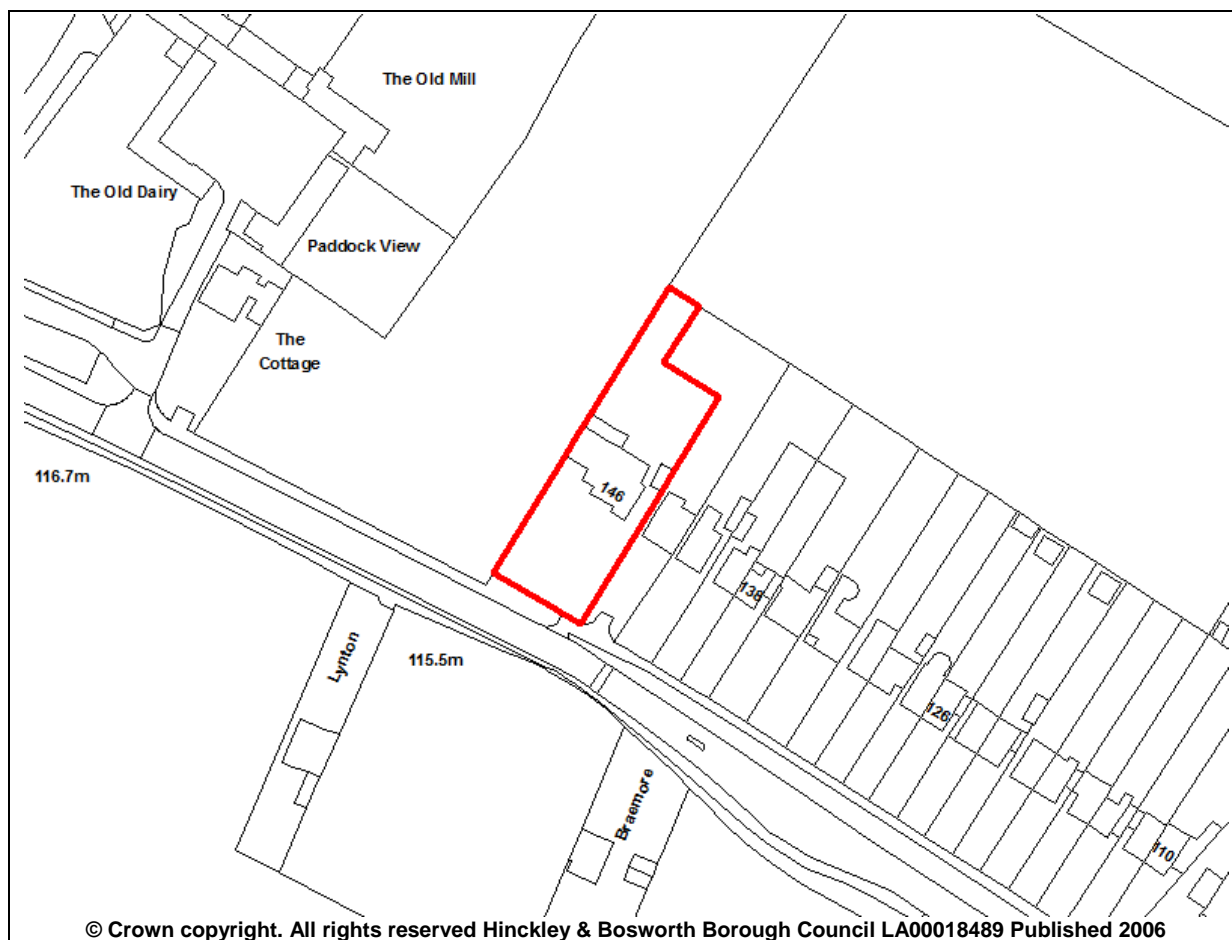
**Planning Ref:** 19/00031/FUL  
**Applicant:** Mr Alec Ryan  
**Ward:** Barwell



Hinckley & Bosworth  
Borough Council

**Site:** 146 Hinckley Road Barwell

**Proposal:** Change of use from children's day nursery to a residential care home for children with education facility



**1. Recommendations**

**1.1. Grant planning permission** subject to

- Planning conditions outlined at the end of this report.

**2. Planning Application Description**

- 2.1. The application seeks planning permission for a change of use from dwelling/children's day nursery to residential care home for up to 6 children from the ages of 6 – 18 years with an education facility to allow the children to be home schooled.
- 2.2. Although the service provider is not relevant in that the planning permission will run with the land and not the end user, in this case, the following information has been

submitted to enable Members a deeper understanding of the type of care that is to be provided.

- 2.3. The applicants are a national childcare and fostering company who currently have 16 operational homes. They care for young people who have a wide range of emotional, social and behavioural needs. The Homes are regulated and registered with OFSTED and there have been three OFSTED reports submitted with the application that although referring to other homes run by the company show that overall the homes are run as 'Outstanding'. The Home will have an OFSTED registered manager and a team to help run the home. One to one support and therapy is provided by the home to facilitate the transition of residing at the home and then moving onto foster care or independent/supported living. It is not known exactly which children would be placed in the Home until it opens as this is dictated by the County Council and the applicant's national plan at the time. However, children are placed depending on their individual needs and the ability of each location to accommodate those needs. The applicant has confirmed that the children come from a variety of backgrounds with different needs, the children to be placed at the home is dependent on their individual circumstances.
- 2.4. During the day, the children are to be educated within the building in an area separated from the residential part of the Home thus providing two separate areas for school and for home life. The Home will provide a safe environment as close to a family home as possible. The staff on shift cook, clean and provide all aspects of daily care as they would as parents in a family environment.
- 2.5. During the day there will be three care staff one Manager, a Deputy, a therapist and three Education staff. At night there are two staff members as a minimum.
- 2.6. A rolling rota which ensures that the children are cared for by the same people over the course of the week, staff are at the home for a reasonable period to ensure consistency and this reduces the need for lots of unnecessary transitions.
- 2.7. There is likely to be approximately 15 employment roles created, some of which may be filled by local people.

### **3. Description of the Site and Surrounding Area**

- 3.1. The application property comprises a sizeable six bedroom detached dwelling house on the north side of Hinckley Road at the very edge of the settlement boundary. To the north, south and west are mostly fields. To the east are similar size residential dwellings which lead into the village centre.
- 3.2. The existing property is currently divided into a residential dwelling and a children's nursery. The nursery was granted planning permission in 2008 and closed in August 2018. The planning permission allowed for up to 20 children to attend the nursery.

### **4. Relevant Planning History**

08/00184/COU	Extension and alterations to dwelling to form a children's nursery	PER	16.04.2008
--------------	--	-----	------------

### **5. Publicity**

- 5.1. The application has been publicised by sending out letters to local residents. A site notice was also posted within the vicinity of the site.

5.2 There have been seven objections to the proposal. The objections are as follows:

- 1) Not the right location for this commercial use;
- 2) Concerns re: anti-social behaviour and intimidation;
- 3) Insufficient information as to the Service Provider;
- 4) Noise and disturbance
- 5) Impact on neighbouring families
- 6) Concerns as to how the Home would be run
- 7) Concerns regarding the children who would be placed at the Home;
- 8) Already two similar homes in Barwell - is there a local need for more in this area?
- 9) Privacy issues.

## **6. Consultation**

6.1. The following consultees have made comments:

Barwell Parish Council: object on the following grounds:

- 1) More details required – ages, physical and emotional circumstances of children to be placed at the care home;
- 2) Barwell already has an anti-social behaviour problem, members concerned that this will increase;
- 3) House in a residential area and therefore not a suitable location for this use;
- 4) Concerns regarding the number of night staff
- 5) There are two care facilities in Barwell, is there a need for more?

LCC Highways – refer to Standing Advice

LCC Children's Services – no comments received

## **7. Policy**

7.1. Core Strategy (2009)

- Policy 3: Development in Barwell

7.2. Site Allocations and Development Management Policies DPD (2016)

- Policy DM1: Presumption in Favour of Sustainable Development
- Policy DM10: Development and Design
- Policy DM17: Highways and Transportation
- Policy DM18: Vehicle Parking Standards
- Policy DM25: Community Facilities

7.3. National Planning Policies and Guidance

- National Planning Policy Framework (NPPF) (2019)
- Planning Practice Guidance (PPG)

7.4 Other legislation

- The Equalities Act (2010) Section 149 created the public sector equality duty which requires public authorities to have due regard where there are equality implications arising from a proposal in the determination of the application.

## **8. Appraisal**

8.1. Key Issues

- Assessment against strategic planning policies
- Design and impact upon the character of the area
- Impact upon neighbouring residential amenity

- Impact upon highway safety

#### Assessment against strategic planning policies

- 8.2. The development plan consists of the adopted Core Strategy and the adopted Site Allocations and Development Management Policies (SADMP) Development Plan Document.
- 8.3. Policy DM1 of the adopted SADMP provides a presumption in favour of sustainable development. Policy 3 of the Core Strategy relates to development in Barwell. One of the aims of this Policy is to diversify the existing housing stock to cater for a range of house types and sizes.
- 8.4. Policy DM25 relates to community facilities and seeks to support the formation of such where it can be demonstrated that they are accessible to the community they intend to serve by a range of sustainable transport nodes. Education facilities are listed as a community facility.
- 8.5. Paragraph 94 of the NPPF advises that the Government attaches great importance to ensuring that a sufficient choice of school places are available to meet the needs of existing and new communities. Local Planning Authorities are advised to take a proactive, positive and collaborative approach to meeting this requirement, and to development that will widen choice in education. Local Planning Authorities are required to give great weight to the need to create, expand or alter schools, and work with school promoters to identify and resolve key planning issues before applications are submitted.
- 8.6. The Town & Country Planning (Use Classes) (amendment) (England) Order 2017 defines Class C3 dwelling houses as:
  - a) by a single person or by people living together as a family; or*
  - b) by not more than 6 residents living together as a single household (including a household where care is provided by residents).*
- 8.7. Children's homes run by workers on a shift pattern do not fall into either class a or b and therefore the dwelling house is not considered to be a C3 dwellinghouse.
- 8.8. Class C2 defines Residential institutions as:
 

*the provision of residential accommodation and care to people in need of care, use as a hospital or nursing home, residential school, college or training centre.*
- 8.9. In this instance, the proposal falls under Class C2 as its use as both a residential care home and as a residential school.
- 8.10. The provision of residential care homes are by their very nature a residential use which, in this residential area within the settlement boundary, is an appropriate and acceptable use of this dwelling. Schools and other education establishments (i.e. nurseries, private schools, free schools) are a common feature within residential areas and accordingly, the part use of the building as an education establishment is considered to be an acceptable use within a residential area.
- 8.11. In this case, the change of use from dwelling house/children's nursery to a residential care home and education facility complies with Policy 3 of the Core Strategy and Policies DM1 and DM25 of the SADMP.

#### Design and impact upon the character of the area

- 8.12. Policy DM10 (c) requires that development complements or enhances the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features.

8.13. The change of use of the building from a single dwelling house to a care home for up to 6 children including an education facility will have no material impact on the surrounding area by way of its external appearance. There are no external alterations to the dwelling house and for all intents and purposes will remain with an outward appearance similar to that existing.

8.14. In this instance the proposal complies with Policy DM10 (c) and is acceptable.

Impact upon neighbouring residential amenity

8.15. Policy DM10 (a) requires that new development would not have a significant adverse effect on the privacy and amenity of nearby residents and occupiers of adjacent buildings including matters of lighting, air quality (including odour), noise, vibration and visual intrusion.

8.16. There is one immediate neighbouring property and an assessment of the proposed use on the impact of their residential amenity has to be made. This neighbour has supplied confidential material to the Local Planning Authority in regard to their personal family circumstances which is assessed under Section 9 of this Report.

8.17. The property is a sizeable detached family dwelling with a large garden. It shares only its eastern boundary and part of its northern boundary with only one dwelling (no 144) which is bounded by trellis fencing and hedging. There are agricultural fields to the west and north. The rear garden is currently divided internally to allow a private garden for the residential use and a play area for the nursery use. At the very rear on the north-west side of the garden is an allotment area currently used for growing vegetables and keeping chickens. It is not known whether the applicant will reinstate the garden to one area or keep the dividing fence.

8.18. The premises would be occupied in its existing form with no extensions proposed. The classrooms/office and therapy room would be provided in the nursery area with the residential areas remaining in the same location as currently used. The sleeping accommodation will be divided from 6 bedrooms to 8 bedrooms which allows 2 bedrooms for staff.

8.19. The proposed use would not give rise to any additional loss of privacy or overlooking to the neighbouring property than which already exists. No material harm would be caused as a result of overlooking to the residential amenity of the adjacent neighbouring property at no 144 Hinckley Road as no new windows are proposed. Potential noise from the use of the garden would be similar to that of a large family and potentially less noisy than from the previous nursery use.

8.20. In regard to concerns from other residents regarding anti-social behaviour within the village including the sitting on garden walls, this is purely speculative with no evidence that the proposal would lead to such behaviour. Anti-social activity off the premises, as in all cases, is a police matter and is not a material planning consideration of this application. With regard to anti-social behaviour within the premises and/or garden, young people who would reside at the home would be expected to conform to a stipulated routine and house regulations in regard to their behaviour both on and off the premises and with the appropriate management, the proposed use would not reduce the residential amenity of existing local residents either on or off the site.

Impact upon highway safety

8.21. Policy DM18 requires all new development to provide an appropriate level of parking provision.

- 8.22. The property benefits from a large hard standing area at the front of the dwelling providing sufficient parking for the proposed use.
- 8.23. The access would be unchanged from the existing access arrangement.
- 8.24. Therefore the proposed development would be in accordance with Policy DM18 of the SADMP.

Other matters

- 8.25. There have been various concerns brought to the attention of officers in regard to lack of information regarding the service provider, the children who are to be placed at the home and potential anti-social behaviour from residents of the home appear to be foremost in the minds of those objecting to the proposal.
- 8.26. Planning applications cannot be judged based on the individuals that may occupy the premises. If, as recommended, permission is granted, any planning conditions must be reasonable, enforceable and precise. Planning conditions can only be related to planning matters and should not duplicate responsibilities/control available through other legislation/controls. Examples of conditions that could be imposed include restricting the number of children residing at the property at any one time and/or restrictions upon age range (where this is considered reasonable), but the actual occupants, type of occupants, shift patterns of staff and /or management obligations cannot be covered via a condition. For instance, OFSTED would play a lead role in assisting with on-site management responsibilities whereas anti-social activity off-site would be a police matter.
- 8.27. As already discussed, the service provider is not relevant in the decision making process and is not a material planning consideration as the grant of permission lies with the land and not the end user.
- 8.28. Members have requested further information in regards to the service provider of the proposed scheme, notwithstanding the fact that this is not a material consideration of the application, and, for clarity, the agent (on behalf of the applicant) has provide the following information;
- *We do not carry information on the children to be placed in the home, they would come from referrals from the county council.*
  - *Whilst we understand the request for the clients details we can not release that information into a public forum.*
- 8.29. In regard to comments that the County Council are not looking for new care homes, the following information has been provided:

*Leicestershire Sufficiency Strategy 2018-21*

*The Strategy acknowledges the need to co-invest, co-produce and co-deliver services with Partner organisations to optimise outcomes for young people and ensure where possible efficiencies in costs are achieved.*

- *Leicestershire's LAC(Looked After Children) population has increased significantly (by 48%) from 355 LAC on 31st March 2010 to 553 on 31st March 2018.*
- *CFS estimates that Leicestershire's LAC population will increase by a further 18% by 2021, bringing the total number of Children and Young People (C&YP) in its care to approximately 769 by the end of March 2021. The corresponding increase in placement spend has been estimated at £12million by 2021/22.*
- *Over the past two years there has been a particularly noticeable trend of older young people coming into care who often have existing behavioural, educational and health needs.*

- 8.30. The following Table provides information as to the amount of placements made by each individual Local Authority during the past year only.

<b>LA</b>	<b>Referrals LTM(Long Term Mean) (Jan 18 to Jan 19)</b>
Birmingham	160
Coventry	47
Derbyshire	68
Leicestershire CC	23
Leicester City	25
Northamptonshire	98
Nottinghamshire	95
Solihull	26
Staffordshire	94
Warwickshire	48
<b>TOTAL</b>	<b>654</b>

- 8.31. It therefore appears that there is on-going demand for residential care facilities such as the proposed within the Borough, Leicestershire and the East and West Midlands as a whole.

## **9. Equality Implications**

- 9.1. Section 149 of the Equality Act 2010 created the public sector equality duty. Section 149 states:-

(1) A public authority must, in the exercise of its functions, have due regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2. Officers have taken this into account and given due regard to this statutory duty in the consideration of this application. The Committee must also ensure the same when determining this planning application.

- 9.3. The equality implications arising from this application relate to the protected characteristics of vulnerable children and their on-going educational needs that need to be appropriately accommodated.

- 9.4. The adjacent neighbour has also submitted information as to the protected characteristics of family members, the details of which are held confidentially by the Council as the Local Planning Authority (LPA). Having assessed those personal circumstances, the LPA believes that they constitute a material consideration to which significant weight can be properly given in the consideration of this application.

- 9.5. Assessment requires a careful balancing of the amenity expectations of the family next door against the need for vulnerable children and their special education needs are also appropriately accommodated.
- 9.6. Given the information from the applicant as to the disabilities of the children they are seeking to accommodate and the information received from the adjacent neighbour, the two parties are likely to share or have similar characteristics in that the health and well-being of the children in their individual care are paramount.
- 9.7. In this regard, equal weight has been given to both sides and the recommendation to approve has been addressed in the assessment of the application in regard to, and in line with Policy 3 of the Core Strategy and Policies SM1, DM10, DM18 and DM23 of the SADMP.
- 9.8. The decision has been taken having regard to all relevant planning legislation, regulations, guidance, circulars and Council policies, including General Data Protection Regulations (2018) and The Human Rights Act (1998) (HRA 1998) which makes it unlawful for the Council to act incompatibly with Convention rights, specifically Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

## **10. Conclusion**

- 10.1. The application property is a substantial property in a residential location which is a suitably large, detached property for the use proposed. The issues raised by those objecting to the application have been carefully considered, but it is concluded that there are no sound planning reasons to refuse permission on. It is therefore recommended that the application be approved. The proposal complies with Policy 3 of the Core Strategy and Policies DM1, DM10, DM18 and DM23 of the adopted Site Allocations and Development Management Policies DPD.

## **11. Recommendation**

- 11.1. **Grant planning permission** subject to

- Planning conditions outlined at the end of this report.

11.2. **Conditions and Reasons**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**Reason:** To comply with the requirements of Section 19 of the Town and Country Planning Act 1990, as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted unnumbered plans: site Plan , Block Plan (un-numbered but both received by the local Planning Authority on 9<sup>th</sup> January 2019, Proposed floorplans of dwelling ground and first floor (un-numbered but received by the Local Planning Authority on 16<sup>th</sup> January 2019),

**Reason:** To ensure a satisfactory impact of the development to accord with Policies DM1 and DM10 of the adopted Site Allocations and Development Management Policies DPD.

3. No more than six children and two carers shall live at the property at any one time.



**Reason:** To protect the amenities of neighbouring residential properties in accordance with DM10 of the SADMP.

4. The on site educational facilities shall only be used by the residents of 146 Hinckley Road, Barwell.

**Reason:** To protect the amenities of neighbouring residential properties and to ensure that adequate off-street parking and turning facilities are available in accord with Policy DM10 and DM18 of the Site Allocations Development Management Plan (2016).

5. The parking spaces and turning spaces so provided within the front garden area of the property shall not be obstructed and shall thereafter permanently remain available for car parking and turning.

**Reason:** To ensure that adequate off-street parking and turning facilities are available to accord with Policy DM18 of the Site Allocations Development Management Plan (2016).

#### **Notes to Applicant**

1. The approved development may require Building Regulations Approval, for further information please contact the Building Control team via e-mail at [buildingcontrol@hinckley-bosworth.gov.uk](mailto:buildingcontrol@hinckley-bosworth.gov.uk) or call 01455 238141.