

**Embargoed until 00.01hrs Thurs 12 May 2011**

# Report

on an investigation into  
complaint no 09 002 577 against  
Melton Borough Council

4 May 2011

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The Local Government Act 1974, section 30(3) generally requires me to report without naming or identifying the complainant or other individuals. The names used in this report are therefore not the real names.

## Key to names used

Mr and Mrs Rowan, the complainants

The Limes, the complainants' property

Oak Village, the village where the complainants are resident

Mr Cherry, Planning Applicant

Councillor A )

Councillor B )

Councillor C )

Councillor D ) members of the Planning Committee

Councillor E )

Councillor F )

Councillor G )

Officer A, Planning Case Officer

Officer B, a Planning Officer

Officer C, Regulatory Services Officer

Officer D, Legal Services Officer

## **Report summary**

### **Subject**

Mr and Mrs Rowan live in a house called The Limes in Oak Village. Part of the village is a designated conservation area. Their property is at the end of the village envelope for development, outside of the conservation area. The Council granted planning permission for a bungalow to be built on farm land next to their home outside the village envelope. The decision was contrary to officer recommendation and Council policy. Mr and Mrs Rowan complained to the Council and a revocation meeting was held to consider the application and decision. The decision to approve the application remained the same. Mr and Mrs Rowan complained to me that the development affected their enjoyment of their home and garden and they were misled over the revocation meeting which raised their expectations that the decision could be altered.

### **Finding**

Maladministration causing injustice.

### **Recommended remedy**

I recommend that a 'before and after' valuation be carried out on the complainants' property. This should ascertain the impact of the new dwelling on the complainants' property and the Council should then pay Mr and Mrs Rowan any difference in value and £500 for their time and trouble in pursuing their complaint.

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## Introduction

1. Mr and Mrs Rowan live in a house called The Limes in Oak Village. Part of the village is a designated conservation area. Their property is at the end of the village envelope for development, outside of the conservation area. The Council granted planning permission for a bungalow to be built on farm land next to their home outside the village envelope. The decision was contrary to officer recommendation and Council policy. Mr and Mrs Rowan complained to the Council and a revocation meeting was held to consider the application and decision. The decision to approve the application remained the same. Mr and Mrs Rowan complained to me that the development affected their enjoyment of their home and garden and they were misled over the revocation meeting which raised their expectations that the decision could be altered.
2. One of the Commission's officers has examined the Council's files and interviewed members and officers of the Council and Mr and Mrs Rowan.
3. The complainants and the Council were invited to comment on a draft of this report, before the conclusions were written. I have taken account of their comments in preparing the final text and reaching my conclusions.

## Legal and administrative background

4. The Council must determine a planning application in accordance with the development plan unless material considerations indicate otherwise.<sup>1</sup> The development plan must be viewed as a whole.<sup>2</sup> It is not unusual for development plan policies to pull in different directions. The local planning authority has to make a judgement bearing in mind such factors as the importance of the policies which are complied with or infringed, and the extent of the compliance or breach. It is enough that the proposal accords with the development plan considered as a whole. It does not have to accord with each and every policy therein.
5. Circular 11/95: Use of conditions in Planning Permission gives advice about planning conditions.<sup>3</sup> It says that conditions should only be imposed where they are necessary and reasonable as well as enforceable, precise and relevant both to planning and to the development to be permitted. The circular draws attention to this in paragraphs 15-17 which advises that in considering whether a condition is necessary local planning authorities should ask themselves whether planning permission would have to be refused if the requirements of that condition were not imposed. If it would not, then the condition requires special and precise justification.

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1 Planning and Compulsory Purchase Act 2004 Section 38(6)

2 R v Rochdale Borough Council ex p Milne [1999] 20LS Gaz R41 paragraphs 48 – 50

6. Paragraph 93 of the circular refers to personal permissions and states:

“Unless the permission otherwise provides, planning permission runs with the land and it is seldom desirable to provide otherwise. There are occasions, however, where it is proposed exceptionally to grant planning permission for the use of a building or land for some purpose which would not normally be allowed at the site, simply because there are strong compassionate or other personal grounds for doing so. In such a case the permission should normally be made subject to a condition that it shall enure only for the benefit of a named person-usually the applicant (Model Condition 35): permission personal to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company. This condition will scarcely ever be justified in the case of permission for the erection of a permanent building.

#### Model Condition 35 Personal Permissions

The use hereby permitted shall be carried on only by [name of person] and shall be for a limited period being the period [of ... years from the date of this letter, or the period] during which the premises are occupied by [name of person] whichever is the shorter (paragraph 93).”

#### Local Plan Policy OS2 and C8<sup>4</sup>

7. OS2 states:

“Planning permission will not be granted for development outside the Town and Village envelopes shown on the proposals map except for –

- A) Developments essential to the operational requirements of agriculture and forestry;
- B) Limited small scale development for employment, recreation and tourism which is not significantly detrimental to the appearance and rural character of the open countryside;
- C) Developments essential to the operational requirements of a public service authority, statutory undertaker or a licensed telecommunications code system operator;
- D) Change of use or rural buildings;

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3 DoE Circular 11/95 20 July 1995

4 Adopted Melton Local Plan 1999

- E) Affordable Housing in accordance with Policy H8 where such development would lead to the coalescence of existing settlements, planning permission will not be granted.”

8. Policy C8 states:

“Planning permission for a new dwelling outside the Town and Village envelopes shown on the proposals map will not be granted unless:

- A) There is an essential long term need for a dwelling to enable a person employed in agriculture or forestry to live at, or very close to the place of work and there is no existing suitable means of accommodation available;
- B) The need cannot be met within the town and village envelopes shown on the proposals map;
- C) There is no building on the farm holding or under the control of the applicant which is in a suitable location to meet the functional need and could be satisfactorily converted to form a dwelling;
- D) The dwelling would be sited to minimise its intrusiveness in the open countryside;
- E) The size, scale, design, form, construction, materials and architectural detailing are in keeping with existing traditional buildings in the area.”

9. BE1

“Planning permission will not be granted for new building unless:

- A) The buildings are designed to harmonise with surroundings in terms of height, form, mass, siting, construction materials and architectural detailing;
- B) The buildings would not adversely affect occupants of neighbouring properties by reason of loss of privacy or sunlight/daylight;
- C) Adequate space around and between dwellings is provided ...”

10. Section 97 of the Town and Country Planning Act 1990 confers the power for Local Planning Authorities to revoke or modify planning permissions if it thinks it is expedient to do so.<sup>5</sup> In exercising this power the local planning authority shall have regard to the development plan and to any other material planning considerations- the same as the legal requirement applied to the determination of planning applications and the power can be used before the development concerned has been completed, but cannot address works already carried out.

### **PPS3 and PPS7**

11. PPS3 contains central government guidance on housing and residential development.<sup>6</sup> In general it states that development should be focused in accessible locations and that brownfield land should be developed in preference to greenfield land releases. It also advocates greater efficiency of the use of land through higher densities and advises authorities not to allow development of less than 30 houses per hectare. It further seeks to secure good quality residential mix of house types.
12. This target of houses per hectare is however no longer in force. PPS3 was revised and reissued on 9 June 2010.<sup>7</sup>
13. PPS7 is about sustainable development in Rural Areas and sets out advice on development in countryside.<sup>8</sup> In the main the government's aim is to protect the countryside for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and so it may be enjoyed by all. It states that new building development in open countryside away from existing settlements or outside areas allocated for development in development plans should be strictly controlled. The policy states that isolated new houses in the countryside will require special justification for planning permission to be granted.
14. Article 22 of Town and Country Planning Act (General Development Procedure) Amendment Order 2003 note 1 states:<sup>9</sup>

“(1) When the local planning authority give notice of a decision or determination on an application for planning permission or for approval of reserved matters and –

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5 Town and Country Planning Act 1990, Section 97

6 Planning Policy Statement 3: Housing March 2000

7 PPS3 9 June 2010

8 Planning Policy Statement 7: Sustainable development in rural areas 3 August 2004

9 Town and Country Planning (General Development Procedure) Amendment Order 2003 Article 22 5.12.2003

1. planning permission is granted, the notice shall include a summary of their reasons for the grant and a summary of the policies and proposals in the development plan which are relevant to the decision;
2. planning permission is granted subject to conditions, the notice shall:
  - (i) include a summary of their reasons for the grant together with a summary of the policies and proposals in the development plan which are relevant to the decision to grant permission; and
  - (ii) shall state clearly and precisely their full reasons for each condition imposed, specifying all policies and proposals in the development plan which are relevant to the decision;
3. planning permission is refused, the notice shall state clearly and precisely their full reasons for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision; and
4. where the Secretary of State has given a direction restricting the grant of planning permission for the development for which application is made or where he or a Government Department has expressed the view that the permission should not be granted (either wholly or in part) or should be granted subject to conditions, the notice shall give details of the direction or of the view expressed, and in the case of notification required by sub-paragraph (b) (c) or (d) the notice shall be accompanied by a notification in the terms (or substantially in the terms) set out in Part 2 of Schedule 1 to this Order."

## Investigation

15. Mr and Mrs Rowan purchased The Limes in December 2007 after carrying out local searches on the property. There had been previous planning applications submitted for development on the land adjacent to The Limes since 1996 to 2004 but these had been consistently refused as the land was in open countryside and outside the village envelope where the presumption was against development. The applications had not been supported by the local parish council and the Planning Inspectorate had also turned down an appeal in 1996. These applications were both for a new dwelling on the site and also for animal feed stores and piggeries.
16. The owner of the site, Mr Cherry, submitted an outline planning application in February 2008 for the removal of existing sheds and foundations and erection of a bungalow with approval of the siting and means of access. Mr and Mrs Rowan

were notified of the proposal on 13 May 2008 and sent in a letter of objection on 3 July 2008. The planning officer, Officer A, prepared a report on the application for the Development Committee meeting recommending refusal on the grounds that the material considerations put forward by the applicant did not merit a departure from the Local Plan, the plot was outside the village envelope and the proposal would have an overbearing impact on the complainants' house and adversely affect their amenity.

17. Members carried out a site visit and considered the application on 24 July 2008. The application was presented to the Committee by Officer B, a Planning Officer. The Committee report explained that the application was being determined by the Development Committee as the proposal was contrary to policy. It explained the planning history of the site, the relevant planning policies and the consultations carried out. The parish council supported the application on this occasion. The reasons being that there had been development on the other side of the road, although that was within the village envelope; it was considered to be a 'brownfield' site having old piggeries and animal husbandry buildings on it; and the applicant was providing himself with single storey retirement accommodation as an alternative to a Council home. The report detailed the objections received from Mr and Mrs Rowan. Their concerns were that road safety was reduced with another access on the road, the site was outside the village envelope and the applicant would be further away from village facilities than at his current address, the proposed building would not follow the building line of The Limes, and there would be an impact onto their residential amenity due to a loss of view across fields. They were concerned that the land adjacent to The Limes was elevated so considered that even a bungalow would have a negative impact upon the rear of their house and patio.
18. The report outlined other material considerations including the issue of the village envelope and the applicant's statement to support his application. This was that his current property had been subject to multiple flooding, he was elderly, had disabled status and declining mobility. He wished to maintain independent living in the village he had lived in for 50 years and it was requested that this be noted. The officers' response was to state that whilst the applicant's circumstances may meet some of PPS3 it should also be noted that the suitability of the site should be taken into account. In this case it was considered that the site was outside the village envelope, in open countryside, and was therefore not considered suitable in terms of the local plan and national policy.
19. The report made reference to the village envelope and the land not forming part of the draft village envelope identified in the Local Development Framework. This had still to be adopted and so, even if the site were to be taken in to account for inclusion, the draft was only at consultation stage and should not form a material consideration. Officer A's view was that the buildings on the land were in keeping with a countryside location and their replacement by a bungalow would make an extension of the built environment beyond the edge of the village into open

countryside. The role of the village envelope was to preserve the character and appearance of the countryside and prevent expansion in unsuitable locations.

This was supported by policy PPS7. Officer A's recommendation was to refuse the application as it was considered it would result in an unwarranted extension into the countryside and be detrimental to the rural character and appearance of the village if approved.

20. Officer B presented the application to the Committee explaining the reasons for recommending refusal. A parish councillor spoke in favour of the application along with Councillor A, a local district councillor. They explained amongst other issues that it was an ideal plot, Mr Cherry was elderly, his current property was occasionally flooded and considered that this was due to the Council's failure to take action to resolve the problem. The Committee discussed the application and the minutes of the meeting record:

“Councillors indicated their sympathy with Mr Cherry's situation. The Chairman [Councillor B] reminded the Committee that the application had to be decided on planning reasons alone.

[Councillor C] proposed to permit the application with levels and screening to be made more acceptable for the neighbours. [Councillor D] was a seconder for this proposal. The Regulatory Services Officer [Officer C] reminded the Committee that the inadequacies of the applicant's current accommodation was not a material planning consideration and could not form a basis for granting permission. However, there were other considerations present– the content of PPS3 and condition of the site and members should consider if these merited a departure from the Development Plan.

The Legal Services Officer [Officer D] reminded the Committee that the reasons to permit had to be based on material planning considerations.

On being put to the vote, the proposal to permit was carried with 4 in favour and 2 against.

**DETERMINATION: Permit for the following reason and with conditions delegated to the [Regulatory Services Officer] (Officer C) but to include:**

- **Limiting the consent for the benefit of the applicant only, reflecting his personal circumstances**
- **Control over the levels the house was to be built**

**REASON: The proposal lay outside the Village Envelope and was considered acceptable in this instance due to the specific circumstances of the applicant, that were considered to be sufficient material considerations to justify an exception to the Development Plan, subject to conditions.**

([Councillors B and G] requested that their vote against the previous application be recorded)."

21. Planning consent was issued on 30 July 2008. Condition 15 States, "The dwelling hereby permitted shall only be occupied by the applicant, Mr [Cherry]." The reason for this condition is given as, "The development having been permitted due to the personal circumstances of the applicant".
22. The notes to applicant on the permission states:

"Under article 22 of the Town and Country Planning (General Development Procedure (England) (Amendment) Order 2003 Note 1 is a summary of the reasons and development plan considerations relevant to this decision.

1. A summary of the policies and proposals of the development plan the proposed dwelling is located outside the village envelope as designated in the adopted Local Plan and would represent an extension of the built environment into the protected open countryside, contrary to Planning Policy Statement 7 and Policies OS2 and C 8 of the adopted Local Plan. Therefore, planning permission can only be granted if there are material considerations present that balance against the Local Plan. It is considered that, in this instance, the specific personal circumstances of the applicant are sufficient grounds to justify such a departure and allow for the provision of a modest bungalow which would meet local housing need.

A summary of the reasons for the granting of this planning permission including the conditions imposed:

The proposal lies outside the Village Envelope and is considered acceptable in this instance due to the specific circumstances of the applicant, that are considered to be sufficient material considerations to justify an exception to the Development Plan, subject to the conditions above relating to safeguarding residential amenity and the character and appearance of the area (condition 2-16 and 15), highways (conditions 7-12), archaeology (condition 13), and drainage (condition 14). Condition 16 is imposed that the development is restricted to occupation by the applicant reflecting the special circumstances. The specific reasons for each condition are given above."

23. Mr and Mrs Rowan were notified of the decision to grant permission for the development. They complained to the Council about the decision and that the minutes of the meeting were not placed on the planning website to enable them to progress a complaint further and understand why the decision had been made.
24. The Council received a reserved matters application on 21 October 2008 to approve design and landscaping. This was approved on 9 March 2009 under delegated powers. Mr and Mrs Rowan complained that they had not been notified of the reserved matters application. The Council in its comments on the draft report has commented that Mr and Mrs Rowan were sent a neighbour notification letter on 21 November 2008 and were offered 21 days to respond. Had they not been in touch, the need to consult them would have been identified by the case officer when he made his site visit on 27 November 2008. A site notice was also posted. They were notified of two sets of amended plans the Council negotiated to lower site levels on 17 December 2008 and 29 January 2009. Mr and Mrs Rowan met with Officer C who advised them to request a revocation hearing of the application. They submitted such a request on 31 March 2009.
25. The Development Committee heard the request on 30 April 2009. A report was prepared by Officer C which outlined the details of the planning application, the Committee meeting of 24 July 2008 and the reserved matters application approved in February 2009. It explained the grounds of Mr and Mrs Rowan's request to revoke the permission namely that undue weight was given to the personal circumstances of the applicant, little or no consideration was given to the Local Plan and insufficient weight was given to representations about issues of residential amenity. The report explained that the key issue for the Committee to consider was whether the permission granted remained appropriate and in particular whether there have been any significant changes in circumstances to render the existing permission to become unacceptably harmful to planning considerations. It was noted that the basis of the grant of outline planning permission was recognised as being contrary to the Development Plan but that material considerations were considered sufficient to justify a departure from the Local Plan. It was not considered that the development plan had been altered in any way that materially affected the determination and neither had the material considerations given as grounds for departing from the Local Plan changed. Therefore, the basis on which the decision was made remained the same and so the appropriateness of the permission was also unchanged.
26. The request that the decision should be revoked due to possible shortcomings in the way the decision was made was noted but the power under S 97 of the Town and Country Planning Act 1990 was not to correct an alleged faulty permission but to consider whether it remain appropriate having regard to the development

plan and other material planning considerations. The report explained that the request to revoke made reference to the local plan and too much emphasis on the applicant's circumstances, but these were a matter of judgement for the Committee. It was considered that the objections received were taken into account therefore the conclusions reached on the application were no less appropriate.

27. The report explained that there may be financial and other resource implications as revocation may expose the Council to a claim for compensation under s107. It was considered in this case to be about £200,000 and there was no budgetary provision for such a claim.
28. Mr Rowan spoke at the meeting and outlined the concerns they had raised. Mr Cherry also spoke. He explained that reasonable endeavours had been made to reduce the ground levels and work was well under way. The Committee considered the request and decided that the permissions should not be revoked.
29. Mr and Mrs Rowan were unhappy with the outcome of the revocation meeting and, following a further complaint to the Council, made a complaint to me.

#### **The complainant's view**

30. Mr and Mrs Rowan explained that they bought their property in December 2007 after carrying out searches on the property. They were aware of previous applications and an appeal but as these had all been consistently refused, as the site was outside the village envelope, and the last application had been in 2004 they decide any further applications were unlikely to be successful. They were therefore surprised when an application was made in February 2008 not long after they moved into the house.
31. They received notification of the application and submitted a letter of objection outlining their concerns that the material considerations put forward by the applicant did not justify a departure from the Local Plan, the plot was outside the village envelope and it would be overbearing and adversely affect their amenities. Their main concern was the closeness of the bungalow to their property. They would not have had such strong objections if the bungalow had been built on the same building line of their property. This would have meant there would have been limited impact on their property and the views they bought the house for across fields would have remained. The view is now blocked by the new bungalow. They say they had no experience in dealing with the planning process. They were aware a site visit had been carried out by the Development Committee as Mrs Rowan saw the Councillors. They say one of the Councillors looked over their wall. Mr and Mrs Rowan say the Councillors did not attempt to discuss any of the issues or invite Mrs Rowan's opinions. They were unable to attend the Planning Committee meeting on 24 July 2008 and were surprised to be informed that the application had been approved with conditions. In particular they were

surprised at the condition stating the dwelling should only be occupied by the applicant, Mr Cherry, who they understood to be 81 years old.

32. Mr and Mrs Rowan say that they were unable to view the minutes of the 24 July 2008 Committee meeting for some time as they were not published on the Council's website. They say this limited their understanding of the decision and so limited their legal and 'tactical' options. They say the Council failed to notify them of the reserved matters application submitted on 21 October 2008 and only became aware of the application after browsing on the planning website. The Council confirmed the omission on 21 November 2008 and they were sent copies of the relevant minutes.
33. Mr and Mrs Rowan explained their concerns about the decision and considered permission had been given purely on the specific circumstances of the applicant alleging his current property flooded. They felt this was highlighted by the minutes, stating that Officer B had said that it was not considered the applicant had put forward sufficient grounds to merit a departure from policy, and the Chairman reminding the Committee that the application should be decided on planning reasons alone. Officer C had also reminded the Committee that the applicant's current accommodation was not a material consideration and could not form the basis for granting permission. Officer D also reminded the Committee that the reasons to permit had to be based on material planning considerations.
34. They also expressed concerns that a representative of the parish council had attended the meeting and spoken in favour of the application despite the parish council being against previous applications. A local Councillor also attended and spoke in favour of the applications. Mr and Mrs Rowan said that neither the parish council nor the local Councillor had made any efforts to find out their views of the application and their emotive presentations to the Development Committee prevented a constructive debate on the planning merits of the application. Mr and Mrs Rowan had noted the minutes of the meeting had not mentioned them, the effect on their property, amenity or the objections they had raised. This led them to the view that no thought or consideration was given to their very real concerns. They were also concerned that out of a possible 11 Councillors of the Development Committee only six were in attendance.
35. Mr and Mrs Rowan obtained copies of all the application documents and plans and considered that there were errors on the plans submitted for the reserved matters application relating to site levels as the adjacent plot is 1m higher than their plot. This had gone unnoticed by the Council until mentioned by them. They had understood the Council had asked for revised plans but these were never resubmitted. Mr and Mrs Rowan say the Council insist that the site level was reduced but it remains higher than the level of their house.

36. Mr and Mrs Rowan meet Officer C to discuss their concerns about the Committee's decision. They said from the meeting they learnt that the flooding issue at Mr Cherry's property dominated the discussions on 24 July 2008 and the problem was due to overflowing drains/culverts. The Council was ultimately responsible for resolving the problem but it was claimed it had not taken the necessary action. Officer C discussed their options for redress and they were advised to seek a revocation hearing which they say was described as a process akin to the Committee hearing a new application. Their understanding was that the merits of the application would be revisited to determine whether the decision to grant permission had been the correct one.
37. Officer C confirmed that the Council would consider a revocation under Section 97 of the Town and Country Planning Act 1990. Mr and Mrs Rowan prepared their case against the original application following the advice from Officer C that the hearing would be treated as if it were considering a new application. They employed a planning lawyer to help them with their case, sought to persuade the parish council to take a more balanced view of the situation and contacted the new local member to see if they would support their case. Mr and Mrs Rowan say they have not received any response from the new member.
38. Mr and Mrs Rowan submitted their case and based their arguments on their view that the original decision was based entirely on the personal circumstances of the applicant; those circumstances were not material considerations and should not have been taken into account; the proposed development lay outside the village envelope; the planning merits of the case had not been considered in relation to the Local Development Plan; their objections were not given due consideration and the development would have an over bearing effect on their property affecting their privacy and amenity.
39. They were disappointed when they saw Officer C's report to the Committee as, in their opinion, it focused on whether there had been any changes in circumstances since the original grant of planning permission which was contrary to the information they had been given as to matters to be taken into account at the hearing. The report also focussed on possible financial costs for the Council of £200 000 if the applicant claimed compensation against the Council. The Committee were advised that the financial aspects should not be taken into account but Mr and Mrs Rowan felt that this would inevitably be a consideration.
40. Mr and Mrs Rowan felt that they had been given incorrect information about the revocation hearing and had no time to change their case. They were not sent a copy of the report but were able to access it via the Council's web site. They considered that S 97 of the Act makes no mention of a focus on a change of circumstances since the permission was granted but rather confers on the Council a wide range of powers to revoke a permission if it considered it was expedient to do so.

41. Mr and Mrs Rowan attended the revocation hearing on 30 April 2009 and were disappointed when the Chairman stopped a debate on the planning merits of the application between two Councillors saying that the focus had to be on whether there had been a change in circumstances. The conclusion was that the application should not be revoked. Following the meeting Mr and Mrs Rowan emailed the members of the Development Committee inviting them to revisit the site but no responses were received.

### **The Council's view**

42. Officer A was the planning case officer and dealt with the application. He explained he had processed the application, carried out a site visit, collated information and the responses received to notification. He prepared the Committee report outlining the planning history of the site and considered the application was contrary to policy and there were no exceptions which would make it acceptable. In view of this he recommended the application for refusal. The report was presented by Officer B and he did not attend the meeting. He said he was surprised that the application had been approved and the condition regarding occupation imposed. He considered it was unusual in view of the applicant's age.
43. He was also the case officer for the reserved matters application and had collated the information available. He had requested an amended plan regarding the site levels and this was mentioned in the planning report. The application was approved under delegated powers. Officer A had no further involvement with the site. In its comments on the draft report, the Council has commented that Mr and Mrs Rowan state that errors on the plans submitted for the reserved matters application in regard to site levels had gone unnoticed by the Council until mentioned. Officer A had yet to undertake a site visit when informed of the errors so had not had the opportunity to examine the plans on site and ascertain their validity. They also state that revised plans were never re-submitted. Amended plans were submitted twice to lower site levels. Mr and Mrs Rowan (and parish council) were consulted in both instances and responded to both amendments. (In the second they even thanked Officer A for his diligence in getting the site levels corrected.)
44. Officer B, a Planning Officer, explained that she is Officer A's line manager and had presented the application to the Committee as he was not able to attend. She said that she had attended the site visit and considered it was an opportunity for members to familiarise themselves with the site and proposed development. They were shown the site, the neighbour's concerns and the access and siting of the new development. Officer B explained that, at the Committee meeting, she had summarised the main points from the report for members. Officer B did not speak at the Committee after her presentation and members' questions were dealt with by the other officers.

45. Officer B said that the applicant's personal circumstances were discussed and that members felt that there were sufficient personal circumstances to warrant the application being approved. There was also discussion about the impact on neighbours. She explained that members had decided to tie the consent to the applicant and so if the applicant died once the property was built it would have to be demolished or an application made to vary or remove the condition.
46. Officer B was involved in the reserved matters application and said she would have approved the application as Officer A's line manager. She explained that the issue of the site levels had been considered and the agent asked for a revised plan. The siting of the development was part of the outline application and was one of the reasons why officers considered the application should be refused. As the Committee had resolved to approve the application, the siting of the new build was fixed at that point. The officers went back to look at levels to mitigate the impact of the new build on Mr and Mrs Rowan's property.
47. Officer C, a Regulatory Services Officer, explained the application had gone to the Planning Committee to determine due to the issues involved in the application. He had attended the site meeting. He recalled that members were aware of the site and looked at Mr and Mrs Rowan's property in relation to the proposed new build. He said one member spoke to Mrs Rowan and explained who they were.
48. The report had been prepared by Officer A but was presented to the Committee by Officer B. Officer C could recall the meeting and application as the development meeting was the first one held after fire had destroyed the Council offices in July 2008. It meant the meeting was held in a room booked in the local Working Men's Club during the day which accounted for the fact that there was a low turnout of Councillors as the meetings were usually held in the evenings. The Committee membership at that time was nine so it was quorate with six Councillors present.
49. Officer C explained that the application was unusual as it had a history and was a departure from planning policy. He said that the application was presented by Officer B, who outlined the application, gave a power point presentation and gave an update on any late submissions. The key issues, such as being outside the village envelope, were drawn out. The local ward Councillor attended the meeting and spoke to the Committee, as he was entitled to do, in favour of the application. He made reference to the flooding suffered by the applicant at his current property and that the Council had a moral obligation to resolve the difficulties faced. The Committee were informed that the applicant was 81 and in ill health so had difficulties in coping with the flooding. Officer C explained that he understood the last floods in the area were in 2001. These were caused by inadequate drains

and water courses not being maintained by the Council for financial reasons. The Council had assumed responsibility for their maintenance in 2000.

50. There were questions and a request for advice from the members on personal circumstances and what role these had in considering the planning application. He advised them, as minuted, that the application should be considered on material planning considerations and the issue of flooding had no bearing on whether permission should be granted for the bungalow. His advice was confirmed by Officer D, a Legal Services Officer.
51. Councillor B, the Chairman of the Committee, had taken an active part in the debate and had expressed his view that the flooding was not a material planning consideration and should not influence members. The discussions had then moved on to amenity issues and the levels between the complainants' property and the proposed new build. The Committee considered that there should be a condition to reduce levels to make the application acceptable. Officer C was aware of the complainants' request for the dwelling to be resited but this was not possible as the siting of the dwelling was accepted as submitted in the outline application.
52. Officer C said that members had asked his advice about imposing a personal planning condition on the approval. He had advised that if the Council wished to impose such a condition then the applicant has to be bound by it. If the applicant in this case dies then no one would be able to live in the property unless they apply to remove the condition, and this is approved. If necessary the Council could refuse the application and then the property may have to be demolished. Officer C said he was surprised that the Committee decided to approve the application as they were usually very zealous about protecting village envelopes and such policies preventing development. However on this occasion he felt the Committee had justified its decision as it had based it on the applicant's personal circumstances and felt this was sufficient to permit a departure from local development policy. In commenting on the draft report the Council has said that Officer C explained that ultimately it is for the Committee to determine what is considered to be material and subsequently how much weight each consideration should attract. He did not express it was his view that the Committee was correct, but recognised that the Committee had correctly identified a departure from policy was involved and granted it only because the Committee was justified by the weight it attributed to material considerations it considered were present.
53. Officer C had been contacted by Mr Rowan after the meeting as he requested all the relevant documents relating to the application. Once these had been received he held a meeting with Mr Rowan to discuss the options available to him and it was agreed that the Development Committee should consider a request to revoke the application. Officer C said that when he presented the request to the Committee he explained that there has to be a reason for the Committee to revoke the permission not that it had changed its mind about the application.

Officer C considered that Mr and Mrs Rowan had possibly not understood the remit of the revocation hearing. The Committee concluded that it was not reasonable to reach a fresh conclusion as there had been no change in circumstances. In commenting on the draft report the Council has said Officer C confirmed that the revocation request was considered on the basis of the planning merits of the case and these had been conveyed to the Committee through the reproduction of the previous report because there had been no changes. He advised that the focus of the debate fell upon consistency of

decision making, leading to the comments made on the absence of changes in circumstances. The reference to compensation in the report was necessary because the Committee had no budgetary powers and it would have to be referred elsewhere had revocation been agreed.

54. Officer C said that he had looked on the Council's website and had been able to find the minutes of the 24 July 2008 Committee Meeting contrary to Mr and Mrs Rowan's comments that they were unavailable.
55. Officer D, a Legal Services Officer, provides legal advice to the Development Committee. She had attended the Committee meeting in that capacity. She had not attended the site visit nor was she aware of the details of the application. She explained that she had attended the Committee meeting on 24 July 2008 and had spoken at the meeting to remind members that they had to only take into account material planning considerations when considering a planning application. She said Officer C had made this position clear to members and she had followed this up with her comments. Officer D could recall that members had discussed flooding issues at the applicant's current property and Officer C had again reminded the Committee that the applicant's circumstances were not sufficient to justify being a material planning consideration.
56. Officer D explained that although the planning officers had recommended the application for refusal, members do have discretion to approve even if the decision is contrary to officers' views. Members had been given advice but it was for the Committee as the decision-making body. Officer D commented on the venue for the meeting and that it had been held shortly after the fire at the Council offices. She considered that the atmosphere of the meeting was very different to usual and although there were few members present it was still quorate.
57. Officer D explained that she was aware Mr Rowan had been discussing the decision with Officer C and a revocation meeting was being held. She had had some input into the meeting and had looked at the legal basis for the Committee to revoke or modify permission under S 97 of the Town and Country Planning Act 1990. Members had been made aware of the grounds for revoking permission but

on this occasion it was not considered to be justified as there had been no change in circumstances in planning terms since the approval.

58. Councillor B was the then Chairman of the Development Committee. He had been a Councillor since 1999 and Chairman of the Committee for three years and Vice Chairman for five years prior to that. He explained that the applicant wanted to remove an old piggery from the site and build a bungalow on farm land. He was aware that the land was outside of the village envelope and had tried to steer the Committee on what should be considered. He had attended the site meeting and could recall the site.
59. At the Development Committee members had discussed the flooding of the applicant's property. Councillor B said the local member had attended and spoke persuasively in favour of the application. He, along with officers, had reminded the members that the application should be considered on material planning considerations alone. Councillor B did not consider there were planning reasons to justify the application being approved. He was aware of the flooding issue, and that was a matter for the Council to resolve, but it didn't mean that planning permission should be granted so the applicant could build a house elsewhere if contrary to planning policy.
60. Councillor B explained that he was unaware how the planning conditions came about and did not consider the personal permission could be justified as the property was not agricultural and should not be tied to the applicant. He was very unhappy about the decision to approve the application and the conditions attached to the permission. Both he and Councillor G asked for their votes against approval to be recorded.
61. Councillor B could not recall the reserved matters application or the Committee meeting to discuss revoking the application.
62. Councillor C has been a Councillor for seven years and had not been a member of the Development Committee when the previous applications had been considered. She remembered the site visit and explained that it was a small piece of agricultural land with no feed value, as it was unsuitable for modern farming. It had old pig sties on it and local people had complained that it was an eye sore. Councillor C said that the applicant could have let the site out again as a piggery and this could have been worse for local residents than having a bungalow on the land.
63. Councillor A, the local ward Councillor, had spoken to the Committee along the same lines as the parish council in support of the applicant and that the site had previously been within the village envelope. No one could recall why it had been removed and there had been many approaches over the years for it to be included again, although this had not happened.

64. In commenting on the draft report, the Council has said that Councillor C has been a Councillor since 2003. The previous applications relating to the site had been considered prior to her election. She recalled the site visit and explained that it was a small piece of rough land with the remnants of the former pig sties still visible. She recalled, when on a previous visit to the Oak Village Dairy site opposite, local people complaining of an eye sore which they looked at every day and asking why planning permission was not granted in order that the site might be tidied up. Whilst a small area of land might normally be used as a pony paddock, this was not possible in this case as what was growing was twitch, dandelions and other weeds that contained no feed value for livestock. In normal circumstances a farmer would cultivate and re-seed such an area, but in this case, due to the small area involved, it was not possible to negotiate modern farm machinery with minimum widths of 4 metres. Councillor C went on to say that she was aware that the site had previously been within the village envelope and that the parish council were at a loss to know why it had been taken out. Both Councillor A and the parish council had urged her to support the application.
65. Councillor C was aware of the flooding issue as this was discussed at another Committee she was a member of and it had been acknowledged that the Council had a duty to resolve the problem. This had however not been a consideration in her mind when looking at the application. Councillor C's view was the new dwelling would enhance the environment and would be better than the old agricultural buildings on the site. She was aware that it was outside the village envelope but there had been other new development over the years on the other side of The Limes as that was inside the envelope. She said the personal condition had been suggested by Councillor A, the local ward Councillor so that the bungalow was not built on a speculative basis. In commenting on the draft report the Council has said that Councillor C stated when she was a member of REEA Committee, the problem of flooding in the road the applicant lived had been discussed. It had been acknowledged that there was a problem that the Council probably had a responsibility for, but due to budgetary pressures were unwilling to do anything about. This, however, had not been a consideration when considering the application. She felt that, the proposed small dwelling would enhance the area. She also stated that had the application been refused, the applicant could have done the pig sties up and re-stocked free range pigs, which possibly would not have proved popular with those living in the immediate neighbourhood. The barn conversions opposite had not been completed when the pigs had last been kept on the site. Councillor C said she remembered Councillor A, when addressing the Committee suggesting that, should the application be approved, a personal condition be placed on the approval, preventing the dwelling being built on a speculative basis.
66. Councillor D has been a Councillor for three years. He had attended the site visit and was aware of its previous agricultural use. He had viewed the complainants' property and had spoken briefly to Mrs Rowan. He explained that the

complainants' property had a high brick wall about 8 ft high. Councillor D explained that Councillor A had spoken at the meeting in favour of the application.

67. Councillor D said Oak Village was a village consisting of many residents who commuted to work and so it was expensive for locals to buy property. This was a site that was derelict land and had been previously in the village envelope with houses opposite the site. He considered that development was suitable as it was a considerate proposal and would improve the environment. He was not aware of the flooding issue and considered it was not relevant to the application. He said he had determined the application on planning grounds. Councillor D was aware of the complainants' concerns about land levels and he had asked for this to be considered as a condition. He could not recall the personal planning condition and the reasons for it being imposed. He had not been aware of the committee ever imposing such a condition previously.
68. Councillor D explained that he could not recall the revocation hearing.
69. Councillor E explained that she had been a Councillor for three years and so had not been involved in determining any previous applications for the site. She explained that she was aware of the site and that it was in a dire state having previously had pigs grazing on it. Councillor E had been on the site visit and looked at the property next door. She explained that the complainants had objected due to loss of view but with a wall alongside the property the view was limited anyway. She was aware of the house on the opposite side of the road and so considered it was reasonable for permission to be granted especially as the land had previously been in the village envelope.
70. Councillor E explained that she had listened to the debate about the application and was aware of the officer's recommendation to refuse. She was aware of the flooding issues put forward but said it had no bearing on her decision. Councillor E considered that the site was an eyesore and so there was no reason to refuse the application. It would improve the environment of the village. In commenting on the report the Council said Councillor E said that the Melton Local Development Framework (MLDF) was an ongoing work in progress and had not been adopted yet. There were concerns about the village envelope and there was ongoing discussion about squaring off village envelopes. She stated that, the piece of land had been inside the village envelope originally and it could be included again when the MLDF was finally finished and adopted: if the envelope had changed once then it could change again.
71. Councillor E could not recall the conditions that were agreed or the revocation meeting.
72. Councillor F explained that the applicant had a problem with flooding at his current property when there was heavy rain and the Council had some responsibility for the situation occurring. The applicant had submitted the

application so he could build a new house where there was no flooding. The application site was on land where there had been piggeries and previous applications had been refused. The land had previously been within the village envelope and the parish council had been requesting that it be included again. Councillor F considered the application was acceptable due to the situation with flooding at the applicant's property.

73. Councillor F said that members were happy with the decision that had been reached and that the circumstances of the applicant made the application acceptable even though it was outside the village envelope. He considered that this was a material planning consideration and overcame officer concerns. He could not recall the conditions imposed, the reserved matters application or the revocation hearing.
74. Councillor G has been a Councillor since 1997. She could not recall the site meeting but was aware of the site being in open countryside and outside the village envelope. There had been a history of previous applications to develop the site which was dilapidated with old buildings on it. The ward councillor had spoken at the Committee meeting in favour of the application and referred to flooding in the village.
75. Councillor G considered the matter was straightforward and this issue should not have been taken into account. The site was outside the village envelope and should have been refused. She explained that officers had advised the Committee that only material planning considerations should be taken into account, however people have differing views about what is material.
76. Councillor G explained that the personal condition was given due to the applicant's circumstances and was to tie him into the development so he could not sell the land. She could see the reasoning for the condition but did not consider it was a good thing. She had asked for her vote to be recorded as she was unhappy with the Committee decision.
77. Councillor G could not recall the revocation hearing although she was present. She said that once a decision had been made it belonged to the Committee as a whole and as nothing had changed since permission was granted there was no reason to change the decision.

## Conclusions

78. Planning decisions inevitably affect individuals. For this reason the foundations of the planning system are land use, and appearance and developments are closely regulated, especially in open countryside. Planning committees are regularly asked to consider the personal circumstances of individuals and those

circumstances can weigh both for and against development. For that reason, government advice is that permissions granted just because of the circumstances of the applicant should only be granted “exceptionally”. The advice then says that where it is proposed to take such an exceptional step, the permission should be conditioned personally to the applicant. And it says that the use of such a condition will “scarcely ever be justified” for a permanent building (paragraph 6).

79. The site in question is outside the village envelope and policies OS2 and C8 both state that permission will “not” be granted for development outside a village envelope. Both policies contain exceptions, but none of these apply to this application (paragraphs 7 and 8). And this is reflected in four previous planning refusals for a dwelling on the site (two for erection of piggeries); one of which was not upheld on appeal (paragraph 15). And it was rightly followed by officers when making the recommendation on this application and in the officers’ advice to committee at the meeting (paragraphs 18 and 19).
80. During this investigation I considered why the Committee approved the application, contrary to the substantial planning history, to the Council’s own policies and to the officers’ recommendation. At interview members offered various explanations, but it seems to me that I should rely on the minuted decision of the Committee (paragraph 20) which says that the proposal was acceptable “due to the specific circumstances of the applicant”. And this was carried through into the recorded reason for the permission itself which says “the development having been permitted due to the personal circumstances of the applicant”. So it seems to me that this was a personal permission of a type which should only be granted “exceptionally” and that it was conditioned in a way which should “scarcely ever be justified”. These are stern tests and I have closely looked at the firmness of the evidence about personal circumstances available to the committee.
81. The evidence came from several sources; from the applicant’s statement (paragraph 18) and at Committee from the parish council and from the local councillor (paragraph 20). There were two key issues. Firstly, the alleged flooding of the applicant’s then home, which was suggested to have been due to a failing by the Council. But this was not, it seems to me, properly documented and it is a moot point whether it was material. If the flooding was such that it made the applicant’s then dwelling, and its location, permanently unusable for residential purposes, that might have suggested that the application be treated as one for a replacement dwelling. But that does not seem to be the case. This point was clearly the key point for Councillor F (paragraph 72).
82. Secondly, there was the applicant’s understandable desire to remain in the local community. But it seems to me that this is based on the presumption that his then home had become uninhabitable; which, as I have said, is not properly evidenced. And it would surely have been appropriate to take into account what

other efforts the applicant had made to remain in the community beyond asking the committee to grant a permission which its policies said it should not.

83. I recognise that a planning committee is within its rights, exceptionally, to grant a personal permission; and to decide that the “scarcely ever be justified” test was passed. But the tests are very stern tests and it seems to me that, in taking such a decision, a planning committee should be very sure of the personal circumstances on which it intends to base its decision. In most cases I would expect to see an officer’s objective evaluation of the circumstances so that the members’ decision is soundly based on evidence. In the case of this application, the officers’ report did not contain such an evaluation. Nor would I have expected it to, given that officers were recommending refusal and that some information about the applicant was only produced at the meeting.
84. In the absence of an objective evaluation of the basis for the applicant’s claimed circumstances, I believe that the decision was flawed with maladministration. And, given the importance of the issue, I would have expected the minute of the meeting to set out clearly the detailed personal circumstances which swayed members. This failing is also maladministration.
85. In order to consider the injustice caused, I have to consider what the outcome would have been had the proper process been followed. Whilst members might have granted permission, my view, on the balance of probabilities, is that they would not. In coming to this view, I have taken into account the fact that the applicant’s then home remains occupied. This suggests to me that, had members been fully informed of the situation in respect of flooding, they may well have concluded that the case was not made. The complainants’ injustice is that their home is now next to a dwelling which should not have been built there.
86. I find no maladministration in respect of the revocation hearing (paragraphs 38 to 41 above). But I do think the Council should have been clearer with Mr and Mrs Rowan about the reason for this meeting and I hope the Council will take this into account should the need arise to consider a revocation in the future.

### **Finding**

87. For the reasons set out in paragraphs 81 to 85 I find that there was maladministration causing injustice to Mr and Mrs Rowan. To remedy this injustice I recommend that a ‘before and after’ valuation be carried out on the complainants’ property. This should ascertain the impact of the new dwelling on the complainants’ property and the Council should then pay Mr and Mrs Rowan any difference in value and £500 for their time and trouble in pursuing their complaint.

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**4 May 2011**

**Embargoed until 00.01hrs Thurs 12 May 2011**