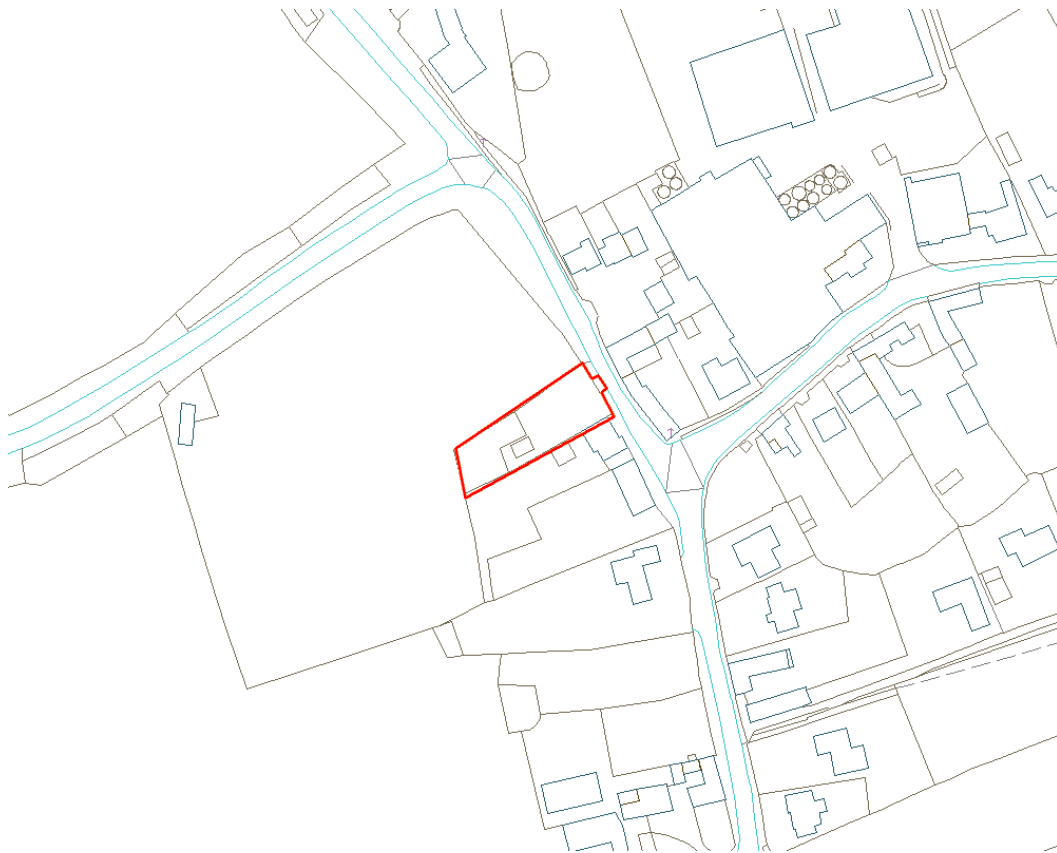


Reference: 11/00687/VAC
Date submitted: 05.09.11
Applicant: Mr Stefan Wippich
Location: 3 Hickling Lane, Long Clawson, Melton Mowbray, LE14 4NW
Proposal: Removal of personal planning condition.



Introduction:-

The application relates to permission no 08/00173/OUT which granted permission in July 2008 for a bungalow at 3 Hickling Lane subject to a condition as follows:

“The dwelling hereby permitted shall only be occupied by the applicant, Mr H.Wippich” and for the reason that “the development was permitted due to the personal circumstances of the applicant”.

The reason the application was granted is as follows:

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 conditionsCondition 16 is imposed that the development is restricted to occupation by the applicant reflecting the special circumstances.

This reasoning, and the condition, reflected the debate that lead to the granting of permission and it was only the specific circumstances of the applicant that were considered justified the bungalow and that without their presence it would not have been granted.

This application seeks to remove the condition to allow unrestricted occupation following the death of the applicant referred to in the condition; although the applicant has advised it is intended to be occupied by a relative of the original applicant.

Relevant History:-

There is extensive planning history to the site which comprises numerous applications to develop the site for residential purposes, and related appeals. However, the application relates to one condition on a specific permission it is considered that the only relevant aspect is the permission granted in July 2008 (08/00173/OUT) described above.

Planning Policies:-

PPS1 - Delivering Sustainable Development – sets out the government's planning policies on delivering sustainable development through the planning system. In particular the Statement advocates development which reduces the need to travel and encourage accessible public transport provision to secure more sustainable patterns of transport development. Planning should focus development in existing centres and promote the more efficient use of land through higher density and the use of suitably located previously developed land and buildings.

PPS3 - Housing - provides central government guidance for residential development. The general thrust of this policy is that development should be focused in accessible locations and that brownfield land should be developed in preference to greenfield land releases. It also advocates a greater efficiency of the use of land through higher densities and advises authorities not to allow development less than 30 houses per hectare. It further seeks to secure good quality residential developments in terms of design, layout and the 'greening' of urban areas, and a mix of house types.

PPS7 - Sustainable Development in Rural Areas – sets out advice on development in the countryside. It states in the key principles (paragraph 1) that 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. New building development in the open countryside away from existing settlements, or outside areas allocated for development in development plans, should be strictly controlled; the Government’s overall aim is to protect the countryside. It goes on to state that isolated new houses in the countryside will require special justification for planning permission to be granted. emphasises that the countryside should be protected for the benefit of all and that urban sprawl should be prevented

Consultations:-

Consultation reply	Assessment of Head of Regulatory Services
Clawson, Hose and Harby Parish Council No objection to the application	Noted.

Representations:

A site notice was posted and neighbouring properties consulted. 2 letters of representation have been received.

Representation	Assessment of Head of Regulatory Services
No objection and in favour of the condition being removed as unoccupied properties soon become an eyesore due to gardens being neglected etc. Consider the original planning condition should be removed. To give planning consent on the basis it could only be occupied by the person that had it built just does not make sense.	Noted. The original condition followed the logic of the granting of permission, based on the Committee’s view that the personal circumstances of the applicant was the sole justification to grant permission and as such the bungalow was considered unacceptable for other persons.

<p>The sensitivity surrounding this case demands greater scrutiny than that suggested in your report; and that the Development Committee must consider the application in light the LGO report..... <i>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.</i></p> <p>Only a handful of Development Committee members oversaw the original application and only a review of the whole history would give new members the proper context in which to assess this application.</p> <p>The suggestion that any compensation payable is in lieu of demolition invites the Development Committee to believe that they cannot consider any alternative. This is not the case: the LGO findings are not binding on the Council and the Development Committee are perfectly within their rights to consider alternatives if they so wish and should consider the precedent that this whole affair sets with regard to future developments.</p> <p>We ask that the Development Committee consider the wider implications of this request as it too simplistic simply to remove the condition because it was incorrect in the first place.</p> <p>We would also ask the Development Committee to consider that this was presented as a modest retirement home and may not be suitable as a family home. Could a condition be adopted that prevents its future extension in order that the impact the bungalow has on our property is not exacerbated?</p>	<p>The application relates to only one condition of the planning permission, which restricts occupancy of the bungalow. Consideration should be limited to that condition and whether or not it should be removed. The application does not present the opportunity to examine whether permission should have been granted and the determination of the application will have no impact on the permission, save for the directly condition it addresses.</p> <p>Noted.</p> <p>Noted: the Council has accepted the Ombudsman’s suggested remedy. The question of an alternative has been put to the Ombudsman and they advise that the original should be adhered to. The complainants have subsequently agreed to this approach and it is being implemented at present.</p> <p>The original permission contains a condition removing ‘permitted development’ rights which is not affected by this application.</p>
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Other material considerations (not raised through consultation or representation)

Consideration	Assessment of Head of Regulatory Services
<p>Ombudsman Findings: The issue was the subject of a complaint to the Local Ombudsman and amongst the findings was the statement that the condition that is subject of this application was neither justified not valid:</p> <p><i>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.....</i></p>	<p>In view of the background it is considered that there is a strong imperative that the condition is unjustified. Furthermore, compensation has been instructed on the basis that the bungalow is physically present and it is not considered that the occupancy of the bungalow is a factor in this exercise.</p> <p>In view of the foregoing it is not considered that grounds exist to retain the condition.</p>

<p><i>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.</i></p> <p>The Ombudsman proceeded to instruct a remedy to the above matter in the form of compensation to the complainant based on the difference of value caused by the presence of the bungalow. This was accepted by the Council on 20th July 2011 and also by the complainant, and is currently being implemented.</p>	
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Conclusion

The condition was imposed to follow the justification for the granting of permission. However, the condition has been ruled to be unjustified and it is considered that in view of this it cannot be retained.

RECOMMENDATION :

Permit (i.e remove the condition)

Officer to contact: **Mr J Worley**

Date: 29th October 2011