

12/0196/AP/REF

Royst Oak, Horn Street

The Planning Inspectorate

For official use only
(Date received)

6-Nov-2012 11:40

PLANNING APPEAL FORM (Online Version)

To help you fill in this form correctly, please refer to the guidance leaflet "How to complete your planning appeal form".

WARNING: The appeal **and** essential supporting documents **must** reach the Inspectorate within the appeal period. **If your appeal and essential supporting documents are not received in time we will not accept the appeal.**

APPEAL REFERENCE: **APP/L5810/A/12/2187054**

A. APPELLANT DETAILS

The name of the person(s) making the appeal must appear as an applicant on the planning application form.

Name

Address

Phone no.

Fax no

Postcode E-mail

Please confirm how you wish to correspond with us: Electronically, via the email address specified above
On paper, by post.

B. AGENT DETAILS FOR THE APPEAL (if any)

Name

Address

Your reference

Phone no.

Fax no.

Postcode E-mail

Please confirm how you wish to correspond with us: Electronically, via the email address specified above
On paper, by post.

C. LOCAL PLANNING AUTHORITY (LPA) DETAILS

Name of the LPA

LPA's reference number

Date of the planning application

Date of the LPA's decision (if issued)

D. APPEAL SITE ADDRESS

Address

Postcode

Grid Reference: Easting Northing

Is the appeal site within a Green Belt? YES NO

Are there any health and safety issues at, or near, the site which the Inspector would need to take into account when visiting the site? YES NO

E. DESCRIPTION OF THE DEVELOPMENT

Size of the whole appeal site
(in hectares)

Area of floor space of proposed development
(in square metres)

Has the description of the development changed from that stated on the application form?
YES NO

If YES, please state below the revised wording, and enclose a copy of the LPA's agreement to the change.

F. REASON FOR THE APPEAL

This appeal is against the decision of the LPA to:-

Please tick **one** box only ✓

- 1 Refuse planning permission for the development described on the application form or in Section E.
 - 2 Grant planning permission for the development subject to conditions to which you object.
 - 3 Refuse approval of the matters reserved under an outline planning permission.
 - 4 Grant approval of the matters reserved under an outline planning permission subject to conditions to which you object.
 - 5 Refuse to approve any matter required by a condition on a previous planning permission (other than those in 3 or 4 above).
- or**
- 6 Failed to give notice of its decision within the appropriate period (usually 8 weeks) on an application for permission or approval.

G. CHOICE OF PROCEDURE

There are 3 possible choices: - written representations, hearings and inquiries. You should consider carefully which method suits your circumstances before selecting your preferred option by ticking the box.

1. THE WRITTEN REPRESENTATIONS PROCEDURE

This is normally the simplest, quickest and most straightforward way of making an appeal. The written procedure is particularly suited to small-scale developments (e.g. individual houses or small groups of houses; appeals against conditions or changes of use).

- a) Could the Inspector see the relevant parts of the appeal site sufficiently to judge the proposal from public land? YES NO
- b) Is it essential for the Inspector to enter the site to check measurements or other relevant facts? YES NO

If so, please explain below or on a separate sheet.

Check constraints of the building and to determine that it cannot be used for an alternative community use.

2. THE HEARING PROCEDURE

This procedure is likely to be suited to more complicated cases which require detailed discussion about the merits of a proposal. At the hearing the Inspector will lead a discussion on the matters already presented in the written statements and supporting documents. Although you may indicate a preference for a hearing, the Inspectorate must also consider that your appeal is suitable for this procedure. You must give detailed reasons below or on a separate document why you think a hearing is necessary.

Please answer the question below.

- a) Is there any further information relevant to the hearing which you need to tell us about? If so please explain below. YES NO

3. THE INQUIRY PROCEDURE

This is the most formal of procedures. Although you may indicate a preference for an inquiry the Inspectorate must also consider that your appeal is suitable for this procedure. You must give detailed reasons below or in a separate document why you think an inquiry is necessary.

a) How long do you estimate the inquiry will last?
(Note: We will take this into consideration, but please bear in mind that our estimate will also be informed by others' advice and our own assessment.)

No. of days

b) How many witnesses do you intend to call?

No. of witnesses

c) Is there any further information relevant to the inquiry which you need to tell us about? If so, please explain below.
Please continue on a separate sheet if necessary.

YES NO

H. GROUNDS OF APPEAL

Do you intend to submit a planning obligation (a section 106 agreement or a unilateral undertaking) with this appeal? YES NO

** See separate documents **

H. GROUNDS OF APPEAL (continued)

Grounds of Appeal	Appellate Court	Finality of Decision
1. Error in law	Yes	Final
2. Error in fact	Yes	Final
3. Error in procedure	Yes	Final
4. Error in judgment	Yes	Final
5. Error in discretion	Yes	Final
6. Error in application of law	Yes	Final
7. Error in interpretation of law	Yes	Final
8. Error in assessment of evidence	Yes	Final
9. Error in weighing of evidence	Yes	Final
10. Error in finding of fact	Yes	Final
11. Error in conclusion of law	Yes	Final
12. Error in sentencing	Yes	Final
13. Error in sentencing discretion	Yes	Final
14. Error in sentencing principles	Yes	Final
15. Error in sentencing objectives	Yes	Final
16. Error in sentencing factors	Yes	Final
17. Error in sentencing considerations	Yes	Final
18. Error in sentencing outcomes	Yes	Final
19. Error in sentencing alternatives	Yes	Final
20. Error in sentencing options	Yes	Final

I. (part one) APPEAL SITE OWNERSHIP DETAILS

We need to know who owns the appeals site. If you do not own the appeal site or only own a part of it, we need to know the name(s) of the owner(s) or part owner(s) and be sure that you have told them that you have made an appeal. YOU MUST TICK WHICH OF THE CERTIFICATES APPLIES.

If you are the sole owner of the whole appeal site, certificate A will apply:

Please tick **one** box only



CERTIFICATE A

I certify that, on the day 21 days before the date of this appeal, nobody except the appellant, was the owner of any part of the land to which the appeal relates:

OR

CERTIFICATE B



I certify that the appellant (or the agent) has given the requisite notice (see the *Guidance Notes*) to every one else who, on the day 21 days before the date of this appeal, was the owner of any part of the land to which the appeal relates, as listed below:

Owner's name Address at which the notice was served Date the notice was served

Owner's name	Address at which the notice was served	Date the notice was served
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

CERTIFICATES C & D



If you do not know who owns all or part of the appeal site, complete either Certificate C or Certificate D in the guidance leaflet and attach it to the appeal form.

I (part two) AGRICULTURAL HOLDINGS CERTIFICATE

We also need to know whether the appeal site forms part of an agricultural holding. Please tick either (a) or (b).



(a) None of the land to which the appeal relates is, or is part of, an agricultural holding:



OR

(b)(i) The appeal site is, or is part of an agricultural holding, and the appellant is the sole agricultural tenant:



(b)(ii) The appeal site is, or is part of, an agricultural holding and the appellant (or the agent) has given the requisite notice to every person (other than the appellant) who, on the day 21 days before the date of the appeal, was a tenant of an agricultural holding on all or part of the land to which the appeal relates as listed below:



Tenant's name Address at which the notice was served Date the notice was served

Tenant's name	Address at which the notice was served	Date the notice was served
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Details of additional tenants



J. ESSENTIAL SUPPORTING DOCUMENTS

You **must** send the documents listed 1-7 below with your appeal form.
Please tick the boxes to show which documents you are enclosing.

- 1 A copy of the original **planning application** sent to the LPA.
- 2 A copy of the **site ownership certificate** and **agricultural holdings certificate submitted** to the LPA
at application stage (this is usually part of the LPA's planning application form).
- 3 A copy of the **LPA's decision notice** (if issued). Or, in the event of the failure of the LPA to give a decision, if possible please enclose a copy of the LPA's letter in which they acknowledged the application.
- 4 A **site plan** (preferably on a copy of an Ordnance Survey map at not less than 10,000 scale) showing the general location of the proposed development and its boundary. This plan should show two named roads so as to assist identifying the location of the appeal site or premises. The application site should be edged or shaded in red and any other adjoining land owned or controlled by the appellant (if any) edged or shaded blue.
- 5 Copies of all **plans, drawings and documents** sent to the LPA as part of the application. The plans and drawings should show all boundaries and coloured markings given on those sent to the LPA.
Please number them clearly and list the numbers here or on a separate sheet:
- 6 Copies of all **additional plans, drawings and documents** sent to the LPA but which did not form part of the original application (e.g. drawings for illustrative purposes). Please number them clearly and list the numbers here or on a separate sheet:
- 7 A copy of the **design and access statement** sent to the LPA (if required)

You must send copies of the following, if appropriate:

- 8 Additional plans, drawings or documents relating to the application but **not previously seen by the LPA**. Please number them clearly and list the numbers here or on a separate sheet:
- 9 Any relevant **correspondence** with the LPA. Including any supporting information submitted with your application in accordance with the list of local requirements. :
- 10 If the appeal is against the LPA's refusal or failure to approve the **matters reserved under an outline permission**, please enclose:
 - (a) the relevant outline application;
 - (b) all plans sent at outline application stage;
 - (c) the original outline planning permission.
- 11 If the appeal is against the LPA's refusal or failure to decide an application which relates to a **condition**, we must have a copy of the original permission with the condition attached.
- 12 A copy of any **Environmental Statement** plus certificates and notices relating to publicity (if one was sent with the application, or required by the LPA).

K OTHER APPEALS

If you have sent other appeals for this or nearby sites to us and these have not been decided, please give details and our reference numbers.

L CHECK SIGN AND DATE

(All supporting documents must be received by us within the time limit)

I confirm that I have sent a copy of this appeal form and relevant documents to the LPA (*if you do not your appeal will not normally be accepted*).

I confirm that all sections have been fully completed and that the details of the ownership (section I) are correct to the best of my knowledge.

Signature

Date

6 November 2012

Name (in capitals) Mr James Nicol

On behalf of (if applicable) Mr Neil Burgess

The gathering and subsequent processing of the personal data supplied by you in this form, is in accordance with the terms of our registration under the Data Protection Act 1998. Further information about our Data Protection policy can be found in the guidance leaflet.

M. NOW SEND

- **Send a copy to the LPA**

Send a copy of the appeal form to the address from which the decision notice was sent (or to the address shown on any letters received from the LPA). There is no need to send them all the documents again; send them any supporting documents not previously sent as part of the application. If you do not send them a copy of this form and documents, we may not accept your appeal.

- **You may wish to keep a copy of the completed form for your records**

When we receive your appeal form, we will write to you letting you know if your appeal is valid, who is dealing with it and what happens next.

N. APPEAL DOCUMENTS

We will not be able to validate the appeal until all the necessary supporting documents are received.

Please remember that all supporting documentation needs to be received by us within the appropriate deadline for the case type. If forwarding the documents by email, please send to **appeals@pins.gsi.gov.uk**. If posting, please enclose the section of the form that lists the supporting documents and send it to PO Box 2606, Bristol, BS1 9AY.

You will not be sent any further reminders.

Please ensure that anything you do send by post or email is clearly marked with the reference number:

APP/L5810/A/12/2187054

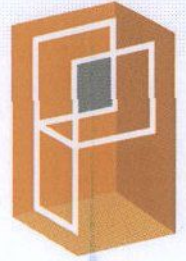
Please ensure that a copy of your appeal form and any supporting documents are sent to the local planning authority.

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*****
* The Documents Listed Below Will Follow By Post *
*****
===== GROUNDS OF APPEAL =====
** Grounds of Appeal 1

===== ESSENTIAL SUPPORTING DOCUMENTS =====
** 01. A copy of the original planning application sent to the LPA.
** 02. A copy of the site ownership certificate and agricultural holdings certificate
submitted to the LPA at application stage (these are usually part of the LPA's
planning application form).
** 03. A copy of the LPA's decision notice (if issued). Or, in the event of the failure
of the LPA to give a decision, if possible please enclose a copy of the LPA's letter
in which they acknowledged the application.
** 04. A site plan (preferably on a copy of an Ordnance Survey map at not less than
10,000 scale) showing the general location of the proposed development and its
boundary. This plan should show two named roads so as to assist identifying the
location of th
** 05. Copies of all plans, drawings and documents sent to the LPA as part of the
application. The plans and drawings should show all boundaries and coloured markings
given on those sent to the LPA.
** 05i. A list of all plans, drawings and documents (stating drawing numbers) submitted
with the application to the LPA.
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APPELLANT

PLAINVIEW
PLANNING



Grounds of Appeal

Change of Use of Public House (A4) to Family Dwelling (C3)

The Royal Oak

Ham Street

Richmond

TW10 7HN

29th October 2012

Appeal against , Ref: London Borough of Richmond

Ref: JNSB - 1015115

Plainview Planning Ltd, 5 Strand Court, Bath Road, Cheltenham, GL53 7LW

T 01242 501003 E info@plainview.co.uk
www.plainview.co.uk



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1. INTRODUCTION

- 1.1 This Grounds of Appeal Statement has been prepared by Plainview Planning Ltd on behalf of Burgess Properties (the Appellant) in support of a planning appeal submitted under Section 78 of the Town and Country Planning Act 1990. The Statement has been prepared in accordance with the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009.
- 1.2 This appeal has been lodged following the refusal of a planning application seeking to change the use of the Royal Oak public house (A4) to a family dwelling (C3) following a sustained period of vacancy due to non-viability.
- 1.3 The reason for refusal states:

The proposal, by reason of the loss of the Class A4 (Public House) use, would result in the loss of an important community and social infrastructure facility in the area, which, in the absence of sufficient information to justify an exception to the polices, would be contrary to policy CP16 of the London Borough of Richmond upon Thames Local Development Framework Core Strategy April 2009, and policies DM TC 4 and DM SI 2 of the London Borough of Richmond upon Thames Local Development Framework Development Management Plan adopted November 2011.

- 1.4 The development will provide a 4 bedroom family dwelling whilst retaining the architectural merit of the structure. The application received exceptional levels of support from the surrounding community; this would suggest that the public house is not required by the local population.
- 1.5 This statement will outline the main arguments and precedes a detailed Statement of Case.
- 1.6 Our Grounds of Appeal are:



- (i) That the proposal fully accords with the development plan and the NPPF;
- (ii) That there are other pubs within walking distance;
- (iii) That the pub has been marketed without success;
- (iv) That there are no other better alternative uses.

2. SITE CONTEXT

- 2.1 The appeal site is located in the attractive residential area of Ham. The immediate surrounding area is very much mixed in nature with schools, shops, cafes and residential properties all prevalent. This surrounding land use lends itself to a residential development on the site of the former Royal Oak. Further to the east of the site, the predominant land use is residential.
- 2.2 Immediately to south of site there is a small local centre boasting a food take-away premises, a delicatessen, a dry cleaners and a general convenience store. Further to the south is a modern residential estate in the form of single dwellings and substantial blocks of flats.
- 2.3 The site is well served by public transport with a bus stop located directly outside on Sandy Lane. There are a number of train stations located within 2 miles of the site, these include Twickenham and Strawberry Hill.



3. ALLOCATION

- 3.1 The site is located within land designated as Metropolitan Open Land and also a conservation area as highlighted within the London Borough of Richmond-Upon-Thames Unitary Development Plan.

4. PROPOSAL

- 4.1 The appellant seeks permission to change the use of the former Royal Oak public House back to an attractive 4 bedroom family dwelling with associated amenity space to the rear.
- 4.2 The LPA have suggested a number of amendments to the scheme in order for it to comply with relevant design polices. These changes were made during the application process thus the reason for refusal relates only to the viability of the public house.

5. VIABILITY OF THE PUBLIC HOUSE

- 5.1 It is considered that the public house has ceased to operate in a viable manner. Policy DM TC 4 clearly states:

Changes of use from a public house will not be permitted unless:

- a) There is another public house within convenient walking distance or*
- b) The public house use is inappropriate in terms of access or neighbourliness or*
- c) The proposed new use would provide a community service or function.*



- 5.2 If the Royal Oak complies with any one of these tests planning permission should be granted.
- 5.3 In the case of The Royal Oak:
- (i) there is another public house within convenient walking distance - Ham Brewery Tap is a ¼ mile away.
 - (ii) we contend that the pub is inappropriate in terms of neighbourliness given the close proximity to residential dwellings - an assertion seemingly supported by local support for the planning application.
- 5.4 On the face of it, the proposal complies with Policy DM TC 4.
- 5.5 Paragraph 4.2.35 of the supporting text goes on to state:

Before accepting the loss of any local pub or shop unit, the Council will require satisfactory evidence of full and proper marketing normally for at least 2 years, and will need to be satisfied that reasonable endeavour has been made to find new occupants for a full range of appropriate uses. If the retention of the pub or shop is proven not to be possible then other uses should be considered before residential.

- 5.6 It is contended that this supporting text is at odds with the specific policy wording. If marketing is a prerequisite then it should form part of the precise policy wording, not be included 4 paragraphs later.
- 5.7 Nevertheless, The Royal Oak has been vacant for 18 months, there is no local need for the public house, and this is clearly echoed by the public support for the application seen through the appellant's neighbourhood questionnaire that was forwarded as part of the application.
- 5.8 Interestingly, the post-amble to Policy DM TC 5 (The Evening Economy) clearly states in paragraph 4.2.38 that '*in other centres.....the Council will limit drinking establishments to a scale compatible to local need.*'



- 5.9 The LPA places a significant amount of emphasis on the lack of marketing evidence. However, the supporting text to policy DM TC 4 does not state a form of appropriate marketing, it does not require the marketing to be continuous nor does it specify when the marketing should be conducted. This lack of detail, coupled with the absence of a marketing requirement in the specific policy text suggests that the planning proposal is still in broad compliance with the Policy DM TC 4.
- 5.10 Nevertheless, it is considered that the public house has been marketed for the required period of 2 years both internally through Enterprise Inns (please see email's from Mark Lewis of Enterprise Inn's dated 10th May 2012 and 20th July 2012 – Appendix A) and since the public house ceased trading through appropriate business websites.
- 5.11 It is considered that the most appropriate form of marketing would be conducted by a brewery as they have the appropriate database of contacts that can make the premises work as a public house. It would appear that the LPA has overlooked this marketing evidence, stating in the officers report:

'The marketing evidence provided covers a four month period and is considered to be insufficient to satisfy the policy'.

- 5.12 We strongly disagree with this conclusion. In the absence of specific marketing requirements in the policy we consider the internal marketing undertaken by Enterprise Inns over a two year period is more than ample to discharge the requirements.
- 5.13 The applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.
- 5.14 We will expand on these points considerably within the Statement of Case.



6. ALTERNATIVE USES

6.1 The supporting text to the policy also requires an assessment of all other compatible uses before residential use should be considered. This was provided by the appellant via an Alternative Use Assessment. The results of which clearly demonstrate that:

- Uses outside of a C3 family dwellinghouse are inappropriate and unviable within the appeal structure;
- Compared to local and national averages the number of people per pub in Lower Layer SOA is very low;
- Local residents do not want to public house the reopen and support a change of use to residential;
- There is good accessibility to a range of community facilities for all demographics within the local area;
- The site is poorly connected in a relatively low density area;
- The surrounding uses limit activities which can take place on site;
- Uses other than residential have the potential to harm the conservation area and the BTM, and do not adhere to quality design policies.

6.2 The Council accepts that there are adequate alternative community facilities within the locality.



7. OTHER POLICY

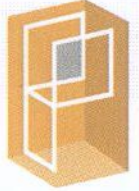
- 7.1 Policy CP16 of the Core Strategy is concerned with Local Services and infrastructure. Point 16.C states the loss of community facilities will be resisted unless it can clearly be shown that the facilities are no longer needed or that the service could be adequately re-provided in a different way or elsewhere.
- 7.2 The appellant has clearly demonstrated that the facility is not required by the local community. The questionnaires highlight the local support for the scheme, the lack of objection to the scheme further emphasises this point. The LPA accept that there is no appropriate alternative use for the premises and the appellant has clearly demonstrated that the property is not viable as a public house, thus it is considered that the scheme is compliant with Policy CP16 of the Core Strategy.
- 7.3 Policy DM SI 2 of the Development Management Plan is concerned with the loss of existing social infrastructure provision. It resists the loss of social infrastructure unless it can be shown that it that the facilities are no longer needed. It states that when considering applications involving the loss of social infrastructure the following evidence will be required:
1. *That the existing facilities are no longer needed or do not meet the needs of users and cannot be adapted in any way; or*
 2. *That the existing facilities are being adequately re-provided in a different way or elsewhere in a convenient alternative location, in accordance with Policy DM SI 1 'Encouraging New Social Infrastructure provision' or that there are sufficient suitable alternative facilities in the locality; and*
 3. *The potential of re-using or redeveloping the existing site for the same or an alternative social infrastructure use has been fully considered.*
- 7.4 Clearly it has been demonstrated that the public house is no longer viable. The lack of public support is clear, the age of the public house and the lack of interest in running it as a public house clearly demonstrates the lack of viability. The public house ca not be



adapted in a manner that will allow the public house to run successfully. It is considered that the change of use is compliant with Policy DM SI 2 of the Development Management Plan.

8. CONCLUSION

- 8.1 It is our opinion that the purpose of Policy DM TC 4 and the NPPF is to ensure that the basic need of the local community continues to be served. The basic need in this case is that the local community have reasonable access to a public house. It cannot be said that the local community do not have a broad range of establishments to choose from all of which have been highlighted within the planning submission.
- 8.2 When an application is made that would result in the loss of a community facility such as a pub, shop or post office, the decision maker must ask whether granting the application would result in a situation where the community would no longer be able to meet its needs. Clearly this is not the case.
- 8.3 The change of use is supported by the local community. During the application stage a questionnaire (45) was distributed to the surrounding residential properties. 29 questionnaires were returned with all but 2 supporting the change of use application. This is further evidence that the facility is not required or even wanted by the local community.
- 8.4 The Council clearly accepts that there are surrounding facilities to support the loss of the Royal Oak and they clearly accept the principle of a well designed family dwelling, however they, in the appellants' opinion, are giving too much weight to the rather rigid justification of a Policy. This is clearly contrary the advice contained with the NPPF. Paragraph 158 of the NPPF usefully summarises the guidance that should be followed by LPAs:



Each local planning authority should ensure that the Local Plan is based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. Local planning authorities should ensure that their assessment of and strategies for housing, employment and other uses are integrated, and that they take full account of relevant market signals.

8.5 We will expand upon the points raised in the Statement of Case.



Enterprise Inn's

Confirmation of Marketing

Appendix A

Mark Lewis Mark.Lewis@enterpriseinns.com

20 Jul ☆



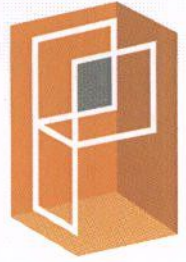
to me ▾

James

Without Prejudice

As discussed and following on from the last email this site came back in 2010 after the last lease operator Lisa Pegg handed the keys back to Enterprise Inns. I have again taken time to look through all back e mails and have identified the agreements at the time. Please note the sensitive nature of this information as it contains personal information which will need to be removed.

The site was reopened with a temporary tenant then took control of the site in February 2011 he ran the site on a temporary agreement on a rent of £10k per year and an incentive of £100 per barrel discount. Due to extremely poor trading he gave notice after just a couple of weeks. A second temporary operator then took the site in March 2011. This was with Declan Boyle of Maccinns. The site was taken on a pepper corn rent and a very high barrelage discount. This was the only operator willing to take the site and did so as a favour to Enterprise Inns. Declan ran the site until it was eventually sold. It became very apparent that the business was not viable, as trade was at a best a £1,000 per week and was not sustain a pub business.



www.plainview.co.uk

contact@plainview.co.uk

Feedback

At Plainview Planning we want to help LPA and Inspectorate staff to process our applications and appeals as easily as possible.

In an effort to improve our documentation and processes, we are inviting feedback from all LPA and Inspectorate case officers via a very short online feedback form. All submissions are anonymous.

Go to www.plainview.co.uk/submissions to let us know what you think about our applications or appeals.

Thank you.

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