

# The Planning Inspectorate

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Ms H Harrison (Development & Building Control Services)  
Chichester District Council  
East Pallant House  
1 East Pallant  
Chichester  
W Sussex  
PO19 1TY

Your Ref:

*RG/03/03040/FULL*

Our Ref:

APP/L3815/A/04/1139523

Date:

23 September 2004

Dear Madam

**TOWN & COUNTRY PLANNING ACT 1990**  
**APPEAL BY LEVILLE BUILDING LIMITED**  
**SITE AT LAND ADJACENT TO LONGWOOD EAST, LONDON ROAD, HILLBROW, LISS, WEST SUSSEX**

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit  
The Planning Inspectorate  
4/09 Kite Wing  
Temple Quay House  
2 The Square, Temple Quay  
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: [Complaints@pins.gsi.gov.uk](mailto:Complaints@pins.gsi.gov.uk)

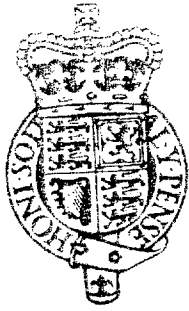
Yours faithfully

*AB*

Mr Kerr Brown

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# Appeal Decision

Hearing held on 14 September 2004  
Site visit made on 14 September 2004

by **Clive Hughes BA(Hons) MA DMS MRTPI**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate  
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Date

**23 SEP 2004**

**Appeal Ref: APP/L3815/A/04/1139523**

**Land adjacent to Longwood East, Hill Brow, Liss, West Sussex GU33 7PB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Leville Building Ltd against the decision of Chichester District Council.
- The application (Ref. RG/03/03040/FUL), dated 31 October 2003, was refused by notice dated 23 December 2003.
- The development proposed is erection of dwelling with integral garage.

**Summary of Decision: The appeal is dismissed.**

## Procedural Matters

1. The application form gives the address of the site as being in London Road. At the hearing it was confirmed that the road is the former London Road and so I have omitted this from the address. The post code for the site was confirmed at the hearing.

## Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to the location within an Area of Outstanding Natural Beauty (AONB), policies in the development plan that seek to protect the countryside and the material considerations advanced in this case.

## Planning Policy

3. The development plan for the area includes the West Sussex Structure Plan 1993 and the Chichester District Local Plan First Review 1999. Policy G1 of the Structure Plan sets out the weight that will be given to the protection of the urban and rural environment. Policy G3 says that development will be located so far as possible so as to minimise the need for the consumption of resources. Development outside the built up area boundaries will be strictly controlled. Policy G5 relates to the design and impact of development. Amongst other things development will be required to relate sympathetically with the existing built and natural environment. In the countryside, Policy G6 permits small scale development providing the environment is not harmed. Within AONBs the balance between conservation and the encouragement of activity will be firmly in favour of the former. Policy C1 seeks to protect the countryside for its own sake from development that does not need a countryside location. Development will not normally be approved outside built up area boundaries unless it is for one of several specified purposes. Within AONBs Policy C2 says that only in compelling circumstances will development be permitted where it would be harmful to the visual quality and distinctive characteristics of the Area. Policy C11 relates to development in villages where social housing is the only form of residential development identified as being permissible outside the built up area boundaries.

4. Policy RE1 of the Local Plan identifies that outside the settlement policy areas the remainder of the plan area is defined as the rural area. Policy RE2 says that the protection and enhancement of the quality of the landscape will be a major priority. Policy RE4 states that AONBs will be conserved and enhanced. Only in compelling circumstances will development harmful to their visual quality or distinctive character be permitted. Policy RE16 relates specifically to infilling. It states that outside settlement policy areas new housing will be strictly controlled. The infilling by dwelling houses of small gaps within small groups of houses will only be permitted provided that five specified criteria are met. These criteria relate to any damage caused to the character or visual qualities of the surrounding environment; the creation of ribbon development; the size of the dwelling plot being consistent with those in the surrounding area; the effect on amenities of adjoining residents; and there being no loss of open space which contributes to the character of the area. Policy BE11 says that new development must not detract from its surroundings.
5. The emerging plans include the West Sussex Structure Plan 2001-2016. Policy LOC1 seeks to direct new development in the county within towns and villages. In the countryside, Policy LOC2 says that local plans will include policies to ensure that outside built up area boundaries development is limited to those uses that have a demonstrable need for countryside locations. Policy CH1 says that development should not be permitted unless it maintains and, where possible, enhances the character of the area. Policy CH2 relates to AONBs where policies should ensure that development is allowed only where it is essential to meet proven needs. Policy DEV1 states that new development should not be permitted unless various criteria are met. This emerging plan was due to be formally adopted on 4 September 2004. However, on 26 August 2004 the Government issued a holding direction that extends the period for the Government to decide whether to intervene in the Plan. The Plan is therefore at an advanced stage and I give it substantial weight in accordance with advice in Planning Policy Guidance 1: General Policy and Principles (PPG1, 1997).

### Reasons

6. The appeal site is situated on the north western side of the former London Road (B2070) close to its junction with Huntsbottom Lane. To the south west lies the settlement of Hill Brow which sits on either side of the B2070. It is a small, predominantly residential, settlement that straddles the administrative boundary between West Sussex and Hampshire. The majority of the built up part of the settlement falls within Hampshire. Around the junction of the B2070 and the B3006 the settlement is fairly densely developed; further north east, and especially along the B2070 beyond the junction with Huntsbottom Lane, the density of development reduces significantly. There is a continuous ribbon of development, composed of substantial houses set well back from the road in spacious grounds within a mature landscape.
7. The appeal site is situated within this ribbon of development. It is a roughly rectangular plot measuring about 60m by 55m that is accessed from the B2070 by a private drive that serves four existing houses. The site is surrounded by mature trees and shrubs, the centre of the site being open. It adjoins residential properties on all sides with further dwellings on the opposite side of the road. The site is set slightly below road level with the land falling away steeply to the north west. It is proposed to develop the site by the erection of a substantial 5-bedroom detached two-storey house with an attached double garage. The house would be sited at an oblique angle to the road with the single storey garage element sited closest to the road. The house would be accessed from the existing drive.

8. The site itself was once part of the curtilage of Longwood and was used as an arboretum. The curtilage of that house has since been sub-divided. The northern part of that curtilage, including the current appeal site, was the subject of a successful appeal in 2000 for the erection of a detached dwelling and garage (T/APP/M1710/A/99/1030427/P7). This house has subsequently been built (West Ridge House) although its curtilage has been substantially reduced by the exclusion of the current appeal site. The new house now sits, at a significantly lower level, to the north west of the current appeal site. Due to the fact that the curtilage of that appeal site is crossed by the administrative boundary, this new house lies within Hampshire, whereas the current appeal site is wholly within West Sussex.
9. While the appeal site was once part of the curtilage of Longwood, it subsequently became part of the approved curtilage of West Ridge House but appears to have never been sold with that new house. It is now an unused isolated parcel of land outside the curtilage of any property. The site is clearly large enough to accommodate a dwelling of the size now proposed without it appearing cramped. In my opinion the site is well screened and, with the addition of further under-storey planting along the road frontage and at the corner with the access drive a new dwelling could be largely hidden from the road. The development would use an existing access from the B2070 and it seems to me that any new dwelling would be unlikely to have a significant impact on the appearance of the area.
10. With regard to the development plan, the site is within an AONB and outside any settlement policy area as defined in the Local Plan. In accordance with policy RE1, therefore, the site lies within a rural area where development is restricted. Policy RE16 of the Local Plan says that outside the policy settlement areas new housing will be strictly controlled but it does nonetheless permit residential infilling in certain instances. In particular, provided 5 criteria can be met, the infilling by dwelling houses of small gaps within small groups of houses is permitted. The policy defines the term "small gap" as being a single vacant plot in otherwise substantially developed frontage. It defines "small group" as a compact group of dwellings with its own identity in physical and social terms as a village or hamlet or clearly related to such a settlement. It excludes isolated or loose knit groups of dwellings.
11. In my opinion the appeal site does not constitute a small gap as defined in Policy RE16. I accept that the site is a vacant plot as it has been purposefully excluded from the West Ridge House plot following the appeal decision. I also accept that the residential curtilages of the dwellings are contiguous along this frontage. However, I do not agree that this means that the frontage is substantially developed. This term is not defined in the Plan, but it implies to me a that the frontage needs to be substantially developed, not with domestic gardens as in this case, but with some form of built development. This section of the road is characterised by well-spaced dwellings surrounded by mature gardens. The density of development is exceedingly low. The dwellings are not only well hidden, but have significant gaps between them. I do not consider that the definition of a "small gap" can reasonably be interpreted to include the appeal site.
12. In addition to the above, I do not consider that the site is within a "small group" as defined in that policy. It is not within a compact group of dwellings; the ribbon of development runs from Hill Brow to Rake, a distance of well over 1km. The site is clearly outside the more densely developed parts of Hill Brow or Rake; it is not within a defined settlement policy area. In my opinion it cannot reasonably be described as being clearly related to either settlement in physical terms. I consider that the site is located within a ribbon of low

density residential development characterised by strong mature planting and by the significant spaces between substantial dwellings.

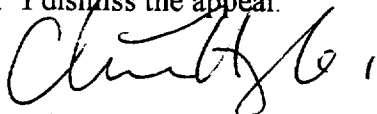
13. Having concluded that the development would not comprise the infilling of a small gap within a small group of houses, the development would therefore be contrary to the provisions of Policy RE16. In view of this it is not necessary to consider the criteria attached to that policy. With regard to the other cited policies, I consider that the development would result in the consolidation of linear development, contrary to Policy C1 of the Structure Plan. This would fail to protect the rural environment and be harmful to the character of the countryside and to the quality of the AONB. This would be contrary to the cited policies in the Structure and Local Plans and those in the emerging Plan.
14. In coming to this conclusion I have had regard to the various appeal decisions that have been put forward. I have had particular regard to the decision in respect of the property now known as West Ridge House and the conclusions of that Inspector. However, that site is within East Hampshire District where different local and structure plan policies apply. I have noted that in the emerging Local Plan for that District, the site would fall outside the proposed defined settlement of Hill Brow. I give greater weight to the appeal decision in respect of the land south of Longwood (APP/L3185/A/00/1055648) as that decision relates to a frontage plot within the same administrative area as this appeal and was therefore determined using the same policies. That plot also appears to have more similarities with the current appeal in terms of its siting and scale.

### **Conclusions**

15. I have taken into account all the other matters raised in the written representations and at the hearing. I have taken account of the concerns regarding access onto the B2070, but as the development would use an existing access and as the sight lines appeared to me to be good, I do not consider that there would be any undue additional hazards to other road users. The Council has raised no objections on highway grounds. With regard to sustainable forms of development, I have noted the distances of the site from the nearest shops and employment opportunities and I consider that in this regard the site would not represent a particularly sustainable location for new development. I have taken account of the proposals for a national park, but as this is still at an early stage I have given it little weight over and above my considerations of its location within an AONB. I have considered the concerns raised regarding precedent and I agree with the Council that if this appeal were allowed it could make it more difficult for the Council to prevent further development along this section of the B2070. This would be likely to be harmful to the character of the area. I have found nothing in these other matters to outweigh my conclusions on the main issue.
16. Overall, therefore, I conclude that the proposed development would represent a consolidation of linear, ribbon development in the countryside. This would be harmful to the character of the area, contrary to the provisions of the development plan. I conclude that the appeal should not succeed.

### **Formal Decision**

17. I dismiss the appeal.

  
Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Harris BSc(Hons) DipTp MRTPI      Senior Planning Officer, Chichester District Council

FOR THE APPELLANTS:

Kris Mitra MA MRTPI      Principal, KMA, Mayfield House, 196/198  
London Road, Portsmouth PO2 9JE  
E J Gregory-Carlton      Appellants

INTERESTED PERSONS:

Martin Small BA(Hons) BPI DipCM MRTPI      Sussex Downs Conservation Board, Victorian Barn, Victorian Business Centre, Ford Lane, Ford, Arundel BN18 0EF  
Nigel Paren      35 Rotherbank Farm Lane, Liss Forest, GU33 7BJ – representing Liss Parish Council  
Colonel H P D Massey      Arawai House, Hillbrow, Liss, Hampshire GU33 7PB

DOCUMENTS

- Document 1 List of persons present at the hearing
- Document 2 Council's notification letter and list of persons notified
- Document 3 Representations received in response to notification letter
- Document 4 Statement and appendices of Mr Mitra
- Document 5 Statement and appendices of Mr Harris
- Document 6 Statement and appendices of Mr Small
- Document 7 Letter from Colonel Massey dated 23 March 2004 to District Council
- Document 8 Appeal site plan T/APP/M1710/A/99/1030427/P7
- Document 9 Extracts from Chichester District Local Plan 1999 – pp 19 and 21

PLANS

- Plan A Drawing No 0309/01 – location plan, block plan and floor plans of proposed dwelling
- Plan B Drawing No 0309/02 – elevations of proposed dwelling



# The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime Minister and the National Assembly for Wales

## Our Complaints Procedures

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### **Complaints**

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens, we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why, and suggest who may be able to

deal with the complaint instead.

### **How we investigate complaints**

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

We therefore do our best to ensure that all complaints are investigated quickly, thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

When investigating a complaint, we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply, we will quickly let you know.

### **What we will do if we have made a mistake**

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

However, the law does not allow us to amend or change the decision.

### **Who checks our work?**

The Government have said that 99% of our decisions should be free from error and has set up an independent body called the Advisory Panel on Standards (APOS) to report to them on our performance. APOS regularly examines the way we deal with complaints and we must satisfy them that our complaints procedures are fair, thorough and prompt.



INVESTOR IN PEOPLE

## **Taking it further**

If you are not satisfied with the way we have dealt with your complaint, you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman, you must do so through an MP. Again, the Ombudsman cannot change the decision.

## **Frequently asked questions**

*"Why can't the decision be reviewed if a mistake has happened?"* – The law does not allow us to do this because an appeal decision is a legal document that can only be reviewed following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

*"If you cannot change a decision, what is the point of complaining?"* – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

*"Why did an appeal succeed when local residents were all against it?"* – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

*"How can Inspectors know about local feeling or issues if they don't live in the area?"* – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

*"I wrote to you with my views, why didn't the Inspector mention this?"* – Inspectors must give reasons for their decision and take into account all views submitted, but it is not necessary to list every bit of evidence.

*"Why did my appeal fail when similar appeals nearby succeeded?"* – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

*"I've just lost my appeal, is there anything else I can do to get my permission?"* – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to their planning officer about this might help you explore your options.

*"What can I do if someone is ignoring a planning condition?"* – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. They can investigate and have discretionary powers to take action if a condition is being ignored.

## **Further information**

Every year, we publish a Business and Corporate Plan which sets out our plans for the following years, how much work we expect to deal with, and how we plan to meet the targets which Ministers set for us. At the end of each financial year, we publish our Annual Report and Accounts, which reports on our performance against these targets and how we have spent the funds the Government gives us for our work. You can view these and obtain further information by visiting our website (see 'Contacting us'). You can also get booklets which give details about the appeal process by phoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - [www.odpm.gov.uk/](http://www.odpm.gov.uk/)

## **Contacting us**

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4/09 Kite Wing  
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## **Website**

[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

## **Enquiries**

Phone: 0117 372 6372

E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

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## **Cardiff Office**

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E-mail: [Wales@pins.gsi.gov.uk](mailto:Wales@pins.gsi.gov.uk)

## **The Parliamentary Ombudsman**

Office of the Parliamentary  
Commissioner for Administration  
Millbank Tower, Millbank  
London SW1P 4QP

Helpline: 0845 0154033

Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

E-mail: [opca-enqu@ombudsman.org.uk](mailto:opca-enqu@ombudsman.org.uk)





# The Planning Inspectorate

An Executive Agency in the Office of the Deputy Prime  
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## Challenging the Decision in the High Court

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### *Challenging the decision*

Appeal decisions are legal documents and we cannot amend or change them once they have been issued. Decisions are therefore final unless successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

### *Grounds for challenging the decision*

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

### *Different appeal types*

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

### *Challenges to planning appeal decisions*

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

### *Challenges to enforcement appeal decisions*

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

**Important Note** - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

## Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

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## Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

## Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: [www.courtservice.gov.uk](http://www.courtservice.gov.uk)

## Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

## Contacting us

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The Planning Inspectorate  
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2 The Square  
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Phone: 0117 372 8962

## Website

[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

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## Complaints

Phone: 0117 372 8252

E-mail: [complaints@pins.gsi.gov.uk](mailto:complaints@pins.gsi.gov.uk)

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## The Parliamentary Ombudsman

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London SW1P 4QP

Helpline: 0845 0154033

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E-mail: [opca-enqu@ombudsman.org.uk](mailto:opca-enqu@ombudsman.org.uk)

