



Appeal Decisions

Site visit made on 1 July 2025

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2025

Appeal A Ref: APP/Y3615/X/23/3328292

The Kilns, 2 Portsmouth Road, Ripley, Surrey GU23 6EZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Thomas Cullum against the decision of Guildford Borough Council.
 - The application ref 23/P/00391, dated 6 March 2023, was refused by notice dated 6 June 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which a certificate of lawful use or development is sought is whether a pool house would be lawful.
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Appeal B Ref: APP/Y3615/W/23/3328294

The Kilns, 2 Portsmouth Road, Ripley, Surrey GU23 6EZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Thomas Cullum against the decision of Guildford Borough Council.
 - The application Ref is 22/P/01552, dated 5 September 2022, was refused by the Council on 8 March 2023.
 - The development proposed is the erection of one dwelling following demolition of existing non-agricultural buildings.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is allowed, and planning permission is granted for the erection of one dwelling following demolition of existing non-agricultural buildings at The Kilns, 2 Portsmouth Road, Ripley, Surrey GU23 6EZ in accordance with the terms of the application, Ref 22/P/01552, subject to the conditions in the Schedule below.

Applications for costs

3. The appellant has applied for costs on both applications. These applications are the subject of separate decisions.

Preliminary Matters

4. In respect of Appeal B, given the passage of time since the appeal was submitted in August 2023 and in particular, given the reasons for refusal and the change to Green Belt policy in the most recent revision to the National Planning Policy Framework (NPPF, December 2024), I asked the main parties whether they considered that this had altered their positions and offered them the opportunity to update their submissions accordingly, if they wished. I set out the basis of their responses below.

Appeal A – the LDC appeal

5. As usual in LDC appeals, the main issue is whether the Council's refusal to issue a S192 LDC for the proposed pool and pool house was well founded. This rests on whether it would constitute permitted development (PD) under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO, as amended).
6. The Council refused the LDC application for two reasons. First, because the pool house, a large building indicated on the Site Plan to be 327m² in area, would exceed 50% of the total area of the curtilage of the dwelling. And, secondly, that it is over large for the dwelling and cannot therefore be considered incidental to its enjoyment.
7. I note in the Council's original appeal statement dated 11 October 2023 that it wishes to withdraw its first refusal reason on the basis that it agrees with the appellant's assessment – as set out on submitted drawing number 2109(11)300 – that the 327m² pool house would in fact only take up 30% of the dwelling's curtilage (of apparently 1,086m²), and not 50%+.
8. However, it seems to me that these figures may not be accurate since it appears, simply by looking at the plan, that the pool house would take up about 50% of the open land to the east of the built form of the dwelling. There is no dispute that the land to the west of the dwelling, or at least the vast majority of it to the west of the front access and parking area, does not form part of the curtilage; indeed, it appears to be another fenced-off development site under the appellant's ownership.
9. Moreover, even if the proposed pool house were to only amount to 30% of the eastern garden area and western access and parking area to the front of the dwelling, I have considerable doubt as to whether it can be described as the curtilage of The Kilns, the appeal dwelling.
10. That is because it appears to breach the caselaw on the issue of what amounts to curtilage. *Burford* reaffirmed the criteria laid down in *Sutcliffe*, namely: (1) the physical layout of the building, (2) its ownership, past and present, and (3) its use or function, past and present (my emphasis).¹ In particular, it is clear that the appellant and his company are developers of this refurbished and extended dwelling at The Kilns and the would-be developers of the dwelling in the eastern part of the garden with access off the rear lane (which is accessed off Kiln Lane), as well as the frontage land to the west of the dwelling on the main road. There is a new high close boarded timber fence dividing and separating this lower-level part of the eastern garden from the garden of The Kilns on the same level of the house. Clearly, it is now a separate plot of land and does not therefore form part of the curtilage of The Kilns. For this reason alone, the proposed pool house cannot possibly be PD under Class E of the GPDO.
11. In regard to the second refusal reason, Class E (a) states that any building seeking to benefit from PD must be '*required for a purpose incidental to the enjoyment of the dwellinghouse*'. Clearly, given the separation of this lower part of the eastern garden from The Kilns into a separate would-be development plot, as evidenced

¹ *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin); and *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310

by the proposal in Appeal B, the pool house could not possibly be for a purpose incidental to the enjoyment of The Kilns. Even if I was to dismiss Appeal B such that the appellant decided to re-integrate the land on this would-be development plot into the wider garden of The Kilns, there is no suggestion that he himself would live in the dwelling. The suggestion by the agent that he 'is a keen swimmer' is irrelevant; he is a developer who intends to market the refurbished and extended dwelling for sale, as he himself indicated at the site visit.

12. For all these reasons the Council was correct to refuse the S192 LDC application, and Appeal A is consequently dismissed.

Appeal B – the Planning appeal

13. The Council refused this application for three reasons. First, because it would be inappropriate development within the Green Belt. Secondly, the proposed dwelling would fail to meet the Technical Housing Standards Nationally Described Space Standards required by Policy H1(3) of the Local Plan: Strategy and Sites 2015-2034 (the LP) and the NPPF. And, thirdly, because no S106 had been provided at the time to mitigate any adverse impact of the development on the Thames Basin Heaths Special Protection Area (TBHSPA), contrary to local policies and the Habitats Regulations².
14. Regarding the first refusal reason, I have considered the parties' recent updated submissions on the Green Belt issue in light of the 2024 revisions to the NPPF on this subject. The appellant argues that the site is grey belt land and meets the new policy requirements in the amended NPPF Chapter 13.
15. The Council agrees, as do I for the following reasons. The site comprises grey belt because it is previously developed land in that its last lawful use was as garden curtilage of The Kilns, which is not located in a large built-up area. Its development would not result in the neighbouring towns of Guildford and Woking merging into one another and would not affect the setting and special character of Guildford, the nearest historic town. As such, respectively, the site does not strongly contribute to purposes a), b) or d) of the metropolitan Green Belt as set out in NPPF paragraph 143.
16. In terms of the test for such development in the Green Belt set out in NPPF paragraph 155, sub-paragraph a. is complied with because the development would utilise grey belt land, which would not undermine the purposes of the remaining Green Belt land across Guildford Borough. There is a demonstrable unmet housing need in the Borough, as confirmed by the Council's email of 8 May 2025; consequently, sub-para b, is complied with. The site is located on the edge of the villages of Send and Ripley, with their limited facilities, with only a short walk to bus stops providing regular services to Guildford, Kingston and Worthing; hence the development would be in a sustainable location as per sub-para c. There is no need for it to comply with sub-para d. because, as a single dwelling, it would not constitute 'major' development and would not therefore have to comply with the 'Golden Rules' required by such development under NPPF paras 156-157.
17. For the above reasons there is no conflict with national Green Belt policy, as the Council agrees.

² The Conservation of Habitats and Species Regulations 2017, in particular paras. 63 & 64

18. Moving on to the second refusal reason, LP Policy H1(3) requires all new residential development to conform to the Nationally Described Space Standards (NDSS). I agree that the proposed single-storey dwelling, with an internal floorspace of 43.36m² would not do so because the dwelling, with a double-bed indicated bedroom, is capable of being occupied by two people, which has a required NDSS of 50m². As such, I agree that, technically, the proposed dwelling would conflict with Policy H1(3).
19. The appellant argues that the dwelling's floor plan includes additional accommodation as part of its overhanging roof which would make it more than 50m² in total, whereas the Council points out that this is not internal habitable floorspace. Whilst I agree that it isn't, it is clearly designed to be a useable extension of living space that would be accessible from the living room/kitchen of the dwelling, which I consider would be likely to be used as such in clement weather for about six months of the year.
20. The house would also sit in a generous sized garden. Clearly the plot would be large enough for a dwelling that would meet the NDSS and although I am somewhat unclear as to why the proposed dwelling is relatively small compared to the size of the plot, for the above reasons I consider its technical failure to meet them is insufficient for me to dismiss this appeal, given that the overall living environment of future occupiers would, I consider, be acceptable – which is, after all, the overall purpose of the NDSS.
21. In respect of the third refusal reason, LP Policy P5 states that permission will only be granted for development proposals where it can be demonstrated that doing so would not give rise to adverse effects on the ecological integrity of the TBHSPA, whether alone or in combination with other development.
22. A longstanding approach to addressing this issue, to ensure that such residential development can still occur within the 5km impact zone of the TBHSPA, is via the *TBHSPA Avoidance Strategy 2017 SPD* (updated in 2021 and 2024) (and the *SPA Tariffs 2024 SPD*). This approach, which is agreed with Natural England, ensures that the impact of residents and their domestic pets (cats and dogs) on the SPA – and its three internationally important bird species (woodlark, nightjar and Dartford warbler – is suitably mitigated by the development, maintenance and improvement of Suitable Alternative Natural Greenspaces (SANGs) and the Strategic Access Management and Monitoring of the SPA itself (SAMM). This is achieved by the pooling of contributions secured via S106 from individual developments like this so that such contributions can be spent to achieve the aim of cumulatively protecting the SPA now and into the future. I am satisfied in principle that this approach, provided it is complied with, would suitably mitigate any impact of the scheme on the TBHSPA, and therefore fulfil the requirements of s63(a) of the Habitats Regs – this is my appropriate assessment as such.
23. The appellant has eventually submitted a signed and dated unilateral undertaking under S106 dated 15 July 2025. I acknowledge the Council's email dated 8 July pointing out a series of flaws to the previous version of the S106 and instructed the appellant to address these issues via the PINS case officer's email to him of 9 July. This has been done in the above final version of the S106, which is now set out in properly paginated order. In particular, the appellant's up-to-date Land Registry title confirms that there is no mortgagee on the land or property; that the appellant is an authorised signatory for Cullum Capital Properties LLP (the

landowner) and that his signature has been duly witnessed by his PA; and, importantly, that the correct updated SANG, SAMM and monitoring fees are incorporated into the deed. As such, the S106 ensures that the proposed development would not, either individually or in combination with other residential developments, adversely affect the ecological integrity of the TBHSPA, such that the proposal would be compliant with the Habitats Regs.

24. For the reasons given above Appeal B should be allowed.

Conditions

25. The conditions in the Schedule below are those suggested by the Council in respect of Appeal B. I agree that they should all be imposed for the reasons set out in the Schedule.

Overall Conclusions

26. Appeal A is dismissed and Appeal B allowed, for the reasons set out above.

Nick Fagan

INSPECTOR

Appeal B - Schedule of Conditions

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51(1) of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans: 2209(11)000, 2209(10)001, 2209(11)001, 2209(21)000, & 2209(31)000.

Reason: To ensure that the development is carried out in accordance with the approved plans and in the interests of proper planning.

3. Prior to the commencement of any development, a written schedule with details of the source/ manufacturer, colour and finish, OR samples on request, of all external facing and roof materials. This must include the details of embodied carbon/ energy (environmental credentials) of all external materials and demonstrate all materials will achieve A-A+ in the BRE Green Guide to Specification. These shall be submitted to and approved in writing by the Local Planning Authority and the development shall be carried out using only those detailed.

Reason: To ensure that a satisfactory external appearance of the development is achieved and to ensure materials that are lower in carbon are chosen.

4. The development hereby permitted shall comply with regulation 36 paragraph 2(b) of the Building Regulations 2010 (as amended) to achieve a water efficiency of 110 litres per occupant per day (described in part G2 of the Approved Documents 2015). Before occupation, a copy of the wholesome water consumption calculation notice (described at regulation 37 (1) of the Building Regulations 2010 (as amended)) shall be provided to the planning department to demonstrate that this condition has been met.

Reason: To improve water efficiency in accordance with the Council's 'Climate Change, Sustainable Design, Construction and Energy' SPD 2020.

5. No development shall take place until a scheme to enhance the nature conservation interest of the site has been submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in full prior to the occupation of the development hereby approved.

Reason: To increase the biodiversity of the site and mitigate any impact from the development.

6. No development shall commence until a Site Waste Management Plan has been submitted to and approved in writing by the Local Planning Authority that demonstrates how waste generated from construction and excavation activities would be dealt with in accordance with the waste hierarchy. The Site Waste Management Plan will subsequently be kept up-to-date throughout the development process in accordance with the established methodology.

Reason: To ensure that the development takes waste hierarchy into account to manage waste. It is considered necessary for this to be a pre-commencement condition because waste will begin to be generated as soon as any development commences on the site.

7. No development shall start on site until details of all boundary treatment have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development or phased as agreed in writing by the local planning authority. The approved scheme shall be maintained in perpetuity.

Reason: To safeguard the visual amenities of neighbouring residents and the locality.

8. No vehicle shall access the site unless and until the junction where the private road meets Kiln Lane has been provided with visibility zones in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter the visibility zones shall be kept permanently clear of any obstruction over 0.6m high.

Reason: The above condition is required in order that the development should not prejudice highway safety nor cause inconvenience to other highway users and are in recognition of Section 9 “Promoting Sustainable Transport” in the National Planning Policy Framework 2023.

9. The development hereby approved shall not be first occupied unless and until space has been laid out within the site in accordance with the approved plans for vehicles to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. Thereafter the parking and turning areas shall be retained and maintained for their designated purpose.

Reason: The above condition is required in order that the development should not prejudice highway safety nor cause inconvenience to other highway users and are in recognition of Section 9 “Promoting Sustainable Transport” in the National Planning Policy Framework 2023.

10. The development hereby approved shall not be first occupied unless and until facilities for the secure, covered parking of bicycles and the provision of a charging point for e-bikes by said facilities have been provided within the development site in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority and thereafter the said approved facilities shall be provided, retained and maintained to the satisfaction of the Local Planning Authority.

Reason: The above condition is required in order that the development should not prejudice highway safety nor cause inconvenience to other highway users and are in recognition of Section 9 “Promoting Sustainable Transport” in the National Planning Policy Framework 2023.

11. Prior to the commencement of development, SAP data shall be submitted and agreed in writing by the Council. The SAP data must demonstrate that the scheme has followed a ‘fabric first’ approach in accordance with the Energy Hierarchy.

Reason: To ensure that the scheme reduces carbon emissions in accordance with Policy D2: Climate Change, Sustainable Design Construction and Energy and the

energy hierarchy at stage 1 and complies with Policy D14: Sustainable and Low Impact Development.

12. No development shall take place until full details, of both hard and soft landscape proposals, including a schedule of landscape maintenance for a minimum period of 10 years, have been submitted to and approved in writing by the local planning authority. The approved landscape scheme (with the exception of planting, seeding and turfing) shall be implemented prior to the occupation of the development hereby approved and retained.

Reason: To ensure the provision, establishment and maintenance of an appropriate landscape scheme in the interests of the visual amenities of the locality.

End of Conditions