



Appeal Decision

Site visit made on 17 January 2025

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 January 2025

Appeal Ref: APP/U2235/X/23/3322195

Blacksmiths Court, Bredhurst, Kent ME7 3JU

- 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 Mrs Allen on behalf of Blacksmiths Court Development Ltd against the decision of Maidstone Borough Council.
 - The application ref 23/501264/LDCEX, dated 10 March 2023, was refused by notice dated 10 May 2023.
 - The application was made under section 191(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 a sliding gate across a shared private access.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is found to be lawful.

Reasons

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. The planning merits of the case are not relevant to the legal tests and therefore I cannot have regard to the concerns raised by third parties. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.
3. Under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO), the erection of a gate up to 2 metres in height is permitted development if it is not adjacent to a highway used by vehicular traffic. The decision turns on whether Blacksmiths Court is a highway used by vehicular traffic.
4. There is no specific interpretation of the term 'highway' for Part 2 of the GPDO. Article 2(1) of the GPDO states that private way means a highway not maintainable at the public expense and any other way other than a highway. Section 336(1) of the Town and Country Planning Act 1990 provides that, for the purposes of that Act, "highway" has the same meaning as in the Highways Act 1980. Section 328 of the 1980 Act provides that "highway" means the whole or any part of a highway other than a ferry or waterway.

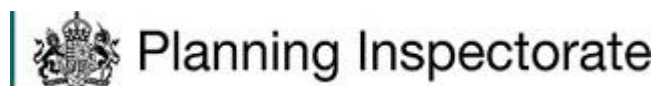
5. Permitted Development Rights for Householders Technical Guidance 2019 defines 'highway' as a public right of way such as a public road, public footpath and bridleway. However, this is only in relation to Part 1 of the GPDO as it applies to permitted development rights for householders. The Interpretation of Part 1 in paragraph 1 of Part 1 of Schedule 2 states that 'highway' includes an unadopted street or a private way and that 'unadopted street' means a street not being a highway maintainable at the public expense within the meaning of the Highways Act 1980.
6. It has been established by common law that a highway is defined as a route over which the public can pass and repass without hindrance or charge. The use must be 'as of right', meaning that it must not be on sufferance or by licence. A private way may be a highway if the public can use it 'as of right'. The key consideration is therefore whether there is a public right to use the road.
7. In this case, Blacksmiths Court is a short private road. The road is not a 'through' route and is not an adopted highway. Close to its junction with Forge Lane is Blacksmith's Barn, a community facility with parking for users of the barn only. The road continues beyond the barn to provide access to seven dwellings in a cul-de-sac. The gate is located beyond the parking area to the community barn and between Nos 2 and 3 Blacksmiths Court. I am satisfied that vehicles using the road beyond the barn are doing so at the implied invitation of the occupiers of the dwellings and there is no public right to use the road. It is therefore not a 'highway'.
8. On the basis of the information before me, I am satisfied that the gate is not adjacent to a highway used by vehicular traffic, for the purposes of Schedule 2 Part 2 Class A of the GPDO. It is therefore permitted development and planning permission is not required.
9. To be clear, the question of whether Blacksmiths Court is a highway between Forge Lane and the access to the community barn has not been raised by the parties and is not a matter that is before me.

Conclusion

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the sliding gate across a shared private access, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

N Thomas

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 15 March 2023 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operation is permitted development under the Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended for which planning permission is granted by Article 3(1) of that Order.

Signed

N Thomas

INSPECTOR

Date: 28 January 2025

Reference: APP/U2235/X/23/3322195

First Schedule

Sliding gate across a shared private access.

Second Schedule

Land at Blacksmiths Court, Gillingham, ME7 3JU

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 28 January 2025

by N Thomas

Land at: Blacksmiths Court, Gillingham, ME7 3JU

Reference: APP/U2235/X/23/3322195

Scale: Not to Scale

