



Appeal Decision

Site visit made on 11 March 2025

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/G5180/X/24/3348884

Cricket Ground Road, Bromley, Chislehurst BR7 5HD

- 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 Residents of Cricket Ground Road against the decision of the Council of the London Borough of Bromley.
 - The application ref 24/00204/PLUD, dated 17 January 2024, was refused by notice dated 10 May 2024.
 - 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 improvement/upgrading of existing road.
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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 proposed operation which is found to be lawful.

Preliminary Matters

2. Works to level the surface of the road were underway at its eastern end, near the junction with Watt's Lane. Where it had been levelled the surface was made up of stones mixed with loose material. The application was for proposed works and I have determined the appeal on that basis.

Reasons

3. 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 raised by third parties cannot therefore be taken into account. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.
4. The application was made on the basis that the works would be permitted development in accordance with Class E, Part 9, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
5. Class E relates to 'repairs to unadopted streets and private ways'. It sets out the permitted development right for: *The carrying out on land within the boundaries of*

an unadopted street or private way of works required for the maintenance or improvement of the street or way.

6. There is no dispute that Cricket Ground Road is an unadopted street or private way for the purposes of Class E and I have no reason to disagree. There is also no question that the works fall within the definition of development. The Council refused the application on the basis that it would not comprise works required for the maintenance or improvement of the road in the context of repairs to it.
7. The appellant argues that the development would be an 'improvement' to the street or way, and the decision turns on this point. The word 'improvement' is not defined in the GPDO and therefore should be given its ordinary and natural meaning; if an improvement is made to something, it is made better.
8. The case of *Cowen v SSETR & Peak District NPA* [2000] JPL 171 established that it is a matter for the decision maker as to whether the works are an 'improvement', but the test is whether the works are within the boundaries of the way and required for the improvement of the way. The judgement acknowledges that the Inspector may lawfully conclude that the works so changed the character of the track that they went beyond the scope of an 'improvement' of a private way, but the test is not whether the works involve an 'alteration'. Sedley LJ opined that it is for the SoS to decide whether the improvement would change the character of the way. This is a matter for a planning judgement, concerned with both use and environmental amenity. The assessment of the effect of the work upon the character of the way will lead to a conclusion as to whether the works are an improvement of an existing way or whether, by altering its character, it has made the way something different. Agreeing with Mummery LJ and Sedley LJ, Evans LJ stated that the ordinary meaning of 'improvements' is limited to changes which do not alter the basic character of the thing which is improved. But to apply this test, it is necessary to establish what the basic character was. This is a matter for the decision maker.
9. In this case the road is clearly delineated, running through an area of woodland which surrounds the cricket ground, with posts or stones set either side along part of its length, as well as streetlights. It is an established and named road that provides access to several residential properties and is a through route linking Watt's Lane and Bromley Road around the cricket pitch. The surface is uneven in places and includes compacted stone and some loose material, with relatively small areas of tarmac which appears to have been used to fill in potholes. It has varying widths. Its basic character is of a well-defined hard surfaced private road in a semi-rural setting. There was no indication of formal restrictions on its use by vehicles or pedestrians.
10. The works would be within the boundaries of the road. The section detail provided with the application indicates that the existing sub layer would be retained. On top would be 150mm of compacted MOT type 1, with a 60mm binder course on top, with an asphalt surface. This would result in a build-up of the track and a new surface treatment. The works would result in an improvement to the road, through the elimination of the potholes and uneven surface, and the provision of a more durable top surface.
11. As a result of the works, the road would have a more formal appearance due to the uniformity of the tarmac surface and this would be an alteration. The smoother

surface is likely to result in it being a more attractive through route and traffic speeds to be higher. However, its basic character as an established and well defined hard surfaced road would not be changed. Furthermore, the potholes have clearly been infilled in the past, which would also have made the road surface smoother, potentially attracting more traffic and greater traffic speeds. The potholes and uneven surface cannot therefore be said to be a fundamental part of its basic character. In this context and as a matter of fact and degree, the altered surface and appearance of the road would not result in a change to its basic character. On the balance of probabilities, the works would be required for an improvement to the private way.

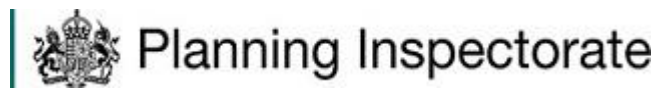
12. I am aware that planning permission was previously sought and refused for a similar development. That does not in itself mean that this proposal requires planning permission.
13. The Council states that there is no evidence that the road has previously been tarmacked in its entirety and that the surface is currently gravel and soil. Be that as it may, as a matter of fact and degree and on the basis of the evidence before me, the basic character of Cricket Ground Road would not be altered to the extent that the works would be beyond what can be considered to be an improvement. I therefore find that the development would be permitted by Part 9, Class E of the GPDO.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for improvement/upgrading of existing road is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

N Thomas

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 18 January 2024 the operations 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The works would be permitted development in accordance with Class E, Part 9, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.
Signed

N Thomas

Inspector

Date: 28 March 2025

Reference: APP/G5180/X/24/3348884

First Schedule

Improvement/upgrading of existing road.

Second Schedule

Land at Cricket Ground Road, London, BR7 5HD

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

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

by N Thomas

Land at: Cricket Ground Road, London, BR7 5HD

Reference: APP/G5180/X/24/3348884

Scale: Not to Scale

