



Appeal Decision

Site visit made on 17 March 2026

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2026

Appeal Ref: APP/N4720/X/25/3367801

Land at Burras Drive, Otley LS21 3ET

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) against a refusal to grant a certificate of lawful use or development (“LDC”).
 - The appeal is made by Mr M Brooke of Bankhead Group against the decision of Leeds City Council.
 - The application ref 25/01133/CLP, dated 24 February 2025, was refused by notice dated 22 April 2025.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which an LDC is sought is: Maintenance and improvement of existing private way.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by Mr M Brooke of Bankhead Group against Leeds City Council. This application is the subject of a separate decision.

Preliminary Matter

3. An appeal¹ against the Council’s refusal to grant planning permission for surfacing works to the same access was dismissed on 24 December 2025. A copy of this decision was submitted by the appellant and therefore, I am aware of its content. However, I have assessed this appeal on its own merits.

Main Issue

4. The main issue is whether the Council’s decision to refuse to grant an LDC for the proposed maintenance and improvement of an existing private way was well-founded.

Reasons

5. For an LDC to be granted under s192 of the 1990 Act, it is necessary for the appellant to demonstrate, on the balance of probability, that the use or operations described would have been lawful on the date of the application having regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”).
6. Schedule 2, Part 9, Class E of the GPDO permits 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. “*Private way*” is defined by

¹ Appeal Ref APP/N4720/W/25/3363405

Article 2 of the GPDO as a highway not maintainable at the public expense and any other way other than a highway.

Whether the appeal site is a private way

7. The appeal site is located at the end of Burras Drive (a road that provides access to several dwellings). It partly comprises a single width access that is bound by a kerb on one side and a close boarded fence forming the boundary with Burras House on the opposite side. At the time of my site visit, this part of the access was overgrown with grass and weeds, however, I was able to see an MOT type material/compacted gravel in places.
8. The appellant states that the access is used by vehicles for purposes associated with the paddock's ongoing maintenance and management. I have not been directed to an alternative means of accessing the paddock and therefore, I have no reason to disagree with the appellant's assertion.
9. I acknowledge that a highway is a route over which the public can pass and repass and the access does not perform this role. However, the definition of a private way within Article 2 of the GPDO includes "...any other way other than a highway". Furthermore, the dictionary definition of "*private*" is something restricted to a specific person or group, not public or shared. Consequently, I am satisfied that a private way does not need to be accessible to the public.
10. Taking the above into consideration, I am satisfied that, on the balance of probability, the section of appeal site that shares a boundary with Burras House is a private way. However, the appeal site also includes part of the adjacent paddock. From the evidence before me and what I saw during my site visit, the appellant has failed to demonstrate, on the balance of probability, that this part of the appeal site comprises a private way.

Whether the proposal is within the boundaries of a private way

11. In *Cowan v Secretary of State for the Environment & Another* [2000] 79 P & CR 457 ("the Cowen case") the Court stated: "*The physical limitation imposed by 'within the boundaries of the street or way' means that the permitted works can only affect the surface and foundations of the way. They cannot widen it or alter its route*".
12. With reference to the section of the private way between the kerb and the close boarded fence along the boundary shared with Burras House, I am satisfied that the proposed development would be "*within the boundaries of a private way*". However, I have found that the section of the appeal site within the paddock is not a private way and therefore the proposed development would not be within the boundaries of a private way.

Whether the proposal is maintenance or improvement of a private way

13. Turning to whether the proposal would amount to "*works required for the maintenance or improvement of the street or way*", there is no definition of "*maintenance*" or "*improvement*" within the GPDO.
14. The appellant has directed me to the Cowen case which they assert is similar to the appeal proposal as the Court found that the resurfacing of a rutted farm track was permitted development. However, the judgement actually turned on whether

the Inspector erred in law by comparing the word “*improvement*” in Part 9 of the GPDO with the word “*alteration*” in Part 6 of the GPDO, which is unrelated to this appeal.

15. The judgement did, however, determine 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*”. Furthermore, “*whether the construction of the hard surface was an “improvement” in the context of a development deemed to be permitted by the 1995 Order is...essentially a matter of fact and degree for the experienced judgment of the inspector*”.
16. As previously described, the section of the appeal site I have concluded is a private way is predominantly covered in grass/weeds with exposed areas revealing an MOT-type material/compacted gravel. There is limited evidence of vehicles traversing it. Consequently, the private way appears semi-natural in appearance.
17. The appellant asserts that the proposed development would comprise the laying of compacted hardcore. However, the covering letter submitted with the LDC states that the materials would include a wearing course on top of the hardcore, with the proposed material to be confirmed. In addition, a drawing submitted with the appeal states that the surface layer would be asphalt. I have therefore determined the appeal on the basis of this drawing.
18. In respect of “maintenance”, the new asphalt surface will cover the whole of the appeal site and would extend into a paddock. I am therefore satisfied that the proposed works would not comprise the “maintenance” of a private way.
19. In respect of “improvement”, I acknowledge that a change in the surface or method of construction does not necessarily amount to a change in the basic character of a private way. However, the proposal would change from a semi-natural private way with an irregular surface type to a clearly defined, asphalt access with a uniform appearance. Consequently, in my judgement, the proposed development would amount to a marked change in the basic character of the private way and therefore, it would go beyond the scope of what would comprise an improvement.
20. Furthermore, the proposed works would extend across part of a paddock that I have concluded is not a private way. Therefore, these works cannot comprise the improvement of a private way.

Other Matters

21. The appellant has directed me to specific quotes from the Cowen case where they assert the judge concludes that altering the surface or method of construction of a rutted farm track by excavating, laying a sub-base and a top surface, and creating a hard surfaced track was permitted development.
22. I acknowledge that the judge states that the GPDO does not preclude that the surface or the construction of the existing way may not be changed. However, they do not conclude that the works that had been undertaken to the private way in the Cowen case comprised permitted development under Schedule 2, Part 9, Class E of the GPDO. Instead, the judge stated at paragraph 15 that “*the issue whether there was an “improvement” within Part 9 in the present case is for the Secretary of State to decide.*”

23. The appellant has directed me to an appeal² to support their case. However, that appeal sought planning permission for the resurfacing of an existing access drive under Schedule 2, Part 6, Class E of the GPDO. Therefore, it is not directly comparable to the appeal proposal.
24. The appellant has also directed me to an appeal³ against the Council's refusal of planning permission for surfacing works to the existing site access at the appeal site. The appellant asserts that the Inspector in that appeal stated that the development would comprise the improvement of the existing track and on this basis, the proposed development must comprise permitted development under Schedule 2, Part 9, Class E of the GPDO.
25. However, the information before me suggests that the surfacing works proposed within that appeal differ to those proposed by the LDC. Consequently, it is not directly comparable to this appeal. Furthermore, the previous Inspector also refers to the development extending into the paddock, which reaffirms my findings that the proposed development would not comprise the maintenance or improvement of a private way.

Conclusion

26. Taking these factors together, on the balance of probability, I find that the proposal would not be development permitted by Schedule 2, Part 9, Class E of the GPDO.
27. I therefore conclude that the Council's refusal to grant an LDC for the maintenance and improvement of an existing private way is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act.

A Berry

INSPECTOR

² Appeal Ref APP/Z3825/W/21/3268540

³ Appeal Ref APP/N4720/W/25/3363405