

Extract from House of Commons Library

Roads: unadopted

Standard Note: SN/BT/402

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3 Maintenance

The highway authority is not responsible for maintaining an unadopted road although it can intervene under existing legislation to repair it. Responsibility for the cost of maintenance of a private road rests with the frontagers; that is, the owners of properties with frontages on such roads. Even if it is not the frontagers who 'own' the road but a third party such as a property company, it is the frontagers who are referred to in the legislation. The highway authority may therefore only deal with them and is not concerned with the owners of the road. Responsibility for the road's upkeep therefore lies with the frontagers, not the local authority. If an unadopted road is adopted and so becomes a highway maintainable at public expense, the highways authority will normally expect the road to be of a proper standard before it is taken on. No funds are available from the EU for repairs to unadopted roads, though it may be possible to obtain a loan from the relevant local authority.

4 It is not uncommon for the owner of a private road to be unknown. The first step to trace them is to search the Land Register as, if the road is registered, the owner's name will be shown. Failing this, it may be possible to trace the owner from the original developer of the road, by examining the deeds of the houses in the road or the deeds granting rights of way over the road. **Even if there is no information about the owner, the frontagers can take over the management of the road and will be protected by law from all but the true owner. For example, they will be able to maintain the road and regulate parking.**

5 Offences

Most of the offences committed under the 1980 Act are designed to punish those who endanger or interfere with users of a 'highway' or who damage or obstruct a 'highway'. A few offences go further in that they apply not just to highways but to all 'streets' as defined in the Act. Interfering with a right of way is a civil wrong, namely a nuisance. A person whose land has the benefit of a right of way may take action against any person interfering with his right, whether the owner of the road or a person who also enjoys a right of way, or someone unconnected with the road.

For example, a right to take action might arise if the parking of cars in a narrow private road persistently interfered with the exercise of a right of way, such as in the case of *Horne and Horne v. Ball* [1995] CLY 1841 in which the court had to deal with **deliberate obstruction**, accompanied by verbal abuse over a long period.

6 Parking Further information on parking more generally can be found in HC Library standard note SN/BT/2235.

In terms of parking, there is no general right to park in a private road except for the owner of the road. In practice parking may be permitted or tolerated by the owner (in which case there is a licence to park) and in some cases a legal right may have been granted by the owner. Parking in a private road without permission or a legal right to do so is trespassing, and is a civil wrong for which redress can be obtained.

The wrong is done to the owner of the road. He can bring legal proceedings to obtain compensation, though the amount of harm done would typically be small and the compensation therefore very modest. The owner is also entitled to insist that trespassing ceases, and could if need be obtain an injunction against the person concerned. Whether or not someone is trespassing by parking in a private road, if they obstruct the road and so interfere with its use by those with private rights of way, a different civil wrong (nuisance) is committed. In this case, the civil wrong would be against the person whose land has the benefit of the right of way, probably the owners of the properties. The same would also be true if a parked car obstructed access to a private road. In a case of nuisance the civil courts may grant compensation and other remedies, such as an injunction. In some particular circumstances a criminal offence may be committed. Under section 34 of the Road Traffic Act 1988, as amended, it is an offence to drive a motor vehicle without authority on land which is not a road (i.e. a road that is not a highway, or to which the public has access) save where a person goes no further than 15 yards from a public road, and does so in order to park. On a private road to which the public does not have access, drivers who come onto the road without authority are committing an offence unless they do so in order to park and go no further than 15 yards from a public road. If they park within 15 yards of a public road, they will merely be trespassing, not committing an offence. There may be a complication if the road can be considered a highway. As has been seen above, some private roads are highways, but not all, and the position is not always easy to determine.

If the road could be considered a highway, the local authority may be able to act under the 1980 Act, the 1988 Act or the Road Traffic Regulation Act 1984, as amended. For example, offences in relation to highways include: • wilfully obstructing the highway without lawful authority or excuse (section 137 of the 1980 Act); and • leaving a vehicle in a dangerous position so as to cause an injury (section 22 of the 1988 Act). **In these cases prosecution would normally be a matter for the local authority or the police.**