



Roads: unadopted

Standard Note: SN/BT/402

Last updated: 18 October 2010

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Section: Business and Transport

This note explains what unadopted roads are and the problems and issues associated with them. It also explains how highways authorities can 'adopt' such roads and make them public highways.

There are two main types of unadopted or private road, those on new developments such as housing estates and those which, usually by historic accident, have existed for a long time, often since the nineteenth century. A Department of Transport survey in 1972 found that there were then approximately 40,000 unadopted roads in England and Wales, making up some 4,000 miles of road. No later survey has been undertaken but the figure is thought not to have changed much. The government estimated in 2009 that it would cost £3 billion to make up these roads to an adoptable standard.

The law on the maintenance and adoption of private roads in England and Wales is highly complex. It is contained in sections 203 to 237 (Part XI) of the *Highways Act 1980*. Briefly, a private or unadopted road is by definition a highway not maintainable at public expense. The local highway authority is therefore under no obligation to pay for its maintenance. Responsibility for the cost of maintaining a private road rests with the frontagers (the owners of properties with frontages on such roads). However statutory provision does exist for unadopted roads to be adopted and thus become highways maintainable at public expense. Statutory provision also enables the street works authority to require frontagers to put in hand repairs if there is a danger to traffic in a private street. Where the frontagers fail to act as required the authority may execute the repairs itself and recover the costs from the frontagers.

A private road is not necessarily a road to which the public does not have access. Nor is it a road exempt from the law. *Private Roads: a legal framework* (4th ed.) by A.W. and C. Barsby (2007) contains a good description of the law.

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1 Background

Most roads and many paths and tracks are public in that they are highways or there is a public right of way. It does not necessarily follow, however, that they are maintained at public expense. Admittedly the expense of maintaining most roads does fall on the public, but not all of them.

From early times the inhabitants of a parish were responsible for the maintenance of the highway. The obligation was later transferred by a series of steps to local officers and bodies. The *Highways Act 1835* introduced a provision under which, for a street to become publicly maintainable, the responsible public authority must deliberately resolve to adopt it. The Act allowed a parish to appoint a surveyor of the highways to collect a highway rate and spend it on maintaining highways in the area. The reference appears to be to highways (which include footways and bridleways) that were maintained by the parish. The 1835 Act was superseded by a 1959 Act and the relevant provisions are now contained in the *Highways Act 1980*, as amended. The ownership of highways maintainable at the public expense rests with the local highways authority (usually the county or unitary council) or, if a trunk road, with the Department for Transport (in practice the Highways Agency).

Most roads are thus subject to a public right of way, are publicly owned and publicly maintained. They are referred to in the 1980 Act and in other legislation as "highways

maintainable at public expense". Local authorities must keep a list of all such roads. Those roads that are not maintainable at public expense are referred to as private or unadopted roads. These can still be subject to a public right of way, but the public generally do not contribute to their upkeep.

2 What is a highway?

By statutory definition a private or unadopted street is a road not maintainable at public expense. However, a private road is not necessarily a road to which the public does not have access. Nor is it a road exempt from the law.

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'. There is no statutory definition of a highway, only a common law one. That definition is quite clear: a "highway is a way over which all members of the public have the right to pass and repass. Their use of the way must be as of right, not on sufferance or by licence".¹

Some private roads are highways, but not all, and the position is not always easy to determine. A private road can either become a highway through statutory procedures after which it becomes an adopted road (i.e. a road maintainable at public expense), or through the common law process of dedication and acceptance. This latter process is explained as follows:

Under the common law of England and Wales, public rights of way were – and may still be – created by a process known as 'dedication and acceptance'. A way becomes a highway when:

- The owner dedicates it to the public as a highway, by allowing them to use it; and
- The public accepts the dedication, by using the way.

Then, after a period of time, the length of which depends upon the circumstances, a public right of way arises; or (in other words) as highway is created.²

While the principle is straightforward, the law is more complicated. One example of how the process can happen is given in section 31(1) of the 1980 Act which provides that after 20 years use as of right and without interruption the land is deemed to have been dedicated, unless there is evidence that there was no intention, on the part of the owner, to dedicate the land. Under section 31(2) the period of 20 years must be measured backwards from the date when the public's right is challenged.³

The owner of a private road can take action in several different ways to prevent the road becoming a highway through the process of dedication and acceptance. These consist either of making clear that there is no intention to dedicate, or of interrupting use by the public. For example, the owner could put up a notice indicating that the road is not for use by the public, thus demonstrating that there is no intention to dedicate it to the public. While a notice is sufficient in itself, it is also possible to rely on closing the road, by means of a barrier or gate of some kind. The existence of a barrier or gate may be significant, even when not closed.

¹ Sweet & Maxwell, *Encyclopaedia of Highway Law and Practice*, March 2002, para 2-335

² A.W & C. Barsby, *Private Roads: The Legal Framework* (4th ed.), 2007, para 1.3

³ *ibid.*, paras 3.23-3.30

The point of a gate is to interrupt use by the public, so that interference of an intention to dedicate can be drawn.

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.

3.1 Urgent repairs

Section 230 of the 1980 Act empowers the highway authority to order the frontagers to carry out repairs to a private road which are "needed to obviate danger to traffic". The legislation also allows the authority to carry out the work itself if the order is ignored and to recover the expenses incurred from the frontagers:

230 Urgent repairs to private streets

- (1) Where repairs are needed to obviate danger to traffic in a private street the street works authority may by notice require the owners of the premises fronting the street to execute, within such time as may be specified in the notice, such repairs as may be so specified.
- (2) Where such repairs as are mentioned in subsection (1) above are needed in a part only of the street (other than a part extending for the whole of the length of the street), a requirement under that subsection shall be made only of the owners of the premises fronting the length of the street which constitutes or comprises that part.
- (3) A person aggrieved by a requirement of a street works authority under this section may appeal to a magistrates' court.
- (4) Subject to any order made on appeal and to subsection (5) below, if, within the time specified in a notice served under subsection (1) above, the repairs required thereby have not been executed, the authority may execute the repairs, and may recover the expenses reasonably incurred by them in so doing from the owners in

⁴ HC Deb 18 June 2002, cc59-66WH

default, the expenses being apportioned between those owners according to the extent to which their respective premises front the street.

(5) If, within the time so specified, the majority in number or rateable value of owners of premises in the street by notice require the street works authority to proceed in relation to the street under the private street works code, the street works authority shall so proceed, and on the completion of the necessary works shall forthwith declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense; and thereupon the street shall become such a highway.

(6) Where a requirement under subsection (1) above has been made in respect of a part only of a street (other than a part extending for the whole of the length of the street), subsection (5) above has effect as if for references therein to the street there were substituted references to the length of the street which constitutes or comprises that part.

(7) Without prejudice to the foregoing provisions of this section or to any other enactment for the time being in force relating to private street works, the street works authority and also, in the cases mentioned below, the district council may, in any street that is not a highway maintainable at the public expense, execute such repairs as are in their opinion urgently required to prevent or remove danger to persons or vehicles in the street.

The cases in which the district council may act under this subsection are those in which the street concerned [is situated in a non-metropolitan district and] is a footpath, bridleway or any such road as is mentioned in section 42(2)(c) above (urban roads).

3.2 Private Street Works Code

Section 230 of the 1980 Act may only be invoked where repairs are needed to obviate danger to traffic. In other cases a highway authority may decide that a private road should be made up under the Private Street Works Code, set out in sections 205 to 218 of the 1980 Act. Under section 205 a street works authority may resolve to make up a private street where it is not sewered, levelled, metalled etc. to the authority's satisfaction. Subject to the Code, the expenses incurred by the authority in executing the works should be divided between the frontagers:

205 Street works in private streets

(1) Where a private street is not, to the satisfaction of the street works authority, sewered, levelled, paved, metalled, flagged, channelled, made good and lighted, the authority may from time to time resolve with respect to the street to execute street works and, subject to the private street works code, the expenses incurred by the authority in executing those works shall be apportioned between the premises fronting the street.

The Code empowers a street works authority to make up a private street at any time. The Code is long and elaborate. It requires proposed work to be approved in advance by a council resolution and lays down detailed rules for the approval and apportionment of cost of the works. The street works authority is empowered to apportion the expenses of the scheme between the owners of the properties fronting the street in proportion to frontage length. There are also discretionary powers for the authority to take account of the greater or less benefit derived by each property from the works and adjust individual apportionment accordingly.

Other powers enable the authority to contribute towards the expenses of rear or flank frontagers or to contribute towards the expenses of the scheme as a whole under the Code, but this is unusual and would probably only be done if the authority wanted to upgrade the road. There are two apportionments of expenses:

- the first (provisional) is made when the scheme has been designed and costed; and
- the second (final) is made when the works are complete and the costs known.

The owners of the properties shown in the apportionment have the right of objection to the authority on specific grounds in each case. Unresolved objections are determined by a magistrate's court. After determination of objections to the final apportionment the authority may demand payment. There is a right of appeal to the Secretary of State for Transport against the demanded sum.

4 Adoption

Provision exists for unadopted roads to be adopted, both at the instigation of the highway authority and of the frontagers, and thus to become highways "maintainable at public expense". The highways authority will normally expect the road to be of a proper standard before it can be adopted. For a private street or road to become a highway maintainable at public expense, the road has to be formally adopted by a resolution of the highway authority for the street in question.

4.1 At the instigation of the highway authority

The highway authority itself can decide to adopt a private street following the execution of repairs to it. Under section 228 of the 1980 Act, where a private street had been made up as required, the street works authority may declare the street to be maintainable at public expense unless the majority of owners object and the magistrate's court does not overrule the objection.

4.2 At the instigation of the frontagers

The frontagers can require the adoption of the private street in question under one of three statutory provisions in the 1980 Act.

Section 228(7) states that, where all street works in a private street have been executed to the satisfaction of the street authority, the street authority shall declare adoption of the street if so requested by the owners of properties which together account for more than half the rateable value of the street:

If all street works (whether or not including lighting) have been executed in a private street to the satisfaction of the street works authority, then, on the application of the majority in rateable value of the owners of premises in the street, the street works authority shall, within the period of 3 months from the date of the application, by notice displayed in a prominent position in the street, declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense and thereupon the street shall become such a highway.

Section 230(5) provides further provision for adoption of a private road where owners require the highway authority to proceed with urgent repairs under the Private Street Works Code and adoption of the road follows immediately afterwards:

If, within the time so specified, the majority in number or rateable value of owners of premises in the street by notice require the street works authority to proceed in relation to the street under the private street works code, the street works authority shall so proceed, and on the completion of the necessary works shall forthwith declare the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense; and thereupon the street shall become such a highway.

Section 229 states that frontagers may require a road to be made up provided that at least one payment has been made or security given under the Advanced Payments Code. Section 229(1) states:

Where a majority in number of the owners of land having a frontage on a built-up private street, or as many of those owners as have between them more than half the aggregate length of all the frontages on both sides of the street, by notice request the street works authority to exercise their powers under the private street works code so as—

- (a) to secure the carrying out of such street works in that street as the street works authority require under that code before declaring the street to be a highway which for the purposes of this Act is a highway maintainable at the public expense, and
- (b) to declare the street to be such a highway,

the street works authority shall proceed to exercise their powers accordingly.

The Advanced Payments Code is contained in sections 219 to 225 of the 1980 Act. It requires, with some exceptions, a person before he may build on land fronting a private street, to deposit or secure with the street works authority the sum which the authority estimates would be recoverable under the Private Street Works Code if they were to make up the street for adoption and apportion the expenses incurred between the owners of premises fronting the street, in proportion to frontage length. There is a right of appeal to the Secretaries of State, who may substitute a smaller sum. Once deposited, the sum earns simple interest until it is used to defray the expenses of making up the street. A frontager is liable to pay any shortfall or to receive any refund as the case may be.

4.3 New builds

Where the construction of a new estate is involved, a local highway authority can, under section 38 of the 1980 Act, adopt by agreement with the owner. Essentially, a developer of an estate can enter into agreement with the highway authority by which the developer constructs the streets to the satisfaction of the authority and in accordance with the authority's specification and the road then becomes a highway maintainable at public expense. Section 38 cannot be used if the owner cannot be traced.

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 *Home and Home v. Ball* [1995] CLY 1841 in which the court had to deal with deliberate obstruction, accompanied by verbal abuse over a long period.⁵

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.

⁵ op cit., *Private Roads: The Legal Framework*, para 4.47ff

7 Vehicle excise duty

Further information on VED more generally can be found in HC Library standard note [SN/BT/1482](#).

Vehicle excise duty (VED) is charged under section 1 of the [Vehicle Excise and Registration Act 1994](#), as amended, "in respect of every mechanically propelled vehicle that ... is used, or kept, on any public road in the United Kingdom". For England, Wales and Northern Ireland 'public road' is defined in section 62(1) of the 1994 Act as "a road which is repairable at the public expense"; for Scotland a public road is defined in section 151 of the [Roads \(Scotland\) Act 1984](#), as amended, as "a road which a roads authority have a duty to maintain".

With this in mind, it used to be the case that if a vehicle was used only on unadopted roads the keeper of a vehicle would not have to pay VED. However, this changed in 2008 when the DVLA was given powers to clamp vehicles that are not on the public road if they are in breach of the VED continuous registration requirements. The explanatory notes to the *Vehicle Excise Duty (Immobilisation, Removal and Disposal of Vehicles) (Amendment) Regulations 2008* (SI 2008/2266) state:

The policy intention is to prevent evaders of vehicle excise duty from using off-road areas such as unadopted roads, commons, public car parks or roads maintained by Housing Associations to place themselves beyond the reach of the enforcement authorities.

As these areas are off the public road it will still be possible to make a Statutory Off Road Notification (SORN) instead of licensing. This measure will therefore force those who are not properly registered with DVLA to submit their details either through licensing or making a SORN.

It will not be possible to take action against vehicles parked in areas associated with a dwelling, such as garages or driveways so there will be no invasion of a homeowner's privacy.⁶

8 MOT tests

The requirement for MOT tests is contained in the 1988 Act. It is an offence under section 47 of the 1988 Act to use a motor vehicle on a "road" without a test certificate. "Road" is defined in section 192(1) as "any highway and any other road to which the public has access, and includes bridges over which a road passes". Thus one may drive on an unadopted road without an MOT test certificate unless that road is also a highway or a road to which the public has access.

9 Speeding

Further information on speed limits and enforcement more generally can be found in HC Library standard note [SN/BT/468](#).

Local authorities have powers to regulate traffic in their areas via Traffic Regulation Orders (TROs) as a result of the 1984 Act. The powers are generally exercisable in relation to "roads", the word "road" being defined in section 142 of the 1984 Act in the same way as in the 1988 Act, as "any highway and any other road to which the public has access, and includes bridges over which a road passes".

⁶ [Explanatory memorandum](#) to SI 2008/2266

Speed limits apply to "roads", as defined above. There is a general speed limit of 30 mph for "restricted roads", and a road is a restricted road if it has a system of street lighting with lights less than 200 yards apart. However the local authority can include or exclude roads from the category of "restricted roads", as it thinks fit. The 200-yard rule is thus not absolute. Apart from this general limit, there is power to vary speed limits on roads. A private road to which the public has access may or may not have a speed limit, but if it has street lights less than 200 yards apart the 30 mph limit is likely to apply. Local authorities have a general power to put up traffic signs. If a private road is a "restricted road" because of its lighting, a speeding offence may be committed even if there are no signs indicating the speed limit; but if the road is restricted by virtue of a decision by the local authority, no speeding offence can be committed in the absence of signs.

10 Public utilities

Further information on street works and utilities more generally can be found in HC Library standard note [SN/BT/739](#).

Public utilities have the power to repair and maintain their equipment and they have to reinstate the road afterwards. This power applies to both highways maintained at public expense and to other 'streets'; this covers private or unadopted roads. Street works carried out by public utilities and by cable companies are undertaken by virtue of a statutory right or a licence granted under the [New Roads and Street Works Act 1991](#), as amended, and do not need the prior consent of the street authority.

The legislation refers to "street authorities". In the case of highways maintainable at public expense, this is the highway authority. It cannot prevent a statutory undertaking from digging up the road but it can decide when the works should be done, it can prohibit the digging up of resurfaced roads, except for emergencies, within a specified time frame, and it is responsible for co-ordinating the work. Similarly the frontagers on a private road cannot prevent the utilities working in their road, but the "street authority" (i.e. the "authority, body or person having control of the street", as specified in section 49 of the 1991 Act) does have some responsibilities, as does the local authority:

For streets which are *not* highways maintainable at the public expense, and where residents' associations and management companies are the street authority, the main differences are as follows, as a result of amendment of the Act by the 1992 regulations. First, the obligation to keep a register of street works under s. 53(1) falls on the local authority rather than on the street managers, and reports under s. 80 go to the local authority. The street authority, however, remains responsible for seeing that the appropriate information is recorded ... and advance notice of street works must still be given to the person who is the street manager for a private street. Section s. 61 of the Act (on "protected streets") does not apply to streets which are not highways maintainable at the public expense (regulation 10). Subject to these modifications, the street authority in a private street fulfil the functions of the local authority in relation to a highway maintainable at the public expense: it is for them to co-ordinate the activities of undertakers, having regard to the code of practice under s. 59, to give directions as to the timing of street works, to grant street works licences to those who do not have statutory powers to carry out street works, and to take decisions under s. 58.⁷

⁷ *op cit.*, *Private Roads: The Legal Framework*, para 10.16; references to 'the 1992 Regulations' are now obsolete, provisions have been transferred to the 2007 Regulations, see below

The relevant regulations are the *Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007* (SI 2007/1951), as amended.

There is no requirement for a public utility to improve the road. Sewers and drains are particularly difficult as drains usually belong to the private householder and in a private road, the sewer often does too. The local authority and the sewerage authority should be able to say whether a sewer is a public sewer and hence the duty of the sewerage authority to repair, or whether it is the responsibility of those who live in the road.

11 Lighting

The relevant highway authority has the power to provide street lighting. In practice it is very often district councils that provide street lighting on local roads even though it is ultimately the responsibility of the county council. The power is contained in section 97 of the 1980 Act. Under this provision highways authorities are permitted to "construct and maintain such lamps, posts and other works as they consider necessary", and to "pay compensation to any person who sustains damage by reason of the execution of the works".

If the road has not been adopted, however, there is no duty on the highway authority to provide lighting and the responsibility lies with the owners of those properties that have frontage rights on to the road. It is possible, that a local authority (or district, parish or community council) may decide to provide lighting for an unadopted road if it is used by the public as a footpath. In which case, the relevant "lighting authority" will be responsible for maintaining the lighting it installed. The general rule is that responsibility for street lighting on an unadopted road will rest with whoever installed the original lighting.