



BRIEF ENCOUNTER

Once a highway, always a highway?

Q In our village is part of what used to be a main road before it was diverted. Some years ago (before we moved in) a garage business put fencing around the piece of road and it now stores old cars there. The council says the road is still registered as a public highway. Can we get the fencing removed and open up the road again?

A There is a well known legal mantra, “once a highway, always a highway”. Although this expression may not be strictly accurate in legal terms, the principle remains that it is very hard to end the status of a road as a public highway.

A road is a public highway if it is marked on an official “definitive map” held by the local highway authority. Under section 263 of the Highways Act 1980, the council is treated as owner of the surface of the highway and anyone who obstructs it is committing an offence.

The main way of ending the status of a highway is by one of the formal procedures for stopping up under the Highways Act 1980. However, whether a road can cease to be a highway by less formal means was recently considered by the Court of Appeal in the case of *R v Land Registry* (on the application of *Smith*). In that case, Mr Smith lived in a caravan on a layby where he tended the verges and apparently became quite a popular local figure.

After 12 years, Mr Smith applied to the Land Registry to become registered as the owner of the layby as a squatter, but the Court of Appeal rejected his arguments. The judges decided that the only real means of taking away the council’s rights under the Highways Act was to follow the machinery in the legislation.

It is therefore unlikely the garage, in your case, has acquired any right to put fences up across the old road — no matter for how long it has been doing this.

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