



## BRIEF ENCOUNTER

### Overgrown plants block road access to property

**Q** Access to my property is via a narrow road that is a public highway. In 2006 a homeowner decided to grow plants outwards from his property over the road. The local council has tried to take action, but the plants are still overgrowing and obstructive. What is the position?

**A** The right to pass and repass over a public road is enjoyed by everyone in the kingdom (hence the expression “the King’s Highway”), and it is pretty hard for the public to lose this right. For example, the Court of Appeal recently decided that a man who had lived in a caravan on an old road in Cambridgeshire for several years could not get title to the piece of land on which the caravan stood by “squatters’ rights”.

Anyone who wilfully obstructs part of the highway commits a public nuisance, and this has been applied to adjoining landowners who have allowed plants or

trees to grow into the road. Not all plants that overhang a road are treated as a public nuisance — an adjoining landowner will be liable only if the plant obstructs the ordinary free passage along the highway. The owner of a tree, therefore, need not lop off branches that overhang the street unless they are obviously likely to be hit by someone using it. Plants growing into the street are a different matter.

A person responsible for a public nuisance can be prosecuted in the magistrates’ courts or the local Highway Authority can apply for an injunction in the civil courts. However, members of the public can usually take action themselves only if they have suffered some substantial injury as a result of the obstruction — for example, if a car accident has been caused by the nuisance.

Your neighbour cannot allow his plants to obstruct the highway, but you will probably have to rely on your local council to take action to stop him.  
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