



BRIEF ENCOUNTER

Do I have to pay for repairs to the road?

Q I live in a private road, built 40 years ago and never repaired. It is deteriorating badly in parts, but is still useable. A group of residents would like to resurface it completely, an expensive undertaking that not all the residents support. There is a covenant on each house to “contribute an equal proportion . . . of the cost of maintaining and repairing the road . . .” Can the residents’ group simply require us to contribute to the cost of upgrading the road?

A A well-drafted covenant to repair a road will clearly state who is responsible for carrying out the work and who is liable to contribute to the cost. Unfortunately, many covenants are a bit vague on both points.

It does not sound as if the covenant in your case says who must mend the road. The position is that where a number of houses share use of a private road and no

one is identified as being required to maintain it, the road may be repaired by anyone. The residents’ organisation itself is not a legal entity, but you cannot stop any of your individual neighbours from repairing the road, provided they do nothing to interfere with your use.

What is more, you will certainly have to pay something if any of your neighbours decide to go ahead with works. There is an ancient legal doctrine that a householder who is obliged to pay for something under a covenant cannot benefit from it until he pays his money over.

Having said that, you are liable to pay only for “maintaining and repairing” the road. As long ago as 1896 the Court of Appeal decided this formula did not generally extend to the upgrading of an unsurfaced road with tarmac. If your road can be mended without resurfacing it completely, there is, therefore, a good argument that you won’t have to pay the extra cost involved.

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