

LAND AT ASHWELL STREET, ASHWELL - REPAIR

The wording of the Enclosure Award states that the "Road is set out for the use of the persons interested for the time being in the allotments numbered 249, 250, 252 and 253 and the "old Enclosure numbered 285". In light of this, there is no constraint on the use. The Enclosure Award also states that the "Road shall forever hereafter be maintained and re-paved by the Owners and proprietors of the allotments".

It has now been confirmed by the First Tier Tribunal that the application site benefits from this express right. The right extends to maintenance and re-paving i.e. structural works not merely use.

I attach a copy of commentary from Practical Law Property dealing with easements and rights and obligations to repair.

I have highlighted the sections that relate to repair of an expressly granted right of way. Please note the statement that the dominant owner (i.e. the user of the right of way) is entitled to maintain and repair the way and to enter onto the "servient owner's land" (i.e. the land over which the right is being exercised) to do necessary work in a reasonable manner.

There is a distinction between an express right (as we are considering in this case) and prescriptive rights. The express grant of a right of way permits the dominant owner to carry out work (even if it is a work of improvement) to the route of the right of way to make the road suitable for intended purposes. If only a prescriptive right had been obtained, queries relating to the scope of the easement might arise, but this is not the case here.

Accordingly, the express right that is or will be shortly noted on the title to the application property extends to repair and improvement of the right of way. Repair to bring the relevant stretch of Ashwell Street to a standard suitable for use (which would include clearing of vegetation and relaying of the surface, repaving is expressly permitted in the wording of the right itself) are therefore covered.