

**March 2017**

## **LOCAL COUNCILS' POWERS TO PROVIDE PARKING SPACES**

### **Introduction**

1. Parking can be a particular problem in a local council's area and this topic note explains a local council's powers and limitations together with the methods for providing parking spaces.
2. On-street car parking is the responsibility of the highway authority (county or unitary council in England and county or county borough council in Wales). Off-street car parks are frequently provided by the principal authority, shops and other private organisations. However, these facilities are often insufficient and residents want something further to be done to avoid traffic problems. A local council has the power to provide off-street parking places in its area but its power to provide on-street parking is limited to bicycles and motorcycles. These powers come mainly from the Road Traffic Regulation Act 1984 (the 1984 Act) but are also associated with other functions such as provision of recreational facilities under section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (1976 Act). Additionally, councils may have implied powers to provide parking spaces and they may also use their powers under statute to create byelaws. Because there is a statutory power to provide parking places the limitations in that power cannot be overcome by using the General Power of Competence in England (where available) or the Power of Well-Being in Wales.

### **Statutory Powers**

3. Local councils have the power to provide parking spaces under section 57 of the 1984 Act (see appendix) if they consider that it is necessary to:
  - relieve or prevent traffic congestion; or
  - preserve local amenities.

4. Once a local council decides that the situation meets one of those criteria then the 1984 Act can be used to provide and maintain, in their area,
  - on street parking places for bicycles and motor cycles; or
  - off street parking places for other types of vehicle or for vehicles generally.

Parking places off the road can include, for example, multi-storey car parks.

5. Where a council considers using roads for bicycle or motorcycle parking it will need to obtain the consent of the body responsible for maintaining the road (see section 58 of the 1984 Act for a full list). There is a process for resolving disputes if the local council is not given consent on reasonable terms.
6. On-road parking must not prevent access to any premises or cause a nuisance.
7. An off-road parking place, or access to it can be up to one-eighth or 800 square feet (74.322 square metres) (whichever is the less) of:
  - a recreation ground provided by the council under section 8 of the Local Government Act 1894;
  - an open space controlled or maintained by the council under the Open Spaces Act 1906, other than a part which has been consecrated as a burial ground or in which burials have taken place; or
  - any land provided by the council as a playing field or for any other purpose and held by that council for recreation under section 19 of the 1976 Act.
  - No off-street parking place can be provided by a local council under s.57 (1) (b) of the 1984 Act without the consent of the relevant county or metropolitan district council first being obtained – section 59 (1) of the 1984 Act.
8. Local councils can also:
  - employ people (paid or unpaid) to supervise the parking spaces;
  - make byelaws regarding the parking places including off-road parking charges (see LTN 14E Byelaws (England) and LTN 14W Byelaws (Wales) for the relevant procedures); and
  - let any off-road parking place for up to seven days
  - further to the consent of the relevant county or metropolitan district council first being obtained make orders in respect of off-street parking places as to the use of the parking place and conditions on which it may be used, charges for its use and removal of vehicles left in contravention of the order (and the vehicle's safe custody) – section 35 (1) and section 59 (4) of the 1984 Act.

9. A local council which provides on-road parking spaces will not be liable for loss of or damage to any bicycle or motorcycle parked there or its fittings or contents (section 57 of the 1984 Act).
10. Section 60 of the 1984 Act allows a local council to contribute to the cost of another person (including another local council) providing parking places that the council could provide or to work together with another local council to provide parking places.

## **Byelaws**

11. Local councils have a number of powers to make byelaws which are set out in a variety of statutes. The power is usually provided to give councils the ability to regulate specific activities or manage specific facilities, for example, section 15 of the Open Spaces Act 1906, which concerns the regulation of public walks/pleasure grounds.
12. In the House of Lords case of *Akumah v Hackney London Borough Council* [2005] UKHL 17 Mr Akumah challenged the validity of 3 parking tickets he received from Hackney Council who had made parking byelaws in respect of one of their housing estates. Hackney had the power to make byelaws (specifically in respect of parking) under section 23(1) of the Housing Act 1985 and section 7(1) of the Greater London Council (General Powers) Act 1975. Instead, however, Hackney used their powers under section 21(1) of the Housing Act 1985 which gave the council, as a housing authority, general housing management powers.
13. Mr Akumah argued that because two Acts of Parliament gave Hackney the specific power to pass byelaws in respect of parking, Hackney should have used those specific powers and should not have relied on their general management powers. The House of Lords disagreed and stated "taking into account the scope and policy of the Housing Acts, local authorities' powers of management of housing accommodation should be construed in the widest possible sense" and, accordingly, the byelaws made by Hackney were valid.
14. The Akumah case, and general powers under which local councils can pass byelaws, should be sufficient to ensure that any byelaws passed using those powers can reasonably include the regulation of parking.

## Parking on Commons and Village Greens

15. The position in respect of parking on commons and village greens is less clear but NALC's views are set out below.

### Village Greens

16. Section 34(1) of the Road Traffic Act 1988 makes it a criminal offence to drive a motor vehicle on any land not being part of a road (e.g. a village green) without lawful authority. But under section 34(3) Road Traffic Act 1988 it is not an offence to drive a motor vehicle up to fifteen yards off a road to park the vehicle on that land or in the case of an emergency.
17. Section 12 of the Inclosure Act 1857 (the 1857 Act) states that:

"If any person wilfully cause any injury or damage to any fence of any ... town or village green... or wilfully lay any manure, soil, ashes or rubbish or other matter or thing thereon, or do any other act whatsoever to the injury of such town or village green ... or to the interruption of the use or enjoyment thereof as a place for exercise and recreation... [he] shall be guilty of an offence."

18. Section 29 of the Commons Act 1876 (the 1876 Act) states:

"An encroachment on or inclosure of a town or village green, also any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance ..."

19. There is no specific power to provide parking spaces on village greens and the provision of car parking facilities by a local council on a village green is likely to breach the 1857 and 1876 Acts. NALC agrees that such offences and nuisances are likely to be committed if village greens are used to provide parking facilities and, accordingly, recommends that councils should not use village greens for parking facilities.

### Commons

20. Section 34 (1) of the Road Traffic Act 1988 (see 16 above) also applies to common land.

21. Section 193(4) of the Law of Property Act 1925 prohibits without “lawful authority” the “drawing or driving” on common land of any “carriage, cart, caravan, truck, or other vehicle”. Importantly, however, local councils have the power to give individuals “lawful authority” on land they own. On the face of it parking on common land is allowed if this is done with the council landowner’s permission, or if the criteria in section 34(3) of the 1988 Act are met (see 16 above).
22. Local councils do not, however, have *carte blanche* to permit parking on common land because they would still be required to respect the rights of commoners. The following passage is taken from the House of Lords decision *Bakewell Management Ltd v Brandwood* [2004] UKHL 14 which is discussed in further detail in LTN 57 (Easements over Common Land and Village Greens):

“The owner of a common cannot lawfully do anything on the common that would constitute an unreasonable interference with the rights of the commoners... to do so would be a nuisance... Nor could the owner of a common lawfully authorise things to be done by others on the common that, if done, would constitute a nuisance. The ... owner of a common can [not] authorise to be done whatever he pleases. Authority given to too many people to camp on the common and light too many fires could damage the sufficiency of grass on the common for the commoners' grazing rights. If that were so, the authority would not, in my opinion, be a lawful one. Similarly, authority to too many people to drive too many cars or other vehicles over the tracks on the common might not be lawful. It would depend on the facts. But, subject to that qualification, subsection (4) [of section 193 of the 1925 Act] allows the owner of a common to authorise the doing of an act that if done without that authority would be an offence under the subsection.”

### **Commons Councils**

The Commons Act 2006 is only fully in force in certain pilot areas of England and not at all in Wales.

23. Section 26 of the Commons Act 2006 (2006 Act) allows the creation of “Commons Councils” which under section 31 of the 2006 Act have a number of functions including the management of:
- agricultural activities on the land for which the Commons Council is established;
  - vegetation on the land; and
  - rights of common on the land.

24. Commons Councils have the power to make rules in respect of commons under sections 31 and 35 of the 2006 Act. The rules are similar to byelaws insofar as a breach of them will be a criminal offence, under section 34 of the 2006 Act. Commons Councils are able to apply to the County Court for a Court Order to secure compliance with the rules. Where such rules are made, local councils will need to ensure that any parking schemes they propose to implement comply with them.
25. However, NALC does not consider that Commons Councils would have any particular role in respect of local councils who wish to use a common to provide parking facilities but, nevertheless, local councils would be well advised to consult the local Commons Council (if any) in any event.

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
14E	Byelaws (England)	Sets out how local councils in England may make byelaws.
14W	Byelaws (Wales)	Sets out how local councils in Wales may make byelaws.
19	Unauthorised parking on private land	Sets out the law on stopping vehicles parking without permission.
53	The Protection of Common Land	Discusses the Law of Property Act 1925 in further detail.
56	The Provision of Play and Sports Equipment on Village Greens	Discusses the Inclosure Act 1857 and the Commons Act 1876 in further detail.
57	Easements over Common Land and Village Greens	Sets out the rights of commoners in further detail.

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## Section 57 of the Road Traffic Regulation Act 1984

1. Where for the purposes of relieving or preventing congestion of traffic or preserving local amenities it appears to the council of a parish in England or a community in Wales to be necessary to do so, the council, subject to sections 58 and 59<sup>1</sup> of this Act, may -
  - a) provide within their area and maintain suitable parking places for bicycles and motor cycles, or
  - b) provide within their area and maintain suitable parking places, otherwise than on roads, for vehicles of other descriptions or for vehicles generally.
  
2. For the purpose of providing and maintaining any such parking place, or for the purpose of providing means of entrance to and egress from any parking place provided under this section, a parish or community council may -
  - a) utilise and adapt any land purchased by the council for the purpose or appropriated for the purpose under subsection (3) below, or
  - b) in the case of a parking place provided under subsection (1)(a) above, but subject to the provisions of section 58 of this Act, adapt, and by order authorise the use of, any part of a road in the parish or community;

and any power under subsection (1) above to provide and maintain parking places shall include power to provide and maintain structures for use as parking places.
  
3. Notwithstanding anything in any other enactment, but subject to subsection (4) below, a parish or community council may appropriate for the purpose of providing a parking place under this section—
  - a) any part of a recreation ground provided by the council under section 8 of the Local Government Act 1894;
  - b) any part of an open space controlled or maintained by the council under the Open Spaces Act 1906, other than a part which has been consecrated as a burial ground or in which burials have taken place;
  - c) any part of any land provided by the council as a playing field or for any other purpose and held by that council for the purposes of section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (recreational facilities).

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<sup>1</sup> Sections 58 and 59 relate to the need to obtain consents from the Highway Authority and others in various situations.

4. Any part of a recreation ground, open space or other land appropriated under subsection (3) above shall not exceed one-eighth of its total area or 800 square feet, whichever is the less.
5. No order under subsection (1) above shall authorise the use of any part of a road as a parking place so as unreasonably to prevent access to any premises adjoining the road, or the use of the road by any person entitled to use it, or so as to be a nuisance.
6. A parish or community council may employ, with or without remuneration, such persons as may be necessary for the superintendence of parking places provided by the council under this section.
7. A parish or community council may make byelaws (subject to confirmation by the Secretary of State) as to the use of parking places provided under subsection (1)(a) above, and in particular as to the conditions upon which any such parking place may be used and as to the charges to be paid to the council in connection with the use of any such parking place, not being part of a road; and a copy of any byelaws made under this subsection shall be exhibited on or near every parking place to which they relate.
8. A parish or community council may let for use as a parking place any parking place provided by them (not being a part of a road) under this section; but, without prejudice to any power of a parish or community council under any other enactment to let a playing field or other land of which a parking place forms part, no single letting under this subsection shall be for a longer period than 7 days.
9. The exercise by a parish or community council of their powers under this section with respect to the use as a parking place of any part of a road shall not render them subject to any liability in respect of loss of or damage to any vehicle or the fittings or contents of any vehicle parked in such a parking place.