Vehicles on the Common

Laws govern the right to drive and park motorised vehicles on common land in England. A vehicular right of way over common land cannot be acquired by long usage, if that long usage was itself an offence. Central government has issued general *Guidance* on the subject.

Section 193 of the *Law of Property Act 1925* makes it an offence for a person to drive "any carriage, cart, caravan, truck, or other vehicle" on common land without lawful authority. The land owner may grant the authority that is needed for such driving not to constitute an offence. Offenders can be prosecuted summarily and punished with a fine of £20 (under schedule 3 of the *Criminal Justice Act 1967*).

Section 34 of the *Road Traffic Act 1988* makes it unlawful for a person to drive "a mechanically propelled vehicle" on any common land without lawful authority. Normally, it is for the land owner to grant permission and he may wish to consider questions of amenity when deciding whether or not to grant the required authority (but he is not obliged to do so). Under the Act, it is not an offence to drive on common land in emergency situations. Nor is it an offence under the Act to drive over common land within fifteen yards of the road to reach a parking place. Offenders can be prosecuted summarily and punished with a fine up to level 3 (£1,000) on the standard scale.

The police have been given powers to stop unlawful driving on common land. Under section 59 of the *Police Reform Act 2002* a "constable in uniform" is given the power "if the motor vehicle is moving, to order the person driving it to stop the vehicle" and "to seize and remove the motor

vehicle" if it "is causing, or is likely to cause, alarm, distress or annoyance to members of the public".

A vehicular right of way is not a right to park. However, there is no general legislation prohibiting the parking of vehicles on common land. But it might be argued that a prohibition on driving amounts to a prohibition on parking. And in 1969, *Mr Justice Foster ruled* that car parking interfered with access rights:

> "It is true that if you consider car parks without any cars parked upon them a person can exercise upon them but when the car parks have cars upon them, it seems to me inevitable that the space so occupied cannot be used for exercise or air..."

The same argument is used to restrain "works" which inhibit access and contravene section 38 of the *Commons Act 2006*.

Driving or parking a vehicle on common land without the land owner's permission can be treated as civil trespass. Common law injunctions can prohibit somebody from accessing property without the owner's consent. A solicitor can apply to the local County or Magistrates Court for such an injunction on behalf of the land owner. Section 61 of the *Criminal Justice and Public Order Act 1994* makes the parking of 6 or more vehicles on private land a 'criminal' offence and gives the police powers to remove the trespassing vehicles. As proposed but not yet enacted, section 1(3) of the *Trespass with a Vehicle (Offences) Bill* would have made it an offence for any person to bring a vehicle onto green spaces owned by a local authority without permission.

There might be local acts or byelaws that make driving or parking an offence. Byelaws can be enforced by local authority officers, the relevant transport operators, community support officers, as well as by police officers but it can be a time-consuming and resource intensive process. Offenders are currently prosecuted through the Magistrates Courts, with fines ranging from £200 to £2,500.

Easement for property owners

Driving restrictions might be eased for property owners whose sole means of vehicular access to their property is across common land. Easement was granted under section 68 of the *Countryside and Rights of Way Act 2000* and, in 2002, the Secretary of State made *Regulations* setting out the procedures to be followed by a person wishing to obtain a legal right of vehicular access

to their property over common land. Then, in 2004, the House of Lords ruled (see *Bakewell Management Ltd v Brandwood and others*) that, provided the owner of common land could lawfully have granted permission for vehicular access, there was no bar on a property owner relying on their actual use of the land for access (even without the owner's express permission) to establish a prescriptive right to do so (under the *Prescription Act 1832*). This judgment made section 68 of the *Countryside and Rights of Way Act 2000* redundant and it was repealed by section 51 of the *Commons Act 2006*.

The Land Registry can register prescriptive rights but it will require evidence of the actual use of the land for access over a period of at least 20 years. This is not always a straightforward process (see *High Court Judgment*). However, easements can be negotiated between a property owner and the land owner even if a prescriptive right cannot be claimed.

Cambridge regime

Cambridge has some ancient *byelaws* (dated 23rd October 1851 and 5th August 1880) which are still in force and regulate vehicles on the "Common Pasture". Byelaw 9 states that:

> "Every person not lawfully authorised or permitted so to do who shall go upon, over, or across any such Common Pasture, with any cart or other carriage"

have committee an offence and are liable for a £1 fine. Byelaws 4 and 6 state that:

> "Every person not lawfully authorised or permitted so to do, who shall ... place any caravan or carriage upon any such Common Pasture"

and

> "Every person lawfully authorised or permitted to place any caravan or carriage upon any such Common Pasture for a limited period, who shall not, at or before the expiration of such period, remove from such Common Pasture such caravan or carriage"

have also committed an offence and are liable for a £2 fine.

Midsummer Common regime

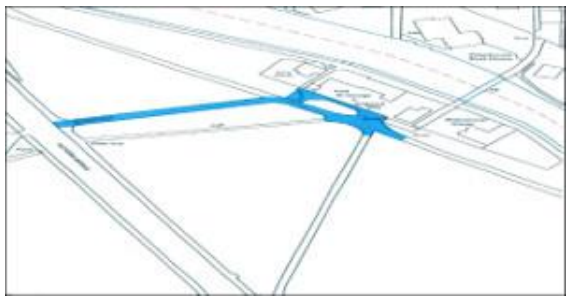
Within Cambridge, complications arise in the case of Midsummer Common where there are three properties whose sole means of vehicular access is across the Common. The law allows residents in those properties to drive across the Common and park on their own land.

Two of the properties were council houses, one of which (Ferry House) remains tenanted whilst the other was sold under the "right to buy" scheme in 1983 and now functions as the Midsummer House Restaurant (see right). The sale contained a right of way expressed in the following terms:

"The right…at all times and for all purposes to go pass and repass over and along any roads and on foot only along any footpaths… which now serve the property …"

The Council has given permission for delivery vehicles to service the restaurant and has given a verbal agreement for disabled parking on an unauthorised hardstanding on the Common outside the property.

The third property is a listed building that started life as a mill on the river Cam but now functions as the Fort St George Public House (see left). The Council recently negotiated a *right of way* with the owners, Greene King, giving them restricted vehicle access rights within the blue-shaded track in the map below.



These access rights are: "The right to pass and repass with or without vehicles over the access and the track for the following purposes relating to the use of the Fort St George as a public house with accommodation:

delivery of goods or services, or both
access for occupiers; and
access for the registered disabled."

and

> "The right to park vehicles on the track between the hours of 8am and 11pm (but for the minimum time reasonably practicable) for the sole purpose of delivering goods and services to and from the Fort St George as a public house with accommodation"

Whilst these arrangements appear sound on paper they are frequently abused.

To clarify the situation, Cambridge City Council sent letters dated 25th May 2011 to the Fort St George public house and Midsummer House restaurant giving them permission for vehicles to drive across Midsummer Common and "stop outside the property in order to make deliveries or service the building". The letters also say that "parking is not allowed" other than "on your own property". But illegal parking persists.

Until enforcement takes place there will be unsightly parking of vehicles on the Common and damage to the grassland. The Council's enforcement policy has two steps: informal action followed by formal action. The policy states that “Informal action will involve offering advice, requests for action, or warnings, or seeking and monitoring the delivery of undertakings or timetabled schedules of action”. In its response to a *Freedom of Information* request, the Council states that since 1989 it has continued "to speak to and correspond with the proprietors and managers of Fort St George and Midsummer House Restaurant ... seeking a resolution through informal means".

The enforcement policy then gives reasons for taking formal action. Amongst these are:

- There is a history of non-compliance with informal action;

- The consequences of non-compliance, for health, safety, the environment, or other Council priorities, are unacceptable and/or immediate;
- There is demonstrable harm to the amenity of the area; and
- An informal approach has failed.

All of these apply in the case of parking on the common land outside the pub and restaurant. In its response to a *Freedom of Information* request, the Council says that it "continues to seek informal resolution of the issues relating to parking on the Common".

The enforcement policy says that formal action can take any form that the Council is empowered by legislation to take. The Council's *Procedure for Dealing with Unauthorised Driving and Parking on Common Land* states that “When evidence of an offence has been gathered (subject to the enforcement policy), a prosecution file will be raised and submitted to legal services who will make a legally privileged decision on a case by case basis whether or not to pursue the matter in the Magistrate’s Court". In its response to a *Freedom of Information* request, the Council says that "no decision has been made in relation to formal action; however the process of evidence gathering is current". Is 16 years of evidence not enough to take formal action? And why is it left for council lawyers, rather than Councillors, to decide whether or not to prosecute offenders to stop parking on common land?

Please *contact us* if you have anything to say about the issues raised on this page.