

ANNEX A

^{Kara}
Mr A ~~Khan~~
Chief Executive
Swale Borough Council
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17/09/15

^{Kara}
Dear Mr ~~Khan~~,

Please would you submit the enclosed document for discussion in the Council Chambers. I am raising this issue as I feel that the problem is becoming more prevalent within our Borough.

Yours Sincerely

INCONSIDERATE AND ANTI SOCIAL, NUISANCE PARKING IN THE SWALE BOROUGH AREA

Dear Ladies and Gentlemen of Swale Borough Council, I would like to bring before you for your consideration and action the topic of Inconsiderate and nuisance parking problem within our Borough, which is becoming more and more prevalent recently.

Vehicles are parking on pavements and verges either fully or partially with no consideration to others. This causes the following problems:

1. They create a hazard to pedestrians, especially Elderly and Partially sighted or blind people.
2. They cause damage to pavements, verges and curbs, which costs the Borough and County Councils lots of money in repairs each year, which could be better spent on other highway needs.
3. They create hazards in that they do not leave room for emergency vehicles, block peoples drive ways and obscure vision of the highway.
4. Parking of Vehicles on pavements, verges and other inconsiderate places gives a bad impression of our Towns and Villages in our Borough.

The Highway Code covers parking and says:

242 - You **MUST NOT** leave your vehicle or trailer in a dangerous position or where it causes any unnecessary obstruction of the road.

Laws RTA 1988, sect 22 & CUR reg 103

244 - You **MUST NOT** park partially or wholly on the pavement in London, and should not do so elsewhere unless signs permit it. Parking on the pavement can obstruct and seriously inconvenience pedestrians, people in wheelchairs or with visual impairments and people with prams or pushchairs.

Law GL(GP)A sect 15

246 - **Goods vehicles.** Vehicles with a maximum laden weight of over 7.5 tonnes (including any trailer) **MUST NOT** be parked on a verge, pavement or any land situated between carriageways, without police permission. The only

exception is when parking is essential for loading and unloading, in which case the vehicle **MUST NOT** be left unattended.

Law RTA 1988 sect 19

There is also the following Highways Act:

It is also illegal to drive on or across the pavement other than to gain legal access to a property, and has been since before cars were invented!

Section 72 of the Highways Act 1835, which is still in force, states that an offense is caused by: “driving on any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers”, which covers driving of a ‘horse, ass, sheep, mule, swine, or cattle or carriage of any description, or any truck or sledge’. The definition of carriage was extended to cover the new-fangled velocipedes and bicycles in Section 85 of the local Government Act 1888.

Later Case law or whatever no-doubt extended this to cover road locomotives and motorcars as they arrived in this country.

Learner Drivers are taught not to park on a pavement or in any place where they would cause an obstruction. You can fail a driving test if you drive on or reverse onto a pavement or verge.

Currently it is not a Criminal offense to park on a pavement or verge, but it is an offense to be seen driving onto or off of a public footpath by a Police Officer. The 'Ask the Police' website states;

Local authorities (in England) can make an order prohibiting parking on the pavement. If this is the case, then there will be signs which clearly point out on a particular road where parking on the pavement is specifically prohibited. The penalty for contravening this will be a fixed penalty notice.

Otherwise, parking a vehicle on the pavement could lead to an offence of obstruction being committed. This could result in a fixed penalty notice being issued to offending vehicles. It can also cause danger/nuisance for pedestrians and wheelchairs users.

Note that it is an offense to drive on the pavement, yet despite the obvious inference that a parked vehicle has been driven on the pavement prior to being parked there, witnesses to the driving will probably be needed to

secure a prosecution - this can be problematic.

The Road Traffic Act 1974 attempted to place pavement parking more firmly into legislation and included a clause that would have banned all parking on pavements (Section 7). The act even received Royal Assent, however a succession of transport ministers failed to enable this part of the Act and gave excuses in parliament for its non-implementation for 37 years and then repealed it in 1988. Pavement parking was however successfully banned in London in 1974 by the Greater London Council (General Powers) Act 1974 (Section 15) and has been illegal in the city ever since.

Currently there is a Bill before Parliament which was initialized by Guide Dogs and Living Streets to create a Law to prohibit Parking on Public Footpaths and verges.

In June 2015 Simon Hoare MP adopted the campaign by proposing a new law in Parliament to enforce a ban in England and Wales.

A separate bill for Scotland is making steady progress at Holyrood

The bill proposes to make provision for the safety, convenience and free movement on pavements of disabled people, older people, people accompanying young children, and other pavement users; to clarify, strengthen and simplify the law relating to parking on pavements in England and Wales.

There is a separate document published by Parliament which I have attached.

The RNIB have themselves posted a Campaign against Parking on Pavements and highlight the difficulties that Blind and partially sighted people have with Vehicles 'obstructing' the pavement. They say;

Drivers that use the pavement for parking, often think they are doing the right thing by keeping the road clear, but fail to realize the consequences of their vehicle now blocking the footpath. The impact is that people with sight loss cannot see the obstruction until it is too late, and collide with the parked vehicle. Often there is insufficient space for pedestrians to get past and they are forced to walk out into the road. This puts blind and partially sighted people at risk from traffic.

Research undertaken by RNIB shows that people with sight loss most

commonly collided with cars parked on pavements more than any other pavement obstruction.

As a local authority I would ask that Swale Borough Council take the lead in curbing INCONSIDERATE AND ANTI SOCIAL, NUISANCE PARKING by taking action against drivers, perhaps by a written warning and or a parking fine.

I would also ask consideration to look at areas where we could improve parking for residents. If a Footpath is wide enough for a Vehicle to fully park on it, then maybe we could design that path to be slightly narrower but have parking bays included. If Verges are not being used and are derelict, could we not make these into parking areas? We also need to look at improving 'signage' to warn Drivers not to park their vehicles.

Thank you for your kind consideration of this document.



Parking: pavement and on-street

Standard Note: SN1170
Last updated: 17 November 2014
Author: Louise Butcher
Section: Business and Transport

This Note outlines the general legal position on what is generally called 'pavement parking' (parking at the side of the road) and the measures available to the police and local authorities to tackle it.

There is no national prohibition against on-street or 'pavement' parking except in relation to heavy commercial vehicles. Local authorities and the police may act to tackle pavement parking in various ways, such as under legislation governing obstruction and dangerous parking; designating limited areas of 'no pavement parking' through a Traffic Regulation Order (TRO); or establishing a special parking area. Separately, it is an offence to *drive onto the pavement*, whether with intention to park or not.

Recently there have been campaigns to introduce a complete ban on pavement parking, leading to a couple of Private Members' Bills being introduced in Parliament. Information on other parking-related matters can be found on the Roads Topical Page of the Parliament website.

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1 Current powers to restrict pavement parking

There is no national prohibition against on-street or 'pavement' parking except in relation to heavy commercial vehicles. These vehicles, defined as goods vehicles with an operating weight exceeding 7.5 tonnes, are prohibited from parking on verges, footpaths or the central reservations of roads under section 19 of the *Road Traffic Act 1988*, as amended. Parking in breach of section 19 is a fixed penalty offence, although the section allows specific exceptions to the general prohibition including loading and unloading in specified circumstances and parking in an emergency to save life.

Some pavement parking will be seen as causing an obstruction and can be dealt with by the police or traffic wardens. However, most enforcement will be by local authorities who have assumed control for decriminalised/civil parking enforcement under Part 6 of the *Traffic Management Act 2004*. As part of this process they can designate 'Special Parking Areas' (SPAs) in which vehicles parked on street or on the pavement can be ticketed for contravening parking regulations (e.g. parking on a yellow line), rather than for causing an obstruction.¹ Some local authorities, i.e. Exeter, took their own Private Act powers to ban pavement parking within their areas.

Government guidance is available for all local authorities on alternative, non-legislative measures to discourage pavement parking. This includes suggestions such as guardrails, the planting of trees and the placement of bollards on pavements. Such physical measures, whilst perhaps costly in the first instance, have the advantage of being self-policing and self-enforcing.²

1.1 Driving on the pavement with intention to park

Although parking is generally permitted along the road, except where there are restrictions or a specific offence has been committed, driving actually *onto* the pavement or footway (to park or otherwise) is an offence under section 72 of the *Highways Act 1835* (see also section 28 of the *Town Police Clauses Act 1847* under 'obstruction', below). *Wilkinson's Road Traffic Offences* explains:

Under the Highways Act 1835, s.72, it is an offence wilfully to ride or drive on the footway, even though the driving may last only for a few seconds (*McArthur v Jack* 1950 S.C.(J.) 29). The offence will apply to pedal and motor cyclists. Driving across the footway to get to a private park was held to be an offence in the absence of proof of long use or of its being a way of necessity (*Curtis v Geoves* (1930) 94 J.P. 71) but in *Vestry of St Mary, Newington v Jacobs* (1871) L.R. 7 Q.B. 47 the owner of land adjoining the highway was held to be entitled to convey machinery on trolleys over the pavement into his premises ...

Not all police forces take active steps to enforce [this law], but many more are now doing so in order to prevent subsequent parking on the pavement. Quaere whether there is a common law right to divert onto the pavement in cases on necessity when the carriageway is blocked.³

¹ for full details of the parking policy framework, see HC Library brief SN2235

² DfT, *Pavement parking* (Traffic Advisory Leaflet TAL 04/93), 1993

³ *Wilkinson's Road Traffic Offences*, 26th ed., 2013, paras 6.252-6.253

1.2 Obstruction

Local authorities and the police have the power to remove a vehicle if it is illegally parked, causing an obstruction or has been abandoned. The power to remove vehicles is given to the police by sections 99-102 of the *Road Traffic Regulation Act 1984*, as amended, and by the *Removal and Disposal of Vehicles Regulations 1986* (SI 1986/183), as amended, made under sections 99 and 101 of the 1984 Act. The powers of removal under section 99 include vehicles which are parked illegally, have broken down and those which cause obstruction, danger or potential danger. If therefore it can be shown that a vehicle is illegally parked, causing an obstruction or is abandoned, the local authority and the police may remove it under this legislation. It should be pointed out, however, that they do not *have* to remove a vehicle in any of these three cases, merely that they *may* do so.

A vehicle can only be illegally parked if there are parking restrictions operating in the area. In other cases one would have to show a vehicle was causing an obstruction. The police can remove vehicles which are causing an obstruction and there are a number of statutes and regulations which allow proceedings to be brought for obstructing the highway. These include:

- *Highways Act 1980*, section 137 (wilfully obstructing the free passage of a highway);
- *Town Police Clauses Act 1847*, section 28 (wilfully causing an obstruction in any public footpath or public thoroughfare); and
- *Road Vehicles (Construction and Use) Regulations 1986* (SI 1986/1078), regulation 103 (causing or permitting a motor vehicle or trailer to stand on a road so as to cause any unnecessary obstruction of the road).

There is a good deal of case law on the general issue of 'obstruction' and 'unnecessary obstruction'. Extracts provided below demonstrate the breadth of the offence and reinforce the importance of individual circumstances in any case:

Obstruction can be caused by actual physical obstruction of an essential line of traffic ... or it may be unreasonable use of the right of stopping even though there is plenty of room for other traffic to pass [...]

While there is obviously an offence if there is a serious obstruction in fact, unreasonable use of the highway calculated to obstruct and whereby persons might be obstructed may suffice for a conviction without evidence that anyone has actually been obstructed (*Gill v Carson* (1917) 81 J.P. 250, a case under the Town and Police Clauses Act 1848, s.28). In *Nagy v Weston* [1965] 1 All E.R. 78 parking a van for five minutes in a wide, busy street near a bus stop and refusing to move was held to be an obstruction under what is now s.137 of the Highways Act 1980 [...]

It was again emphasised in *Wade v Grange* [1977] R.T.R. 417 that what amounts to obstruction is primarily a question of fact and that the Divisional Court is only concerned with correcting mistaken applications of the law [...]

Whether particular facts amount to an unreasonable use would depend very much on the magistrates' local knowledge of the importance of the particular road; a long stay may not be out of order in a quiet residential side road, but it would be otherwise in a busy shopping street. An obstruction only comes into existence if there is an unreasonable use of the right of stopping (*Nagy v Weston* above), and it is a matter of degree (*Dunn v Holt* (1904) 68 J.P. 271) [...] In *Absalom v Martin*, where the nearest public car park was several hundred yards away, the defendant parked partly on the

carriageway and partly on the footpath and was endeavouring to carry on his business of bill posting in such a way as to cause the least inconvenience to pedestrians and other road users. A defendant who sold fruit from a barrow for 15 minutes, the barrow taking up 5ft in a 24ft road and customers causing further obstruction, was held to have been rightly convicted, as continuous selling does not mean that the barrow was not standing longer than was necessary (*Whitseside v Watson* 1952 S.L.T. 367). In *Bego v Gardner* 1933 S.L.T. 110 the conviction was upheld of a man who sold ices from his van parked in a cul-de-sac frequented by the public.

Leaving a car unattended for three hours, which was found to cause danger to the public and annoyance to the residents but which was not specifically found to cause an obstruction, was held to constitute the offence of leaving a car unattended for longer than was necessary to load or unload it (*Henderson v Gray* [1927] S.C.(J.) 43). A motorist parked his car in a line of cars in a street and left it there for five hours. He argued that, as he parked in a line of cars, he was not causing an unnecessary obstruction. The High Court held that he clearly caused one (*Solomon v Durbridge* (1956) 120 J.P. 231) ... Parking for five hours on a grass verge between the footpath and the wall was held to cause an unnecessary obstruction in *Worth v Brooks* [1959] Crim. L.R. 885, but in *Police v O'Connor* [1957] Crim. L.R. 478, quarter sessions held that it was not an unreasonable use of the highway to park a large vehicle outside the driver's own house in a cul-de-sac [...]

In *Seekings v Clarke* (1961) 59 L.G. 268, a case under what is now s.137 not involving a motor vehicle, it was said that anything which substantially prevented the public from passing over the whole of the highway (including the footway) and which was not purely temporary was an unlawful obstruction, subject to an exception on the de minimis principle. This case is discussed in *Wolverton UDC v Willis* [1962] 1 All E.R. 243.⁴

1.3 Traffic Regulation Orders (TROs)

A highway authority can ban parking in a specific area by way of a Traffic Regulation Order (TRO) made under Parts I and IV of the *Road Traffic Regulation Act 1984*, as amended. Section 2 of the 1984 Act sets out what TROs may be used for and it includes almost anything prohibiting, restricting or regulating the use of a road by traffic or pedestrians, including parking. Full details on the procedure for making TROs can be found in HC Library brief SN6013.

1.4 Parking restrictions

There are two types of on-street parking controls:

- 'Prohibited' parking is where there are yellow lines or clearway restrictions in operation and it is an offence to park on the adjacent pavement or verge; and
- 'Permitted' parking is where there are meter bays or resident bays.

Decriminalised parking enforcement (DPE) was introduced in England (outside London) in 1995. Under this system parking offences became civil rather than criminal offences and local authorities took responsibility for parking in their areas. On 31 March 2008 this was renamed civil parking enforcement (CPE) and some changes were made to the enforcement and appeals process. A general outline of the decriminalised/civil parking regime is given in HC Library brief SN2235

⁴ op cit., *Wilkinson's Road Traffic Offences*, paras 6.204-6.211

In areas where the local authorities have taken over responsibility for parking, cars parked on the pavement can be ticketed as contravening the parking regulations imposed by the local authority rather than for causing an obstruction.

1.5 Clean Neighbourhoods and Environment Act 2005

Part 2 of the *Clean Neighbourhoods and Environment Act 2005* introduced two new offences to prevent individuals parking vehicles on the street in order to sell them or in order to carry out repairs in the course of a business.

Under section 3 it is an offence for a person to park motor vehicles on a street, where the vehicles are parked merely in order to be sold. There must be two or more vehicles on the same street, no more than 500 metres apart, for the offence to be committed. The provision is not aimed at an individual selling a car privately; he has to be acting as part of a business. Under section 4 of the 2005 Act it is an offence to carry out 'restricted works' to vehicles on a road.⁵ Again, it does not apply to someone who can show he was not repairing the vehicle in the course of a business – although this is so only as long as it does not cause annoyance to persons in the area. A second exception is where the repairs arose from a breakdown or accident and are carried out promptly. The maximum penalty for both offences is a fine of £10,000 (level 4 on the standard scale); fixed penalties also apply.

2 Other attempts to legislate

2.1 Pre-1991

Prior to 1991 successive governments and individual Members of Parliament sought ways of combating pavement parking.

In 1974 Parliament provided for a national ban on pavement parking in urban areas in section 7 of the *Road Traffic Act 1974*. If implemented, this would have prohibited all parking on verges, central reservations and footways on 'urban roads'. The Secretary of State could have exempted certain classes of vehicles and individual local authorities could have made Orders within their own areas to exempt from the national ban certain streets at all times or during certain periods. However, full implementation required that the ban had to be brought in by Parliamentary Order and this never occurred. Successive transport ministers argued that there were difficulties for local authorities and the police in finding the resources to carry out the necessary policing and enforcement work. In 1979 the then Government decided to defer implementation indefinitely.⁶

In December 1986 the Department of Transport sought comments on a discussion paper, *Pavement Parking - Curbing an Abuse*. The paper looked at the reasons for pavement parking and the problems it caused. It put forward four options to tackle the problem involving a mixture of bringing the 1974 Act into force, providing more scope for TROs and making time for more private acts from individual authorities. Eighteen months later, the Government promised that that outcome of the review would be published "as soon as possible",⁷ but nothing happened. When the 1972 Act was repealed in 1988, section 36B (the 'national ban' mentioned above) became, without any amendment, section 19A of the *Road Traffic Act 1988* and the matter rested there. Regulations to put into effect the national

⁵ 'restricted works' are works for "the repair, maintenance, servicing, improvement or dismantling of a motor vehicle" or "the installation, replacement or renewal of any such part or accessory"

⁶ HC Deb 27 July 1979, cc631-2W

⁷ HC Deb 28 July 1988, c595W

ban were not brought forward because of the potentially enormous costs to local authorities and police of securing proper policing and enforcement of such a blanket ban. It was finally repealed by section 83 and Schedule 8 of the *Road Traffic Act 1991*.

2.2 2014

As explained in section 1, above, the current arrangements essentially give local authorities the powers to ban 'pavement parking' by introducing parking measures and prohibitions in their areas. Successive governments have taken the view that it should be for local authorities to take these decisions based on specific local needs.

However, in recent years there has been a renewed push to reintroduce a nationwide 'blanket ban'. This has been led by charities such as Guide Dogs for the Blind, and Living Streets and has garnered widespread support. They argue that:

Pavement parking affects people across the country. For many people — including those who have sight loss, parents with babies or toddlers in buggies, and wheelchair users — this is a serious problem. For someone who is blind, having to step off the pavement into the road because of a badly parked car can be extremely frightening.⁸

There are two bills seeking to address this issue in the 2014-15 Parliamentary session: one by Mark Lazarowicz MP to devolve powers to introduce a pavement parking ban to the Scottish Government and one by Martin Horwood MP to introduce a blanket pavement parking ban in England and Wales.⁹ Mr Lazarowicz's bill was instigated by problems Scottish MSPs have had introducing their own legislation in this area (see, e.g. Sandra White MSP's proposed *Responsible Parking (Scotland) Bill*). The Bill received Second Reading in the House of Commons in September 2014, but it may well be overtaken by further proposals for devolution to the Scottish Parliament. Mr Horwood's Bill has yet to receive Second Reading, currently slated for January 2015.

⁸ Letter to *The Times*, 12 September 2014 [from campaign groups, charities, politicians and others]

⁹ *Responsible Parking (Scotland) Bill 2014-15* and *Pavement Parking Bill 2014-15*