



ADVICE NOTE

PARKING ISSUES

Advice for dealing with parking issues in your block or estate

Note:

As the leading trade body for residential leasehold management, ARMA is also an important resource for leaseholders. Our Advice Notes cover a range of topics on the leasehold system to help leaseholders understand their rights and responsibilities and ultimately get the most out of living in their flat.

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SUMMARY

- Since 1st of October 2012 it is a criminal offence to clamp or tow away a vehicle on private land unless done by the police or local authority.
- So any clamping signs should be removed if they have not been removed already.
- Any clamping contracts need to be renegotiated.
- Ticketing of vehicles parked without permission is the alternative for owners of private property.
- Barriers are acceptable also.
- There needs to be clear signage about any ticketing arrangements in use.
- Discuss any parking issues with your managing agent to make sure you comply with the law and have cost effective means in place to control parking.

CLAMPING AND TOWING AWAY WAS OUTLAWED FROM 1ST OCTOBER 2012 UNLESS CARRIED OUT BY THE POLICE

THE BAN ON CLAMPING AND TOWING AWAY

Clamping and towing away was outlawed from 1st October 2012 unless carried out by the police, local authority, bailiffs or other government agency. The consent of the vehicle owner to clamping or towing away is NOT authority for it to be done. Sections 44 and 45 of the Protections of Freedoms Act 2012 refers ("the 2012 Act").

POWER OF THE POLICE TO REMOVE OBSTRUCTIVE VEHICLES

The Act allows regulations to be made to extend the power of the police to include the removal of cars parked on private land if they are obstructively or dangerously parked. Currently the police can only remove vehicles from roads. The regulations to implement this power are still awaited.

It is possible for an obstructive vehicle to be moved to an alternative position on a scheme if that can be done without damaging that vehicle, but the cost would fall on the client.

TICKETING

The ticketing and therefore fining of wrongly parked cars is legal and the 2012 Act has given extra power to ticketing.

Any landowner can issue tickets without the need for a licence. But landowners can only enforce the payment, if the driver or registered keeper does not pay, by going to the county court. There is also an appeal system available to drivers. It may be helpful to discuss with your managing agent the use of an accredited parking enforcement company who is a member of the British Parking Association.

Section 56 of the 2012 Act holds the registered keeper of a vehicle liable for any unpaid fine where the identity of the driver is not known provided that a specified procedure is followed. If the registered keeper fails to name the driver then he/she will be responsible for the fine. Before the 2012 Act, only the driver could be forced to pay a fine if the vehicle had been ticketed.

USE OF BARRIERS

Barriers can be used to prevent illegal parking and to enforce parking charges if required. It does not matter if the barrier is lowered or not. If you are considering the installation of a barrier do check with your managing agent whether the leases permit the recovery of costs.

ABANDONED VEHICLES ON PRIVATE LAND

Great care and appropriate caution are required when dealing with abandoned vehicles. Where the vehicle is left on the private land of a block of flats it becomes more complex for the agent. Local authorities have a duty to remove abandoned vehicles on land “in the open air”, including on private land, but may well be more cautious at becoming involved.

A word of warning: if you or your managing agent are contemplating removing, and possibly destroying, a car or van in a private parking area you need to understand that you are dealing with someone else’s property. As a consequence, you need to be able to demonstrate that you have acted with due care and in a manner that is appropriate to the circumstances. The fact that you may be under pressure from leaseholders to take swift action, that the vehicle constitutes a hazard, and even that society rightly regards the abandonment of vehicles as constituting anti-social activity, must not blind you to the consequences of action that may subsequently be regarded as being cavalier or draconian.

Does its presence contravene the lease?

Some leases will specifically refer to the fact that only vehicles that are taxed and in a roadworthy condition may be parked in the allocated parking area. Others may not. As a result, it may be perfectly acceptable that a vehicle that may look in poor condition and is out of tax but is not a hazard could be parked legitimately in the owner’s allocated parking space or in spaces allocated generally to residents.

Is it a health and safety hazard?

The health and safety of residents and their visitors must be the paramount consideration of those responsible for the management of buildings and their common parts. Therefore, if a vehicle is in such a condition whereby it could legitimately be regarded as a hazard, the landlord is entitled to take such action as to render the potential hazard harmless.

Is the vehicle abandoned?

A difficult question to answer and there are many examples where mistakes have been made. Reasonable steps to ascertain the status of any particular vehicle will include checking with DVLA and ticketing the vehicle. One Judge in such a case believed that the landlord should maintain a register of vehicles for each block although it is difficult to envisage how this might be achieved. However, a more practical solution might be to write to residents (or a group of them) to provide a further safeguard against a situation where a resident has allowed a relative to use their own allocated space to park a car whilst it is restored.

What action is appropriate?

If it is believed that a vehicle has been abandoned, then removal and disposal may be the only practical solution. If the DVLA check points to a non-resident, and other investigations lead to the same conclusion, consideration should be given to instructing a contractor to remove and dispose. Many local authorities have specialist units for this type of work and indeed many have their own direct link to DVLA.

Unless the vehicle needs removing as a matter of urgency, a notice should be affixed securely to the vehicle giving the owner a reasonable period of time within which to contact you prior to a final decision being taken. ALWAYS take a photograph of the vehicle with the notice attached to demonstrate that this action has been taken. If a contractor is used for this purpose, always ensure that they are prepared to give evidence in Court should the need arise. Good record keeping on the contractor's part will be useful as part of this.

There is no guarantee that a claim might not arise even in the most apparently straightforward case. Therefore proceed with caution, keep a clear paper trail and use photographs as evidence. If removal and disposal is to proceed, use the local authority if possible or a reputable contractor who will make a credible witness.

COSTS OF DEALING WITH ABANDONED CARS

It can cost a lot of time and money to remove abandoned cars. If the car belongs to a leaseholder there may be an opportunity to charge that leaseholder if the lease allows.

If the car has been abandoned by a non-resident then any costs involved may or may not be recoverable from the service charge funds; but a careful reading of the leases will be required to establish whether the position.

A managing agent who has to deal with abandoned cars may wish to discuss with their client whether additional fees are payable to the agent for what is not a normal part of the management services provided.



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UNTAXED VEHICLES

A vehicle parked on the street must be taxed and insured and, if it is aged three years or older, it must have a valid MOT certificate. If you wish to report a vehicle that does not appear abandoned, but does appear to be untaxed then please contact your nearest DVLA local office in writing (you can find the address online). This can be done anonymously. Details you will need to collect include:

- Make, model and colour of the vehicle;
- Registration number;
- Location of the vehicle;
- Name and address of owner (if known);
- Registered keepers will be legally responsible at all times for making sure they have a valid tax disc. They will be liable for penalties and fines if the vehicle is untaxed, dumped or caught up in any criminal activity (automatic penalty of £80 if the vehicle is not taxed at the time without any need to see the vehicle, and a penalty of £1,000 if taken to court UNLESS a statutory off road notice (SORN) has been declared).

A car can be parked off road and not display a tax disc, if it is the subject of a SORN registered at the DVLA. An enquiry to the DVLA will then confirm if the car is then subject to a SORN or not.

To check whether a vehicle is taxed, visit <https://www.vehicleenquiry.service.gov.uk>.

Note:

Whilst every effort has been made to ensure the accuracy of the information contained in this ARMA Advisory Note, it must be emphasised that because the Association has no control over the precise circumstances in which it will be used, the Association, its officers, employees and members can accept no liability arising out of its use, whether by members of the Association or otherwise.

The ARMA Advisory Note is of a general nature only and makes no attempt to state or conform to legal requirements; compliance with these must be the individual user's own responsibility and therefore it may be appropriate to seek independent advice.