

WHEN IS A CAR PARKING SPACE NOT A CAR PARKING SPACE?

There has been a lot of uncertainty over the last few years as to how to treat the grant of an ancillary car parking space in a lease. If a car parking space is granted to the Tenant as a "right" - normally in a Schedule to the lease containing all rights granted to the tenant - then the Landlord is treating the parking as a right granted over the Landlord's land ie an easement over the Landlord's land. There are still a great many leases around where parking is treated this way.

However, since an easement is a right that one person enjoys over another person's land, case law has held that there can be no easement which gives someone exclusive possession. The point of an easement is that there is an element of sharing with the owner of the land, your right cannot be so extensive as to deny the landowner use of his land completely.

The problem then arises with allocated car parking spaces. If a tenant is granted a "right to park" in their own individual allocated space, various cases from 2001 - 2006 have held that since an allocated space amounts to exclusive possession, a right to park in it cannot be an easement.

There can still be valid easements of a right to park in situations where, eg, there is parking on a "first come, first serve" basis which amounts to genuine sharing, with no guarantee to an individual allocated space. However, if a tenant has been granted a right to park in their own allocated space this is legally defective.

In practical terms this legal defect can have serious consequences. Since the law does not recognise a right to park in an individual allocated space as an easement, it will be treated legally as a mere licence between the original landlord and the tenant. This licence will NOT bind a purchaser of the landlord's interest, and a tenant then faces the risk that such a purchaser could either withdraw a tenant's "licence" to park or seek to negotiate a new payment for such a licence.

A tenant should therefore insist that if granted an individual parking space, then this space is included within the definition of the leased property.

If a tenant does insist on their individual car parking space being leased to them, a landlord in a leasehold development should consider the impact on maintenance and service charge, since normally the tenant would be responsible for the maintenance of their own leased property.

In all but the smallest development a landlord would be advised to be responsible for maintenance of car parking spaces and should therefore expressly provide in the lease that the Landlord will maintain the car parking space, notwithstanding its inclusion as part of the tenant's leased property.

The landlord should then be able to collect the cost of maintenance of car parking spaces via the service charge.

Finally, just as the law was becoming clearer on this point, late last year a House of Lords decision on a Scottish case from the Outer Hebrides has again muddied the waters. Although not a direct legal precedent in England and Wales Moncrieff v Jamieson involved a similar Scottish law of servitude. In that case the House of Lords did allow a right to park on an allocated space as a servitude. Two of the judges also commented that they doubted whether the previous (Court of Appeal) cases from England were correct in saying there could be no easement to park in an allocated space.

So the legal wrangling continues, but the message to take away is that, currently at least, under English and Welsh law a tenant has no "right to park" in an individual allocated parking space - an allocated space should be leased to the tenant as part of the tenant's leased property.

If you wish to discuss any of the issues raised in this article, or for information on any other commercial property matters, please contact Jenny Harbord of Murrell Ashworth LLP using the following details:

Tel: 01872 226994
Mob: 07854 030077

Email: jenny@murrellashworth.co.uk
Website: www.murrellashworth.co.uk

**murrell
ashworth**



Murrell Ashworth LLP
14 High Cross
Truro
Cornwall TR1 2AJ