

LEICESTERSHIRE COUNTY COUNCIL
HIGHWAYS FORUM FOR NORTH WEST LEICESTERSHIRE

15TH OCTOBER 2012

PARKING ON THE FOOTWAY

REPORT OF THE DIRECTOR OF ENVIRONMENT AND TRANSPORT

Purpose of Report

1. Following questions from a number of Highway Forums, this report looks at the problems of footway parking, the legal issues involved and the Council's powers to deal with them.

Background

2. Parking on footways and other paved areas is a common problem throughout the whole county. It is a source of irritation and it is recognised that it causes severe difficulties for some, especially those who are disabled, visually impaired or elderly, and for adults with young children in prams or pushchairs.

The Legal Position

3. It is an offence under section 72 of the Highway Act 1835 and section 34 of the Road Traffic Act 1988 for a vehicle to be driven on a footway except as a means to access a property.
4. Once parked on a footway, then one of the following offences MAY be committed:
 - Wilful obstruction of the Highway (section 137, Highways Act 1980)
 - Unnecessary obstruction (Section 42, Road Traffic Act 1988)
 - Leaving vehicles in a dangerous position (Section 22, Road Traffic Act 1988)
5. Drivers may only be prosecuted for any these offences by the police, though the ability of the police to take action will depend very much on individual circumstances.
6. In addition, Section 19 of The Road Traffic Act 1988 creates an offence of unlawfully parking a heavy commercial vehicle (operating weight above 7.5 tonnes) on the footway. However, a driver is not guilty of this offence if they can prove that their vehicle was parked for the purpose of loading or unloading that 'could not reasonably have occurred elsewhere', and that the vehicle was not left unattended.

7. If the road alongside where footway parking is taking place is covered by a waiting restriction then this restriction will normally also cover the footway. If this is the case then a penalty charge notice may be issued to the vehicle by a Civil Enforcement Officer (CEO).
8. Drivers may also be held liable for damage caused to verges or footpaths or to underground services.

Powers of the County Council

9. The County Council has very limited powers to deal with footway parking.
10. If a waiting restriction is present and in force in the adjacent carriageway (single or double yellow line), or a footway parking prohibition is in place (evidenced by regular signs to that effect), then a penalty charge notice may be issued to the vehicle by a Civil Enforcement Officer.
11. Where waiting or footway waiting restrictions are not present or in force then a penalty charge notice may still be served if the vehicle is blocking all or part of a dropped kerb intended for use by pedestrians to cross a road, for example those found at road junctions.
12. If neither of these is the case, then the County Council has no power to deal with the issue.

Powers of the Police

13. If footway parking amounts to obstruction then it is possible for the police to issue a fixed penalty notice. If the parking amounts to 'leaving vehicles in a dangerous position' then a successful prosecution may also lead to the imposition of three penalty points on the driver's licence.
14. However, in order for a prosecution to succeed, it is necessary for the police to demonstrate:
 - a) that an actual, as opposed to a potential, obstruction occurred (which means that a formal complaint must have been made), and
 - b) that a driver's action in parking on the pavement was unreasonable having regard to the duration, position and purpose of the parking.
15. From this, it can be inferred that a driver who places two wheels on the footway with the intention of allowing sufficient room for the free movement of traffic on the road cannot necessarily be said to be acting 'unreasonably', especially if by parking wholly on the carriageway an obstruction would be caused to large or emergency vehicles.
16. If, however, the action of parking wholly or partly on the footway means that a wheelchair user or a double buggy cannot get through and would have to use the road to pass by, then prosecution may be considered.
17. If footway parking is reported to the police, then their ability to take action will depend very much on the individual circumstances. Unless the vehicle is

causing a very real and unnecessary obstruction to other road (or footway) users AND somebody has made a formal complaint then prosecution action will not ordinarily follow.

18. It should also be noted that footway parking may necessarily be allocated a much lower priority than other ongoing issues and that a police response within a 'reasonable' time may not be assumed.

Damage to verges

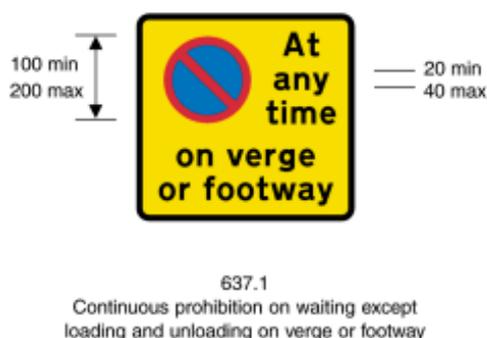
19. Another aspect to footway parking is damage to verges. The use of the grass verges for parking vehicles and driving over as a short cut can and does give rise to a good deal of unsightly damage, which not only spoils their appearance but can in some cases, cause damage to underground services.
20. From a technical viewpoint, it is an offence for a vehicle to be driven 'elsewhere than on a roadway' and drivers may be held liable for the damage caused to verges or footpaths or to underground services. However, it is rarely practical for the police or for the County Council as Highway Authority to pursue these aspects.
21. The cost of restoring damaged verges is significant, especially as damage occurs in many places across the County and, even if repaired, may soon occur again. For this reason, the County Council has a policy with regard to the repair of damaged verges:

Highway verges that are either damaged through parking or over-riding will not be repaired except in the following circumstances:

- *Where repair or improvements of a highway verge are required, as part of a scheme to address road safety, meeting the usual criteria required in bringing forward road safety improvements.*
- *Where repair or improvements to a highway verge should reasonably be included within highway maintenance works proposed at the same location, (the highway maintenance works meeting the usual criteria to be undertaken).*
- *Where repair or improvements to a highway verge should reasonably be included within highway improvement works proposed at the same location, (the highway improvement works meeting the usual criteria to be undertaken).*
- *Where another authority or third party wholly funds repairs or improvements to a highway verge.*

Prevention of Footway Parking

22. It is possible to prohibit waiting on a footway or verge, though this is an expensive process as it requires a Traffic Regulation Order. It is also a legal requirement that the Order is backed up by signs such as the one below placed at a maximum of 60 metres apart. This adds considerably to the cost and is also a further maintenance liability for the Council. In those areas of the country that have implemented these restrictions, enforcement has proven difficult, as the absence of any one such sign can negate the ability to properly enforce and they are often in areas that are not on the CEO's 'beat'. Finally, these restrictions are not popular with local residents so any proposal may have to be abandoned if significant objections are received during the TRO process.



23. The only physical solution to prevent footway parking is to erect bollards, but this will very rarely be justified. The introduction of bollards merely transfers the problem elsewhere and it is not possible, nor practical, for the Highway Authority to erect bollards on every footway throughout the county where, on occasion, such problems exist. Experience has also shown that bollards, even where they are erected, are frequently broken or damaged and the Council is then presented with the additional maintenance costs.
24. The other approach to preventing footway parking is education. This approach was used successfully by Charnwood Borough Council last year in their 'Pavement Parking Campaign'. An example of the flyer distributed in the Charnwood area is shown in the Appendix to this report, and further details of the initiative may be found in the report to the Charnwood Highways Forum on 12 July 2011:
[http://politics.leics.gov.uk/Published/C00000699/M00003157/AI00028674/\\$pavementparking.doc.pdf](http://politics.leics.gov.uk/Published/C00000699/M00003157/AI00028674/$pavementparking.doc.pdf)

Partial Pavement Parking

25. Although the Highway Code (Rule 244) states that you should not park partly or wholly on the pavement, the provisions of the Road Traffic Regulation Act 1988 (section 32) enable the Highway Authority to introduce a traffic regulation order to designate an area as 'Partial Pavement Parking'. In this instance, parking bays are marked on the road and footway to show the extents of the parking provision, and signs are provided to indicate that such parking is allowed.

26. There is an example of this type of parking in Loughborough, shown below. Note how the central area of the carriageway is kept clear to allow access for large vehicles, whilst still giving sufficient access on the footway.



27. This type of provision is only practical where sufficient footway width exists to still allow the passage of wheelchairs or double buggies. It should be noted that the cost of provision of this type of parking is unlikely to be justified under the Local Transport Plan unless there are serious and ongoing issues of access by the emergency services.

Conclusions

28. Footway parking is widespread around the county and, in many cases, causes no problems.
29. Where problems are being reported, the County Council and the police have powers to intervene in certain circumstances but, in the majority of cases, no action can be taken.
30. Where practical, education is the best option.

Recommendation

31. It is recommended that the Forum notes the contents of this report.

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