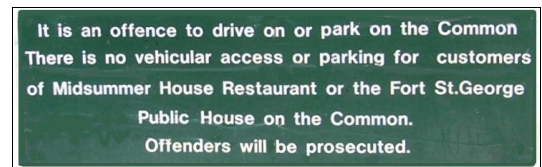


Parking on Midsummer Common

1. Midsummer Common is 'common land' owned by Cambridge City Council. National and local legislation¹ prohibits the unauthorised driving and parking of motorised vehicles on the Common. The Common is fenced with locked gates to control vehicular access.



2. Three properties are encircled by the Common and the river Cam. The House of Lords has ruled² that residents may drive across the Common if it is their sole means of access but this does not entitle them to park on the Common. The Council has ruled that vehicles servicing the two commercial properties, the Midsummer House Restaurant and the Fort St George Public House, may also drive across the Common but are not allowed to park. This traffic uses the gate (see picture "a" above) at which there is a notice restricting general access.



3. The two properties have been given keys to the gate and have been told³ to keep it closed "immediately after use" and not to park on the Common. The gate is all too frequently left open inviting vehicles to enter and park on the Common - outside the two properties and elsewhere (see the pictures below). This is a long running problem and offenders have not been prosecuted.



4. **The gate is the first problem.** It is not secure. If left unlocked, the gate swings open inviting anyone to drive onto the Common. The locking system of chains, padlocks and keypads fails because it is difficult to keep keys and codes secure, because users are too lazy to relock them, and because vandals destroy them.

5. Back in April 2008, when seeking election to the Council, Tim Bick wrote to voters saying that "The Council is arranging to install a new electronically-controlled gate, which will close automatically after a vehicle has passed through". Three years have passed but nothing has been done. This inaction is despite FoMC and BruNK bringing this to the attention of the Council on a regular basis.

6. The Council has now told FoMC⁴ that "Officers are currently in the process of providing a self-closing gate which is accessed by fob". This is what was said in 2008. The Council has gone a bit further this time in saying that "The gate is currently being fabricated". Subsequent discussions raised doubts but the Council's Open Space Manager said that a year-end installation is possible.

7. An automated barrier to control vehicular access to the Common at this entry point is essential if illegal parking is to be stopped. History at the site would suggest that a gate is not the best solution but deference must be given to the professional judgement of Council officers and the Executive Councillor. FoMC and BruNK take the view that technological advances and practical experiences point towards a rising kerb being a better way of controlling vehicular access. Time will tell who is right.



8. Whether it is a gate or rising kerb, Officers wish to see it controlled by a fob and mobile phone. Both the Restaurant and Public House will be given a fob so that at the push of a button they can open the gate remotely. Council staff will be able to do the same using a mobile phone. It is said that "the gate itself will be able to record usage" but it is unclear whether it can differentiate between fob users. This method of gate control differs from more conventional methods using card readers. Time will tell whether it works effectively.



9. Better signage would help. There was once a "No entry" sign on the existing gate (see picture "a" above) but this was removed by a Council officer. This action should be reversed. The public should be told not to enter and drive on the Common without authority. And they should be warned that offenders will be prosecuted. So a new sign should be installed and the redundant "green" notice removed.



10. **Enforcement is the second problem.** Unauthorised driving and parking of vehicles on the Common is a criminal offence¹. The police have been given powers to stop unlawful driving on common land⁵ but have not been called into action. The Council's own notice by the gate says that driving and parking offenders "will be prosecuted". But the Council admits⁶ that "There have been no prosecutions for driving or parking on Midsummer Common". These failures encourage further offenders.

11. The Council's own Enforcement Policy⁷ calls for formal action under certain circumstances, including the "contravention of legislation" and where "there is a demonstrable harm to the amenity of the area". Clearly, action should have been taken to stop the unauthorised driving and parking of vehicles on the Common.

12. The Enforcement Policy goes on to say that "fixed penalty" notices can be applied for specific offences. Local byelaws say that parking on the Common constitutes an offence and attracts a "fixed penalty" fine. The Council fails to impose such a fine. Parking on Council-owned land is trespass and it is well established practice in the civil courts to allow the retention of property until fines are paid; vehicles can be clamped for this purpose. The Council's Enforcement Policy is to proceed through a formal caution to a prosecution but it has failed to do this and the problem persists.

13. Cambridge City Council has been negligent in its duty to enforce the law. The Council now says⁴ that it has a "clear working process" for enforcement which will be implemented once approved by lawyers. The Council has not disclosed this new "working process".

Endnotes

1. 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. 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. Cambridge byelaws state 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" and "Every person not lawfully authorised or permitted so to do, who shall ... place any caravan or carriage upon any such Common Pasture" have committed an offence and are liable for a fine.
2. 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).
3. In letters sent by the Council in May and repeated in October 2011.
4. In a letter dated 13 October 2011.
5. 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".
6. Cambridge City Council response to Freedom of Information request 1496.
7. Cambridge City Council, *Enforcement Policy*, March 2010.

FoMC October 2011