



Can a landlord relocate car parking spaces in a lease to redevelop?

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Summary

For some years, there has been doubt over whether a right to park a car in a single defined space, as opposed to a general right to park anywhere in a larger area, is an easement.

The distinction between having a car parking space being demised under a lease and merely having a right to use it by way of an easement is important because it affects whether the landlord has rights over the space and can govern whether or not a tenant is entitled to have the use of any space included in a new lease.

If the tenant has an easement over the space, the landlord may still be able to make some use of it. If, on the other hand, the tenant has a lease of the space, then the tenant will usually have exclusive possession, not just of the area on the ground, but also the air space above it as well and the landlord may be excluded from it altogether.

In a recent case, however, the Court decided that a landlord did not have a right to move tenant's designated parking spaces and so deprived the landlord from the right to develop.

The Law

In *Kettel v Bloomfold Ltd*, the tenants owned long leases of a residential flat in a block in the East End of London. The landlord owned the freehold of the development. Each flat had the benefit of the use of a designated parking space.

The landlord took the view that it was entitled to relocate the car parking spaces, in order that it could build another block of flats on the car park. It wrote to the tenants advising them to get in contact to arrange to park somewhere else and then fenced off the existing spaces.

The court discounted the possibility of the spaces being included in the tenants' leases and ruled that, on the basis of the tenants' individual rights to park in designated spaces, they did take effect as easements.

The landlord tried to argue that it had a right to change the designated parking spaces. The easement in this case did not expressly permit the developer to vary the space which is allocated and the court determined that no right to vary the space would be implied.

Practice points

- A right to park a car in a single defined space is capable of existing as an easement.
- There is no general right for a burdened landowner to relocate an easement which affects his land, unless the grant expressly provides for this.
- Landlords should consider retaining rights to give tenants alternative spaces or keep spaces unallocated
- Care should also be taken with rights of way and personal licences as permanent rights can be established by long user (A wake up call for land owners)

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For further information please contact Matthew Spring of the Property Disputes Team by email or on 020 7465 4300.

10 New Square, Lincoln's Inn, London WC2A 3QG

DX 40 London/Chancery Lane
Tel: 020 7465 4300 Fax: 020 7465 4400 www.phb.co.uk

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