

# Transport and Environment Committee

10.00am, Thursday, 5 December 2019

## Gilmore Place Driveway Parking Overhanging Footway – Response to Motion

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### 1. Recommendations

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- 1.1 It is recommended that the Committee:
  - 1.1.1 notes the contents of the report; and
  - 1.1.2 discharges the [approved motion](#) of the South East Locality Committee on 21 January 2019.

**Paul Lawrence**

Executive Director of Place

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## Gilmore Place Driveway Parking Overhanging Footway – Response to Motion

### 2. Executive Summary

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- 2.1 Gilmore Place is a residential street in the city centre ward. Over several years, property owners have created parking spaces replacing front gardens along Gilmore Place that are accessed by driving across the footway. Some vehicles subsequently overhang the public footway, which causes an obstruction of the footway adjacent to a busy road due to insufficient depth of garden space.
- 2.2 Converting front gardens into off-street parking spaces is commonplace across the city.
- 2.3 The average car length is around 4.5 metres. Some smart cars can be around 2.5 metres in length and some executive saloons are over five metres.
- 2.4 The Council has some powers to resolve the issue of pavement parking. Following Royal Assent, the Transport (Scotland) Bill may offer additional assistance in dealing with some pavement parking issues currently not addressed. The legal definition of the “road” includes the footway. However, the Council has limited powers to resolve the issue of vehicles overhanging the footway where no wheels are on the road.
- 2.5 The Committee is requested to discharge the motion by Councillor Mowat approved by the South East Locality Committee on 21 January 2019 that requested a report setting out what enforcement regimes (planning, parking and regulatory) are available to the Council to enable free access along the footway for pedestrians. This report is passed to the Committee following the dissolution of Locality Committees earlier this year.

### 3. Background

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- 3.1 Gilmore Place is a street in the Tollcross area of the city and lies within the Marchmont, Meadows and Bruntsfield Conservation Area. The street is mainly residential with tenemental and individual dwellings with several sections of business/retail properties with frontages.

- 3.2 Gilmore Place lies within two residential parking zones: Zone 8 of the Central Area Controlled Zone (CACZ) (about 70% of bays are for residents parking) and Zone S3 (which is mostly providing residential parking bays).
- 3.3 Throughout the street many residents and guest houses with front gardens have converted some or all their garden to allow for off-street parking.
- 3.4 In some instances, the depth of garden space available for parking is limited and vehicles often overhang the footway. This presents an obstacle for pedestrians.

## 4. Main report

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- 4.1 Pavement parking has been a well-documented issue throughout the city. As demand for on-street parking and parking charges increases, there is also a demand on creating private off-street parking by converting front gardens.
- 4.2 Some residents in Gilmore Place have converted their gardens into parking areas, despite not having sufficient depth to ensure that all sizes of private motor vehicles adequately clear the footway when parked. Gilmore Place is not unique in this respect, with many other locations across the city also affected, causing inconvenience to pedestrians, people in wheelchairs or on mobility scooters, people with visual impairments, and people with prams or pushchairs.
- 4.3 The Highway Code rule 244 states that drivers should not park partially or wholly on the pavement unless signs permit it. There is also some legislation covering parking issues.
- 4.4 The following sets out the legislation and powers of the Council in relation to pavement (or footway) parking.

### **Current Legislation - Planning**

- 4.5 The Council's Planning Guidelines for Householders (February 2019) suggests that parking in front gardens will not normally be allowed in a conservation areas or listed buildings, where loss of original walls or railings and the creation of a hard surface would have an adverse effect on the character and setting of the area, or a listed building and its special architectural or historic interest. A building warrant is also needed where the hard-paved area is more than 200 square metres.
- 4.6 Hard surfaces between houses within conservation areas or within the curtilage of a listed building and the road are not permitted development. Similarly, if the hard surface is not either made of a porous material or designed to let water run off onto a porous area, planning permission is required.
- 4.7 Planning Guidelines for Householders does provide planning guidance for access and parking. The guidance suggests "a parking space will normally be allowed if the front garden is at least six metres deep, with a maximum area of 21 square metres or 25% of the front garden, whichever is the greater. The design should be such as to prevent additional parking on the remainder of the garden area, e.g. by using kerbs, planting boxes or changes of level. The access should not be wider

than three metres.” There are many parking spaces and driveways throughout the city that do not meet these guidelines.

- 4.8 Planning may grant permission for driveway areas. Planning may place conditions on applications; however, such conditions are unlikely to restrict the size or type of motor vehicle that may utilise the space or to prevent overhanging of the footway as such conditions are not enforceable. Alternatively, there may be reasons for planning permission to be refused (e.g. because it does not address the requirements for water run-off). It is the applicant’s responsibility to apply for and obtain any other relevant permissions (e.g. to cross a footway) from the Council in its capacity as Roads Authority.

### **Current Legislation – Roads Legislation**

- 4.9 Unless the pavement is lowered to permit access into a property, it is an offence to drive over the pavement.
- 4.10 There is no statutory definition of what constitutes an obstruction.
- 4.11 Section 72 of The Highway Act 1835 states an offence is committed by any person who wilfully rides “upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers”. While the definition applies to the act of driving on the footway, it does not specifically address overhanging vehicles from private gardens.
- 4.12 The Road Traffic Act 1988 (Section 22) states that it is an offence “if a person in charge of a vehicle causes or permits the vehicle or a trailer drawn by it to remain at rest on a road in such a position or in such condition or in such circumstances as to involve a danger of injury to other persons using the road.” While the definition of a road includes the footway, it does not specifically address overhanging vehicles from private gardens.
- 4.13 It is an offence to leave a vehicle in such a way as to cause an obstruction to other people. Section 99 of the Road Traffic Regulation Act 1984 and the Removal and Disposal of Vehicles Regulations 1986 (as amended) grant police constables powers to require the owner, driver, or person in charge of a vehicle which is causing an obstruction to other people (which includes pedestrians) to move that vehicle. A police constable can also arrange for such a vehicle to be removed if the person responsible will not move it or cannot be found, a charge will be made to the vehicle owner if the vehicle is removed.
- 4.14 Section 59 of the Roads (Scotland) Act 1984 states “nothing shall be placed or deposited in a road so as to cause an obstruction except with the roads authority’s consent in writing and in accordance with any reasonable conditions which they think fit to attach to the consent” and “be required by the roads authority or by a constable in uniform to remove the obstruction forthwith, and commits an offence if he fails to do so.” While the definition of a road includes the footway, it does not specifically address overhanging vehicles from private gardens.
- 4.15 Section 129(2) of the Road (Scotland) Act 1984 states “a person who, without lawful authority or reasonable excuse, places or deposits anything in a road so as to

obstruct the passage of, or to endanger, road users commits an offence". While the definition of a road includes the footway, it does not specifically address overhanging vehicles from private gardens. Section 129(8) of the Road (Scotland) Act 1984 states without prejudice to the subsection referred to in 4.13 above, a person commits an offence who, over or along a footway, places a shade, awning "or other projection" less than either or both:

- (a) 2.25 metres above the level of the footway;
- (b) 50 centimetres inwards from a carriageway.

The words shade and awning suggest that the offending structure must be affixed to a building and that it overhangs or juts out across a footway or carriageway. However, it cannot be applied overhanging vehicles.

### **Current Legislation – Parking Enforcement**

- 4.16 Restrictions on waiting, loading, and unloading apply to Gilmore Place under The City of Edinburgh Council (Traffic Regulation; Restrictions on Waiting, Loading and Unloading and Parking Places) (Variation No 1) Order 2010 TRO/09/76.
- 4.17 Traffic orders are used to place single and double yellow lines and blips along sections of the road that are legally enforceable.
- 4.18 Parking Operations will carry out parking enforcement of parking infringements by way of issuing penalty notices. If vehicles are parked with one or more wheels on the footway, then enforcement action is currently available to the Council where there are restrictions in effect on the adjacent road. The parking enforcement applies on the road and across the footway to where it meets the adjacent property boundary.
- 4.19 In 2018/19, 984 parking tickets were issued in Gilmore Place. A further breakdown of figures for the period July to October 2019 is provided:
  - July – 97 parking tickets, 7 issued to vehicles parked on the footway, of these 1 was overhanging from a driveway.
  - Aug – 113 parking tickets, 4 issued to vehicles parked on the footway, 0 issued to vehicles overhanging from driveways.
  - September – 98 parking tickets, 1 issued to a vehicle on the footway and it was overhanging from a driveway.
  - October – 126 parking tickets, 5 issued to vehicles on the footway, including 2 for overhanging the driveway.

### **New Legislation**

- 4.20 The Transport (Scotland) Bill for an Act of Parliament to prohibit the parking of vehicles on pavements and prohibit double parking was introduced by the Cabinet Secretary for Finance and Constitution, Derek Mackay MSP, on 8 June 2018. The Bill passed Stage 3 on 11 October 2019.
- 4.21 Chapter 4, Part 4 of the Transport (Scotland) Bill states that for the purposes of the pavement parking prohibition "a person must not park a motor vehicle on a pavement" and a motor vehicle is parked on a pavement if "it is stationary, and one

or more of its wheels (or any part of them) is on any part of the pavement” whether or not “the driver of the vehicle is in attendance at the vehicle” or whether or not “the engine of the vehicle is running”.

- 4.22 Various exemptions and conditions apply as outlined in the Bill (see background information for more information).
- 4.23 Contravention of a pavement parking prohibition can result in a penalty charge payable by the registered keeper of the motor vehicle.
- 4.24 The Bill is still to be submitted for Royal Assent, after which it becomes an Act of Scottish Parliament. There is no timeline for when the implementation of the legislation.

### **Summary**

- 4.25 If vehicles are parked with one or more wheels on the pavement, then enforcement action is available to the Council where a vehicle is parked on the road.
- 4.26 If vehicles are parked with their wheels clear of the footway within a driveway but have portions of their bodywork overhanging the footway, then enforcement issues are likely to become a matter for the Police who would have to consider the extent of the obstruction and whether to take further action.
- 4.27 Planning may refuse permission although the applicant can appeal their decision. Planning cannot place conditions on approval over the length of vehicle or how a vehicle is parked as such conditions are not enforceable. It is therefore up to the applicant to be satisfied that they can legally park a vehicle in their driveway.

## **5 Next Steps**

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- 5.1 The Council will adopt changes that allow it to enforce any new legislative powers to assist with controlling illegal or inconsiderate parking.
- 5.2 Parking Operations enforce existing parking infringements.
- 5.3 A communications plan will be developed to raise the profile of improving parking along Gilmore Place. This will include an assessment of the issue that will lead to letters to premises where parking has been identified as a problem. As there are several guest houses in the area, it is worth considering timing any activity around May 2020 to coincide with the increase in guest house occupancy.
- 5.4 A similar approach will be taken to alert residents to the issue of inconsiderate parking and that this causes issues for pedestrians, wheelchair users, and others with mobility issues in terms of blocking footways. A similar approach will be taken that was used to tackle communal bins blocking footways.
- 5.5 Further work will be undertaken to ensure better links between Planning and Roads Authority functions around planning application considerations, permits and other access permissions to ensure where allowed that no permissions are granted where driveway depths are insufficient.

- 5.6 The conditions of the permit application for dropped crossings will be revised to assess whether there is sufficient driveway depth and adequate access before granting a permit. Insufficient driveway depth should be considered as a reason for refusal to grant permission.

## **6 Financial impact**

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- 6.1 There are no financial impacts associated with this report.

## **7 Stakeholder/Community Impact**

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- 7.1 The public will be required to comply with legislative changes that affect their ability to park vehicles in their street or at their home.
- 7.2 Any enforcement action improves the accessibility and safety of the road and footway network for pedestrians and other users.
- 7.3 Converting front gardens into areas of hard standing impacts on sustainable urban drainage, leading to increased flood risk, and reduces areas for wildlife. The planning guidelines aim to mitigate this impact.

## **8 Background reading/external references**

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- 8.1 [Decriminalised Traffic and Parking Enforcement in Edinburgh – report to Transport and Environment Committee 17 May 2018.](#)
- 8.2 [Sustainable drainage systems – A guide for local authorities and developers](#)
- 8.3 [Planning Guidelines for Householders.](#)
- 8.4 [Transport \(Scotland\) Bill as passed on 11 October 2019.](#)

## **9 Appendices**

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- 9.1 None.