

BRIEF ENCOUNTER

PARKING BAYS

Q: I bought a flat recently with a long lease. A single allocated parking bay comes with my two-bedroom property, which is in a block of 40 flats. I am not always there but every time I arrive someone is parked in my bay. There is no consistent pattern (i.e. no repeat offenders), and it tends to be a mixture of residents and non-residents. Unfortunately, although access to the parking is gated, it is not securely controlled: driving up to the barrier opens the gates automatically.

What rights do I have to force the landlord to incorporate a more secure entry system or to "police" unauthorised parking? Also, how can I enforce my right to my parking space without having to knock on every resident's door?

A: If anyone uses your parking space they commit a trespass or a nuisance, and you have a right to stop them. If you want the landlord to crack down on other flat owners, check the terms of your own lease. First, see whether there is a right to require the landlord to take action against other leaseholders under the terms of their own leases. Second, check whether there is a specific ban on using or obstructing other residents' parking spaces (the ban may be a clause of the lease itself or in a list of regulations in a table at the end). The overwhelming likelihood is that your neighbours will be under similar obligations in their leases. If these two provisions exist, your landlord can be required to take action against your neighbours, if necessary by court proceedings.

It is harder to get the landlord to take action against strangers. Anyone who encourages or approves of the use of the space by non-residents would be liable in the same way as the drivers themselves (for example, if the landlord encouraged customers to park in your space to visit a shop). It could also be argued that failing to take action is a breach of the landlord's obligation to give you "quiet enjoyment" of your property and not to "derogate" from the lease granted to you.

You can also take action against the drivers yourself. You could (at least in theory) sue them for an injunction and damages for breach of your right to use the space. You can also take other drastic measures such as wheel clamping, although the rules are complex and you will need to use a warning sign and a licensed contractor. However, the answer may be simply to buy yourself a plastic "No Parking" cone.

Mark Loveday is a barrister at Tanfield Chambers (020-7421 5300). E-mail your questions to: property.consumer@thetimes.co.uk