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Independent information and scrutiny for Noble Court

# ANPR PARKING ENFORCEMENT PROPOSAL FOR NOBLE COURT

## Corporate governance, leasehold rights and legal risk report - revised ownership analysis

| | |
|---|---|
| **Development** | Noble Court / Church Mews |
| **Property structure** | 40 leases / flats |
| **Corporate membership** | 35 company members |
| **Subject** | Proposed third-party ANPR / PCN enforcement regime |
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## Purpose

To identify the legal bridge - if any - between the Company's corporate powers and a regime that conditions the exercise of individual leasehold parking rights on registration with a private operator, while exposing vehicles to parking charges.

## Status

A structured risk analysis commissioned and produced by noblecourt.estate, based on the supplied 1988 Memorandum and Articles, the lease wording described below, and the proposed scheme. noblecourt.estate is an independent residents' information website and is not an official publication of Church Mews Management Company (Mitcham) Limited, its directors, freeholder or managing agent. It is not a solicitor's opinion and should not be treated as a prediction of litigation.

# 1. BOARD-LEVEL CONCLUSION

The project presents a **high legal and governance risk in its proposed enforcement form**. The Company appears to possess broad powers to manage the estate and appoint contractors. That does not establish a power to rewrite, burden or penalise the exercise of rights granted by 40 separate leases.

### The crucial distinction

There are **40 leases but 35 company members**. Leasehold rights exist under each lease. Corporate voting rights exist under the Articles and register of members. A majority - or even a valid Special Resolution - of 35 members does not automatically amend the proprietary and contractual rights contained in 40 leases.

On the material reviewed, designated parking spaces are included within the demise and the lease grants an express right to park a private motor vehicle, subject to stated vehicle-type restrictions. No identified lease term requires third-party registration, use of an app, payment of a £5 annual registration charge, submission to ANPR monitoring, or liability for a £100 parking charge while otherwise parking in accordance with the lease.

Accordingly, the Board should not treat member support, general objects, Article 34 management powers or Article 37 bye-law powers as interchangeable with lease authority. Enforcement against compliant leaseholders should remain suspended unless a specialist solicitor identifies a defensible contractual route and the operational, land, data, procurement and financial risks are closed.

## Recommended corporate decision

Do not execute or activate an operator agreement until the full contract, land ownership, camera field of view, lease matrix, voting basis, Article 37 procedure, data-controller allocation, DPIA, financial exposure and legal opinion have been documented and approved through a properly minuted process.

# 2. THE 40-LEASE / 35-MEMBER STRUCTURE

This revised report separates four legal capacities that must not be collapsed into a single idea of 'the residents'.

| Capacity | Population / document | Legal significance |
|---|---|---|
| **Leaseholder** | 40 leases; ownership may be concentrated among 35 members | Rights and covenants arise under each individual lease. Enforcement authority must be tested lease by lease unless identity is proved. |
| **Company member** | 35 members | Voting entitlement derives from the Articles and register of members, not merely the number of flats or leases owned. |
| **Director** | Board as constituted from time to time | Directors manage the Company's business, subject to statute, constitution, proper purposes, duties and reserved member decisions. |
| **Landowner / freeholder** | Separate from this management-only RMC | The RMC cannot grant installation or surveillance rights over land it does not own or control beyond authority actually conferred on it. |

## Voting consequence

The working assumption previously supplied is one member, one vote. That must be verified against the operative Articles and the current register of members. A person owning two, three or four leases does not necessarily receive two, three or four company votes. Conversely, joint owners, nominees, corporate owners and membership formalities can affect who is entitled to vote.

## Lease consequence

Even if all leases use a common precedent, the Company should verify all 40 executed leases and any deeds of variation. The earlier statement that 'all 35 leases are identical' was both numerically wrong and evidentially too absolute. The correct due-diligence statement is: there are 40 leases held by 35 members; material identity of terms must be verified from the executed documents.

# 3. DOCUMENT HIERARCHY AND DECISION RIGHTS

The ANPR proposal crosses several legal layers. Authority at one layer does not cure a defect at another.

| Layer | Question that must be answered | Current assessment |
|---|---|---|
| **Land title** | Who owns the entrance road, mounting point and land within the camera field of view? | Unresolved; the reception road is said to be adopted. RMC title/consent cannot be assumed. |
| **Leases** | What clause permits registration conditions and third-party charges against compliant parking? | No such clause identified; high-risk gap. |
| **Memorandum / Articles** | Can the Company manage parking and appoint contractors, and what procedure applies? | Broad powers appear to exist, but remain bounded by lease rights and Article 37 procedure. |
| **Board duties** | Has the Board informed itself, acted for proper purposes and evaluated foreseeable risk? | Requires full contract, advice, evidence and minuted consideration. |
| **Data protection** | Who determines purposes and means; is surveillance necessary and proportionate? | Controller status, lawful basis, transparency and DPIA must be resolved before deployment. |
| **Operator contract** | Who bears revenue, complaints, cancellation, indemnity and exit risk? | Unknown until complete unredacted agreement and schedules are disclosed. |

Corporate capability is therefore necessary but not sufficient. The Board needs affirmative authority across every relevant layer before it can responsibly commit the Company.

# 4. LEASE ANALYSIS

## 4.1 Demised space

The supplied demise includes the flat and 'all that the parking space shown edged blue on the said plan'. A specifically demised bay is legally stronger than a revocable permission to use an unallocated communal space.

## 4.2 Express parking and access rights

Clause 1(l) is reported to confer a right to park at any one time in not more than one marked parking space a private motor vehicle, subject to stated restrictions. The lease also grants a right 'at all times ... to pass and repass with or without vehicles over and along the drives and forecourts comprised in the estate'. The parking space is to be used for private vehicles only and not for commercial vehicles, caravans, boats or trailers.

## 4.3 The proposed additions

- registration of vehicle details with an external operator;
- use of the operator's app or system;
- a £5 annual third-party registration payment;
- continuous capture and processing of number plates;
- potential £100 parking charges;
- a new appeal and cancellation process controlled contractually by a third party.

None of those conditions has been located in the lease wording reviewed. Their novelty matters because the lease already defines the grant and states particular restrictions.

## 4.4 Rules for gardens and grounds

An express power to prescribe reasonable rules for enjoyment of gardens and grounds shows that the draftsman knew how to confer a continuing rule-making power. Its existence does not necessarily extend to imposing financial liabilities on use of a demised bay. Any reliance on it would require careful construction of the complete clause and plan.

## 4.5 Enforcement of existing covenants versus creation of new obligations

The Company may have remedies for an actual breach of lease - for example prohibited vehicle type or misuse. That is conceptually different from creating a new operator-facing obligation and treating non-registration as though it were a breach of lease.

# 5. CONSTITUTIONAL AND CORPORATE ANALYSIS

## 5.1 Memorandum objects

Objects A, E, F, H, K and U reportedly provide broad capacity relating to management, parking areas, contractors, regulation and ancillary acts. These provisions materially weaken any contention that the Company lacks all power to manage parking or appoint an operator.

## 5.2 Article 34

Article 34 places management of the Company's business with the directors, subject to legislation, the Articles and matters reserved to members. It is a governance allocation, not a deed of variation and not an independent source of rights over demised property.

## 5.3 Article 37 bye-laws

Article 37 reportedly permits the directors to make, alter or revoke bye-laws, subject to confirmation by Special Resolution at the next AGM, failing which an unconfirmed bye-law ceases at the end of that meeting. The Board should state whether it characterises the scheme as a bye-law. If so, it must disclose the exact text, adoption date, notice and proposed confirmation.

## 5.4 Meetings

Article 13 reportedly requires 21 days' written notice for an AGM and a meeting called for a Special Resolution. Article 16 reportedly sets a quorum of two members present in person or by proxy. A valid meeting also requires correct recipients, form of notice, resolution wording, voting entitlement, proxies, chairing and minutes.

## 5.5 Directors' statutory duties

Companies Act 2006 sections 171-174 require directors, among other matters, to act within powers and for proper purposes, promote the success of the company, exercise independent judgment, and exercise reasonable care, skill and diligence. A five-year or otherwise long-term 'free installation' contract with material exit, indemnity, data or dispute exposure demands informed scrutiny, not merely reliance on the operator's sales presentation.

# 6. MEMBER APPROVAL: WHAT IT CAN AND CANNOT DO

A Special Resolution under Companies Act 2006 section 283 ordinarily requires at least 75% of the votes cast by members entitled to vote. It is not ordinarily 75% of all 35 members, nor 75% of the 40 leases.

## Illustration only

If seven members validly voted and six voted in favour, the percentage of votes cast in favour would be 85.7%. That may satisfy the statutory percentage, assuming the Articles, notice, quorum, proxies and voting rights were all complied with.

**But the result does not answer the lease question**

A corporate resolution may authorise the Company, ratify an internal bye-law or direct governance action within the constitution. It does not automatically bind a leaseholder to a new proprietary burden, create a contractual debt to a parking operator, or vary 40 leases.

## If variation is required

The safest mechanism is ordinarily an agreed deed of variation for each affected lease, with appropriate freeholder, mortgagee and registration considerations. Statutory lease-variation routes are specialist territory and cannot be presumed available merely because a majority supports the policy.

The 40/35 structure creates a further fairness issue: a member with several leases may have one company vote but several demised bays exposed to the regime. Conversely, a corporate vote cast once cannot be treated as multiple consents to alter multiple leases.

# 7. DEROGATION FROM GRANT AND QUIET ENJOYMENT

The covenant against derogation from grant prevents a grantor from substantially depriving the grantee of the benefit of what was granted. In *Saeed v Plustrade Ltd* [2001] EWCA Civ 2011, a general management power could not be used so as substantially to reduce the benefit of an express parking right.

## Application to this proposal

A court would examine practical effect. Capturing number plates is not, by itself, necessarily a derogation. The material risk arises if a leaseholder lawfully uses a demised/designated bay but becomes liable to a substantial charge solely for failing to comply with a new registration apparatus absent from the lease.

## Factors increasing risk

- the bay forms part of the demise;
- the parking and vehicular access rights are express;
- the lease already specifies the permitted use and vehicle restrictions;
- registration failure, not misuse of the bay, triggers the charge;
- the operator is incentivised by parking-charge revenue;
- errors can burden lawful use with appeals, debt demands or litigation;
- no express lease clause has been identified as authorising the new condition.

Quiet enjoyment may also be engaged if the Company's acts materially interfere with ordinary lawful use. Neither doctrine means every regulation is invalid; both reinforce the need for proportionality, accuracy and a clear contractual foundation.

# 8. OPERATOR CONTRACT AND FINANCIAL RISK

The assertion that the installation costs the Company nothing is not a complete economic analysis. The consideration may consist of exclusivity, access to land/data, the right to retain PCN revenue, restrictions on cancellation, minimum-revenue protection, indemnities or termination payments.

| Contract field | Required disclosure / control |
|---|---|
| **Term and renewal** | Initial term, automatic renewal, notice windows and holdover obligations. |
| **Exit liability** | Every termination trigger, equipment removal cost, lost-revenue formula, liquidated damages and stated exposure - including the previously indicated £5,000-£30,000 range. |
| **Revenue model** | Who retains PCNs; commissions; minimum volumes; cancellation caps; incentives and bad-debt treatment. |
| **Authority warranty** | Any warranty that the RMC owns or controls the land and may authorise cameras, signage and enforcement. |
| **Indemnities** | Liability for unlawful processing, leaseholder claims, trespass, road authority complaints, signage defects and operator conduct. |
| **Operational discretion** | RMC's unconditional right to cancel erroneous PCNs and suspend enforcement without penalty. |
| **Data clauses** | Controller/processor or joint-controller allocation, purposes, retention, security, audit, breach and deletion. |

## Section 20

A long-term agreement can be a qualifying long-term agreement under section 20 of the Landlord and Tenant Act 1985 where it is an agreement entered into by or on behalf of the landlord for more than 12 months and relevant contributions exceed the statutory per-leaseholder threshold. Whether this operator agreement qualifies depends on its legal and economic substance, who is the contracting landlord, and whether costs - including termination liabilities - are recoverable through service charges. 'No installation fee' does not settle the issue. Specialist advice should address sections 20 and 20ZA before signature.

# 9. LAND, HIGHWAY AND INSTALLATION AUTHORITY

The entrance / reception road is said to be adopted highway. That creates a separate due-diligence workstream. The Company must not assume that managing the development authorises fixing equipment to highway assets, placing signs within highway land, or configuring cameras principally to monitor vehicles on an adopted road.

## Required evidence

- Land Registry title and plan for each mounting point and sign location;
- highway extent plan from the local highway authority;
- freeholder's written consent where required;
- planning / advertisement-consent analysis;
- power, cabling and maintenance access rights;
- camera specification and masked field of view;
- confirmation that number plates are captured only to the extent necessary for the stated private-land purpose.

The RMC is management-only and is not the freeholder. It may therefore need authority from the freeholder and, depending on siting and works, the highway authority or other landowner. A contractual warranty given to the operator without this evidence could expose the Company.

# 10. DATA PROTECTION AND SURVEILLANCE GOVERNANCE

Vehicle registration marks and images capable of relating to identifiable people are personal data. The ICO emphasises that surveillance must be lawful, fair, transparent, necessary and proportionate, and should not be treated as a universal cure for operational problems.

**The operator's generic privacy policy is insufficient**

The RMC must determine and document its own role. If it determines the purpose of controlling Noble Court parking and materially participates in the means, it may be a controller or joint controller, even if the operator hosts the system.

## Minimum pre-deployment controls

- documented purpose and evidence of the actual parking/security problem;
- alternatives assessment and necessity/proportionality analysis;
- DPIA before deployment because systematic monitoring may create high risk;
- lawful-basis assessment for each processing purpose;
- transparent signage and privacy information before capture;
- data-flow map: capture, watchlist/whitelist, matching, PCN issue, appeals, sharing and deletion;
- strict retention rules and access controls;
- data-subject rights process and breach response;
- contract terms compliant with the parties' actual controller/processor relationship;
- periodic audit of accuracy, false positives, cancellations and continued necessity.

Crime prevention and parking enforcement should not be blended casually. Each purpose needs a defensible basis and proportionate configuration. Monitoring an adopted public road may increase the number of uninvolved individuals captured and therefore the privacy impact.

# 11. CONSOLIDATED RISK ASSESSMENT

| Risk | Rating | Board-level assessment |
|---|---|---|
| **Interference with demised parking rights** | **RED** | Express demise/right; no identified registration or PCN condition. |
| **Corporate power to manage parking** | **AMBER** | Broad powers exist, but scope and proper purpose do not displace leases. |
| **40 leases / 35 members confusion** | **RED** | Corporate votes and lease consents risk being wrongly treated as equivalent. |
| **Article 37 procedure** | **AMBER-HIGH** | If scheme is a bye-law, confirmation and meeting requirements must be met. |
| **£5 registration / £100 PCN** | **RED** | No identified lease basis for burdening otherwise compliant parking. |
| **Derogation / quiet enjoyment** | **RED** | Materially arguable where lawful use triggers financial exposure. |
| **Operator agreement / exit exposure** | **RED pending disclosure** | Term, termination, revenue, indemnities and cancellation rights unknown. |
| **Land / adopted highway authority** | **RED pending evidence** | RMC is not freeholder; camera/sign rights must be proved. |
| **Data protection / DPIA** | **RED pending completion** | Operator policy does not discharge RMC accountability. |
| **Litigation and reputational exposure** | **AMBER-HIGH** | PCNs against lawful users can produce injunction, damages, costs and distrust. |

# 12. BOARD DECISION GATES

The project should pass every gate before signature or activation.

| Gate | Evidence required | Stop condition |
|---|---|---|
| **1. Lease authority** | 40-lease schedule; executed wording; variations; counsel/solicitor opinion. | No clear basis for registration and charges against compliant users. |
| **2. Constitution** | Operative Articles; register of members; board/member procedure; Article 37 analysis. | Voting or bye-law procedure uncertain. |
| **3. Land authority** | Titles, highway boundary, freeholder/highway consents, siting plans. | Company cannot prove rights at every equipment/sign location. |
| **4. Contract** | Complete agreement and schedules; legal review; quantified worst-case exposure. | Uncapped/unclear indemnity, exit or revenue obligations. |
| **5. Data** | DPIA, lawful basis, role allocation, notices, retention, security and audit. | High residual risk or unclear controllership. |
| **6. Proportionality** | Evidence of problem, options appraisal and success measures. | Less intrusive effective measure not properly evaluated. |
| **7. Resident protection** | No-charge onboarding; robust whitelist; RMC cancellation right; indemnity. | Lawful leaseholder can still face operator-controlled liability. |

No gate should be treated as satisfied by an operator's assurance where the issue concerns the Company's own leases, constitution, land authority or statutory duties.

# 13. FORMAL QUESTIONS FOR THE BOARD

**1.** Provide a schedule identifying all 40 leases, their parties, parking-space treatment, material parking clauses and any deeds of variation.

**2.** Confirm the current 35 members and the voting entitlement recorded for each under the Articles and register of members.

**3.** Identify the exact lease wording said to permit mandatory third-party registration, the £5 fee and a £100 charge for an otherwise authorised vehicle.

**4.** State whether the proposal is a rule, regulation or Article 37 bye-law and provide its exact text and approval timetable.

**5.** Provide the complete unredacted operator agreement, specifications and schedules, including term, renewal, exit, revenue, minimum-performance and indemnity provisions.

**6.** Quantify the Company's worst-case termination and claim exposure and state whether any amount could be demanded through service charges.

**7.** Provide the legal analysis of section 20 / 20ZA and identify the contracting landlord for statutory purposes.

**8.** Identify the owner of every mounting/sign location and provide the freeholder/highway/other consents relied upon.

**9.** Provide the camera field-of-view plan, including masking of adopted-highway areas and justification for unavoidable capture.

**10.** Provide the DPIA, lawful-basis assessment, privacy notices, retention schedule and controller/processor determination.

**11.** Confirm the RMC's unconditional right to cancel erroneous PCNs and protect compliant leaseholders from debt escalation and costs.

**12.** Provide the independently minuted options appraisal, including permits, physical access controls, targeted patrols and no-change alternatives.

# 14. FINAL OPINION AND RECOMMENDED RESOLUTION

The Company's broad corporate powers are real, but they are not unlimited. The legal weakness is the missing bridge between those powers and the proposed imposition of new conditions and financial consequences on the exercise of express rights under 40 leases.

Correct corporate analysis requires separate treatment of 35 member votes and 40 leasehold estates. Member approval may validate a corporate decision within the Articles; it does not itself alter every lease. The Board should therefore avoid presenting a poll as dispositive of lease authority.

**Recommended board position**

The Company should resolve that it will not enter into or activate any ANPR/PCN enforcement arrangement affecting leaseholders' designated or demised parking spaces unless and until the seven decision gates in this report are evidenced as satisfied, independent specialist advice confirms a lawful contractual route, and the complete financial and data-protection consequences have been disclosed to members.

If those conditions cannot be met, the proposed enforcement regime should be abandoned or redesigned so that it does not impose new liabilities on leaseholders lawfully exercising their lease rights.

## Important limitation

This report is a risk analysis, not legal advice. Conclusions depend on the complete executed versions of all relevant leases, the Company's operative constitutional documents, land titles, the operator contract and the factual configuration of the cameras. A solicitor specialising in residential leasehold and company law should review those originals before any formal proceedings.

# APPENDIX A - PRINCIPAL DOCUMENTS AND AUTHORITIES

## Company and lease documents

- 1988 Memorandum and Articles of Church Mews Management Company (Mitcham) Limited - particularly Memorandum objects A, E, F, H, K and U and Articles 13, 16, 34 and 37.
- All 40 executed leases, plans and deeds of variation; current register of members showing 35 members; Land Registry titles and highway extent plan.
- Complete proposed parking-operator agreement, specifications, schedules, privacy documents and camera plan.

## Legislation and guidance

- Companies Act 2006, ss 171-174 and s 283: www.legislation.gov.uk/ukpga/2006/46/contents
- Landlord and Tenant Act 1985, ss 20 and 20ZA: www.legislation.gov.uk/ukpga/1985/70/contents
- UK GDPR and Data Protection Act 2018.
- Information Commissioner's Office, Video surveillance (including CCTV) guidance, including ANPR: ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/cctv-and-video-surveillance/

## Case authority

*Saeed v Plustrade Ltd* [2001] EWCA Civ 2011 - Court of Appeal authority concerning derogation from an express parking grant.

## Publication

Commissioned and produced by **noblecourt.estate** - an independent website for information, scrutiny and discussion concerning Noble Court. This report is not issued on behalf of the RMC, its directors, the freeholder or the managing agent.

## Revision note

This edition corrects the earlier description of the property/membership structure. The development comprises 40 leases held by 35 company members. It no longer asserts without documentary verification that 'all 35 leases are identical'.

END OF REPORT