

Report of The Director

Morrisons Car park - Wellingborough

1 Purpose of report

This report seeks the consent of the committee for Morrisons to increase the penalty charges for breach of parking restrictions in their Sharman Road car park.

2 Executive summary

Morrisons acquired a long lease from the council and constructed their superstore in 2001. They also entered into a car parking deed to provide a shoppers car park for their store and the town centre. The deed requires Morrisons to seek the council's consent to increase the penalty for breach of parking restrictions. They now wish to increase the penalty charge.

3 Appendices

None

4 Proposed action:

4.1 The committee is invited to RESOLVE to instruct officers to give consent to Morrisons to increase the penalty charge for breach of parking restrictions at Sharman Road car park to the level requested.

5 Background

5.1 The council granted a 125 year lease to Morrisons in 2001 that required them to provide 535 car parking spaces together with their retail food superstore. The car parking deed that accompanies the lease requires Morrisons to "manage and maintain the parking zone as a town centre car park for the uses of shoppers attending both the superstore and the retail area of Wellingborough town centre". No charges can be levied for parking, but the deed allows Morrisons to impose a penalty of £10 or such other higher sum as the council may reasonably agree in respect of vehicles parking for more than three hours in any five hour period.

5.2 This council has a long established policy of 'free' car parking for the public in Wellingborough town centre. The car parking deed prohibits any charge being levied for car parking. Morrisons are seeking consent to increase the penalty charge for overstaying the three hour limit.

- 5.3 A previous request by Morrisons to increase the penalty charge was refused by services committee on 29 June 2015.

6 Discussion

- 6.1 Morrisons have entered into a national car park management contract with euro car parks. Signs displayed in the car park state that vehicles staying for over three hours will be subject to a penalty charge of £85 (reduced to £50 if paid within 14 days). Euro car parks have advised Morrisons that this is the appropriate level of penalty to deter overstaying.
- 6.2 The council's estate management contractor contacted Morrisons to remind them that they need the council's permission to increase the penalty charge above £10. Morrisons immediately suspended penalty charges, apologising for their error. The management surveyor dealing with the matter was unaware that the deed existed. A formal request has now been submitted, which is summarised in paragraph 6.3. A summary of further supporting information from morrisons is included in paragraphs 6.4 to 6.7:
- 6.3 "An automatic number plate recognition (ANPR) system was installed with signage on 16 September 2019. Car parking is limited to three hours with no return within two hours. It is intended that any vehicle overstaying will be issued with a penalty charge. It is necessary to enforce the restriction to prevent parking abuse and to ensure that spaces are available for customers. Morrisons feel that a £10 penalty is insufficient to deter people from abusing the time restriction. Euro car parks have recommended the £85 penalty (reduced to £50 if paid within 14 days) from their experience of managing many car parks. Morrisons make no profit from the penalty income. The scheme pays for the operation and maintenance of the system. Any surplus is given to the morrisons foundation and distributed to different charities; details of which can be found on: <https://www.morrisonsfoundation.com>"
- 6.4 Morrisons want to discourage the use of their car park as a long stay / commuter car park. In order to protect parking for shoppers it has been necessary to employ a professional car park management company, euro car parks. They manage a large proportion of the Morrisons estate as it not practical to expect retailers to police the car parks and enforce restrictions.
- 6.5 Prior to the installation of the ANPR system a parking attendant was employed. He never issued tickets but acted as a deterrent. Customer research at the store raised the availability of shopper parking as an issue. In response to this euro car parks were asked to monitor use of the car park and install the ANPR system as a more cost effective solution than an attendant. During September 2019, 136 warning notices were issued.

- 6.6 Morrisons feel that £10 is not enough of a deterrent to prevent long stay parking. The highway authority, Northamptonshire County Council, issue penalties of £70 in restricted areas (reduced to £50 if paid within 14 days). As the rate for prompt payment is the same, they feel that their request to increase the penalty charge to £85 (reduced to £50 if paid within 14 days) is reasonable.
- 6.7 Morrisons focus at Wellingborough, and all other stores across their estate, is to improve the availability of parking space for the benefit of shoppers and not to make any profit from the car park. Any surplus from parking penalties is donated to charitable causes.
- 6.8 Following discussion with Morrisons, they have agreed to resolve two concerns that have been raised. Firstly, the car park serving the Tithe Barn hall is accessed via the Sharman Road car park and the ANPR camera cannot differentiate between vehicles visiting the store or attending an event at the hall. They will install a console in the hall to allow visitors to events there to log their car details and therefore avoid being served a penalty notice if they stay over 3 hours. It should be possible to agree similar legitimate exemptions with Morrisons' managers on site. Secondly, Morrisons has agreed to operate the enforcement system only between the hours of 7am and 7pm. This will allow unrestricted use in the evening for people wishing to visit the town centre for a meal or other recreational purposes. In agreeing to this, Morrisons recognise the importance of the night time economy to the future health of the town centre.
- 6.9 It is recommended that Morrisons should be given consent to increase the penalty charge to the level requested. The council imposed a requirement on Morrisons to manage the car park for the benefit of shoppers. The council should support them in complying with the obligations of their lease and car park deed. The proposed charge is not unreasonable when compared with the level of penalty for infringement of highway parking restrictions and is in line with charges levied in controlled car parks nationally.
- 6.10 There are three options:
- Option 1:** Morrisons should be given consent to increase the penalty charge to the level requested by them. This is the recommended option;
- Option 2:** Morrisons should be given consent to increase the penalty charge, but to a lower level than that requested by them. This option is not recommended;
- Option 3:** Morrisons should be refused consent to increase the penalty charge. This option is not recommended.

7 Legal powers

- 7.1 The disposal of this site to Morrisons in 2001, in return for a capital receipt of £1.8 million, satisfied the requirements of 'best consideration' under S123 of the Local Government Act 1972. The car park deed that accompanies the lease allows Morrisons to 'impose a penalty of £10 or such other higher sum as the council may reasonably agree in respect of vehicles parking for more than three hours in any five hour period'. The council is required to act reasonably in deciding whether or not to agree to a request to increase the penalty charge.

Morrisons may choose to resort to the courts to determine whether or not the council has been reasonable in refusing such a request. Morrisons has an obligation under the lease to make the car park available for shoppers. Preventing them from meeting this obligation by refusing to allow the penalty charge to be set at a viable level may be considered by the court to be unreasonable.

8 Financial and value for money implications

- 8.1 The council obtained 'best consideration' for the disposal of a 125 year lease of this land to Morrisons in 2001. Therefore, there are not direct financial implications arising from this report. However, should the committee refuse Morrisons request to increase the penalty charge, this will limit their ability to effectively manage the Sharman Road car park as a shoppers car park. This could have a negative affect on the economic success of both the superstore and businesses in the town centre if unauthorised long term parking limits the availability of spaces for genuine shoppers.
- 8.2 Should Morrisons decide to challenge a refusal to increase the penalty charge in court, the council would have to meet its own costs and, if Morrisons was successful, their legal costs may also be awarded against the council.

9 Risk analysis

Nature of risk	Consequences if realised	Likelihood of occurrence	Control measures
Public concern at increased charges	Increased level of complaints	Medium	Communications issued by Morrisons and the council explaining the benefits of effective car park management
Public fail to realise that penalty charges are being imposed	Increased level of complaints	Low	Morrisons and their contractor to publicise the introduction of penalties and ensure adequate signage
Penalty charges not increased, long term parking not discouraged	Parking not available for shoppers; damage to the economic viability of the store and town centre	Medium	Introduce penalty charges at a sufficient level to deter long term parking

Consent refused to increase penalty charge, Morrisons challenge decision in court	Decision may go against the council, damages and cost of proceedings could be high	Medium	Assess likelihood of success before proceeding to court
---	--	--------	---

10 Implications for resources

- 10.1 Significant time has already been spent in liaising with Morrisons and the council's estate management contractor to produce this report. In the event of refusal and possible legal challenge, significant staff resource would be required to prepare the council's defence and this would cause delay to the progress of other priority projects.

11 Implications for equalities and stronger and safer communities

- 11.1 Morrisons is obliged to effectively manage the car park to make it available to all groups in the community who wish to visit and shop at their store and in Wellingborough town centre. Effective management of the car park will also help to control and limit antisocial behaviour, making the town centre safer.

12 Author and contact officer

Adrian Piper, Assistant Director

13 Consultees

Liz Elliot, Managing Director
 Shaun Darcy, Director
 Eric Symons, Assistant Director
 Vicki Jessop, Assistant Director
 Karen Denton, Assistant Director
 Victoria Phillipson, Principal Property and Projects Manager

14 Background papers

None

