# This parking behaviour is creating a nuisance and we thought we made a by-law to avoid this?

The case of *The Owners Strata Plan No. 2245 v Veney [2020] NSWSC 134* serves as an important guide for the interpretation of by-laws and exploring parking behaviour considered to be a nuisance in a strata scheme.

**Background**

Strata Scheme No. 2245 contains a total of 100 lots. The scheme is essentially comprised of 50 residential apartment lots and 50 car space lots, whereby each owner owned an apartment and car space lot.

The issue in dispute stemmed from use of the Lot 51 car space. When a car was positioned inside the Lot 51 car space, other owners were physically restricted from accessing their own car space due to both the design of the parking lot and the natural common property rockery adjacent to the Lot 51 car space.

In 1998, a special by-law was passed which granted exclusive use of a set area of the common property to the owner of Lot 51 to use as an alternate car space, thus resolving the accessibility issue. Importantly, whilst the by-law granted exclusive use of common property, it did not explicitly restrict access to Lot 51.

The owners corporation argued that the intention of the by-law was that access to Lot 51 would be restricted, and that intention should be relevant in interpreting a by-law.

**Issue**

The owners corporation argued that the context behind the by-law suggests an intentional restriction on the use of the Lot 51 car space. They asserted that historical context, physical characteristics of the land at the time of approval and the contents of a supplementary letter which detailed the proposed arrangement should all be taken into account in the interpretation process. As per their argument, use of the Lot 51 car space by the defendant created an actionable nuisance under section 153 of the Strata Schemes Management Act 2015.

**Interpretation**

It was found that the:

1. *Physical characteristics of the land are not useful in aiding construction of the by-law;*
2. *No conditions in the by-law referenced a restriction on access to Lot 51;*
3. *The ordinary and natural meaning of the words in the by-law suggests the conferral of a new right (under Division 4 Chapter 2 Strata Schemes Management Act 1996); and*
4. *A restriction could have easily been included had that been the intention of the by-law, but it was not.*

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This finding highlighted the importance of the actual words used and the drafting of by-laws.

**Nuisance**

As to the nuisance argument under section 153, it was interpreted as having the common law meaning given its lack of definition in the Act. As such, any liability for nuisance must consider *"a balance… between the right of the occupier to do what he likes with his own land, and the right of his neighbour not to be interfered with."*

The Court affirmed the relatively high bar to private nuisance at common law, and that the 'mere inconvenience' faced by the affected owners was insufficient to establish a private nuisance.

**Implications**

All owners should be aware that by-laws must be explicit in their intent within the text of the by-law if they are to stand the test of time.

## Key takeaways

- The case highlights the necessity for explicit language in by-laws to avoid ambiguity.
- Historical context and physical characteristics do not override the actual wording of by-laws.
- The Court confirmed that 'mere inconvenience' does not constitute a private nuisance.
- By-laws must be clear to withstand legal scrutiny over time.
- Owners should understand their rights and responsibilities regarding common property use.

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