

Gating Orders

Note:

Gating Orders were introduced by section 2 Clean Neighbourhoods and Environment Act 2005 which inserted a new Part 8A into the Highways Act 1980. Detailed procedures are set out in the Highways Act 1980 (Gating Orders)(England) Regulations 2006.

Who can make a gating order?

The Highway Authority

Can any kind of highway be the subject of a gating order?

The 2005 Act lists certain major roads which cannot be subject to a gating order but most minor roads (including footpaths) could be subject to a gating order.

Are there any pre—conditions to be met before a gating order can be made?

Yes. There are THREE tests which must be satisfied before a gating order can be made. The Council must be satisfied that:

1. premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
2. the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
3. it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

The first two tests are matters of fact and require statistical evidence to satisfy them.

The circumstances referred to above include:

- the likely effect on the occupiers of premises adjoining or adjacent to the highway;
- the likely effect on other persons in the locality; and
- in the case of a through route the availability of a reasonably convenient alternative route.

Isn't the highway authority supposed to keep highways open?

Yes. This is a duty under section 130 highways Act 1980 which states: "It is the duty of the highway authority to assert and protect the rights of the public

to the use and enjoyment of any highway for which they are the highway authority.” However, this is just one more factor to take into account in deciding whether it is expedient to make a gating order.

What does a gating order do?

A gating order restricts, to the extent stated in the order, the public right of way over the highway to which it relates.

This could include restricting access for certain periods or times of the day or at all times.

Access for occupiers of premises adjoining or adjacent to the highway cannot be restricted, nor can a gating order be made if it forms the only or principal means of access to dwellings. If it forms the only or principal access to premises used for business or recreational purposes, it cannot restrict access during the times of day when these premises are normally used.

Certain people may be specified in the order to be exempted from the restriction, such as emergency services and those with a legitimate reason for accessing any premises adjacent to the highway. In practice, this would involve the provision of keys to such people, or the opening of the gates during certain times/periods when such people would expect to use the highway.

A gating order does not necessarily involve erecting a gate or physical barrier but in practice they would be unenforceable without them.

What is the procedure for making a gating order?

Detailed procedures are set out in the 2006 Regulations. Before an order can be made occupiers adjoining and adjacent to the highway in question must be notified of the proposed gating order. A press advert (with a copy on the Council’s website) must be placed. A list of statutory consultees must also be notified of the proposed order. All representations made in response to these notices must be considered by the Council. Some of the statutory consultees (if they object to the gating order) have the right to call for a public inquiry before a gating order is made. Otherwise the Council can decide if a public inquiry is appropriate. There is a right to challenge the making of a gating order in the High Court.

Gating orders –v- stopping up

Section 192B(8) Highways Act 1980

A highway in relation to which a gating order is made shall not cease to be regarded as a highway by reason of the restriction of the public right of way under the order (or by reason of any barrier authorised under this section).

In other words although a gating order restricts the use of a highway, the highway remains a highway.

This needs to be distinguished from sections 118B and 118C Highways Act 1980 which deal with the stopping up of “relevant” highways for the purposes of crime and disorder, etc. Sections 118B and 118C were inserted by the Countryside and Rights of Way Act 2000. These deal with **special extinguishment orders**.

"Relevant highway" means-

- (a) any footpath, bridleway or restricted byway,
- (b) any highway which is shown in a definitive map and statement as a footpath, a bridleway, or a restricted byway, but over which the public have a right of way for vehicular and all other kinds of traffic, or
- (c) any highway which is shown in a definitive map and statement as a byway open to all traffic,

but does not include a highway that is a trunk road or a special road.

The grounds for making an order depend on whether the relevant highway crosses land occupied by a school.

For non-school premises the grounds are as respects any relevant highway for which they are the highway authority that:

- the highway is in an area designated by the Secretary of State by order for the purposes of this section;
- premises adjoining or adjacent to the highway are affected by high levels of crime;
- the existence of the highway is facilitating the persistent commission of criminal offences.
- it is expedient, for the purpose of preventing or reducing crime which would otherwise disrupt the life of the community, that the highway should be stopped up.

For school premises the grounds are that:

as respects any relevant highway for which they are the highway authority and which crosses land occupied for the purposes of a school, it is expedient, for the purpose of protecting the pupils or staff from-

- (i) violence or the threat of violence,

- (ii) harassment,
- (iii) alarm or distress arising from unlawful activity, or
- (iv) any other risk to their health or safety arising from such activity,