

REPORT TO: Urban Renewal Policy & Performance Board

DATE: 21 March 2007

REPORTING OFFICER: Strategic Director, Environment

SUBJECT: Alley Gates and Gating Orders

WARDS: Boroughwide

1.0 PURPOSE OF REPORT

1.1 This report is presented to both Safer Halton and Urban Renewal PPB to advise of new powers now available to the Council to make Gating Orders and proposes a policy to be adopted that would respond to all future requests for alley gates.

2.0 RECOMMENDED: That the Executive Board be asked to adopt a policy requiring all future proposed alley gates to be supported by a Gating Order made under the provisions of section 129A of the Highways Act 1980.

3.0 SUPPORTING INFORMATION

3.1 Section 2 of the Clean Neighbourhoods and Environment Act 2005 introduced a new power that allows councils to make, vary or revoke gating orders in respect of highways within their area. This has been effected by inserting new sections 129A to 129G in the Highways Act 1980 that enable councils to restrict public access to any public highway by gating (at certain times of the day if applicable), without removing its underlying highway status. Local authorities are now able to make "gating" orders on grounds of anti-social behaviour as well as crime.

3.2 Powers to close alleyways were first introduced by the Countryside and Rights of Way Act 2000 (CROW Act 2000); this enables alleyways, which are also rights of way, to be closed and gated for crime prevention reasons. But they do not enable alleyways to be gated expressly to prevent anti-social behaviour and they exclude many alleyways that are public highways but not recorded as rights of way. Also, under these provisions the removal of rights of passage is irrevocable.

3.3 The Clean Neighbourhoods and Environment Act 2005 enables a council to gate a highway in a similar manner to the CROW Act 2000 power but it:

- a) Does not first require an area to be designated as a crime area by the Secretary of State,
- b) Enables gating to take place if the highway suffers from crime and/or anti-social behaviour,
- c) Enables the council to determine a gating order, if it is considered in the best interests of the local community to do so.

- 3.4 Section 129A of the Highways Act 1980 sets out these general principles, asserting that a council must be satisfied, before making an order, that the area surrounding the relevant highway suffers from crime or anti-social behaviour and would act as a useful crime/anti-social behaviour reduction measure.
- 3.5 Local authorities should also be satisfied that residents and members of the public who use the relevant highway would not be inappropriately inconvenienced by its gating, and should be satisfied that alternative access routes exist.
- 3.6 The health and sustainability implications of the order should also be considered as gating orders could potentially encourage the use of cars if the alternatives are too long or lack pedestrianised sections. This should be balanced against the health impacts facing pedestrians from the ongoing crime or ASB in the alleyway.
- 3.7 Before proposing an order, local authorities should give consideration as to whether there are alternative interventions that may be more appropriate (and cost effective) for tackling the specific problems they are facing without having to gate the highway.
- 3.8 Gating orders can have implications for various groups of people, such as walkers who may oppose the termination of certain rights of way. For this reason, it is essential that gating orders are satisfactorily publicised before they are made. Local authorities must publicise a notice to this effect in a local paper and on their website.
- 3.9 The notice needs to:
- include a draft of the proposed order;
 - identify alternative routes that members of the public may take; and
 - invite representations (in writing) as to whether or not an order should be made, within a period of notice that is at least 28 days.
- A similar notice, including all the information stated above, should also be placed on or adjacent to the relevant highway at both ends, in order that people who want to use the highway can see that it is to be gated.
- 3.10 A number of individuals and groups will have legitimate purpose or business to pass through gates. These can include, but is not limited to, property owners and occupants, statutory undertakers, such as telecommunication companies and utility companies, the emergency services and council officers on business. The consequent distribution of keys will require careful consideration in each case. Too wide a distribution could lead to the gating order becoming ineffective and unenforceable.
- 3.11 In the past the Council has implemented a number of alley gating schemes. These have generally been confined to passages that provide access to the rear of terraced properties in the more traditionally laid out streets of the Borough. The Council has taken a pragmatic approach to implementing such schemes as until now the legislation available has been cumbersome and inappropriate. This

approach has worked well but difficulties can arise when there is evidence of anti-social behaviour on pedestrian routes that are well used and provide access to wider areas. A recent example has been the footpaths that connect Addison Square in Widnes with Leigh Road and Highfield Road.

- 3.12 It is proposed that in future all gating proposals should be supported by a Gating Order made under section 129A of the Highways Act. A more formal approach will allow the proper consideration of objections and representations. Such objections would be considered by the Executive Board Sub-Committee as is currently the case with Traffic Regulation Orders. In certain circumstances a public inquiry, conducted by the Council, may be required. Under the new legislation an objection from certain bodies will automatically cause a public inquiry to be held, if the relevant highway passes through their area. These authorities include:
- the chief officer of a police force;
 - a fire and rescue authority;
 - any council (including parish councils); and
 - an NHS trust, NHS foundation trust or NHS primary care trust.
- 3.12 It is proposed that a procedure similar to that followed for Traffic Regulation Orders be followed. Following the receipt of a request for gating, there would be consideration given to the issues discussed in 3.1 to 3.10 above. This consideration would involve officers from Highways and Transportation, Planning, Community Safety and Legal. If a Gating Order would appear to meet the requirements of the legislation, there would be consultation with ward Councillors and the statutory bodies listed in 3.11 above.
- 3.13 If there is general support for the proposal a draft order would be drawn up and advertised by the Operational Director Highways, Transportation and Logistics under delegated Highway Authority powers. Any unresolved objections would be referred to the Executive Board Sub Committee unless a public inquiry becomes necessary. Planning consents would continue to be sought in the normal way.
- 3.14 A similar process would be followed should there at a later date be a request to revoke or amend the gating order.
- 3.15 A draft procedure is shown as an appendix to the report and this is being followed on a trial basis for the gating of the three footpaths that access Addison Square in Widnes.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The administrative cost associated with promoting Gating Orders should be met by the promoting body e.g. an Area Forum. The gates would be maintained as now by Property Services and Highways would maintain the highway from existing budgets. There will be on-going resource implications as the Home office guidance suggests that gating orders should be reviewed every 12 months; that notices describing the orders should be displayed for as long as the gates are in place; that the Highway Authority should keep a register of gating

orders and updated maps should be issued to statutory authorities/emergency services etc.

5.0 POLICY IMPLICATIONS

5.1 The Council has a number of conflicting policies and duties in relation to the issue of gating orders:

- A duty to do all that it reasonably can to prevent crime and disorder in the discharge of all Council functions - contained in section 17 of the Crime and Disorder Act 1998;
- A duty as 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;
- keep the highway free of obstruction for the safe passage of the general public;
- Policies and strategies adopted through the Local Transport Plan (and UDP): promote accessibility to bus services; maintain and promote Rights of Way; seek to safely reduce the number of people who travel to school by car; increase foot, cycle and public transport journeys; seek to reduce road casualties, develop and promote pedestrian routes that connect to facilities such as education and recreation.

5.2 It is clear that alley gating has been successful in reducing crime and anti-social behaviour. However there will always be a balance to be struck when a proposed gating order affects a right of access for the general public rather than residents' rear access to a limited number of properties.

5.3 Each case will need to be considered on its own merits to avoid setting precedents that raise expectations for the gating of a large number of well-used paths across the Borough. This would significantly reduce accessibility on foot, whilst possibly just redistributing anti social behaviour.

5.4 Home office guidance states that the intention of the gating order is to restrict the highway temporarily whilst the crime or ASB is persistent. Once it is reduced the restrictions can be varied or revoked. It is therefore clear that under no circumstances should the existence of a gating order be used as a justification for a permanent closure of the highway on the grounds that it is "no longer necessary". To permanently close the highway on the grounds of crime, a Special Extinguishment Order (under the CROW Act powers) would be required.

6.0 RISK ANALYSIS

6.1 There is a risk that if paths are gated the anti social behaviour may be redistributed elsewhere. However there is potentially a reduced risk for local residents resulting from anti social behaviour taking place on paths and alleyways. If there is not a safe and convenient alternative walking route there is a risk of an increase in car journeys, congestion and potentially road traffic casualties.

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

7.1	<i>Document</i>	<i>Available for inspection</i>	<i>Contact</i>
	Guidance Relating to the Making of Gating Orders	www.respect.gov.uk	Jonathan Farmer Ext 3018

DRAFT PROCEDURE FOR MAKING A GATING ORDER UNDER THE PROVISIONS OF THE HIGHWAYS ACT 1980 (GATING ORDERS) (ENGLAND) REGULATIONS 2006 (SI2006/537)

1. Before making a gating order, the Council must be satisfied that:
 - a) premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
 - b) the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour;
 - c) it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour;
 - d) reasonable alternative routes are available.
2. If the above pre-conditions are met, approval in writing is sought from Operational Director to prepare and advertise order.
3. Initial informal consultation is undertaken with Utilities, Police, Fire, NHS, Parish Council etc and occupiers adjoining or adjacent to highway.
4. Planning application is made (can run concurrent with Gating Order).
5. Preparation of plan, location, description, alternative routes and statement of meeting criteria. Determine dates and times of restriction, details of persons excluded, check with legal for added clause and any others as appropriate given an assessment of their needs. Name of person responsible for maintaining gates.
6. Forwarded to legal to prepare order/notice and carry out formal consultations (including those who requested to be consulted on all proposed orders).
8. Publicised for 28 days, objections must be received in this period.
9. Objections are referred to Exec Board Sub who may decide to hold a public inquiry – inquiry must be held if unresolved objections remains from Police, Fire, NHS or Parish Council.
10. The Public Inquiry can be held no earlier than 42 days after the notice of the proposals are first published. The Public Inquiry must be publicised and the process would be expected to be lengthy.
11. Once the Order is made a notice of the Order is maintained indefinitely on site and is available for inspection at Council Offices explaining why gate is there.
11. A register and map of gating orders is kept and orders are reviewed on an annual basis.
12. Orders may be varied or revoked as necessary using the same procedure.