

REPORT TO: Executive Board

DATE: 21st June 2007

REPORTING OFFICER: Strategic Director, Environment

SUBJECT: Alleygates and Gating Orders

WARDS: All

1.0 PURPOSE OF REPORT

1.1 This report is 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 alleygates. Also to request mainstream Council funding for the erection of alleygates, which are at present solely funded by Area Forums.

2.0 RECOMMENDED: That the Executive Board adopts the policy that requires all future proposed alleygates on public highways, (which can include Public Rights of Way), 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, (which can include Public Rights of Way), 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 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. Recent examples include the footpaths that connect Addison Square in Widnes with Leigh Road and Highfield Road.

3.3 It is proposed that in future all gating proposals on public highways 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.

Before making an order the Council should be satisfied of the following:

- the area surrounding the highway suffers from crime or anti-social behaviour and gates would act as a useful crime/anti-social behaviour reduction measure
- residents and member of the public would not be inappropriately inconvenienced by its gating and that alternative access routes exist
- that health implications have been considered, as gating could encourage car use if alternative routes are too long or lack pedestrian sections – balanced against implications for victims
- effects on disabled users have been considered, in that alternative routes should be free from obstructions and suitably paved
- that alternative interventions that may be more appropriate have been considered.

3.4 It is proposed that a procedure similar to that followed for Traffic Regulation Orders be followed. This expands upon the procedure for “New Gates” set down in the “Alleygates” report made by Strategic Director – Health & Community to Executive Board on 7 June 2007. Following the receipt of a request for gating, which should be made to the Community Safety Team via the HDL, officers from Highways and Transportation, Planning, Community Safety, Property Services and Legal will convene to give consideration to all relevant issues and evidence. 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 above. Community Safety will then report the findings to the appropriate Area Forum.

3.4.1 The Area Forum will then consider the request in light of Community Safety advice. It will decide if funding is available for erection of gates and legal procedure, and whether it wishes to proceed. It will advise Community Safety of its decision. Local residents may choose to contribute to the cost should Area Forum funding not be available.

3.4.2 Community Safety will then liaise with residents regarding the decision, via the Police Community Support Officers (PCSO's)

3.4.3 If the decision is to install gates, Community Safety will request the Operational Director, Highways, Transportation and Logistics to commence the statutory Gating Order process (see 3.5 below) and commission Property Services to design the scheme, obtain planning permission, & commission a contractor to supply and erect gates.

- 3.5 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 who may choose to hold a public inquiry if considered necessary. Planning consents would continue to be sought in the normal way. Note that, separate consultation with residents, in addition to the statutory legal notices, will **not** normally be carried out but notices advising of the proposed gating will, however, be placed through the door of those directly affected.
- 3.6 A similar process would be followed should there at a later date be a request to revoke or amend the gating order.
- 3.7 The proposed procedure is shown as an appendix to the report.
- 3.8 A more detailed report on alleygating was presented to the March 2007 meetings of both Safer Halton and Urban Renewal PPBs. Both PPBs supported the approach now proposed. The Safer Halton PPB recommended that the Executive Board consider mainstream funding for future alley gating schemes. This should be considered in the context of the discussions on the 2008/09 budget.
- 3.9 Approximately 80 No. gates were erected last year. The new legal Gating Order procedure is attracting many more requests, but the limited resources available for the additional legal procedure is likely to slow progress in implementing schemes.

4. FINANCIAL IMPLICATIONS

- 4.1 Should funding not be available, the administrative cost associated with promoting Gating Orders, which would include legal, advertising, and processing fees as well as the cost of designing, procuring and erecting the gates, would have to be met by the promoting body.
- 4.3 All alleygates that are erected regardless of how they are funded would be maintained as now by Property Services and Highways would maintain the highway from existing budgets. There will however be additional on-going resource implications as the Home Office guidance suggests that gating orders should be reviewed every 12 months; that notices describing each order 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. These additional costs would have to be met from existing revenue budgets.

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 anti-social behaviour 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 |

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

All alleygate requests must be directed to Community Safety via HDL, who will then convene a meeting with Highways and Transportation, Legal, Property Services and Planning

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, a request in writing must be sought from Operational Director, Highways, Transportation and Logistics to prepare and advertise order.
3. Initial informal consultation will be undertaken with Utilities, Police, Fire, NHS, Parish Council etc and occupiers adjoining or adjacent to highway.
4. In order to process the request the following information will be required:
 - A plan detailing the location;
 - A description of proposed gating and alternative routes;
 - A statement of how the relevant criteria is met;
 - Dates and times of restriction and details of persons excluded (a proviso also excluding other persons who live in the immediate vicinity may also be added ie. may be given keys)
 - The name of person responsible for maintaining gates
5. A planning application will then be made, which can run concurrent with Gating Order).
6. Legal will be requested to prepare order/notice and carry out formal consultations (including those who requested to be consulted on all proposed orders).
8. Intention to make the order will be publicised for 28 days, during which time any objections must be received.
9. Any unresolved objections will be referred to Exec Board Sub who may decide to hold a public inquiry. However an inquiry must be held if unresolved objections remain from Police, Fire, NHS or Parish Council.
10. The Public Inquiry would be held no earlier than 42 days after the notice of the proposals are first published and the Public Inquiry being publicised..

11. Once the Order is made a notice of the Order must be maintained indefinitely on site and be available for inspection at Council Offices explaining why the gate is there.
11. A register and map of gating orders will be kept and orders reviewed on an annual basis.
12. Orders may be varied or revoked as necessary using the same procedure.