

LEICESTERSHIRE LOCAL ACCESS FORUM – 12 JUNE 2008

**REPORT OF THE DIRECTOR OF HIGHWAYS, TRANSPORTATION AND WASTE
 MANAGEMENT**

GATING ORDERS

Purpose Of Report

1. To seek the Forum's views on proposed policy on the making of Gating Orders.

Background Information

2. Gating Orders allow local highway authorities to gate certain types of highway (typically urban alleyways) where the County Council is satisfied that:
 - stopping up or diverting the highway is not appropriate
 - premises adjoining, or adjacent to, the highway are affected by crime or anti-social behaviour
 - the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour, and
 - it is, in all the circumstances, expedient to make the Order for the purposes of reducing crime or anti-social behaviour

These circumstances are:

- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway
- (b) the likely effect of making the order on other persons in the locality
- (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

Legislative Background

3. Powers to close alleyways were first introduced by the Countryside and Rights of Way Act 2000. This enabled rights of way, which includes some alleyways, to have highway rights removed for crime prevention purposes within areas designated by the Secretary of State as "high crime areas". There are no such areas in Leicestershire, so powers had not been available to the County Council.
4. Due to limitations of those powers, the Home Office (working with DEFRA and the DfT) introduced a new power through section 2 of the Clean Neighbourhoods and Environment Act 2005. This allows highway authorities to restrict public access to any highway by gating it (at certain times only if applicable) on the grounds of crime and/or anti-social behaviour, without removing its underlying highway status. The effect of gating Orders is analogous to Traffic Regulation Orders (TROs). Non-statutory Guidance sets out that Gating Orders are intended to be temporary and should be reviewed probably annually.
5. Regulations governing the use of Gating Orders oblige local authorities to:
 - publicise a notice of any proposed implementation, variation or revocation of a gating order on their website, in local newspapers and by erecting signs adjacent

to the relevant highway. This must be for a period of at least 28 days during which time the public can make representations as to whether a gating order should be made;

- provide a copy of the relevant publication to all relevant stakeholders, including occupiers of near-by premises;
- hold a public inquiry if an NHS Trust, Fire Rescue or Police Force, covering the area through which the relevant highway passes, formally object to the implementation, variation or revocation of a gating order, with discretion to hold a public inquiry to consider other objections;
- publicise a gating order in a prominent place in a council office, on their website and in a position that sufficiently draws the attention of members of the public who use the gated highway, for a minimum of 12 months after the date of the order; and
- keep a register of all gating orders

Development of Proposed Policy

6. Gating orders are intended to address crime and anti-social behaviour, however they restrict the use of alleyways. This can amount to a complete closure – 24 hours a day, 7 days a week.
7. Under existing powers, rights of way can only be closed by Order. Where there are objections to the closure, public inquiries are required and the County Council is required to demonstrate that the route is unnecessary (for the public). Inconvenience to the landowner is not relevant and a reasonable alternative must be available. Similarly for extinguishments of highways, the County Council is required to demonstrate that the way is unnecessary and Magistrates rarely give approval when there are objections. These requirements suggest that a strong case is required before removing the right to use highways.
8. Whilst gating orders may only apply for limited periods, their adverse effect on users needs to be balanced carefully with the benefits for nearby residents in terms of reduction in crime and anti-social behaviour. In nearly all cases, the beneficiaries of gating will be a small number of residents with properties adjacent to the alleyway concerned (whose property values may well increase if gating is introduced), whereas there will generally be disadvantages for a far greater number of users. Public rights to use the route in question may well have been in existence since, or before, properties were built.
9. It is important that any proposals for gating submitted to the County Council are considered in light of the conflicting interests. This should include consideration of crime and disorder evidence, survey results, consultees' views, appropriateness of proposed closure times and practical operational difficulties
10. Examples of the practical difficulties associated with the operation of gating schemes include: Gate locking procedure needs to ensure no-one is locked in; provision of access for emergency services, utilities and maintenance works; Once gates are locked, the alleyway may become more attractive for anti-social behavior, and may encourage climbing of gates or residents' fences; Gates may only be effective if visually intrusive; Locking/unlocking should not generally be undertaken directly by residents who may be biased towards complete closure, nor users who may be unwilling to lock gates.

11. Having considered the above, County Council officers have drawn up proposals to form the basis of a policy, attached as Appendix A.
12. The views of consultees will be considered before a proposed policy is recommended to the County Council's Cabinet this summer.

Recommendation

13. The Forum's views are sought on the attached draft basis for policy.

Officer to Contact

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Background Papers

Extract from Clean Neighbourhoods and Environment Act 2005:

http://www.opsi.gov.uk/ACTS/acts2005/ukpga_20050016_en_2#pt1-l1g2

The Highways Act 1980 (Gating Orders) (England) Regulations 2006:

<http://www.opsi.gov.uk/SI/si2006/20060537.htm>

Government guidance on the making of Gating Orders:

http://www.respect.gov.uk/uploadedFiles/Members_site/Documents_and_images/Enforcement_tools_and_powers/GatingOrderGuidance0050.doc

APPENDIX A

Proposed County Council Policy for the use of Gating Orders under section 2 of the Clean Neighbourhoods and Environment Act 2005

Any proposals for Gating Orders in relation to rights of way or adopted highways shall be assessed and implemented in accordance with National Regulations and Government Guidance as supplemented by County Council Policy.

Basis for policy

- As any specific gating scheme would only be of benefit to a limited number of residents, the costs of introducing and operating a scheme (Demonstrating the case for gating, conducting surveys of use, compilation of crime and disorder information, advertising and legal costs, public inquiry, design, construction, repairs, locking/unlocking) should rest with the applicant (who may be the Parish or District Council).
- Gating Orders should only be considered after all other alternative methods of reducing crime or anti-social behaviour have been explored or tried
- Gating Orders should only be considered where there is evidence of sustained problems of crime and/or anti-social behaviour that can reasonably be expected to be addressed by gating.
- Gating Orders should not be introduced where there is a reasonable expectation that the problems will be transferred to another location.
- Any proposals should normally have the support of the local Community Safety Partnership, the local District (and where appropriate, Parish) Council and the fire, police and ambulance services
- Public access should only be restricted for the periods reasonably necessary to address crime and anti-social behaviour
- The amount of use and type of users of the highway and the availability of suitable alternatives should influence the decision on any specific proposal.
- Views of relevant user groups and users of the affected highways should be carefully considered.
- If objections would require a public inquiry, the proposals should be reconsidered.
- Satisfactory arrangements should be made for the routine locking/unlocking of gates.
- Survey, design, construction and maintenance works should only be undertaken by individuals or bodies approved by the County Council
- Any schemes should be reviewed at yearly intervals