

WORCESTERSHIRE COUNTY COUNCIL

GATING ORDER POLICY & PROCEDURE

1. BACKGROUND

- 1.1 Powers to enable highway authorities to gate a 'relevant highway' which facilitates persistent criminal or anti-social behaviour were introduced on 1st April 2006 under Section 2 of the Clean Neighbourhoods and Environment Act 2005. This section allows councils that are highway authorities to make, vary or revoke gating orders without removing the status of the highway in respect of highways within their area. This has been achieved by the introduction of sections 129A to 129G in the Highways Act 1980. These sections enable councils to restrict public access to certain public highways for which the council is highway authority, by gating it (at certain specified times if applicable). The word 'gate' is not defined in the legislation and other forms of barrier may be possible.
- 1.2 'Relevant highways' are negatively defined in the legislation. Essentially, only minor highways, for example public footpaths, and unclassified roads, can be gated. Classified roads cannot be gated.
- 1.3 Regulations are prescribed that govern the order process. Under these Regulations, highway authorities must keep a register of gating orders available for public inspection.
- 1.4 This policy and procedure document takes account of Home Office guidance, notably "A Step-by-Step Guide to Gating Problem Alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005" ("the Home Office Guidance") - see Appendix 1. When considering gating order proposals, the Council will take account of the Guidance.
- 1.5 Gating is intended to be used as a temporary deterrent while crime or anti-social behaviour is persistent. If there is a subsequent reduction in crime or anti-social behaviour, the highway restrictions can be varied or revoked.
- 1.6 In general, public highways do not cause or facilitate crime. Anti-social behaviour is a wider social problem, the root of which cannot be tackled by reducing access to a public highway.
- 1.7 The problems brought about by anti-social behaviour should be balanced against the public's long-standing right to pass and re-pass along and over a highway, the primary function of which is to provide access for people within their community in the pursuit of their ordinary lives and business. Worcestershire County Council (WCC) officers will liaise with the Crime and Disorder Reduction Partnership (CDRP), the Police and other relevant agencies to see if other measures, such as increased surveillance and inspection have been fully considered and trialed as appropriate to mitigate these anti-social behaviours before a gating order is considered.

2 CONDITIONS FOR MAKING A GATING ORDER

2.1 To comply with the Highways Act 1980 – s129A-G as inserted by the Clean Neighbourhoods and Environment Act 2005, any location at which it is proposed to make a gating order must meet the following criteria:

- (i) Premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
- (ii) The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
- (iii) It is in all the circumstances, expedient to make the order for the purposes of reducing crime or anti-social behaviour.

2.2 A gating order cannot be made in the following circumstances:

- (i) A gating order may not be made so as to restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.
- (ii) A gating order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling.
- (iii) In relation to a highway which is the only or principal means of access to any premises used for business or recreational purposes, a gating order may not be made so as to restrict the public right of way over the highway during periods when those premises are normally used for those purposes.
- (iv) If the proposed route is not a relevant highway (as defined in Highways Act 1980 s129A(5))

2.3 In assessing whether a Gating Order proposal meets the criteria specified in 2.1 above, WCC, as the highway authority, will also need to consider the following:

- (i) Assessment of whether there are alternative measures, which do not involve gating the highway, that might be more appropriate and cost effective.
- (ii) The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway.
- (iii) The likely effect of making the order on other persons in the locality.
- (iv) Where the highway proposed to be gated constitutes a through route, a reasonably convenient alternative exists, free from obstruction, suitably paved and a viable option for all users, including those with reduced mobility.
- (v) The balance of crime and anti-social behaviour concerns against the impact a gate would have on legitimate users of the highway and local residents and whether a gating order would be effective in reducing crime or anti-social behaviour.

- (vi) The extent to which the application of this power conflicts with other WCC priorities contained in the Local Transport Plan (e.g. Walking and/or other strategies) and the Rights of Way Improvement Plan relating to sustainable travel, safer routes to school, health and recreation etc. Nor should use of the power conflict with the requirements of the Disability Discrimination Acts. Identified conflicts with other WCC policies will be recorded in any report
- (vii) A health impact assessment may be required if the proposals are felt to be encouraging the use of a vehicle(i.e. if the proposed alternative routes are too long). Similarly, A mobility assessment may be required if the proposals are felt to disadvantage persons with impaired mobility
- (viii) Whether planning permission/listed building consent is required.
- (ix) The overall effectiveness of gating the alleyway
- (x) Whether the proposed restriction on public use is proportionate to the objective of reducing crime and anti-social behavior.

3. RESOURCE ALLOCATION

- 3.1 The making of gating orders is an additional power for WCC and adds to other existing order making duties and powers, such as emergency and temporary closures, s116 orders, traffic regulation orders, definitive map modification orders, public path orders.
- 3.2 Thus the demand to consider, process, implement and manage gating orders places additional demands on existing public resources. For example, the costs of installing, locking and unlocking and maintaining gates and, possibly, removing redundant street lighting will be considerable. Similarly, should a gating order ultimately require a public inquiry to be held as a result of objections at the formal consultation stage, the associated costs could also be quite considerable.
- 3.3 It is anticipated that gating orders will only be made which are in the public interest. It is therefore felt appropriate that, as the order-making authority, WCC will contribute to the costs associated with making any gating order through provision of staff resource to process the Order. The officer (salary) costs will be found from within existing resources by reallocating existing officer time from other order making tasks.
- 3.4 However, a balance has to be struck between the number of gating order proposals that can be considered compared to other types of orders that WCC has to consider. Given that there is considerable and complex work involved in considering gating order proposals, and given that this work must be met from existing resources, it is envisaged that 1 or possibly 2 gating order proposals may be considered at any one time. This is inclusive of reviewing or revoking Orders.
- 3.5 A number of proposals are likely to be awaiting consideration at any one time. Normally, the proposals will be considered (see 4 below) in the order of date of receipt by WCC. However, the Director of Environmental Services in consultation with the Cabinet Member with responsibility for Transport and Safe Environment may decide to alter the priority of a proposal if the circumstances are exceptional.

- 3.6 It is estimated that additional finance may be required to cover the costs (excluding salaries) associated with the making of the anticipated orders. The officer (salary) costs will be found from within existing resources by reallocating existing officer time from other order-making tasks.
- 3.7 As WCC has no budget for processing gating orders beyond officer time, costs associated with public inquiries, planning applications, advertising, supplying, installing and maintaining gates and the operation of locking and unlocking of gates should be funded from external sources.
- 3.8 S.129B(7)_Highways Act 1980 authorizes County and District Councils to install, operate and maintain any barrier authorized by a gating order. WCC has no funding for the implementation or ongoing management of gating orders. Therefore, in order to process orders, agreement must be reached that the relevant district council will exercise its own powers to implement the order (see also 6.2 below), subject to appropriate indemnities. The agreement will make it clear that the District Council will be the authority exercising powers under s.129B(7), but that WCC will retain its other functions as highway authority. Highway authority powers may be delegated if considered appropriate.
- 3.9 The resource demand and allocation of those resources will be monitored and reviewed in light of experience of the number of enquiries/proposals received, officer time allocation requirements, and implementation and management costs.

4 APPLICATION PROCESS – INITIAL ASSESSMENT

4.1 Initial Request

Initial expressions of interest in a gating order may arise directly from a number of sources, the most likely of which will be the affected party(ies), or via a PACT meeting. In all instances, the requestor should be asked to channel their request through the local County Councillor, who, if s/he considers it appropriate to do so, will initiate proceedings in close liaison with relevant agencies/representatives e.g. CDRP, the Police, community group.

4.2 Proposal Sponsor

The local County Councillor, if supportive of the request, then acts as the Proposal Sponsor by completing a Worcestershire County Council Gating Order Proposal Form (supplied with guidance notes by Environmental Services Directorate). Before doing so however, s/he should be confident that full consideration has been given to:

- whether there is a history of persistent crime or anti-social behaviour at the location where a gating order is proposed
- what the proportion of anti-social behavior is relative to the legitimate usage of the link in question
- what evidence, such as police reports etc, is available to support this application
- what alternative measures to mitigate the crime or anti-social behaviour have been trialled
- whether there is a suitable alternative route and whether the problems may be transferred to this route
- how provision, maintenance, operation and advertisement will be funded.

4.3 Officer Assessment

Once a proposal has been sponsored and Proposal Form submitted by the local County Councillor, an application is considered to have been submitted and will be assessed by relevant Council officers on behalf of the Director of Environmental Services. In the case of applications relating to relevant highways recorded on the Public Rights of Way Definitive Map and Statement, applications will be assessed by Countryside Service Access Team officers; applications relating to other relevant highways will be assessed by Highways Status and Extent Team.

An initial assessment of the application will take into account the conditions and considerations for making a gating order as outlined in section 2 above and will include some or all of the following as required:

- (i) Assessment to confirm that the route is a “relevant highway” (as defined by Highways Act 1980).
- (ii) Checking information compiled by the Proposal Sponsor.
- (iii) Assessment of whether alternative solutions are practicable, are likely to succeed or have been attempted and proved ineffectual.
- (iv) Survey of use of the route at relevant times.
- (v) Consideration of the potential positioning of gates, proposed times of closures, requirement for keys, etc.
- (vi) Funding provision

Throughout these stages of the process, initial (informal) consultation may be carried out as appropriate with:

- relevant Crime and Disorder Reduction Partnership (CDRP)
- WCC departments
- the Police
- other emergency services
- relevant district council
- Local Access Forum
- relevant local council(s)
- local residents, businesses and users with an interest in the proposed gating order
- people likely to be affected by potential displacement of any problems as a consequence of the proposed gating order
- utility providers (where applicable)

At any point during this initial assessment the Director of Environmental Services will cease evaluation if s/he reaches one or more of the following conclusions (the list is not exhaustive):

- (i) The route is not a relevant highway.
- (ii) There is insufficient evidence of a problem.
- (iii) Alternative methods of addressing the problem are preferable.
- (iv) The proposal is not practical.

- (v) No suitable alternative route exists.
- (vi) Lack of support or objections from the statutory consultees (emergency services and local councils) mean that an order is unlikely to succeed.
- (vii) Legitimate usage at the site far outweighs that of an anti-social nature.

If a request for a gating order is rejected, the Director of Environmental Services will contact the Proposal Sponsor to explain the intention and discuss possible alternative means of addressing the problem. In these circumstances, a report would not normally be submitted to the Cabinet Member with responsibility for Transport and Safe Environment (as described in 4.4 below). However, if after discussion with the Director of Environmental Services, the Proposal Sponsor was dissatisfied with the intention, the Director of Environmental Services would send a report, proposing a halt to the process, to the Cabinet Member for comment before making a decision.

4.4 **Recommendation**

A detailed investigation of the proposal will be carried out and where all relevant information at this initial, informal stage of the process indicates a gating order may be an appropriate measure for dealing with the crime and/or anti-social behavior problem, then the Director of Environmental Services will make a formal report to the Cabinet Member with responsibility for Transport and Safe Environment, recommending that a gating order is made and the formal stage of the process is commenced.

The report will contain:

- (i) The justification for the proposal and a statement that it meets the legal requirements for an order to be made.
- (ii) Details of the proposal, the exact location of the gates, times of closure and the proposed arrangements for locking and unlocking the gates (if applicable and unless automatic).
- (iii) The alternative routes available to people affected by the closure.
- (iv) Detail of responses from consultations.
- (v) A recommendation that the proposal should be approved or halted.

4.5 **Cabinet Member Agreement**

If the Cabinet Member supports the recommendation, Legal and Democratic Services will begin the formal stage of the process. If, however, the Cabinet Member does not support the recommendation, the process is halted and the Proposal Sponsor advised accordingly.

5 **APPLICATION PROCESS - FORMAL PROCEDURE**

- 5.1 Legal and Democratic Services will draft the proposed order. The proposed order will contain:

- (i) A statement that the required legal conditions for the order have been met.
- (ii) The dates and times that the public right of way or the relevant highway will be restricted.
- (iii) Details of any persons who are excluded from the effects of the restriction.
- (iv) Details of alternative routes which are available to pedestrians and vehicular traffic during the period the highway is restricted.
- (v) Contact details with regard to responsibility for maintaining and operating any barrier, the installation of which is authorized by the order.
- (vi) Details of how to make representations.

5.2 Notice of the proposed order will be advertised in a local newspaper, on the WCC website and notices will be erected at the site at each end of the relevant highway.

5.3 Legal and Democratic Services will also arrange for formal notification as required by the Regulations.

Notice shall be given to:

- all the occupiers of premises adjacent to or adjoining the relevant highway
- every council through whose area the relevant highway passes
- every chief officer of a police force through whose police area the relevant highway passes
- every fire and rescue authority through whose area the relevant highway passes
- every NHS trust or NHS foundation trust through whose area the relevant highway passes
- any local access forum through whose area the relevant highway passes
- any statutory undertaker who maintains services in the locality in which the relevant highway is located
- any provider of gas, electricity or water services in the locality in which the relevant highway is situated
- any communications provider in the locality in which the relevant highway is situated
- any persons who the council reasonably considers might have an interest in the proposed gating order
- any person who requests a copy of the notice
- any person who has asked to be notified of any proposed gating orders.

5.4 If no objections and/or representations against the proposed order are received, the Director of Environmental Services will instruct Legal and Democratic Services to make the order.

5.5 If objections and/or representations against the proposed order are received, the Director of Environmental Services, in consultation with the Cabinet Member, will consider how to proceed.

5.6 The Council has discretion when considering objections. It may consider them and come to a decision on whether or not to proceed with the proposal itself. It may decide to hold a public inquiry. In exercising this discretion, it will act in accordance with the Regulations and the Home Office Guidance. A number of factors will be

taken into account. These include the overall benefit of making the order, the likelihood of an inspector recommending that the order be made, and the cost and delay (both to the proposal in question and to other proposals awaiting consideration) in pursuing a public inquiry. If it holds an inquiry, WCC would seek the assistance of the Planning Inspectorate.

- 5.7 Following an inquiry, the Director of Environmental Services, in consultation with the Cabinet Member, will decide whether to accept the recommendation. If it is concluded that an order should be made, the Director of Environmental Services will instruct Legal and Democratic Services to make the order.

6. IMPLEMENTATION AND MANAGEMENT

- 6.1 Once an order is made, relevant details are recorded in The Register of Gating Orders. The Register is available for public inspection at County Hall and via the WCC's website.
- 6.2 Arrangements for the installation, operation (including provision of keys) and maintenance of barriers authorized by the Order will be dealt with by the relevant District Council (see 3.8 above) and WCC will not exercise its own powers in this respect.

7. MONITORING AND REVIEW OF ORDERS

- 7.1 WCC will monitor all gating orders at regular intervals to ensure they are being operated in accordance with the conditions of the order and will also investigate any complaints about their operation.
- 7.2 WCC will also review each gating order at five/ten year intervals from the date of implementation of the order, although an earlier review of an order could be carried out if WCC considers that it is appropriate to do so.
- 7.3 WCC may vary or revoke (Section 129F Highways Act 1980) a gating order it has made:
- (i) To further to restrict any public right of way over the highway to which the order relates, if it is satisfied that in all the circumstances it is expedient to do so for the purpose of reducing crime or anti-social behaviour.
 - (ii) To reduce the restriction imposed by the Order, if and to the extent that it is satisfied that the restriction is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behaviour.
 - (iii) To revoke the order, if it is satisfied that the restriction imposed by the order is no longer expedient in all the circumstances for the purpose of reducing crime or anti-social behavior or support for the maintenance or operation of the Order is removed.