

CAMBRIDGESHIRE COUNTY COUNCIL

GATING ORDER POLICY

(Relates to sections 129A-129G Highways Act 1980)

THE PROVISION OF GATES ON THE PUBLIC HIGHWAY

1.0 BACKGROUND

- 1.1 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 through 'special extinguishment and diversion orders' and gated for crime prevention reasons. For a route to be eligible it must lie within a designated crime area, the application procedures for which are set out under the CROW Act. It is unlikely that any areas within Cambridgeshire would meet a request for such a designation. In any case these orders do not enable alleyways to be gated expressly to prevent anti-social behaviour (ASB) 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.
- 1.2 From 1 April 2006, new powers to gate a highway in order to prevent crime or ASB from occurring, are available to local authorities under [Section 2 of the Clean Neighbourhoods and Environment Act 2005](#). This section of the Act introduces new powers that allow councils to make, vary or revoke free-standing gating orders (i.e. without removing the status of the highway) in respect of highways within their area. This has been achieved by inserting new sections 129A to 129G in the Highways Act 1980, which will enable councils to restrict public access to any public highway by gating it (at certain times of the day if applicable), without removing its underlying highway status. The process is based on the existing procedure for making Traffic Regulation Orders (TROs).
- 1.3 These powers have the following benefits over those available under the CROW Act 2000:
- i) they do not require the highway to be designated by the Secretary of State;
 - ii) they enable gating to take place if a highway suffers from crime and/or ASB, and
 - iii) they enable a council to continue with a gating order, even if objections are made. (This decision could be delegated to an Area Joint Committee, which, in extremely controversial situations, may decide to hold a public inquiry.)
- 1.4 Regulations have been prescribed that govern the order-process. Under the Regulations a council must also keep a Register of gating orders available for public inspection.

- 1.5 Full details of these new provisions have been issued by the Government and may be viewed at [Gating Order regulations](#), on www.together.gov.uk or by downloading [Guidance relating to the issue of gating orders \(March 2006\)](#) (Word 74kb).

2.0 CONDITIONS FOR MAKING A GATING ORDER

General principles

- 2.1 In general, rights of way 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. The provisions in the Clean Neighbourhoods and Environment Act are framed in a way that limits their use to alleyways where it can be shown that persistent crime and ASB is expressly facilitated by the use of certain rights of way.
- 2.2 The Government considers that these powers will be particularly important in enabling the gating of back (or side) alleys that are demonstrably the source of crime and ASB in built up areas, particularly housing estates. In such circumstances it might be appropriate, for example, to erect a gate that is open during reasonable hours of the day and closed at night. The rationale behind the formulation of these powers is to assist in urban areas, rather than in more open rural settings, where there might be a number of means of access to premises and where the issues involved are likely to be different to those of an urban environment.
- 2.3 Gating is intended to be used as a temporary deterrent while crime or ASB is persistent. Following the reduction of the crime or the ASB, the highway restrictions can be varied or revoked.
- 2.4 If the intention is to permanently gate the highway (i.e. removing the highway status), the provisions introduced by the Countryside and Rights of Way Act 2000 (CROW Act) should be used. However, as noted above, it is unlikely that this would be possible in Cambridgeshire. Indeed given the longer timescales under the CROW Act, and that conditions on the highway may warrant quick action, the Clean Neighbourhoods and Environment Act 2005 provisions are likely to be more practical in finding a solution. In theory in a designated area it would be possible to use the Clean Neighbourhoods and Environment Act 2005 to achieve gating whilst seeking a CROW Act order to revoke the highway status.
- 2.5 Section 129A of the Highways Act 1980 sets out these general principles, asserting that a council must be satisfied, before making an order, that premises adjoining or adjacent to the relevant highway are affected by crime or ASB and that a gating order would act as a useful crime/ASB reduction measure.

- 2.6 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 that suitable alternative access routes exist. However this should not restrict the gating of highways that are in such a dangerous condition that gating it is in the best interest of all concerned.
- 2.7 An authority also needs to consider the provisions of section 129B because a gating order may not:
- restrict a public right of way for the occupiers of premises adjoining or adjacent to the highway;
 - restrict the public right of way where it is the only or principal means of access to any dwelling (for example the route a postman might use to deliver post).
- 2.8 The health 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. In these situations a Health Impact Assessment could be carried out if there is any doubt over the availability of alternate routes and/or the proposed times the gates will be closed.

Issues of Mobility

- 2.9 Special consideration must be given to the impact a potential order might have on disabled users of the highway to ensure that alternative routes are free from obstructions, are substantially as convenient in length and are suitably paved. During the installation of gates consideration must be given to the height of the locks and the ease with which they can be opened and closed.

Consideration of other tools to tackle crime and ASB

- 2.10 Gating orders are not the only solution to tackling crime and ASB on certain highways. Before proposing an order, as with TROs, consideration must be given to whether there are alternative measures that may be more appropriate (and cost effective) for tackling the specific problems, which do not involve gating the highway. Government advice gives examples of the installation of security lighting and CCTV. Gating orders should be seen as a last resort.
- 2.11 The problems brought about by anti-social behaviour should be balanced against the public's long-standing right to pass and repass 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. Serious effort should go into liaison with the police to see if other measures, such as increased surveillance and inspection, for example from Community Support Officers, can mitigate these anti-social behaviours before more drastic action is considered.

3.0 PUBLIC CONSULTATION

- 3.1 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. Occupiers of premises served by or adjacent to the highway must be notified. A notice of the proposal must also be published in a local paper and if possible on an appropriate website. This notice does not need to be excessively lengthy or large in size but does need to include the following:
- i) a precise description of the length of highway affected;
 - ii) the effect of the proposed gating order;
 - iii) the alternative routes that members of the public may take, and
 - iv) an invitation to make representations (in writing) as to whether or not the proposed order should be made, within a period of notice of at least 28 days.
- 3.2 A similar notice, including all the information stated above, should also be placed at all entrances to, and along the relevant highway, in order that users of the highway can appreciate the length of highway that it is proposed to gate. These need to be visible enough to attract attention, and make it clear what the implications of the order will be. The regulations do not specify a minimum time period that these notices should be up. However, they should be erected and maintained on street during the public consultation period.
- 3.3 A full justification, with supporting evidence, must be prepared prior to this stage to enable anyone who makes representations to be given a comprehensive reply and reasons for proposing the gating order.
- 3.4 Consideration of the public consultation responses should be completed and a decision made on whether or not to proceed to the draft order stage within 28 days of the closing date for representations.
- 3.5 Finally, a written consultation must be undertaken with the following organisations: utility companies, district councils, the emergency services, the local NHS trust and the appropriate statutory rights of way consultees as prescribed by the Department of the Environment Circular 2/1993.

4.0 DRAFT ORDER

- 4.1 The statutory procedures to be followed in making a gating order are similar to those used to make a normal traffic regulation order (TRO). A public notice and copy of the draft order must be published in a local paper and concurrently erected on site and, if possible, posted on an appropriate web site. The notice should give similar information to that used at the public consultation stage and should invite written

representations to the proposals contained in the draft order within 21 days of publication.

- 4.2 If no objections to the draft order are received, the order may be made with the authorisation of the Director of Highways and Access.
- 4.3 If an objection(s) to the draft order is/are received, which cannot be resolved, the objection(s) would be reported to the appropriate Traffic Management Area Joint Committee for determination.

5.0 FUNDING

- 5.1 The TRO process typically costs in the region of £1,000, to which must be added the cost of the physical measures and traffic signs required to implement the restriction.
- 5.2 In most cases the County Council will meet the costs associated with the gating of an alleyway in a residential area, although there is no reason why residents should not contribute to that cost. However, it is expected that the costs of providing such a restriction in a commercial area, where the main beneficiaries will be businesses, will be met by those businesses.
- 5.3 Third parties may fund the provision of gates that meet the policy conditions described in Section 7 of this report. Third party funding must include the following cost elements.

Works Cost Elements		Likely Cost	Type of Payment
a)	The cost of making the gating order.	Up to £1,500	Actual cost of the works.
b)	The cost of manufacturing and erecting the gates.	£1,000-£5,000	
c)	The cost of design and administration of the works.	10% of a+b	
d)	The annual cost of operating the gates.	£750/annum	Commutated Sum (20 x annual combined operational and maintenance cost)
e)	The cost of an annual maintenance inspection and any necessary repairs due to normal usage.	£75/annum	

- 5.4 The person or persons who fund the provision of gates will be responsible for the full cost of any works required due to the gates being destroyed, stolen, or coming to the end of their economic operating life, or due to damage caused by a third party.

- 5.5 No order should be placed for the provision of privately funded gates before full payment of the one-off and commuted sum payments have been received.
- 5.6 No order should be placed for replacement or repair works to privately funded gates until a written undertaking to pay for the works has been received from the funding body.

6.0 PROPOSED POLICY

- 6.1 Special extinguishment or diversion orders that remove the highway status of an alleyway, for crime prevention reasons, should continue to be made under the provisions of the CROW Act 2005 if a Secretary of State crime area designation can be achieved.
- 6.2 Temporary gating orders for crime or ASB prevention reasons, should be made under the Clean Neighbourhoods and Environment Act 2005 (Sections 129A to 129G of the Highways Act 1980).
- 6.3 The use of a gating order will only be considered in the following circumstances:
- i) on public highways (generally urban alleyways) where it can be shown that persistent crime and/or serious ASB is occurring and is expressly facilitated by the use of the public highway;
 - ii) in locations where local residents and the local crime reduction partnership have been consulted and both support a highway closure to deter persistent crime and/or serious ASB. (Following the reduction of the crime or the ASB, temporary restrictions should be reviewed and a decision taken on whether or not the order could beneficially be varied or revoked.)
 - iii) where residents and members of the public who use the relevant highway would not be inappropriately inconvenienced by its gating, and a suitable alternative access route exists. If there is any doubt over the availability of alternate routes and/or the proposed times the gates will be closed, a Health Impact Assessment should be carried out;
 - iv) where careful consideration has been given to the impact a potential order might have on disabled users of the highway and alternative routes are free from obstructions, are substantially as convenient in length and are suitably paved. During the installation of gates, consideration must be given to the height of the locks and the ease with which they can be opened and closed by disabled users;

- vi) when alternative solutions for tackling the specific problems being experienced, such as the installation of security lighting, CCTV, increased police officer surveillance or neighbourhood watch, have been fully investigated or tried, and have been found to be ineffective or prohibitively more costly than gating.
- vii) suitable arrangements can be made for the consistent and timely opening and closing of the gates.

6.4 It should be remembered that the orders are not meant to be permanent solutions. If a gating order is to be made then a review period should be agreed, for example of five years, so that the effect of the gate and other factors such as action to combat the sources of the ASB or a change in local circumstances such as redevelopment can be assessed and a decision taken as to whether the order needs to be varied or revoked.