

## **Cabinet – 16 December 2009**

### **Public Rights of Way Gating Orders Policy**

<b>Portfolio:</b>	Councillor Ansell - Transport
<b>Service:</b>	Engineering and Transportation.
<b>Wards:</b>	All
<b>Key decision:</b>	No
<b>Forward plan:</b>	Yes

#### **1. Summary of report**

- 1.1 This report provides an update on two trial Gating Orders at Chester Road/Thorney Road and Stroud Avenue/Redpine Crest and recommends approval of an amended Gating Orders Policy as a basis for consideration by Council.
- 1.2 The decision on the Public Rights of Way Gating Order Policy will be made by Council. Implementation of Gating Orders will be dealt with by Chief Officer Delegation in accordance with the Council's constitution.

#### **2. Recommendations**

- 2.1 That Cabinet approves the Public Rights of Way Gating Order Policy as the basis for consideration by Council on 11 January 2010.

#### **3. Background information**

##### Public Rights of Way Gating Orders Policy

- 3.1 Public rights of way form part of the highway network and are, as with the road network used by vehicles, protected by statute. The council has a statutory obligation to maintain them and keep them free from obstructions. Unfortunately, some public rights of way can facilitate the commission of crime and anti social behaviour. Legislation has been introduced to allow closure of public rights of way where this occurs. The legal procedures are lengthy and complex but must be adhered to and their criteria met, before closure can go ahead.
- 3.2 The Situational Interventions Policy was approved by Cabinet in October 2005. The Safer Walsall Partnership produced this policy, which covers two distinct areas:

- Section A - situational measures including alley gating schemes and other forms of environmental improvements on sites which are not public rights of way.
  - Section B - measures taken to reduce crime on public rights of way. This primarily includes procedures for closing public rights of using Special Extinguishment Orders.
- 3.3 The Clean Neighbourhoods and Environment Act, 2005, inserted a new provision in the Highways Act 1980 (Section 129(A) - 129(F). These allow a Highway Authority to gate Highways similarly to the provisions of 118B and 119B of the Highways Act 1980 which relate to Special Extinguishment Orders except that there is no requirement for the highway to be designated by the Secretary of State as is required under s118(B) and 119 (B). Gating Orders have however been introduced as a more streamlined way of closing highways for prevention of anti social behaviour and crime, but still have legal criteria and procedures which must be adhered to.
- 3.4 The Public Rights of Way Gating Orders Policy has been prepared to outline the council's approach for implementing Gating Orders. Gating Orders are seen as a more suitable method of dealing with requests for closure of public rights of way where anti social behaviour and crime is experienced. Use of Gating Orders will largely supersede use of Special Extinguishment Orders, due to the difficulties which were encountered with delivering closure of public rights of way using this earlier legislation.
- 3.5 The new Public Rights of Way Gating Orders Policy forms an addendum to the Situational Interventions Policy, as it may be desirable to use the previous legislation in certain circumstances, for example, where permanent extinguishment is required, or where it is necessary to extinguish a public right of way across a school site where there is violence or a threat of violence.
- 3.6 Walsall Borough's Rights of Way Improvement Plan must be reviewed not more than 10 years after its approval as Council policy, which was on 21 April 2008. The Public Rights of Way Gating Orders Policy will be reviewed at the same time. This will be in approximately eight years time allowing for several Gating Orders to have been implemented and reviewed. Each Gating Order implemented must be reviewed not more than 5 years after they are made and provided circumstances remain unaltered at the time of review, it is envisaged that they will remain in place.

#### Details of amendments to the Public Rights of Way Gating Orders Policy

- 3.7 Following implementation of the trial Gating Orders and a review of the Home Office Guidance "A Step by Step Guide to Gating Problem Alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005", some alterations have been made to the Policy including:
- 3.8 Item 4.2: It has not been possible to identify funding for implementation of the trial Gating Orders. This is largely because implementation of Gating Orders may span financial years and both Capital and Revenue funding streams, which are required to support their implementation, are agreed on an annual basis. Therefore item 4.2 has been introduced to allow sites which meet the legal

criteria to be placed onto a waiting list for implementation once funding is confirmed.

- 3.9 Section 5: The statutory requirements for implementation of Gating Orders have been outlined by Legal Services. This primarily includes items 5.1 to 5.9 and item 8.3. This will ensure that a robust case for closure can be prepared for each Gating Order, which demonstrates that legal requirements are met. It is of importance that Gating Orders are only implemented for sites which meet legal requirements as an appeal may be made to the High Court within six weeks of confirmation of an Order, on procedural grounds. This could result in high legal fees and may ultimately result in removal of gates.
- 3.10 Item 6.7: A “Gateway Approach” will now be utilised for pursuing future Gating Orders, with all evidence to demonstrate legal requirements and deliverability issues assessed in turn. The checklist (**Appendix B**) has also been updated to facilitate this approach. This will ensure that evidence required to demonstrate the legal requirements are met is available at an early stage. Where requirements cannot be met further unnecessary investigations may be avoided. A site will fail to meet the criteria for a Gating Order if any one of the checklist items cannot be met.
- 3.11 Section 7: This section has received some alterations to ensure that the approach used for requests and prioritisation of Gating Orders is clearly defined. Gating Orders will be implemented for LNP areas on a rotational basis, for up to three locations at a time.
- 3.12 The proposed policy is attached as **Appendix A**.

#### Trial Gating Orders

To assist with finalisation of the policy and delivery of the trial Gating Orders, a Gating Orders Working Group has been established. This comprises representatives from Public Rights of Way, Safer Walsall Partnership, Local Neighbourhood Partnerships, Police and Neighbourhood Watch. The group has met on a monthly basis to discuss delivery of Gating Orders at the two sites, and to gather evidence, as outlined within the policy and LNP Checklist. A report for each site has been compiled to demonstrate the extent to which legal criteria and deliverability issues highlighted on the checklist are met, which can be viewed at: <http://cmis/CMISWebPublic/Binary.ashx?Document=7851>. It is envisaged that for future Gating Orders an evidence file will be opened for each site, with a copy of the checklist and supporting information attached, rather than establishing a working group and detailed reports on each occasion.

#### Adopted footpath NDA27, Chester Road to Thorney Road

- 3.13 The report prepared for Chester Road to Thorney Road outlines that evidence has been obtained to demonstrate that the legal requirements are met including in brief:
- That high levels of anti social behaviour and crime are experienced
  - The public right of way facilitates the commission of offences
  - There is a reasonably convenient alternative route

- 3.14 There are factors associated with delivery of a Gating Order, for example the requirement for a planning application to be made, establishment of procedures to open and close the gates, installation of a sign with emergency contact numbers, etc. which are still to be resolved. It is of importance to note that capital funding for installation of the gates and revenue for legal order costs and ongoing maintenance is still to be secured before a Gating Order can be delivered.
- 3.15 As legal requirements can be met, it is considered that a Gating Order is implemented for this site, subject to the outstanding issues being resolved and securing of funding.

#### Definitive Footpath 38 Willenhall (part) Stroud Avenue to Redpine Crest

- 3.16 The report for definitive footpath 38 Willenhall (part), Stroud Avenue to Redpine Crest outlines that some of the legal requirements are not met:
- High levels of anti social behaviour and crime cannot be demonstrated. Police and Anti Social Behaviour Unit evidence suggests only low levels of sporadic incidents.
  - The low levels of recorded incidents mean that it cannot be demonstrated that the public right of way facilitates the commission of offences.
  - A reasonably convenient alternative route is available, although during past statutory consultations on a Special Extinguishment Order under section 118B Highways Act 1980, a high number of local objections were received. There is a possibility that this may occur again during the Statutory Consultation on a Gating Order.
- 3.17 As the legal requirements are not met it is considered that a Gating Order should not proceed at this location.

#### Authority for implementation of Gating Orders

- 3.18 In accordance with the Council's constitution, a Chief Officer Delegation from an Executive Director will be sought for the approval to proceed with a Gating Order for each prioritised site, to ensure that the council has the necessary authority to proceed.

#### Implementation of future Gating Orders

- 3.19 The Public Rights of Way Team currently has a list of 76 public rights of way for which closure has been requested. In some circumstances, the request for closure was made a considerable time ago so may no longer be relevant to local circumstances. A new procedure has been introduced within the Public Rights of Way Gating Orders Policy, which will invite each Local Neighbourhood Partnership Area to submit one application for their local priority site to Public Rights of Way for consideration of a Gating Order. Therefore, upon introduction of the new Gating Orders Policy, this list of closure requests will no longer be upheld. LNPs, or their successors, must apply should they wish for a site to be considered for a Gating Order. Information contained within the current site list will be amalgamated into the existing public rights of way document management system, for future reference and may be used as evidence to support future Gating Orders where relevant.

3.20 It is a legal requirement that a register of all Gating Orders is publicised on the council website. In addition to this statutory requirement, a record of all priority sites put forward for implementation of Gating Orders will be displayed. Anyone with an interest in a particular Gating Order may track its progress on the council website.

### 3.21 Criteria for consideration of a Gating Order

- The site must be a public right of way.
- High levels of persistent crime or anti social behaviour must be demonstrated.
- The right of way must facilitate crime and/or anti social behaviour.
- A reasonably convenient alternative route must be present.
- The likely effect on properties adjoining or adjacent to the highway of making a gating order should be considered.
- The practical implications of making a closure also need to be taken into account.

### 3.22 Preparing the case for a Gating Order

- LNPs or their successors will receive requests for gating and carry out preliminary investigation into suggested sites.
- Each LNP identifies their priority site and gathers information using the checklist (**Appendix B** of the policy) and a 'gateway' approach.
- The completed checklist and supporting documentary evidence is submitted to the Public Rights of Way Team.
- Three potential sites are prioritised and Chief Officer approval sought.
- The legal procedure to make a Gating Order commences.
- If the legal procedure is successful, gating is implemented when appropriate funding has been identified.
- Public Rights of Way maintain a register of Gating Orders and review each site within a period of 5 years.

## 4. **Resource considerations**

4.1 **Financial:** Funding is to be secured for all aspects of delivery of Gating Orders. The main source of funding outlined is Safer Walsall Partnership's Capital funding for security improvements. Their Capital bid for financial year 2009/10 was unsuccessful and their current programme of improvements is funded from a carry over of their capital allocation from 2008/09. Without additional funding from this source for 2010/11, there will be no funding for implementation of Gating Orders.

In addition, funding must be secured to support revenue costs associated with a Gating Order, such as maintenance of gates and Legal Order costs.

Delivery costs will increase significantly, if a public inquiry is required to determine the outcome of the Order, if statutory authorities require relocation of apparatus, or compensation is payable. These costs are likely to be a serious barrier to delivery and Gating Orders would not be able to proceed without sufficient funding, if and when these issues arise.

The cost of individual schemes will depend on the scale and circumstances of each one and will be reflected in any future bid for resources.

4.2.1 **Legal:** Under section 129 (A) of the Highways Act 1980 the Council may make a gating order. Before making a gating order the Council must be satisfied that the three statutory criteria set out in Section 129 (A)(3) of the Highways Act 1980 listed below are met:

- Premises adjoining or adjacent to the highway are affected by high levels of 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 cases expedient to make the order for the purpose of reducing crime and anti social behaviour.

Section 129A(4) specifies that the circumstances which must be considered in 129A(3)(c) include:

- The likely effect of the order on occupiers of premises adjoining the highway
- The likely effect of making the order on persons in the locality; and
- In cases where the highway constitutes a through route the availability of a reasonably convenient alternative route.

Sections 129A-G of the Highways Act 1980 and the Highways Act 1980 (Gating Orders) (England) Regulations set out the procedure relating to the making of a Gating Order.

Once a Gating Order is in place, it is possible for a council to vary or revoke the order, pursuant to section 129F of the 1980 Act and the regulations 9-16.

Gating Orders can only be implemented for sites which meet the legal criteria. The Checklist, introduced within the Gating Orders Policy has been produced to ensure that only sites which meet the legal criteria for closure are taken forward. Support of Legal Services is essential to ensure that Gating Orders are implemented in accordance with statutory criteria and procedures, along with Council policy and procedures.

4.3 **Staffing:** With the current staffing level in Public Rights of Way it will only be possible to implement a limited number of Gating Orders at any one time, due to the lengthy and complex legal procedures involved. In addition, there is a legal requirement to review Gating Orders, not more than 5 years after implementation. This will inevitably result in a higher workload to undertake future reviews and may mean that as more Gating Orders are successfully implemented fewer new sites can be put forward. Additional staff support may need to be secured to implement higher levels initially, or to maintain momentum of new Gating Orders in future whilst meeting the statutory requirements for review.

4.4 **Other resource considerations:** There are currently 76 public rights of way where closure is requested. It will not be possible to implement Gating Orders at all of these locations. Therefore sites must be prioritised. This will primarily be

based upon whether the legal criteria for closure, as outlined in sections 129 A-F of the Highways Act 1980 are met. LNP's or their successors will also play an important role in identifying priority local sites.

The legal requirements for Gating Orders include that high levels of anti social behaviour and crime are experienced which is facilitated by the public right of way. Officers in Public Rights of Way do not have access to Police Crime Logs or an expertise in Crime Prevention so will rely upon Safer Walsall Partnership for support in this area.

## **5. Citizen impact**

Closure of public rights of way for crime and anti social behaviour prevention purposes may help to significantly improve the quality of life those who live next to the public right of way and experience disruption due the persistent high levels of anti social behaviour and crime.

In direct comparison to this, some users of the public rights of way may experience inconvenience and access to local amenities may be disrupted. This may have an adverse impact on quality of life which will be particularly felt by the more vulnerable (for example, the young, elderly, disabled, or low income groups who do not have access to a car). It is therefore extremely important that a balanced approach is adopted which gives full consideration of potential impacts on the local community along with walking, cycling and horse riding routes. Impacts of this type will be minimal as they will be managed in two ways:

Legal requirements for implementation of Gating Orders prescribe that a reasonably convenient alternative route must be available after closure. All sites put forward for implementation must therefore meet this requirement.

The council has outlined proposals in the draft gating Orders Policy which ensure that Gating Orders will only be pursued where there is demonstrable community support for their implementation

## **6. Community safety**

Implementation of Gating Orders will have a positive impact upon the prevention of anti social behaviour and crime. They will reduce opportunities for commission of offences, by removing an attractor for commission of offences, and/or removing a means of access/escape. Perceptions of fear of crime and safety will also be improved.

## **7. Environmental impact**

A potential reduction in opportunities for sustainable travel, which in turn leads to increased car use, increased congestion & pollution, will have a negligible impact. The legal requirement for the availability of a reasonably convenient alternative route and procedures introduced within the draft policy will reduce any risks of this nature.

Gates and fencing to be installed may have a visual impact. They must be primarily of a design to offer a high degree of security. However, their design will be in accordance with the Highways Street Furniture Palette.

## **8. Performance and risk management issues**

8.1 **Risk:** It will only be possible to implement Gating Orders subject to securing funding and support of other service areas. Progress will be reviewed and monitored periodically, in accordance with Walsall Borough's Rights of Way Improvement Plan. Opportunities to correct any shortfalls in funding or staffing, or to amend delivery programmes and timescales, will be investigated at this time. The requirement for support of other service areas to assist with delivery, primarily Legal Services, Local Neighbourhood Partnerships and Safer Walsall Borough Partnership has been identified within the Service Plan.

8.2 **Performance management:** Walsall Borough's Rights of Way Improvement Plan was produced in accordance with statutory duties under the Countryside and Rights of Way Act. This was approved by Council as approved council policy on 21 April 2008. Item 6.8 introduces crime and anti social behaviour as one of ten themes for action to improve public rights of way in the borough. This aims to review existing crime prevention and "alley gating" procedures on public rights of way, particularly focusing upon revision of the current policy to include implementation of Gating Orders. This is further emphasised by its inclusion as a quick win, which aims for implementation to commence within 12 months of approval of Walsall Borough's Rights of way Improvement Plan.

The Service Plan for Transportation and Forward Planning also includes a target to review current council policy on crime and anti social behaviour on public rights of way, to include implementation of Gating Orders.

## **9. Equality implications**

The potential impacts upon quality of life of some of the more vulnerable users will be managed and minimised as outlined within Citizen Impacts, above.

In addition to this an Equalities Impact Assessment (EIA) was approved by the Equalities Board for Public Rights of Way. Equality implications will be managed in accordance with this EIA.

## **10. Consultation**

A Gating Orders Working Group was established to support delivery of the trial Gating Orders. This was attended by representatives from Public Rights of Way, Safer Walsall Partnership, Local Neighbourhood Partnerships, the Police, and local representatives, for example Neighbourhood Watch.

Informal consultation on the two trial proposals has been undertaken with statutory prescribed bodies, local residents and users of the public rights of way.

Further details of responses received are provided within the attached reports for the two sites. Statutory consultation procedures must be adhered to for each Gating Order implemented.

Walsall's Local Access Forum was also consulted on 4 June 2009, in accordance with statutory requirements. They felt that there was sufficient evidence of anti social behaviour and crime for Adopted Footpath NDA27, so agreed to support closure for this site, but requested an opportunity to discuss gating of Footpath 38 Willenhall, once further information in support of closure was available.

Prior to this, consultation was undertaken with a wide range of local representatives and public rights of way user groups on the draft Gating Orders Policy, as outlined within the report to Neighbourhoods Scrutiny and Performance Panel on 25 November 2008.

#### Recommendations from Environment Scrutiny and Performance Panel - 16 November 2009

The Senior Rights of Way Officer and the Group Leader for Transportation Forward Planning provided background to the Gating Orders Policy and the context to the results of the two trial sites highlighted within the report.

Members queried the rejection of the application for a Gating Order at Footpath 38, Stroud Avenue. Officers explained that there were distinct legal criteria in assessing applications for gating orders and that Footpath 38 had not met the necessary criteria. Despite requests to residents affected by anti-social behaviour along the footpath to provide incident logs and the offer of CCTV surveillance, evidence to support the application was not forthcoming. Members expressed frustration that police did not log residents concerns and they were then reticent to report further events. The Executive Director (Neighbourhood Services) agreed to escalate Members' concerns with the Chief Superintendent.

The Panel agreed that the policy made arrangements clear and noted that there would not be an increase in costs to implement it, due to each scheme being required to identify funding before it proceeded.

Following a vote, a resolution was made that the Environment Scrutiny and Performance Panel approve the Gating Order Policy and recommend that it be passed for consideration by Cabinet to adopt as Council policy.

### **Background papers**

- a. Public Rights of Way Gating Orders Policy
- b. Reports on Gating Orders at:
  - Adopted Footpath NDA27 between Chester Road and Thorney Road
  - Definitive Footpath 38 Willenhall (Part) between Stroud Avenue and Redpine Crest

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4 December 2009

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4 December 2009

## **PUBLIC RIGHTS OF WAY GATING ORDERS POLICY**

### **1 INTRODUCTION**

- 1.1 Public rights of way form part of the highway network and similarly to the road network used by vehicles, they are protected by statute. The public have a right of access to travel along them primarily on foot, but also sometimes on bicycle, horse back or in motor propelled vehicles. The council has a statutory obligation to maintain them and keep them free from obstructions.
- 1.2 Unfortunately, some public rights of way can facilitate the commission of crime and anti social behaviour. Legislation has been introduced to allow gating of public rights of way where this occurs. The legal procedures are lengthy and complex but must be adhered to and their criteria met, before gating can go ahead.
- 1.3 Definitive public rights of way and other non-definitive and adopted footpaths for which the Public Rights of Way team has a responsibility are covered by this policy. This includes public footpaths, bridleways, byways open to all traffic and restricted byways. Gating Orders can only be implemented for public rights of way where it can be evidenced that they are part of the public highway network, for example those which are recorded on the Definitive Map and Statement, or the List of Streets.
- 1.4 Public rights of way can come into existence by way of accrued rights where they have been used by the public for a period of 20 years or more without interruption. However these sites will not automatically become a public right of way maintainable at public expense unless legal procedures under the Wildlife and Countryside Act 1981, or Highways Act 1980 are implemented, subject to legal criteria being met. For sites which fall into this category, or any where there is uncertainty over the status, a Gating Order cannot be pursued.
- 1.5 It is perceived that the use of Gating Orders supersedes the use of Special Extinguishment Orders to gate public rights of way for crime and anti social behaviour reasons, although this does not have to be a permanent measure. Gating Orders will be the main method used by the council, although Special Extinguishment Orders may still be used in some circumstances, e.g. if it is desirable to permanently extinguish a public right of way.
- 1.6 Throughout this document where Local Neighbourhood Partnerships (LNPs) are mentioned it is recognised that in future different arrangements and terminology may apply.

### **2 CONTEXT**

- 2.1 The powers to make Gating Orders are to be found in sections 129A-G of the Highways Act 1980, and were introduced by the Clean Neighbourhoods and Environment Act 2005. Section 129 F of the Highways Act 1980 also provides for Gating Orders to be varied or revoked. Gating Orders can be made for the purpose of reducing crime and anti-social behaviour, and are intended to be easier to use than Special Extinguishment Orders, providing certain criteria are met and subject to review by the Planning Inspectorate.
- 2.2 Gating Orders can allow public rights of way to be gated at certain times of the day and opened for public use during daylight hours, for example. They may also allow closure for 24 hours a day. Statute dictates that once implemented Gating Orders must be reviewed periodically. They may be revoked or times of closure varied at the time of review. We intend to only gate public rights of way where it is proven that there is a

significantly higher anti social behaviour and crime level than in the surrounding area and it is demonstrated that this will have a positive impact on crime reduction.

2.3 The main differences between Special Extinguishment and Gating orders can be summarised thus:

<b>Special Extinguishment Order</b>	<b>Gating Order</b>
Can be made only in a part of the borough designated by the Secretary of State	Can be used on any right of way without designation
Used for the purpose of preventing or reducing crime	Can be used to reduce anti-social behaviour as well as crime
The right of way is completely and permanently removed	The right of way remains a highway but its use is restricted
There are high levels of crime and the highway is facilitating the persistent commission of criminal offences	The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour
The order must be consistent with any crime and disorder strategy	The likely effect of making an order regarding displacement of anti-social behaviour or crime to nearby areas must be considered
There must be a reasonably convenient alternative route or it must be reasonably practicable to divert the highway	There must be a reasonably convenient alternative route or it must be reasonably practicable to divert the highway
Secretary of State decides whether to allow an order to be sealed where any objections are received	Objections from the Police Fire and Ambulance Services and any other local authority involved can cause a Public Inquiry to be held and the decision on the Gating Order will be determined by the Planning Inspectorate. Where objections are received from parties other than those outlined the council can still determine the order, but must consider whether it is in the best interests of the community.

### **3 WHO IS INVOLVED**

3.1 Within this document, the following abbreviations are used:

LNP – Local Neighbourhood Partnership  
 SWP – Safer Walsall Partnership  
 PROW – public right(s) of way

#### **3.2 The Public Rights of Way team (PROW)**

The team records and maintains definitive public rights of way and adopted footpaths over which members of the public have a right to walk, ride, lead a horse or in some instances, cycle and drive motor propelled vehicles. These public rights of way can only be gated by means of a legal order. The team will be responsible for the following actions when implementing a Gating Order:

- Assessing whether the legal requirements for Gating Orders are met for each request, based upon the statutory criteria and recommending which schemes should be put forward for delivery
- Implementation of the legal procedures of Gating Orders
- Liaise with the Planning Inspectorate and co-ordinating the statement of case for closure where objections are received and the Order has to be submitted for a decision in accordance with statute

- Obtain the necessary Chief Officer Delegation to ensure that the council has the necessary authority to proceed
- Provide advice and support to Local Neighbourhood Partnerships (LNPs) throughout the process

### **3.3 The Safer Walsall Partnership (SWP)**

The Safer Walsall Partnership will support implementation of Gating Orders in the following ways:

- The Anti Social Behaviour Unit may work with residents to identify and target offenders, or with residents to gather evidence of problems experienced
- Liaise with Police Architectural Liaison Officers and Crime Reduction Officers regarding the impact gating would have on reducing anti social behaviour and crime
- Consider the issue of displacement of anti-social behaviour due to closure of the public right of way
- Provide advice on other actions which could be implemented to resolve the problems, or why Gating Orders are the most suitable approach
- Advise LNPs on design of gates/ means of closure to ensure it offers high degree of security.
- Support LNPs during installation

The Safer Walsall Partnership may also advise on other actions that may be taken to reduce anti social behaviour and crime where a gating order is not possible.

### **3.4 The borough's 9 Local Neighbourhood Partnerships (LNPs) or their successors**

Local Neighbourhood Partnerships will play an important role in the implementation of Gating Orders as their composition of locally appointed partners' means they are in an ideal position to gather evidence to demonstrate that legal criteria are met. The role that they play in implementation will include:

- Identify key local priorities and put them forward for inclusion in the gating orders programme
- Identify a main contact and spokesperson to liaise with all agencies, including the Anti-Social Behaviour Unit, Borough Tasking and the Architectural Liaison Officer/ Crime Reductions Officer, regarding a potential site
- LNPs will also gather evidence of community support for gating orders from community groups, schools etc, make preliminary enquiries regarding crime, issues for the emergency services etc., using the checklist (Appendix A)
- Identify funding for implementation of the Gating Order including legal, implementation and maintenance work

### **3.5 Legal Services, Planning and Regeneration, Local Access Forum**

- Legal Services support the legal order process, sealing and confirming Orders, serving notices and advising on legal matters generally. They must be satisfied that the legal criteria are met.
- Planning and Regeneration Services will be consulted if and when gates and fencing are to be installed to ensure that planning approval is obtained where applicable. They can advise LNPs where planning consent is required and advise them during this process.
- The Local Access Forum is a statutory consultee for gating orders. When gating orders are implemented members' views will be sought in relation to the proposal. Their views in relation to the proposed closure and its impact upon Public Rights of Way and accessibility issues are important in their role as an advisory group. Their views will be considered and proposals adapted wherever possible, but they do not have the power of veto over proposed closures

## 4 FUNDING

- 4.1 LNPs need to identify funding for the legal order, and for the design and installation of gates. Consent and indemnity issues will need to be resolved. Maintenance will depend on the method of installation and will be agreed in advance. **An up-front payment will usually need to be made for the legal order.** If this is not possible for example, where a Gating Order may be grant funded, an alternative approach should be agreed in writing with the PROW team.
- 4.2 The PROW Team will keep a record of all Gating Orders meeting the legal criteria. If sites meet the legal requirements and are prioritised, but no funding is available for implementation, they will be taken off the list after a period of 5 years. It is envisaged that within this time period, the local situation and levels of anti social behaviour and crime will have varied and it would be necessary for the LNP to make a new application for the site, if Gating is still a Local Priority.

## 5 CRITERIA

- 5.1 Gating Orders may be used to gate definitive public rights of way including public footpaths, bridleways, restricted byways and byways open to all traffic, together with adopted footpaths. Sites which are not part of public rights of way will be referred to the SWP for consideration of other situational measures.
- 5.2 However, only public rights of way which fulfil legal criteria outlined within sections 129 A (3) (a) to (c) can be considered for gating. Before making a Gating Order the council must be satisfied that;
- (a) Premises adjoining or adjacent to the Highway are affected by high levels of crime or anti social behaviour;
  - (b) The existence of the highway is facilitating the persistent commission of criminal offences or anti social behaviour; and
  - (c) It is in all the circumstances expedient to make the order for the purposes of reducing crime and anti social behaviour

Sites must have credible evidence showing that persistent crime and/or anti social behaviour is being committed, including Police records primarily, which may be corroborated by information from other partners and residents.

- 5.3 The circumstances outlined in section (3)(c) include:
- (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; and
  - (c) In a case where the highway facilitates the through route, the availability of a reasonably convenient alternative route.

### **High levels of persistent crime or anti social behaviour**

- 5.4 A dictionary definition of 'persistent' is 'continuing, lasting, obstinate, hard to get rid of, continual'. The ambit and extent of the powers were considered by the High Court in *Ramblers' Association v Coventry City Council* [2008] EWHC 796 (Admin). It was concluded that the word persistent was an ordinary English word, commonly understood to mean "continuing or recurring: prolonged", that did not require further definition.

- 5.5 Section 129G of the Highways Act 1980 specifies that “anti social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more persons not in the same household as himself.
- 5.6 It is recognised that persistent episodes of anti social behaviour and crime, as defined above, can cumulatively produce a significantly adverse effect on quality of life. Therefore, sites which suffer high levels of this type of problem will be considered.
- 5.7 To meet the legal criteria recorded evidence of high levels of anti social behaviour and crime must be provided. In particular, it must be demonstrated that those properties adjoining or adjacent to the highway have high levels of crime. This will normally include those properties which border the highway, or are within its close proximity. It must be considered whether levels are high in comparison to the surrounding local area and borough average.
- 5.8 Gating orders primarily focus on anti-social behaviour but other crimes may also be used as evidence. Therefore police evidence of anti social behaviour and crime is of prime importance. Other evidence for example, petitions, residents’ own incident logs, minutes of meetings, complaints, letters/e-mails, reports and evidence of police or Safer Walsall Partnership interventions may also provide useful recorded evidence so should also be considered.

**The likely effect of making the order on properties adjoining or adjacent to the highway and other persons in the locality**

- 5.9 A range of adverse impacts may be encountered associated with the delivery of a Gating Order. For example, in some circumstances restriction of access or loss of business may be experienced. Claims for compensation may arise as a result. In addition, the likely effect of making the order on other persons in the locality e.g. inconvenience caused by the closure, or displacement of anti social behaviour/crime to other areas near to the proposed closure must be considered. Impacts of this type should be avoided wherever possible, or managed where they occur. Costs associated with delivery could potentially increase if claims for compensation are received meaning that gating is not a feasible option.

**The right of way facilitates crime and/or antisocial behaviour**

- 5.10 In general, rights of way do not cause or facilitate crime. However, in some cases it can be shown that persistent crime and anti-social behaviour is expressly facilitated by the use of certain public rights of way, particularly in built up areas or housing estates. Where a footpath is the only means of access to the rear of a terrace of properties, for example, it may well be easier to demonstrate that the way itself is facilitating persistent crime, rather than in an open rural setting, where there might be a number of means of access to premises.
- 5.11 In order to demonstrate that this criterion is met, it must be shown that the public right of way is in some way contributing towards the commission of offences. This may include for example, that crimes are occurring on the right of way itself, or that it is providing a means of access for commission of offences, or an escape route. Evidence from police records, the Anti Social Behaviour Unit and Architectural Liaison Officer will be crucial here but other forms of evidence may also provide support.

**Availability of a reasonably convenient alternative route**

- 5.12 Consideration has to be given to all members of the community including all users of the public right of way, including those with restricted mobility or visual impairments, in accordance with the Disability Discrimination Act 2000. Before pursuing a gating order it

must be demonstrated that the alternative route after closure would not be significantly longer resulting in inconvenience. The alternative route should be of at least a similar standard to the highway to be closed in terms of surface condition, width and accessibility. It should also be demonstrated that a majority of the local community support the closure. When objections are received against closure due to the level of inconvenience which would be caused they will be reviewed and it may not be possible to continue with the gating order.

- 5.13 Surveys may be useful to evidence the level of inconvenience that will be experienced and local support. Details on level of use, journey start and destination and overall journey length before and after closure may be used. This type of information may be particularly useful where there are a number of objections from the local community.

### **Practical implications of making a closure**

- 5.14 Sites have to be suitable for the erection of gates. For example closure might not be practicable where the public right of way runs across an open space and would require large sections of fencing to secure it, or where the highway to be gated provides the only means of access to a residence. Property owners will need to give permission for fixtures on, adjacent to or overhanging their property. Where private access rights exist, or statutory authorities require access to maintain equipment, those who have a private right of access must also give permission for the closure.

## **6 PROCEDURE**

### **6.1 A request for gating is received**

All requests for gating will be directed to the appropriate LNP. Initially the LNP must seek advice on the status of the route from PROW to confirm that it is a public right of way and therefore eligible for implementation of a Gating Order in accordance with this policy and statute. The LNP should also seek clarification about whether there have been any previous requests for closure or actions to prevent anti social behaviour and crime from PROW and SWP. The LNP is advised to arrange a site visit at this stage with officers in PROW and SWP, who will be able to advise whether there are any practical or legal issues which may prevent a Gating Order from being implemented to avoid any unnecessary investigations and free up LNP time for considering other more feasible requests.

- 6.2 **Each LNP** must determine its approach for receiving requests and applications for Gating Orders and for putting forward **1 priority site** to PROW for prioritisation.

### **LNP carries out preliminary investigation into suggested sites**

- 6.3 A nominee from the LNP should be put forward who will become responsible for gathering detailed evidence in accordance with the checklist at a later stage, with the support of PROW and SWP.
- 6.4 Consideration should be given to the information that will be required for the detailed investigation, below. Briefly, the headings for the checklist (Appendix 1) should be considered to ensure that generally the legal and practical requirements can be met. Evidence will be required, for example, to show that anti social behaviour or crime is experienced at the times when it is proposed that the right of way is to be gated which may be 24 hours per day or night time etc.

## **LNP identifies priority site**

- 6.5 After assessing the available evidence against the headings of the checklist to determine the level of evidence available and receiving advice from PROW and SWP, the LNP should determine one priority site. This should be referred to public rights of way for consideration, who will review the request and advise on any potential problems with meeting the legal criteria and actions which the LNP should take to strengthen the case.

## **LNP carries out detailed investigation to build the statement of case for closure**

- 6.6 A checklist has been prepared to help to guide LNP's through the process of gathering information in support of a Gating Order, as detailed in Appendix 1. PROW & SWP will support LNP's with the gathering of evidence at this stage. The LNP's nominated lead person will liaise with officers, members of the LNP and other local contacts to ensure that all required evidence is provided by relevant parties.
- 6.7 Each item of the checklist should be completed in turn, following a "Gateway Approach" with evidence obtained for each point and held on file starting at number 1 and then moving onto each item sequentially, once evidence is available. If evidence is unavailable for one point, this will indicate that this legal requirement is not met and Gating is not possible, so the completion of the checklist should end here to ensure unnecessary time and effort is not spent on the site. It is essential that high levels of anti social behaviour and crime are confirmed at an early stage, as the primary reason why applications for Gating Orders will be unsuccessful is where low levels are experienced, meaning that legal criteria is not met. Therefore LNP's are advised to ask Police and the Anti Social Behaviour Unit to provide written details, confirming the extent of the problems as early as possible.
- 6.8 Some of the main information detailed within this checklist (Appendix A) is as follows. Please note that the below list and appendix A are not exhaustive; LNP's may be aware of local actions that have been implemented which would be invaluable to demonstrate that legal requirements are met and why the site is a local priority:

### (a) Evidence that statutory criteria are met:

- Public Rights of Way confirm that the site is a public right of way and suitable for a Gating Order in accordance with this policy and statutory requirements, along with Walsall Borough's Rights Of Way Improvement Plan.
- Police evidence including incident logs, statements from beat officers etc. and a statement agreeing to closure on the grounds that a footpath facilitates crime is obtained.
- SWBP confirm the site forms part of their priorities for anti social behaviour and crime reduction.
- Proposals for closure have been discussed with police, fire and the local NHS Primary Care Trust who agree to closure.
- In-depth consultation is carried out with statutory authorities to agree their requirements and to allow information to be inserted into a legal order.
- Completed residents' incident logs, letters from residents and minutes of meetings where residents describe the problems they are having are collected.
- The views of landowners of the public right of way and adjacent properties, local businesses and other key local amenities in the vicinity e.g. schools, health centres, community buildings, etc are sought. Landowner consent must be gained if required. There may be claims for compensation under certain circumstances.
- Further investigation is carried out into the availability of a reasonably convenient route and the level of inconvenience to pedestrians.

(b) Practical issues:

- Procedures for Opening and closing of gates if necessary and by whom
- Access requirements are determined and resolved where private access, or access for maintenance is required
- Sign detailing opening/closing times and contact number
- Design of closure
- Maintenance agreement
- Street lighting and the possible need for removal is resolved.

6.9 The completed checklist and supporting documentary evidence is submitted to the PROW team. If the checklist is incomplete or insufficient evidence is available to demonstrate that the legal criteria are met, the request will be referred back to the LNP for further evidence to be collected. Sites will only be considered for implementation of a Gating Order once a completed checklist has been received, which demonstrates that legal criteria is met.

## **7 Potential sites around the borough are prioritised**

7.1 The PROW team will consider all sites put forward by LNPs and due to limited resources and staff time prioritise three sites in the borough at any one time for implementation of a Gating Order based on the evidence which is presented. Gating Orders can only be implemented where there is sufficient evidence to demonstrate that legal requirements are met. These sites will be progressed sequentially beginning with the site which (a) has the most urgent need for gating as shown by the level of anti-social behaviour and crime being experienced, (b) has the necessary supporting evidence in place, and (c) has funding in place.

7.2 In accordance with the Council's constitution, a Chief Officer Delegation will be sought for the approval to proceed with a Gating Order for each prioritised site, to ensure that the council has the necessary authority to proceed.

7.3 Sites which are put forward, but not included within the top 3, will be held on record by the Public Rights of Way team. Once Gating Orders have been implemented for the 3 priority sites LNPs will be asked to review whether the remaining sites are still a local priority, or whether they would like to put forward an alternative. In the 3 LNP areas where Gating Orders have been implemented, they will be asked whether they wish to put forward another priority site for consideration.

7.4 LNP's may submit a local priority site for consideration by PROW at any time. However, only one priority site will be held on PROW records at any one time for each LNP area. Therefore LNP's should be aware that when submitting a new site, any previous site submitted for consideration will be taken off the list and archived, but will no longer be considered by PROW for implementation of a Gating Order. Each LNP's request will be considered in rotation. PROW will advise LNP's prior to prioritisation being undertaken, allowing LNP's an opportunity to submit further evidence in support of an existing application, or to put forward an alternative site. LNP's will receive feedback on the outcome of their application.

## **8 Implementation of Legal Gating Order process**

For prioritised sites, implementation of a Gating Order will be undertaken in accordance with statutory procedures, as outlined below.

8.1 Public Rights of Way ensure that the legal criteria are being met and prepare the case for closure based upon the evidence provided by LNPs. If further evidence is required to

ensure that a robust case for closure is demonstrated the LNP will be asked to provide further information on those points.

- 8.2 The LNP must provide up-front funding for the legal order process, unless alternative arrangements have been agreed with Public Rights of Way.
- 8.3 An instruction to Legal Services will be made to commence with the making of the Gating Order and serving of notices. Further statutory consultation is carried out with all statutory consultees by serving notice of an order. In addition notices are erected on site, displayed at the ends of the highway, advertised in a local newspaper and made available for inspection. There is a 28 day notice period during which anyone may submit comments in support of a Gating Order (representations) or against (objections) at this stage. If the LNP or any partners strongly support or oppose the proposal, it is recommended that they write to PROW in accordance with the statutory notice procedures to ensure that their comments are taken into consideration. Further details on the statutory consultees and notice procedures are contained in Appendix 2 and 3.
- 8.4 Objections, representations or further comments on the proposed closure may be received during the notice period. These will be reviewed and Public Rights of Way will seek to resolve objections, or address any new issues raised which could potentially hinder the legal order process.
- 8.5 If no objections are received from local authorities, the police, fire and ambulance services, or if they are made and subsequently withdrawn as an outcome of further negotiations, the Order will be confirmed by the council.
- 8.6 Where objections are received other than from agencies listed above, they will be considered and attempts made to address concerns and encourage objectors to withdraw their comments. However, the council will confirm the order in house.
- 8.7 Some objections may be received which could mean that implementation of a Gating Order is no longer possible. For example, if gating would involve the paying of high sums in compensation, or the costs of relocation of apparatus, or if new evidence is provided which raises concerns about whether the legal criteria is met, it may be necessary to gather further evidence or seek to resolve issues at this stage. If it is not possible to overcome the problems, the Gating Order may not be pursued, and the authority to proceed will be withdrawn.
- 8.8 As directed by the legislation, where objections are received from a Local Authority, the Police, Fire Service or NHS PCT the Order will be submitted to the Planning Inspectorate for the decision on closure. Public Rights of Way will co-ordinate the development of information and the exchange of the statement of case or other evidence required by the Planning Inspectorate. Support of the LNPs will be essential at this stage to ensure that a robust case for closure can be provided. The decision on the Gating Order will be determined by either written representations, an informal hearing or a public inquiry. It will be necessary to identify further funding to progress the order, as legal costs are likely to increase significantly.
- 8.9 It is essential that a strong and robust case for closure is provided at this stage, which demonstrates that all of the legal criteria are met. If legal procedures are not adhered to there is a risk that an appeal with the Planning Inspectorate may be forced, which would be costly to the council and may result in the decision for closure being withdrawn.

## **9 Gating is implemented**

9.1 Only once the Legal Order has been confirmed, gating can go ahead. LNPs will lead on the installation of physical barriers, but the Safer Walsall Partnership will provide advice and support to ensure that the means of closure offers the best degree of security possible. Stages will include:

- The scheme design is finalised
- Need for planning consent is checked and it is obtained where applicable
- Statutory undertakers' equipment is relocated if necessary
- Any necessary public lighting work is undertaken
- Where private access is required arrangements are finalised
- Procedures for opening and closing gates are determined, where applicable
- Necessary maintenance agreements are established
- Consent of land owners and any other relevant parties is obtained for installation of gates, fencing, etc
- Installation of a sign verifying hours that the public right of way will be closed and a 24 hour telephone number will be provided as directed by statute
- Gates and fencing is installed

## **10 PROW maintain a gating order register and review gating orders**

10.1 In accordance with statute Walsall Council will maintain a register of Gating Orders.

10.2 Each gating order will be displayed for at least 12 months from the date of the order in a council office and published on the council website.

10.3 A register of gating orders will be open to inspection during normal business hours which will contain:

(a) Copies of all notices of proposals for the making, variation or revocation (as the case may be) of gating orders; and

(b) Copies of all gating orders made by the council

10.4 The council will also supply a copy of a gating order to any person who requests a copy and pays a reasonable charge.

10.5 A list of applications for implementation of Gating Orders will also be maintained and published on the council's website.

10.6 There is no maximum limit to how long a highway can be gated; also Gating Orders are not intended to be a permanent solution. For each Gating Order implemented, it will be necessary to determine a period for review, which shall be no longer than 5 years after the date when the Gating Order is made. The review should evaluate whether the gating order is acting as a useful crime or anti-social behaviour reduction measure, and will also assess the impact it is having on the community. The PROW team may discuss with the relevant LNP whether the limited access is causing excessive inconvenience to residents, and may also carry out surveys in the locality.

10.7 Once a Gating Order is in place, it is possible for the council to vary or revoke the order. An order may be varied or revoked if circumstances have altered, but will need to comply with the key principles of reducing crime and anti-social behaviour while not excessively inconveniencing users of the gated highway. Where a Gating Order is to be revoked or the hours of closure amended, it will be necessary to follow legal procedures outlined within section 129F of the Highways Act 1980

## **11. Links to useful documents:**

Home Office website  
[www.respect.gov.uk](http://www.respect.gov.uk)

Clean Neighbourhoods and Environment Act, 2005  
[www.opsi.gov.uk/acts.acts2005/ukpga\\_20050016\\_en](http://www.opsi.gov.uk/acts.acts2005/ukpga_20050016_en)

Safer Walsall Partnership – Anti-Social Behaviour  
[www.walsall.gov.uk/index/policing\\_and\\_public\\_safety/anti\\_social\\_behaviour.htm](http://www.walsall.gov.uk/index/policing_and_public_safety/anti_social_behaviour.htm)

Public Rights of Way  
[www.walsall.gov.uk/index.transport\\_and\\_streets/public\\_rights\\_of\\_way.htm](http://www.walsall.gov.uk/index.transport_and_streets/public_rights_of_way.htm)

Local Neighbourhood Partnerships  
[www.walsall.gov.uk/index/community\\_and\\_living/local\\_neighbourhood\\_partnerships.htm](http://www.walsall.gov.uk/index/community_and_living/local_neighbourhood_partnerships.htm)

## **12. List of Appendices**

- 1 LNP Checklist
- 2 List of statutory consultees
- 3 Legal Requirements for Gating Orders

Appendix 1LOCAL NEIGHBOURHOOD PARTNERSHIP CHECKLISTPublic Rights of Way Gating Orders Policy

Local Neighbourhood Partnership Area:

Name and contact details of LNP Nominee:

Public Right of Way Location and Reference Number (can be obtained from PROW Team):

**TASK – all items in bold type need to be satisfactorily resolved before a Gating Order can be implemented**

**1. Route status**

Tick  
when  
complete

Supporting  
evidence ref.

Check with Rights of Way team if footpath is either:  
**Definitive public right of way** or

**Adopted public right of way/footpath**

**2. Supporting evidence**

Tick  
when  
complete

Supporting  
evidence ref.

Details of persistent anti-social behaviour are evidenced  
including:

**Number of properties affected**

**Types of anti-social behaviour or crime**

**Frequency of incidents**

**Length of time residents have been affected**

**Impact on residents**

<p>Properties which have a boundary with the public right of way have higher rates compared to surrounding area</p> <p style="text-align: right;"><i>Section continued</i></p> <p><i>overleaf...</i></p> <p><b>The crime reduction officer and/or architectural liaison officer has explained what measures have been taken and/or considered, what the effects were, and why a gating order is the most appropriate solution</b></p> <p><b>Other actions have been considered to reduce anti social behaviour and/or crime and have been implemented wherever possible</b></p>		
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<b><u>3. Public right of way facilitates anti-social behaviour or crime</u></b>	Tick when complete	Supporting evidence ref.
<p>It can be demonstrated that:</p> <p><b>Anti-social behaviour or crime occurs on the public right of way</b></p> <p><b>and/or</b></p> <p><b>Public right of way provides means of access/egress for commission of offences</b></p>		

<b><u>4. Reasonably convenient alternative route</u></b>	Tick when complete	Supporting evidence ref.
<p>The following conditions have been met:</p> <p><b>The length of proposed route is reasonable</b></p> <p><b>The surface of proposed route is suitable</b></p> <p><b>The proposed route is suitable for those with a visual or mobility impairment</b></p> <p><b>A survey of usage of the existing route has been carried out</b></p> <p><b>Community facilities and businesses would be unaffected</b></p> <p><b>Wider community support for closure has been gained</b></p>		

<b><u>5. Community support and consultation</u></b>	Tick when complete	Supporting evidence ref.
<p>The following groups listed in appendix item 2 have been consulted:</p> <p><b>Community facilities and users of public buildings agree to closure</b></p>		

<p><b>Views of adjacent households and those from a wider catchment area</b></p> <p><b>Statutory authorities have no objections</b></p> <p><b>Police</b></p> <p><b>Fire Service</b></p> <p><b>NHS PCT</b></p> <p><b>Any other local authority involved</b></p> <p><b>Any utility companies with apparatus in the highway</b></p> <p><b>Public rights of way interest groups e.g. Local Access Forum, Ramblers Association</b></p>		
<p><b><u>6. Practical considerations</u></b></p>	<p>Tick when complete</p>	<p>Supporting evidence ref.</p>
<p>The following have been arranged:</p> <p><b>A crime reduction/architectural liaison officer has been consulted regarding a suitable design</b></p> <p><b>The need for planning permission has been ascertained</b></p> <p><b>Landowners are in agreement</b></p> <p><b>Indemnity agreements are in place</b></p> <p><b>Maintenance agreements and inspection arrangements are in place</b></p> <p><b>Procedures are in place for opening and closing gates if needed</b></p> <p><b>Key holders have been identified</b></p> <p><b>A sign with a 24 hour contact number has been provided</b></p>		
<p><b><u>7. Funding</u></b></p>	<p>Tick when complete</p>	<p>Supporting evidence ref.</p>
<p>Confirm funding is available for:</p> <p><b>Legal costs – allow at least £2,500</b></p> <p><b>Planning application fee (if applicable)</b></p> <p><b>Design fee</b></p> <p><b>Installation of gates and associated works</b></p> <p><b>Maintenance</b></p>		
<p><b><u>8. Any additional information</u></b></p>	<p>Tick when</p>	<p>Supporting evidence ref.</p>

	complete	
<p><b>Please list any additional information you would like to be taken into consideration below</b> (attach additional sheets or use the back of the page if necessary):</p>		

<b>PROW Use Only:</b>	
Date request originally received, and further dates of resubmissions	
Legal Requirements Met	
Date of Expiry of Application (6 months after request for further information from LNP, or 5 years after acceptance of application but funding has not become available)	

## **Appendix 2**

### **List of Statutory Consultees:**

- (a) All the occupiers of premises adjacent to or adjoining the relevant highway;
- (b) Every council through whose area the relevant highway passes;
- (c) Every chief officer of a police force through whose police area the relevant highway passes;
- (d) Every fire and rescue authority through whose area the relevant highway passes;
- (e) Every NHS trust or NHS foundation trust through whose area the relevant highway passes;
- (f) Any local access forum through whose area the relevant highway passes;
- (g) Any statutory undertaker who maintains services in the locality in which the relevant highway is situated;
- (h) Any provider of gas, electricity or water services in the locality in which the relevant highway is situated;
- (i) Any communications provider in the locality in which the relevant highway is situated;
- (j) Any persons who the council reasonably considers might have an interest in the proposed gating order (this currently includes The Ramblers Association, The Open Spaces Society, The Byways and Bridleways Trust, The Autocycle Union, The British Horse Society and The Cycle Touring Club);
- (k) Any person who requests a copy of the notice; and
- (l) Any person who has asked to be notified of any proposed gating orders.

## Appendix 3

### Legal requirements for **making and publicising** Gating Orders

Before making a gating order under s129A the authority must be satisfied that the legal criteria contained within sections 129A(3) are met and consideration has been given to section 129A(4). Then the council must:

Publish on its website and in a newspaper circulating in its area a notice:

- (i) identifying specifically or by description the relevant highway;
- (ii) setting out the general effect of a gating order being made;
- (iii) identifying alternative routes which would be available to pedestrians and vehicular traffic if the proposed order were to be made;
- (iv) setting out a draft of the proposed order; and
- (v) inviting written representations, within such period as is specified in the notice, being not less than 28 days, as to whether or not a gating order should be made;

The Act says that notices **must be erected on or adjacent to the highway as considered necessary to draw attention to members of the public**, but in Walsall this will be done as a matter of course.

A copy of the notice must also be sent to all prescribed statutory consultees as listed in Appendix 2.

The council has to consider objections from the public, but does not have to stop the order because of them as the order is for their benefit.

A public inquiry **must** be held in relation to a proposed gating order if an objection is received from the following:

- (a) the chief officer of a police force through whose police area the relevant highway passes;
- (b) a fire and rescue authority through whose area the relevant highway passes;
- (c) a NHS trust or NHS foundation trust through whose area the relevant highway passes; or
- (d) a council through whose area the relevant highway passes,

A gating order cannot be made before either:

- (a) a period of 28 days, beginning on the day the notice is published, has elapsed; or
- (b) any public inquiry held under regulation (if applicable) has been concluded.

A gating order must contain:

- (a) a statement that the conditions set out in section 129A(3) of the Act have been met;
- (b) the dates and times that the public right of way along the relevant highway will be restricted;

(c) details of any persons who are excluded from the effects of the restriction referred to in paragraph (b);

(d) details of alternative routes which would be available to pedestrians and vehicular traffic during the period the relevant highway is restricted;

(e) contact details of the person who is responsible for maintaining and operating any barrier whose installation is authorised by the order.

Street notices have to be put on site stating:

- (a) the fact that a gating order has been made; and
- (b) the effect of the order.

**Public Rights of Way**

01922 652445

[publicrightsofway@walsall.gov.uk](mailto:publicrightsofway@walsall.gov.uk)