

**DATE: 25 NOVEMBER, 2008**

**GATING ORDERS POLICY**

**Ward(s)**                      All

**Portfolios:**    Cllr Anthony Harris – Engineering & Transportation

**Summary of report:**

Consideration of the Gating Orders Policy was originally included on the Forward Plan for Cabinet on 14 January 2009 and Council on 23 February 2009. A revised approach to this is proposed, in response to outcomes of consultation on the draft policy.

Two trial Gating Orders are to be implemented in accordance with procedures outlined in the draft Gating Orders Policy and legal requirements of sections 129 A-G of the Highways Act, 1980, as introduced by the Clean Neighbourhoods and Environment Act, 2005. This approach will test operation of the draft Gating Orders policy and provide a comparison between two Local Neighbourhood Partnership (LNP) Areas.

The two trial Gating Orders will be implemented for the following public rights of way:

- a. Section of footpath 34 Willenhall, between Stroud Avenue and Redpine Crest. This site is in Willenhall Local Neighbourhood Partnership (LNP) and was agreed as their priority site on 13 November 2008.
- b. Adopted public footpath between Chester Road (adjacent to number 167) and Thorney Road. This site is in Aldridge South and Streetly LNP, and was agreed as their priority site on 14 October 2008.

The final version of the Gating Orders Policy will be produced after implementation of the two trial Gating Orders.

New Home Office Guidance entitled “A step by step guide to gating problem alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005”, was launched in October 2008. This will be considered and relevant points from this guidance will also be incorporated into the council’s final Gating Orders policy.

The final policy and outcomes of the proposed trails will be reported to a future Neighbourhoods Scrutiny and Performance Panel (NSPP) meeting for consideration, then Cabinet and Council. The Forward Plan for Cabinet and Council will be updated accordingly, after NSPP have considered and agreed the approach.

It is anticipated that the final Gating Orders Policy and outcome of the trials will be reported in 12 months, allowing for timescales required to meet legal procedures. Approval for confirmation and sealing of the two trial Gating Orders will be sought at this time.

### **Background papers:**

Draft Gating Orders Policy

[http://www.walsall.gov.uk/gating\\_order\\_policy\\_final\\_version-2.doc](http://www.walsall.gov.uk/gating_order_policy_final_version-2.doc)

Home Office Guidance; A step by step guide to gating problem alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005

[http://www.respect.gov.uk/uploadedFiles/Members\\_site/Document\\_Library/step-by-step\\_guides/GatingGuide\\_Oct2008.pdf](http://www.respect.gov.uk/uploadedFiles/Members_site/Document_Library/step-by-step_guides/GatingGuide_Oct2008.pdf)

### **Reason for scrutiny:**

This report is submitted to Scrutiny to seek approval of the revised approach.

### **Recommendations:**

NSPP are asked to agree:

1. Implementation of two trial Gating Orders in accordance with procedures outlined in the draft Gating Orders Policy at:
  - a. Section of footpath 34 Willenhall, between Stroud Avenue and Redpine Crest
  - b. Adopted public footpath between Chester Road (adjacent to number 167) and Thorney Road
2. To agree for a future report on the trial Gating Orders and the final Gating Orders Policy to be submitted to Cabinet and Council, with any recommendations, as considered appropriate.

### **Resource and legal considerations:**

It will only be possible to implement Gating Orders if funding is secured to cover both legal costs and installation of gates/ fencing. Safer Walsall Partnership receives funding from the Council Capital Programme for implementation of fencing and Gating schemes under their Improving Security in Local Neighbourhoods Programme. Implementation of the two trial Gating orders will be implemented subject to agreement of funding from this source.

Once Gating Orders are implemented and gates are installed there will be ongoing maintenance requirements to ensure that Gates are in a good state of repair and do not pose a hazard to users of public rights of way. Funding for maintenance of

Gates and fencing installed in the two trial sites is to be determined. However, it is envisaged that this could be funded through use of Indemnity Agreements, which would be agreed by the land owner(s) prior to installation. Fences are not usually maintained as part of the highway; they are normally maintained by the adjacent land owner as outlined within their property deeds.

There may be revenue implications for timed Gating Orders, i.e. those where the public right of way is to be closed at night time but opened for use in the daytime. Opening and closing procedures are to be determined on a case by case basis and any funding required to meet this requirement must be secured.

There are currently two full time Rights of Way Officer posts, one of which is a Job Share. With this current staffing level 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 4 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.

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-G of the Highways Act 1980 are met. LNP's will also play an important role in identifying priority local sites.

Support of Legal Services will be essential to ensure that Gating Orders are implemented in accordance with statutory criteria and procedures, along with Council policy and procedures.

Part of 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.

The above provides a summary. Please see the draft policy for further details of the proposed roles and responsibilities of Safer Walsall Partnership, LNP's and Legal Services.

### **Citizen impact:**

Closure of public rights of way for crime 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.

Negative impacts of this nature 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.
- The council has outlined proposals in the draft gating Orders Policy which state that Gating Orders will only be pursued where there is demonstrable community support for their implementation.

### **Environmental impact:**

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.

A potential reduction in opportunities for sustainable travel, which in turn leads to increased car use, increased congestion & pollution, will have a negligible minimum 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 and therefore in keeping with the local environment.

### **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, for which implementation will commence within 12 months of approval of Walsall Boroughs 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.

This decision from Scrutiny is therefore essential to ensure that progress continues towards delivery of the above policy and service delivery targets.

### **Equality Implications:**

The potential adverse impact on quality of life of some of the more vulnerable users will be managed and minimised as outlined in 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.

### **Consultation:**

Officers in Safer Walsall Partnership, Legal Services and Local Neighbourhood Partnerships have been involved during production of the draft Gating Orders Policy. Successful implementation of Gating Orders will require support of these service areas to assist with delivery. Therefore their views will continue to be sought during implementation of the proposed trial Gating Orders and preparation of the final policy.

Approval of Walsall Boroughs Rights of Way Improvement Plan (ROWIP) was subject to recommendations from NSPP, that Local Neighbourhood Partnership's should be consulted on improvements to public rights of way. Production of a Gating Orders Policy is one of the first actions to be implemented, as outlined within the ROWIP. Therefore, in accordance with these recommendations and the councils Consultation Strategy, views of LNP's and other interested parties have been invited, during a 12 week consultation period, which ended on 31 October 2008.

A written report and consultation letter was distributed to all LNP's. Presentations were provided to Willenhall LNP and Aldridge South and Streetly LNP, upon invitation to meetings.

#### LNP responses to consultation

Willenhall LNP suggested that some of the details of the policy, particularly the proposal to appoint a local representative to assist with gathering of evidence, would be problematic. They requested that a trial Gating Order is implemented to test the draft policy, before it is finalised and submitted to Cabinet and then Council for consideration. They have proposed that public footpath 34 Willenhall, between Stroud Avenue and Redpine Crest, should be put forward as their priority site for implementation of a trial gating order. This is subject to approval at their meeting on 13 November 2008.

Aldridge South and Streetly LNP held a special Community Action Group on Alleyways. They discussed a number of potential improvements to public rights of way within the LNP area and agreed to put forward the adopted public footpath between Chester Road (adjacent to number 167) to Thorney Road for implementation of a trial Gating Order. This was agreed at their LNP Meeting on 14

October 2008.

No other LNP's made comments on the draft Gating Orders Policy during this consultation period.

Other responses to consultation

Walsall Local Access Forum, who are an advisory group and a statutory consultee for Gating Orders, considered the draft policy during their meeting on 23 September 2008. They commented that the draft policy provides a good approach and covers the main issues.

To obtain views of the public the draft policy was displayed on the council website and wider interest groups, a consultation letter was also distributed to interested parties including statutory consultees on public footpath orders and local users of the boroughs public rights of way network. Relatively few responses were received and of those received we are confident that the draft policy and legal criteria for Gating Orders will be robust enough to ensure that their concerns are addressed. For example, one resident was concerned that users may experience difficulties with accessing local amenities after closure, but part of the legal criteria includes that a reasonably convenient alternative route should be available, meaning that due consideration of this shall be given for each Gating Order implemented.

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## 1. Report

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 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.

The Countryside and Rights of Way Act, 2000 introduced Special Extinguishment Orders as section 118B of the Highways Act 1980. Walsall Council remains the only authority in the West Midlands region to have successfully implemented any closures under Special Extinguishment Orders legislation. Six sites were put forward for closure for crime prevention purposes using this legislation and implementation has proven to be extremely complex, with no guarantee of success. Out of these six sites put forward for closure under Special Extinguishment Orders, four were referred to the Planning Inspectorate due to objections received from national associations and statutory authorities and closure has only been possible in two of the sites.

The Situational Interventions Policy was approved by Development Control Committee in November 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.

Newer legislation called gating Orders has been introduced under the Clean Neighbourhoods and Environment Act, 2005, as sections 129 A-G of the Highways Act 1980. These have 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.

The draft 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.

The new Gating Orders Policy will form 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.