



Leicestershire
County Council



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SCRUTINY COMMISSION – 4TH MARCH 2009

GATING POLICY FOR LEICESTERSHIRE

REPORT OF THE REVIEW PANEL

Introduction

1. This report sets out the conclusions and recommendations of the Panel concerning a proposed Gating Policy for Leicestershire.

Scope of the Review

2. The Chairman and Spokesmen of the Commission at their meeting on 26th June agreed that they (or their representatives) would undertake a review of the provisions within the Clean Neighbourhoods and Environment Act 2005 which enabled Councils to remove or restrict highway rights in areas of high crime or antisocial behaviour and to develop a policy to enable the Council to consider requests for 'gating orders'.

Membership of the Panel

1. The following members were appointed to serve on the Panel:

Dr M. O'Callaghan CC
Mr M. Charlesworth CC
Mrs M. L. Sherwin CC (who replaced Mr Natzel on the Panel following his resignation due to work commitments)
4. Dr O'Callaghan CC was appointed as Chairman of the Panel.

Conduct of the Review

5. The Panel met on four occasions between August 2008 and January 2009 and was supported by officers from the following departments:-

Highways, Transportation and Waste Management;
Community Services;
Chief Executive's (Legal Services and Youth Justice).
6. During the course of the review the Panel visited an area in Oadby and Wigston where the existence of certain alleyways had caused a level of crime and antisocial behaviour and met with the following:-

- Councillors Bentley and Connell of Oadby and Wigston Borough Council;
 - Councillor Loydall – Chairman of the Oadby and Wigston Crime Reduction Partnership;
 - Tracey Haskins – Oadby and Wigston Community Safety Team
 - Sergeant Micheal Kelly; PC Dave Jaeckels and PCSO Helen Danson of Leicestershire Constabulary.
7. The Panel also undertook a consultation exercise using the County Council 'Have Your Say website', though the response rate was extremely disappointing. The Panel also decided, in view of its recommendations, to send a copy of its final report to all 7 Leicestershire District Council's and the Chairmen of the 7 Crime and Disorder Reduction Partnership asking for their views. Any comments received will be reported to the Commission.

Findings of the Review - Summary

8. The attached report sets out the findings of the Panel. Briefly, the Panel is of the view that the provisions in the Clean Neighbourhoods and Environment Act should be applied to those areas where it can be shown that persistent crime and anti-social behaviour is largely facilitated by the use of certain rights of way. Gating Orders may be a helpful tool in reducing crime and anti-social behaviour but that these powers should be applied sensitively, balancing the community's concerns about crime and anti-social behaviour against the right to maintain people's freedom of access as far as is possible.
9. The Panel report sets out rigorous tests which any applicant would need to satisfy before any application for a gating order would be considered. It also recommends that applications should normally be initiated by the local District Council and be supported by the local Community Safety Partnership. Only in exceptional circumstances would an application from an individual be considered.
10. The making of a Gating Order is an executive function. The Panel recommends that the Cabinet should consider delegating to the County Solicitor, in consultation with other relevant officers, responsibility for assessing potential applications and publishing public notices. In respect of those applications where there are no unresolved objections the County Solicitor be authorised to make the Order. Where there are unresolved objections or the proposals are deemed sensitive a report should be submitted to the Development Control and Regulatory Board. The recommendation of the Board would then be submitted to the Cabinet for decision.

Resource Implications

11. The resource implications of the proposed policy are addressed in paragraphs 14 and 15 of the Panel's report. No additional funding has been provided to the County Council to implement the provisions of the Clean Neighbourhoods and Environment Act and the Panel is recommending additional funding of £21,000 is made available in 2010/11 to implement the policy. This will have to be considered in the context of rolling forward the MTFS. The Director of Corporate Resources has been consulted on this report.

Recommendations

12. The Commission is asked to consider the proposals put forward by the Panel and, if agreed, recommend the Cabinet to:-
 - i) adopt the report as the basis of the County Council's gating policy;
 - ii) authorise the County Solicitor to issue the requisite public notices for any proposed gating order;
 - iii) authorise the County Solicitor to make a gating order in those cases where there are no unresolved objections;
 - iv) consider the request for growth of £21,000 in the 2010/11 budget to cover the additional cost of implementing the policy.

Impact Analysis

Equal Opportunities Implications

The proposed policy recognises the need to have regard to the needs of those members of the population with mobility difficulties and for any gating order to address access issues.

Crime and Disorder Implications

Gating orders are aimed at reducing incidents of crime and anti social behaviour.

**Dr M. O'Callaghan CC
Chairman**

REPORT OF THE SCRUTINY REVIEW PANEL

GATING POLICY FOR LEICESTERSHIRE

Legislative Background

1. Section 2 of the Clean Neighbourhoods and Environment Act 2005 introduced a new power that allows councils to make, vary or revoke gating orders in respect of highways within their area. This is achieved by inserting new sections 129A to 129G in the Highways Act 1980 and enables 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. Local authorities are able to make "gating" orders on grounds of anti-social behaviour as well as crime.
2. Powers to close alleyways were first introduced by the Countryside and Rights of Way Act 2000 (CROW Act 2000). This enabled alleyways, which are also rights of way, to be closed and gated for crime prevention reasons but did not for reasons of anti-social behaviour and excluded many alleyways that were public highways but not recorded as rights of way. Under these provisions the removal of rights of passage is irrevocable.
3. The Clean Neighbourhoods and Environment Act 2005 provisions enables the Council to gate a highway in a similar manner to the CROW Act 2000 power but it:
 - i) doesn't first require the highway to be designated by the Secretary of State;
 - ii) enables gating to take place if highway suffers from crime and/or anti-social behaviour;

- iii) enables the council to continue with a gating order, even if objections are made (if it is considered in the best interests of the local community to do so).

Legal Requirements

4. To comply with the law, any location at which it is proposed to make a gating order must meet the following criteria:-
 - (i) Premises adjoining or adjacent to the highway are affected by crime or antisocial behaviour;
 - (ii) The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour;
 - (iii) It is, in all the circumstances, expedient to make the order for the purposes of reducing crime or anti-social behaviour.
5. A gating order should not be made in cases where the gate would prevent any resident or business (during the normal business hours) from accessing their main entrance.
6. The highway authority must be satisfied that a Gating Order would be effective in reducing crime or antisocial behaviour and:-
 - (i) must consider the effects of an order on adjacent occupiers and other local people and make sure that a reasonably convenient alternative route exists, which should be a viable option for all users, including the disabled and those with reduced mobility;
 - (ii) must balance crime and anti-social behaviour concerns against the impact a gate would have on users of the highway and local residents;
 - (iii) must consider environmental implications and any health issues if, for example, gating a highway will mean that people will be obliged to drive rather than walk to a school or local shops.

General Principles

7. The Panel is of the view that in general rights of way do not cause or facilitate crime. It believes that the provisions in the

Clean Neighbourhoods and Environment Act should be limited in use to those areas where it can be shown that persistent crime and anti-social behaviour is greatly facilitated by the use of certain rights of way. Gating Orders may be a helpful tool in reducing crime and anti-social behaviour but that these powers should be applied sensitively, balancing the community's concerns about crime and anti-social behaviour against the right to maintain people's freedom of access as far as is possible. To that end the Council would need to ensure that:-

- (i) the application of this power should not conflict with other County Council priorities contained in the Local Transport Plan and the Right of Way Plan, safer routes to school;
- (ii) the use of the power does not conflict with the requirements of the Disability Discrimination Acts;
- (iii) gating orders are a tool which should normally be used as a last resort i.e. only when an investigation has concluded that other means of addressing the crime or anti-social behaviour problem have been thoroughly explored or are not likely to be successful.

Application Procedures

8. The Panel is of the view that applications for Gating Orders should normally be initiated by the local District Council and have the support of the local Crime and Disorder Reduction Partnership (CDRP). Individuals or businesses applying for such orders should be referred their local District Council. It would be open to the District Council to seek third party contributions i.e. businesses or local residents.
9. Where an individual or business wishes to proceed without consulting the local District Council advice should be given regarding the likely cost incurred in both gathering the necessary evidence and consultation and they should be asked to give a commitment to meeting such costs before any work on an application for a gating order is started.
10. Attached as **Appendix 1** is an application form. Members will note that the application form sets out in detail the evidence that would be needed to support the making of a successful order. **Appendix 2** sets out a schedule of the stages involved in the application and order making process and the

timescales within which those elements which fall within the responsibility of the County Council will normally be delivered.

Decision Making Process

Publicising the Draft Order

11. The making of a Gating Order is an Executive Function and as such it falls to the Cabinet to take final decision or, if it chooses to do so, delegate that responsibility to an officer. The Panel's view is that the County Solicitor, in consultation with the County Council's Highways, Transportation and Waste Management Department, the Head of the Youth Justice and Rights of Way Officer be required to assess the application. Subject to being satisfied that the applicant has provided the necessary evidence it is recommended that the County Solicitor be given delegated powers to issue a public notice which sets out:-

- the relevant section of the highway to be gated either on an OS map or in sufficient detail so that people understand which section of the highway is being referred to;
- a brief resume of the evidence of crime and antisocial behaviour which supports the making of an order;
- details of the alternative route is suitable for all users including disabled users;
- the duration of gating order the times when access will be restricted and details of key holders.

Making the Order

The Panel is of the view that:

- (a) In the event there are no unresolved objections following the public notice the County Solicitor be authorised to make the necessary final order.
- (b) In the event that there remain unresolved objections the Panel is of the view that the matter should be referred to the Development Control and Regulatory Board with a request that the Board should form a view and advise the Cabinet.

- (c) In those cases where the objections received would result in a public inquiry the Panel believes that the matter should be referred back to the Applicant with a request that the proposals are reconsidered so as to overcome the objections. Only in exceptional circumstances should officers of the County Council consider proceeding with an order which would result in a public inquiry.

Design and Installation of Gates

12. Once a Gating Order is approved the County Council will require a suitable gate or gates to be installed by the applicant appropriate to the local setting. The design of the gate(s) must be approved by the County Council (Director of Highways Transportation and Waste Management). Applicants will need to obtain any other approvals, consents or licences required for the installation of the gate(s) whether statutory or not. In Conservation areas or where Listed Buildings are involved the installation of gates may need special consideration and approval.

Maintenance of Gates including access

13. On installation of any gate(s) applicants will provide to the County Council details of any Key Holders with contact details including both day time and out of hours telephone and where available other contact means. Where the arrangements involves locking and unlocking of a closure device the County Council will need to approve such arrangements and be provided with details of the responsible person(s). The Applicant will be responsible for on-going maintenance of gates installed.

Review of Gating Orders

14. The Panel is of the view that gates installed as a result of a Gating Order should not be a permanent feature and that the continuing need for gates should be reviewed. The Panel is of the view that such a review should be carried out as a rule every 12 months, though the review period would likely be agreed as part of the approval of an application. Where such a review demonstrates that there have been significant changes to local circumstances, a proposal should be made for the original order to be revoked.

Resource Implications

15. No additional funding has been provided to the County Council to implement the provisions of the Clean Neighbourhoods and Environment Act. The proposals put forward by the Panel will mean that the costs of individual schemes will be shared between the County Council, District Councils, local CDRP's and beneficiaries of the scheme (through third party contributions). Given the potential for a large number of schemes being put forward for gating orders the Panel is of the view that the number of gating orders processed in any one year should be limited to a maximum of three per District Council. District Councils should however be advised that the resources allocated would only allow the making of seven orders per year for the whole County (see paragraph 16). The cost of gating the route together with on-going maintenance to be met by the Applicant who would be advised to seek contributions from various sources including Parish Councils, the Police, the Local Crime and Disorder Partnership and third party contributions.
16. The costs falling to the County Council will include staffing costs across three Departments of the Council (Highways Transportation and Waste Management, Community Services and Chief Executives). The Panel has been advised that subject to there being no more than 7 such applications per year (one per District) the costs of undertaking the necessary checks and assessments could be met from existing resources. The Panel has however noted that there will be costs incurred in placing a public notice and in making the final gating order and these are estimated at approximately £3,000 per application. On the basis of 7 applications per year this will require additional resources of £21,000 per annum. This level of resource will need to be reassessed in the light of future demand.

Equality Assessment

17. All Applicants are advised to ensure that a suitable alternative route is provided for all users including disabled users and children in pushchairs.

**Dr M. O'Callaghan CC
Chairman of the Panel**