

Annex 2

Summary of Legislative Requirements and Home Office Guidance for proposed Gating Order

1. Section 129A of the Highways Act 1980 (as amended) by the Clean Neighbourhoods and Environment Act 2005 (CNE) allows local authorities to make Gating Orders to restrict public access over any relevant highway (as defined by S129A(5)) to reduce and prevent crime and anti-social behaviour (ASB). In order that a highway can be considered for a Gating Order, it must be demonstrated that it meets all of the following legislative requirements:
 - a) Premises adjoining or adjacent to the highway are affected by crime or ASB;
 - b) The existence of the highway is facilitating the persistent commission of criminal offences or ASB; and
 - c) It is in all circumstances expedient to make the order for the purposes of reducing crime or ASB. This means that the following has to be considered:
 - (i) The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
 - (ii) The likely effect of making the order on other persons in the locality; and
 - (iii) In a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.
2. Home Office Guidance 2006 suggests that the council should give consideration as to whether there are alternative interventions that may be more appropriate to combat crime and ASB before considering the use of a Gating Order. Alternative methods of crime prevention carried out by North Yorkshire Police on the Jute Road snicket to date are:
 - Meetings with affected residents
 - More patrols in the area
 - Making it an “ASB hotspot”
 - Problem solving plan drawn up
 - Static patrols conducted
 - Incident Diary given to affected resident
3. Although a Gating Order restricts public use over a route, its highway status is retained, thus making it possible to revoke or review the need for the Order. Home Office Guidance 2006 recommends that this review be carried out on an annual basis.

4. Access along a route which is restricted by a Gating Order is given to residents adjacent to or adjoining the restricted route (HA1980 S129B (3)) and anyone who has a private right of access over it (Gating Orders can only be made to restrict relevant highways, including Public Rights of Way).
5. A Gating Order may be made by the Council even if there are objections to it, as long as the Council is satisfied that the Order meets all the requirements of the legislation.
6. Any person may apply to the High Court for the purpose of questioning the validity of a Gating Order on the ground that-
 - (i) the Council had no power to make it; or
 - (ii) any requirement under the legislation was not complied with in relation to it.

An application under this section must be made within a period of six weeks beginning with the date on which the Gating Order is made.