

**Decision Session – Cabinet Member for
Transport**

13 October 2014

Report of the Director of City and Environmental Services

**Public Rights of Way – Proposal to restrict public rights over the
alleyway between Nunmill Street and Bishopthorpe Road in Micklegate
Ward, York using Gating Order legislation**

Summary

1. This Gating Order has been requested by local residents, North Yorkshire Police, Safer York Partnership (SYP) and Councillors in order to help prevent crime and anti-social behaviour (ASB) associated with it. In addition to a petition raised by residents in 2012 requesting alleygates, two informal consultations have been carried out in 2013 and 2014. A decision is requested as to whether or not to seal and make operative the draft Gating Order under Section 129A of the Highways Act 1980, to restrict access along this alleyway.

Recommendation

2. The Cabinet Member approves:
Option 1: Sealing and making operative the draft Gating Order (Annex 1).

Reasons:

3. a) The council has a duty under Section 17 of the Crime and Disorder Act 1998 to implement crime reduction strategies in an effort to reduce overall crime in their administrative area. This gating scheme will support that obligation.
b) Two formal objections to the draft Gating Order have been received however, at the previous informal consultation stage the majority of residents who responded were in support of the scheme (see Annex 2).
c) With due regard to the Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010, the Council has identified that there is one positive and six negative impacts of this gating scheme which involve mobility and access issues (Annex 3 - Community Impact

Assessment). Some of the negative impacts can be mitigated by design and installation options. Gating Orders may also be reviewed on a yearly basis, or on demand, which can accommodate any change in local circumstance. The positive impact of additional security to residents, increasing peace of mind and providing a safe area to the rear of properties justifies the negative impacts.

Background

4. Delegated Authority exists for officers in consultation with the Cabinet Member for Transport to seal Gating Orders however due to the significant public interest in this draft Gating Order, along with four other Gating Orders made on the 4 alleyways running parallel to this one, which have already been sealed, the Cabinet Member has determined to take the decision in respect of this scheme.
5. Informal consultations for this gating scheme have been carried out (Annex 2).
6. Waste collection arrangements for this street have changed from rear to front of property since these informal consultations were carried out. Therefore, should alleygates be installed, waste collection will not be affected.
7. Statistics provided by SYP (Annex 4) show that in the 12 months between July 2013/2014 there were 3 crimes and 4 incidents of ASB recorded for the properties adjacent to this back lane. The crime and ASB statistics in the 12 months between August 2012/2013 show that the alleyway was not subject to any recorded incidents of crime or ASB during that 12 month period. However between June 2011/2012 it experienced a relatively high number of burglaries in particular leading to a petition requesting alley gates being raised by residents early in 2012. However, it was not possible to take the scheme forward at the time, as funding was not available.
8. Taking the levels of crime and ASB for the other 4 alleyways which run parallel to this one (for which Gating Orders have already been made), along with Nunmill Street / Bishopthorpe Road, this group of 5 alleyways, rank the highest on the SYP alley-gating priority list.
9. Despite the above, at the OIC meeting held on 26 September 2013, SYP advised against taking this scheme forward due to the divisive nature of the consultation responses.
10. The Council, as highway authority has powers available to it, under section 129A of the Highways Act 1980, to make a Gating Order. Once an

Order is made it can be reviewed and either varied or revoked (s129F(2) or (3)). Annex 5 summarises the requirements of this legislation along with details of the Home Office Guidance on the use and life of a Gating Order.

11. In making a decision to make such an Order, the decision maker must have regard to the Public Sector Equality Duty (PSED) referred to in paragraph 2(c) of this report. This requires the decision maker to have due regard to the need to eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not and; and foster good relations between people who share a protected characteristic and those who do not. The protected characteristics include age, disability, pregnancy and maternity and race.
12. All political party spokespersons and affected Ward Members have been consulted. No comments have been received.

Consultation

13. There are 68 properties affected by this proposal. Two informal consultations were carried out. Overall, of those who responded, 23 residents were in support of the scheme and 10 residents objected (Annex 2).
14. In addition to the above 2 formal objections have been received (Annex 6).
15. Reasons for not wanting alleygates include:
 - i. The need for daily vehicular access to garages;
 - ii. The fact that the lane provides the only level access without steps to some properties;
 - iii. The added inconvenience of getting in and out of cars to open and close the gates;
 - iv. Concern that the installation of gates will make access to the properties on Bishopthorpe Road much more difficult for those who are infirm or disabled;
 - v. The change in refuse collection from rear of property to the front (this has already taken place) and that the consultation has been undermined by the change in waste collection ahead of the decision whether or not to make the gating order operative;
 - vi. The issues faced by Bishopthorpe Road residents are different and more serious than those for Nunmill Street residents and it

is unreasonable to give the “voice” of the latter equal weighting to that of the former.

The above comments are considered in the Analysis below.

Options

16. Option 1: Seal the draft Gating Order
Option 2: Do not seal the draft Gating Order

Analysis

Option 1

17. If the draft Gating Order is sealed, the alleyway will be gated at all times. Only those residents living in properties which are adjacent to or adjoining the restricted route will be given a Personal Identification Number (PIN) with which to access the gates, along with emergency services and utilities that may need to access their apparatus.
18. The Order will then be reviewed after 3 years, or before if necessary, by conducting a full consultation with residents. Depending on the outcome, the gates could either remain in situ; the conditions by which they remain in situ could be changed; or, they could be removed altogether.
19. *In response to the objections raised:*
This alley is of similar width (at just over 3m) to other vehicular width alleys in the city which have already been gated and which are used to access garages. The council has not been made aware of any problems experienced by residents getting in and out of vehicles to open and close the gates. The standard width of a UK parking space is 2.5m and the width between alley gates when open for access is kept to 2.5m minimum to allow vehicles to drive through safely.
20. The proposed position of the gates has been discussed by officers, with residents onsite to ensure that if gates are installed, there will be no difference in the way vehicles are manoeuvred around the corners of the alley.
21. A Community Impact Assessment has been carried out (Annex 3) and the summary is at paragraph 3.c. After all previous consultation with residents the Council is not aware of any resident, at this point in time, who may have difficulties in accessing the gates because of a protected characteristic under the Equality Act 2010 (e.g. due to age or disability). However, the gates will present an extra obstacle to those who access the alleyway using a vehicle, as they will be required to get in and out of their vehicles to open and then close the gates.

22. The change of refuse collection from rear to front of property has already been implemented. Waste Services have advised that the changes were made for operational reasons, ie to bring waste collection in line with the other 4 adjacent alleyways which have been gated and also with recycling that is already collected from front of property. The change in collection would have been put, and will remain in place whether the Order is made operative or not. Anyone who has physical difficulty in presenting their bagged waste to the pavement may opt to register for an assisted collection.
23. With regards to it being unreasonable to give the 'voice' of the residents of Nunmill Street greater weighting over the residents of Bishopthorpe Road; informal consultation responses indicate that on the Nunmill Street side of the alleyway 11 residents support gating and 4 do not. On the Bishopthorpe Road side 12 residents support gating, 1 is neutral and 6 are against. The number of residents who support gating on Nunmill Street is not therefore significantly more than those on Bishopthorpe Road.

Option 2

24. This option would leave the alleyway open for use by the public and the incidents of crime and ASB are therefore likely to continue at previous levels. Notwithstanding this, gating this alleyway may be revisited in the future.
25. There is the perception that because Gating Orders have been made on the 4 alleyways adjacent to this one, this would displace the crime and ASB that is currently associated with those alleyways to the Nunmill Street / Bishopthorpe Road alleyway. Safer York Partnership have advised *"large schemes within the city, Clifton, Groves, or Leeman Road have not shown a displacement of crime but it is accepted that these studies have only looked at crime and not the fear of crime, and that residents without a gate may "fear" being a victim of crime more than a resident who has a gate. It is felt that the benefits of gates will be greater if the whole of the community has, and accepts the introduction of gates. As crime and ASB in this area is in the majority "opportunistic", it may have the ability to displace but this could or could not be proven until gates are introduced. Safer York feels the introduction of gates is the best long-term method of crime reduction within this area"*.

Council Plan 2011 – 2015

26. The gating of the alleyway would support the Council Plan priority to *'Build Stronger Communities'*.

*“Safer inclusive communities –
To tackle crime and increase community safety, we will raise the community profile of the Safer York Partnership and establish an annual crime summit. We will also work with the Safer York Partnership to engage residents in tackling antisocial behaviour in our neighbourhoods”.*

Implications

27. The following implications have been considered:

- (a) **Financial** - Capital funding has been secured for the scheme through the Council and SYP. To supply and fit a double (vehicle) gate with lock is approximately £1,175. The estimated cost for this scheme is in the region of £3350. The authority is responsible for the maintenance of gates installed using Gating Orders.
- (b) **Human Resources (HR)** – To be delivered using existing staffing resources.
- (c) **Equalities** – The implications are summarised at paragraph 3.c and referred to in the main body of the report.
- (d) **Legal** – Section 129A of the Highways Act 1980 enables the Council to make a Gating Order restricting access to an alleyway which is a public highway where the Council is satisfied that (a) adjoining or adjacent premises are affected by anti social behaviour and/or crime and that (b) the existence of the highway is facilitating the persistent commission of criminal offences or anti social behaviour and that (c) in all the circumstances it is expedient to make the order for the purpose of reducing crime or ASB. Before making such an Order the Council must also consider the likely effect of the Order on adjoining and adjacent owners and other persons in the locality. Where the highway constitutes a through route the Council must consider the availability of a reasonably convenient alternative route.

Gating Order legislation will be replaced on 20 October 2014 by Public Spaces Protection Orders when the regulations for the Anti Social Behaviour, Crime and Policing Act 2014 (2014 Act) are published. Any Draft Gating Orders that have not been sealed before this time will have to go through the consultation process again as the legislative requirements of the 2014 Act are different.

(e) **Crime and Disorder** – This report is based on tackling crime and disorder issues as set out in the main body of the report and Annexes.

(f) **Information Technology (IT)** – None.

(g) **Property** – There are no property implications.

(h) **Communities and Neighbourhoods (Waste Services)** – Other than those discussed in the main body of the report, there are no other Communities and Neighbourhoods implications.

Risk Management

28. The implementation of a Gating Order is a power of the authority, not a duty. There are no rights of appeal should a decision not to progress with a Gating Order be made. However, Crime and ASB levels local to the area are likely to continue should a Gating Order not be pursued.
29. A person may apply to the High Court for the purpose of questioning the validity of a Gating Order if they believe that the council had no power to make it, or any requirement under this Part was not complied with in relation to it.

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**Report
Approved**



Date 3 October 2014

Specialist Implications Officer(s)

Wards Affected: Micklegate Ward

For further information please contact the author of the report

Background Papers

- Highways Act 1980 (as amended), section 129
- Crime and Disorder Act 1998
- Countryside and Rights of Way Act 2000
- Clean Neighbourhoods and Environment Act 2005 & Home Office Guidance relating to the making of Gating Orders 2006
- Highways Act 1980 (Gating Orders) (England) Regulations 2006 (SI 2006 No 537)
- City of York Council Gating Order Policy Document
- A step-by-step guide to gating problem alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005 (Home Office – October 2008)
- Equalities Act 2010
- Officer Decision – 26 September 2013: Public Rights of Way – Proposal to restrict public rights over five alleyways in Micklegate Ward, York using Gating Order legislation
- Officer Decision – 4 December 2013: Public Rights of Way – Proposal to restrict public rights over five alleyways in Micklegate Ward, York using Gating Order legislation – Update to previous OIC Report (26th September 2013)
- Officer Decision – 13 February 2014: Public Rights of Way – Proposal to restrict public rights over the alleyway between Nunmill Street and Bishopthorpe Road, Micklegate Ward, York using Gating Order legislation – Update to previous OIC Report (4th December 2013)
- Decision Session: Cabinet Member for Transport – 29 May 2014: Public Rights of Way – Proposal to restrict public rights over five alleyways in Micklegate Ward, York using Gating Order legislation

Annexes

Annex 1: Nunmill Street / Bishopthorpe Road Draft Gating Order and Plan

Annex 2: 1st and 2nd Informal Consultation responses

Annex 3: Community Impact Assessment

Annex 4: Crime and Anti-Social Behaviour Statistics

Annex 5: Legislation

Annex 6: Formal Objections