

**Decision Session (Public) –  
Cabinet Member for Transport, Planning and  
Sustainability or Environment**

2 August 2012

Report of the Director of City and Environmental Services

**Public Rights of Way – Presentation of Petition for the  
installation of gates on the alleyway between Bishopthorpe  
Road and Nunmill Street**

**Summary**

1. This report presents a petition submitted by Catherine Worden and Sue Lawson, residents of Bishopthorpe Road, requesting the installation of gates on the alleyway between Bishopthorpe Road and Nunmill Street. The Alleyway in question is considered to be a public highway and therefore a Gating Order will be required to restrict public access.

**Recommendations**

The Cabinet Member is asked to consider:

2. Not progressing the request to gate the alleyway at this time, but to leave it on the list of other alley-gating requests, to be looked at and reprioritised accordingly, if and when local circumstances change.

Reason:

3. On current information the proposed Gating Order does not appear to meet the legal expediency test, given the likely effect on adjacent businesses.

**Background**

4. The alleyway subject to the petition (Annex 1) runs between houses on Bishopthorpe Road and Nunmill Street (Annex 2 – location plan, Annex 3 – photographs). There are 84 properties affected by the alleyway, including 1 or 2

businesses, some of which require vehicular access along the alleyway.

5. From 01/06/11 to 31/05/12 there were 15 incidents of crime (4x Assault, 6x Burglary, 1x Criminal damage and 4x Theft), of which a total of 9 can be directly attributed to the alleyway (Annex 4). There were also 4 incidents of anti-social behaviour (ASB) (Annex 5); which, due to the method they are recorded are not able to be attributed to the alleyway.
6. This alleyway was considered as part of a wider scheme of Alley-gating in the Southbank area of the city in 2007. At the time the gating of this particular alleyway was abandoned due to strong objections that were received at the informal consultation stage from some of the residents and businesses that would have been affected.
7. The scheme was looked at again in 2009/10, but again it was not progressed due to the fact that hotels/guest houses on Bishopthorpe Road require vehicular access at all times of day and night to car parking facilities that are accessed from the alleyway, and the likelihood that objections would once again be received. The request to gate the alleyway currently remains on a list of other requests, to be looked at if and when local circumstances change.
8. All political party spokespersons and affected Ward Members were consulted. Comments were received from Cllr. Ann Reid; *“Given the history of this alley with previous attempts to alley-gate it proving unsuccessful and the reduction in funding then I would support option 1”* No other comments were received.

## **Consultation**

9. Informal consultation was carried out in 2007, objections to the gating of the alleyway were received at that time.
10. The purpose of this report is to request a decision as to whether or not to once again proceed to the feasibility stage of the alley-gating process. Further consultation would be carried out as part of this process.

## Options

11. Option 1: Do not progress the request to gate the alleyway.
12. Option 2: Progress the request to gate the alleyway to Feasibility Study stage

## Analysis

### Option 1

13. When consultation was last carried out in 2007, objections were received from residents and businesses that would be affected. It is likely that objections would again be received if a further consultation exercise was carried out. The Council could progress with a Gating Order to gate the alleyway even with outstanding objections however, given the fact that strong objections were received in 2007 and that any Order would directly affect businesses, it is unlikely that the Council could prove that the gating of the alleyway meets the legislative criteria of being 'expedient' in 'all circumstances'. Any person may apply to the High Court for the purposes of questioning the validity of a Gating Order with 6 weeks of the Order being made.
14. If the Council were to progress with the gating of the alleyway with strong objections outstanding, to get a demonstrably unbiased opinion on the matter the council could hold a public inquiry. This would cost in the region of £7k and there would be no guarantee of a successful outcome.
15. The Council's Alley-gating schemes are funded by Safer York Partnership (SYP) with, on occasion, additional funds from Ward Committees. SYP is not funding any new Alley-gating schemes this financial year. The availability of funding for Alley-gating in future years is uncertain. This particular scheme would cost approximately £6k, which would include the advertising of the Gating Order and the procurement and installation of the gates and locks, but does not include ongoing maintenance.
16. Additionally there are currently no staff resources available. In the short-term i.e. 2012/13 the officer who processes all the Council's Gating Orders is on maternity leave. In the long-

term 2013/14 onwards, 1 FTE equivalent is scheduled to be cut from the Rights of Way Team.

17. If this option were to be taken, the request to gate this alleyway would remain on the list of other Alley-gating requests and looked at again if and when local circumstances change. It would, of course, be prioritised against all other requests.

### Option 2

18. It could be argued that the levels of crime and ASB meet the requirements of the legislation, but the fact that the gating of the alleyway would restrict access to businesses means that the order would not be 'expedient' in 'all circumstances'.
19. In order to progress this petition, officers would be required to be taken off other programmed work including that relating to I-Travel York, and/or other statutory duties including Definitive Map work, maintenance and enforcement. If, after the Feasibility Study, it is determined to progress to a Gating Order, additional funding for Press adverts, and the procurement and installation of the required gates and locks, would have to be found. The Rights of Way budget is already fully committed to delivering statutory functions.

### **Council Plan Priorities**

20. 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**

21. The following implications have been considered:
  - **Financial** - The maintenance of the Council's 176 alley gates is currently funded from the Rights of Way Maintenance budget (£20k). The maintenance of these gates currently costs approximately £7k per year. Other than those discussed in the

main body of the report, there are no further financial implications.

- **Human Resources (HR)** - Other than those discussed in the main body of the report there are no further HR implications.
- **Equalities** - None
- **Legal** - 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. 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 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 circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

The circumstances referred to above are:

- 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.

A Gating Order cannot be made so as to restrict the public right of way over a highway which is the only or principle means of access to any dwelling.

In relation to a highway which is the only or principle means of access to any premises used for business or recreational purpose, a Gating Order may not be made so as to restrict the public right of way over the highway during periods when those premises are normally used for those purposes.

On current information the proposed Gating Order does not appear to meet the legal expediency test, given the likely effect on adjacent businesses.

- **Crime and Disorder** – other than those discussed in the main body of the report and Annexes, there are no other crime and disorder implications.
- **Information Technology (IT)** – None.
- **Property** – Council property is not affected.
- **Other** – None.

### **Risk Management**

23. 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. Crime and ASB levels local to the area are likely to continue however should a Gating Order not be pursued.
24. If it is determined to progress with a Gating Order to Feasibility Study stage, then due to the current staffing situation within Rights of Way, an officer will be required to be taken off statutory duties and other programmed work (I Travel York) to concentrate on this request. Given the statutory nature of the majority of rights of way work, this may result in court action or a complaint being lodged, with the Local Government ombudsman, against the authority.
25. Any delays to the delivery of programmed I Travel York projects may result in the loss of this funding for improvements to and access to rights of way.

### **Contact Details:**

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Report  
Approved

Date 2/ 8 /12

Wards Affected: Micklegate

All

For further information please contact the author of the report

**Background Papers:**

Highways Act 1980 (as amended), section 129.

**Annexes:**

**Annex 1:** Petition

**Annex 2:** Location Plan

**Annex 3:** Photographs

**Annex 4:** Crime statistics

**Annex 5:** ASB statistics