



**GATING ORDER POLICY,
PROCEDURE & PRACTICE DOCUMENT**

**USING LEGISLATION BROUGHT IN BY
THE CLEAN NEIGHBOURHOODS AND ENVIRONMENT ACT
2005**

March 2007

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INTERPRETATION

1. Within this document the terms 'Alleygating', 'Alleygating Scheme', 'Special Extinguishment Order' and 'Gating Order' shall refer to the closure of an alley either by the installation of a removable barrier (e.g. a locked gate) or the installation of a permanent structure (e.g. a wall or fence).
2. This policy shall apply to all minor highways referred to in legislation as 'relevant highways', and is not restricted to those recorded on either the Definitive Map and/or the List of Streets Maintainable at Public Expense. It includes any footpath, bridleway or restricted byway over which the public have access whether by foot or vehicle, but does not include trunk roads or special roads.

INTRODUCTION

3. All local authorities and certain other 'responsible authorities' (such as the police), as listed under Section 5 of the Crime and Disorder Act 1998, have a duty under Sections 6 and 17 of that Act, to implement crime reduction strategies in an effort to reduce overall crime in their administrative area. One of the main crimes committed in this country and one which has the most impact on its victims, is domestic burglary.
4. It is an acknowledged fact, that burglars prefer to break into a house through the doors or windows at the rear or side of the building where there is less chance of being seen, whereas only 15% of domestic burglaries occur through the front doors or windows. A lockable gate at the entrance to an alley and which is difficult to climb will help to keep the number of burglaries down. In some parts of London and Liverpool, it has been demonstrated that such gates have brought down the number of rear access burglaries by up to 90% and 50% respectively and in some parts of York where gating has been implemented, this decrease has been up to 87%. Although the overall average reduction may be less than that, there is no doubt that gating has a significant effect on reducing rear entry burglaries.
5. Legislation introduced by the Countryside and Rights of Way Act 2000, was brought in to address this situation by allowing local authorities to make Special Extinguishment Orders to close public rights of way for crime prevention purposes, but this was found to be cumbersome and difficult to implement. In April 2005 the Clean Neighbourhoods and Environment Act 2005 was brought in to try and address these difficulties by introducing 'Gating Orders'. However, a substantial proportion of these 'alleys' are public highways protected by a wealth of legislation and case law, which has developed over a number of centuries to protect the rights of highway users.
6. An increasing number of Local Authorities have already embarked upon widely publicised 'Alleygating Schemes', which have been very successful. Subsequently this publicity has resulted in a number of requests for the closure of paths in the City of York Council Area.
7. City of York Council is sympathetic to requests for Alleygating Schemes, subject to them being lawfully implemented and has already carried out a number of closures using legislation introduced by the CROW Act. However, with the introduction of the Clean Neighbourhoods and Environment Act 2005, the legislation available for closure of public rights of way has been simplified. Under these regulations, public rights are 'restricted' and not 'extinguished' and they remain public highways, for which the authority remains responsible.
8. This document sets out City of York Council's policy and procedure for dealing with requests for Alleygating Schemes and the implementation of any subsequent works. Instead of using several different pieces of legislation, the process will be simplified if only one piece of legislation is used. It is therefore recommended that for all alley restrictions designed to prevent or reduce crime, the Clean Neighbourhoods and Environment Act 2005 legislation should be used, unless other legislation is found to be more appropriate.

Policy AG 1: City of York Council is sympathetic to requests for Gating Orders, subject to their being lawfully implemented.

The Highway Authority's Duties

9. The Council has a statutory duty to protect all public highways, whether registered on the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense, or otherwise and failure to undertake this duty could result in the Council acting unlawfully. The Council must therefore exercise caution before embarking upon any proposals that may adversely effect or interfere with the rights of the public to pass and re-pass along any public highway, or potential public highway.
10. The Council also has a duty, along with the police and other 'responsible authorities', to reduce and prevent crime within their administrative area. This may mean that these two duties conflict with, or contradict each other and therefore this conflict or contradiction must be minimised.

Authorisation of gates or similar structures on highways

11. All gates or similar structures, if installed within a public highway, constitute an obstruction. However, under certain circumstances, these obstructions may be legitimised, after which they may be referred to as 'lawful obstructions'. A structure will only constitute a lawful obstruction if it is authorised by the relevant Highway Authority, who may only grant such permission if an Act of Parliament specifies that it may do so.
12. The circumstances under which gates or other structures can normally be installed on public highways are strictly controlled by the provisions of the Highways Act 1980, and even if lawfully installed, such gates or structures cannot be locked or used to prevent free passage by any legitimate user. The criteria for the authorisation of these gates or structures are clear and unambiguous. The route concerned must be a footpath or bridleway, the land concerned must be in use for agricultural purposes and the gates or structures must be required for the purposes of controlling the ingress or egress of animals. A request for a Gating Order will not satisfy these criteria.
13. The only other instance where gates or barriers may be installed is for the purposes of the safety of persons using the route and once again, their installation must not prevent actual use of the route by any member of the public.
14. The Council cannot authorise the installation of any gate, barrier or other structure in, on or across any public highway, under any other circumstances. Before any such gate or structure could be lawfully installed, it would first be necessary to legally extinguish the public highway, which would require a legal order.

Policy AG 2: The Council will not authorise the installation of any gate, barrier or other structure, in, on or across any public highway, otherwise than allowed by law.

DETERMINATION OF HIGHWAY STATUS

Routes shown on the Highway Records

15. Many public rights of way or highways are already recorded on documents known as the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense. These are the Council's formal records of public highways. If a route is recorded on either of these documents, then with few exceptions, it is undisputedly a public highway.

Routes not shown on the Highway Records

16. In common with many Authorities throughout the country, there are a significant number of routes that exist, but are not shown in the Council's records. This does not mean that highway rights do not exist, simply that they are unrecorded and that the legal records may need to be amended.

17. In general terms, if a route, path, or way runs between two highways, is used as a through route and has existed as such for a number of years (usually at least 20 years), then in the absence of any evidence to the contrary, there may be a reasonable presumption that highway rights exist or have been established.
18. Public highway rights may be established either under the provisions of the Highways Act 1980, or at Common Law. In either instance the evidential test is one of 'balance of probability' and in making a decision as to whether or not public highway rights exist, the Council must act in a '*quasi-judicial*' manner. This means that the Council must act in the manner of a court of law and make its decision based upon evidential fact. Issues such as desirability, privacy and security, although important, cannot lawfully be taken into account.
19. A request for a Gating Order will not be progressed where there is any dispute over the existence, or otherwise of public highway rights.

Policy AG 3: The issue of whether public highway rights exist along any route that is subject to a Gating Order request will be considered first and determined on a case-by-case basis by the Highway Authority. A Gating Order will not be progressed, where there is any dispute over the existence, or otherwise, of public highway rights; a decision that will be taken elsewhere.

IMPLEMENTATION OF GATING ORDERS

20. Unlike Special Extinguishment Orders, Gating Orders brought in by the Clean Neighbourhoods and Environment Act 2005 are not reliant on the designation of high crime areas by the Secretary of State and may be progressed in either designated or non-designated areas.

Policy AG 4: Gating Orders may be progressed regardless of the required designation being granted.

Informal Consultation

21. Prior to the making of any Order for the closure of a highway under the Highways Act, it is considered good practice to carry out an informal pre-order consultation in accordance with the Parliamentary Rights of Way Review Committee's Code of Practice for consultation on proposed changes to rights of way. It allows for any objections to the making of an order and includes bodies such as the Ramblers' Association, Open Spaces Society and other similar organisations. Gating Orders made under the Clean Neighbourhoods and Environment Act 2005, do not require informal consultation. However, it is recommended that this practice should continue, in order to gauge responses from affected residents, local Ward Members, the Parish Council, emergency services and utility companies; consultees such as the Ramblers' Association do not need to be included at this stage as they are included in a later stage of the process. This will prevent unnecessary and possibly costly procedures going ahead if the alley closure is likely to be unpopular, or requires the diversion of utility service equipment.

Consents

22. During the informal consultation period, all property owners and occupiers who are affected by the proposals contained within a Gating Order, will be requested to complete an Agreement Form (see Annex 1), which confirms their agreement:
 - to the Gating Order and any necessary Legal Orders that may be made.
 - to agree to any changes to the collection of refuse, as may be required by the closure of the alley.

It is recognised that a 100% response is not always possible. Therefore:

Policy AG 5: A Gating Order may not be progressed, unless the majority (50% + 1), of interested parties have agreed, in writing, to the proposals as specified within the Alleygating Policy Document or they have not objected to such a proposal. In the event that less than the majority of interested parties have agreed or have not objected, it shall be the decision of elected Ward Members whether or not to proceed with the scheme.

Protection of Private Rights

23. Gating Order procedures are wholly concerned with restricting public rights over highways and anything the authority decides, will not affect the private rights of residents, businesses, or other relevant parties (such as utility companies) having access over those highways.

Consultation

24. Before making a Gating Order, there must be a formal consultation period of not less than 28 days, where the council shall publish on its website and in the local newspaper, a Notice:

- Identifying the highway to be restricted.
- Setting out the effect of the proposed Gating Order.
- Identifying any alternative routes available to pedestrian and vehicular traffic
- Setting out a draft of the proposed Order.
- Inviting written representations or objections to the Notice.

25. A copy of the Notice and Order map must also be displayed on or adjacent to the highway to be restricted, in order for members of the public using the highway to be made aware of the effect of the proposed Gating Order and make representation if they so wish.

26. Copies of the Notice and a draft copy of the proposed Gating Order must be sent to the following people:

- All occupiers of premises adjacent to or adjoining the highway to be restricted.
- All affected businesses adjacent to or adjoining the highway to be restricted.
- All statutory consultees set out in the legislation, including The Ramblers' Association, Open Spaces Society etc.
- All statutory undertakers and utility providers, such as gas, electric and telephone companies.
- All emergency services, including the Police Authority for the area named in the Order.
- Anyone who has contacted the local authority requesting to be consulted.

27. It would be advisable to consult with the Parish Council and local Ward Members at this stage, as they will also have been involved during the informal consultation period.

Legal Order Objections

28. If no objections are received within the statutory timescales, the Gating Order can be presented to the appropriate Advisory Panel for Members to resolve to make the Order.

29. Where objections are raised and not withdrawn, Members may still decide whether or not to make the Order and it does not have to go to the Secretary of State for determination. In order to make that decision, Members have to satisfy themselves that the interests of the local

community outweigh the rights of users of the highway, if Members feel that the interests of the local community are more important, the Order can be made.

30. Where an objection is raised by the Police, Fire & Rescue Service, or the Ambulance Service, a public inquiry must be held. However, the reason for the objection should be established (i.e. nearby emergency fire exit opening into the alley) and the Alleygating Officer should attempt to reach a compromise with the relevant emergency service Liaison Officer to the satisfaction of both parties. It may be that the design of the gate at the location under review can be altered to accommodate the relevant safety requirements; or it may be necessary to alter the location of the gate itself. If a compromise cannot be reached, then a decision should be made whether or not to abandon the Order.
31. In addition to the above, legislation also allows a local authority to hold a public inquiry if it so wishes, but this is not a requirement and there are no guidelines to suggest when this should occur. Unlike other public inquiries, it is the Council who appoints the Inspector from the Planning Inspectorate; the cost of which is currently £630 per day, not including the cost of the venue. Therefore the occasions where this would be considered should be restricted to the following:
- Objections from Elected Ward Members.
 - Objections from the Parish Council.
32. A Gating Order cannot be made until either a period of 28 days has lapsed from the date of the advertising of the notice, or any public inquiry held in accordance with the legislation has been concluded.

Legal Orders Made

33. Once a Gating Order has been made, a copy must be displayed at the Council offices and advertised on the Council website for a period of 12 months from the date of making the Order. Copies should also be sent to the same groups identified in paragraph 26. A register of all Gating Orders must also be kept at the Council offices and made available for inspection during normal business hours.
34. A copy of the Gating Order must be situated at each end of the highway, although there is no requirement to advertise in the local newspaper. There is no suggested time limit for the on site advertising, but a period of not less than 28 days would be recommended, which is in line with other such orders made under the Highways Act.

Magistrates Court Orders

35. On occasion, due to the status of some highways, it is sometimes necessary to seek Legal Orders for the closure of vehicular highways through the Magistrates Court. This process is also governed by timescales for advertising and objections etc and must be carried out with the assistance of the Council's Legal Services. Closures through the Magistrates Court should only be sought where other options are not practical or available, as legislation within the Clean Neighbourhoods and Environment Act 2005 allows for such closures without resorting to applications through the courts.

IDENTIFICATION OF AREAS TO BE SUBJECT TO GATING ORDERS

36. Requests for Gating Orders should be made to the Alleygating Officer, or the relevant Ward Committee Co-ordinator who shall decide whether or not to pursue the request and commission a Feasibility Study from the Alleygating Officer. The Ward Committee shall be responsible for the completion of the 'Gating Order Request Form' (Annex 2), precisely defining the area to which the scheme relates, and identifying any alleys that are to be considered for restriction. They shall also be responsible for prioritising their funding for the implementation of any Gating Order in their area.

PRIORITISATION

37. Priorities for the implementation of Gating Orders shall be decided on information provided by the Safer York Partnership, based upon the levels of reported crime and official crime statistics. Crime reports for the alley in question must therefore be sought from the Crime Analyst or Police Crime Prevention Officer.
38. Priority will be given to Gating Order proposals that prove demonstrable levels of the type of offences listed under Category 1 and 2 below, although in the absence of such evidence, offences in Category 3 below may also be considered.
39. A lower priority will be given to Gating Order proposals that prove demonstrable levels of the type of offences only listed under Category 2 or 3 below.
40. Categories.

Category 1

Robbery, Domestic Burglary and Vehicle Crime.

Category 2

Arson, real fear of assault /robbery and drug dealing/taking.

Category 3

Noise and disturbing behaviour, anti-social behaviour, fly tipping of rubbish, dog fouling and graffiti.

Installation of Gates

41. Upon completion of the legal order process, all physical works and materials shall be commissioned and undertaken by the Alleygating Officer, in line with the Council's Procurement Policy. At present, the gates are installed with the assistance of a 'Community Payback Team' supplied by the Probation Service at no cost to the authority. The continuation of this agreement should be encouraged as it utilises one of the other bodies involved with the implementation of the Council's duties under the Crime and Disorder Act and also reduces overall costs of the scheme.

Issue of Personal Identification Numbers (PIN)

42. On 7 December 2005, the Executive Member for Planning and Transport agreed that all alley gates are to be operated by means of a coded keypad lock, which will require a Personal Identification Number (PIN). All parties with a legitimate need for access into gated alleys shall be issued with a PIN. Applicants for a PIN shall provide proof of their identity and address. Codes will be changed periodically, or at other times deemed necessary for security reasons and all legitimate parties will be informed in advance of the date of the change and the new PIN.

Policy AG 6: Personal Identification Numbers (PIN's) will be issued to all legitimate parties on completion of the fitting of the gates. These parties will receive advanced notification if or when the PIN has to be changed at a future date.

Maintenance and Management Issues

43. As Gating Orders do not extinguish highway rights, the Council retains responsibility for the maintenance of the highway, gates and the issuing of PIN's etc, commencing when the Alleygates become operational. This work will be undertaken through the Alleygating Officer in line with manufacturer's recommendations and the Council's procurement policy. Repairs, maintenance and cleaning of the highway will be as and when required or at the request of residents and not on a regular basis.

44. The Council may receive requests to make a conditional Gating Order, thereby closing an alley during certain times and days (i.e. only at night etc). The responsibility for the locking and unlocking of the gates should be taken into account, as Regulation 8(e) of the Highways Act 1980 (Gating Orders) (England) Regulations 2006 (SI 2006, No 537) states that, "[A gating order must contain] contact details of the person who is responsible for maintaining and operating any barrier whose installation is authorised by the order". Under this regulation, it is not necessary for the 'person' in question to be a named individual. Instead, this can be any suitable position or role within the Council, such as the Anti-Social Behaviour Co-ordinator, or Highways Manager; although on a day-to-day basis the responsibility is likely to fall to the Alleygating Officer to ensure continuity of the Order. This way, the Order will not need to be changed every time a new person fills the role.
45. Regulation 8(b) states that a Conditional Gating Order must also contain the times and dates when the gates will be open to the public. Should the gates not be opened at the specified times, the authority would be guilty of committing an offence of unlawful obstruction of the highway and could face prosecution in a court of law. Similarly, should the gates not be closed at the specified time and a member of the public was to become locked in or subject to assault or robbery, or an adjacent property is burgled from the alley, then the Council would have a civil liability, which could potentially cost thousands of pounds in compensation.
46. Responsibility for the opening and closing of the gates cannot therefore be handed to adjacent residents and must be managed correctly.
47. Notwithstanding the above, there is presently no Council department with resources in place to take on the responsibility of, or employed to carry out, the opening and closing of alley gates. Because of similar problems in other local authorities, many have decided not to make Conditional Gating Orders.

Policy AG 7: The Council shall retain responsibility for the maintenance of alleys and Alleygates, and the issuing of PIN's etc, commencing when the Alleygates become operational. This work will be undertaken by the Alleygating Officer in line with manufacturer's recommendations and the Council's procurement policy.

FUNDING

Staffing Implications

48. The Council shall fund an Alleygating Officer post within the Public Rights of Way Unit. This is to ensure the implementation of schemes through to completion. This post will oversee all Alleygating Schemes and Gating Orders being considered and/or implemented by City of York Council.
49. In relation to Conditional Gating Orders, the Council shall either create a suitable post and fund the cost of the necessary staff, in perpetuity, with the duties of locking and unlocking alley gates made under such an Order. Or incorporate the extra duty, in perpetuity, with existing staff already tasked with similar duties. Should this duty be contracted out to a private security company, then the cost of them managing the gates (typically £4,500 to £5,500 per Gating Order per year) would mean that this course of action would be subject to the Council's procurement rules.
50. Should the Council decide to make a conditional restriction of an alley (i.e. only at night), then the management and ongoing budgetary implications of carrying out that duty shall be taken into account prior to the decision being made.
51. Home Office Guidance notes recommend that if a Conditional Gating Order is made, local authorities should review the Order after 12 months, to assess its success or otherwise. This review should evaluate whether the Gating Order is acting as a useful crime or anti social behaviour measure; it should also assess the impact it is having on the community and discussions should be held with local residents to gauge whether the limited access is causing excessive inconvenience.

52. Should any of the conditions in paragraphs 49 to 51 of this policy not be possible, then the Council will not implement Conditional Gating Orders, for the reasons given in paragraph 45 of this policy.

Policy AG 8: Should the Council decide to make a conditional restriction of an alley (i.e. only at night), then the management and ongoing budgetary implications of carrying out that duty shall be taken into account prior to the decision being made. If this duty cannot be guaranteed then a Conditional Gating Order can be made for the length of time that the funding can be guaranteed.

Budgetary Implications

53. All other costs relating to the implementation of Gating Orders (e.g. the cost of any legal orders, gate closure management etc, as well as the cost of any physical works) shall be funded from the relevant Ward Committee budget in addition to any outside funding which may be obtained.

Compensation

54. The legislation relating to the closure or diversion of public rights of way includes provision for the payment of compensation to any party who suffers a loss or damage (e.g. loss of a rear access to property) as a result of the Order. However, there is no provision for the payment of such compensation included in the new Gating Order regulations.

Statutory Undertakers

55. The implementation of a Gating Order may require the relocation of apparatus owned by utility companies (gas, water, electric, telephone etc). The costs relating to the relocation of such equipment is often very expensive and should be avoided if at all possible. Notwithstanding the above, all statutory undertakers will retain their right of access to closed alleys.

56. In the unlikely event of such expenditure being required, it shall be funded from Ward Committee budgets. However, the need for such expenditure must be avoided if possible.

Maintenance

57. Following the implementation of a Gating Order, the Council shall retain responsibility for all maintenance related to it.

58. In the event of such expenditure being incurred, it shall be funded from the relevant Ward Committee's budgets, or the Council's Highway Maintenance budgets, dependent on the type of work required. In other words, whichever budget covers the type of work required at the moment, then that budget will continue to cover that type of work following closure.

TIMESCALES

59. It is estimated, dependent on circumstances, that from receipt of a properly completed request, a Gating Order should take no more than 6 to 8 months to implement.

60. Some elements of proposed schemes, or indeed entire schemes may be completed in shorter timescales, however there are a whole range of variables that may affect completion dates. Some of these are outside the control of the Council such as:

- residents/owners completing and returning agreement forms.
- the designation of areas by the Secretary of State (in the case of CROW legislation).
- objections to Legal Orders and subsequent Public Inquiries.

61. Factors that are internal to the Council, which may also effect completion dates are:

- Scheduling and deadlines for quarterly Ward Committee meetings.
- Scheduling and deadlines for six-weekly Advisory Panels.
- Granting of planning consent (if applicable).

GATING ORDER – PROCESS

Initial Enquiry/Request

62. Upon receipt of a Gating Order Request Form from a Ward Committee or member of the public, the Council's Alleygating Officer shall undertake a Feasibility Study and compile a Feasibility Report, to advise and enable the Ward Committee to decide whether or not to expend funds on commissioning a Gating Order.

Feasibility Study

63. The Feasibility Report should be produced in a format that will enable it to be submitted to the relevant Advisory Panel once approved by the Ward Committee and should include, although not exclusively, the following:

Consultation with Local Residents/Owners

64. Informal consultations shall be undertaken with all residents/owners of properties and businesses within and immediately adjacent to, an area subject to a request for a Gating Order. The responses received, shall be used to ascertain whether there is a genuine need for the scheme and to gauge local support. When Gating Order consultation documents are sent out, they should include a draft copy of the proposed closure order.

Consultation with Utility Companies

65. The Utility Companies, (gas, water, electricity etc) shall be consulted in respect of specific routes that may be subject to closure. It is essential to ascertain, at an early stage, which of these companies, if any, have their apparatus under any routes that may be subject to closure proposals. The Utility Companies will require the retention of their rights of unhindered access, or may require the relocation of their apparatus, if it appears they will be affected by the proposals.

66. If the Utility Companies require unhindered access to their apparatus, they may not consent to the installation of any structure across the route. The Council may not therefore be in a position to proceed with any closure proposals. Alternately, if they require the relocation of their apparatus, this may cost a considerable sum of money (potentially thousands of pounds). This should be avoided, but where required, the Ward Committee shall fund such works, if they decide to proceed with the Order.

Consultation with Emergency Services

67. Consultations shall be undertaken with all of the Emergency Services (Fire & Rescue, Police and Ambulance), including the Police Authority for the area, as they may all potentially require access along a route subject to a proposal for closure. It must be born in mind that should any one of these services object to a Gating Order, then in the absence of a satisfactory settlement, a public inquiry will have to be held.

Consultation with Safer York Partnership

68. The Safer York Partnership shall be consulted on any Gating Order proposals and requested to:

- provide relevant crime figures and statistics relating to the alley.

- advise how, and in what way, the proposal is consistent with the Crime and Disorder Strategy.
- advise what other Crime Reduction Initiatives are being undertaken in the immediate area (eg CCTV, targeted patrols etc).

Consultation with Refuse Collection / Cleansing Dept (any special provisions required)

69. Consultations shall be carried out with the Council's Cleansing Services in order to establish whether any changes or special provisions need to be made for refuse collection. In the event of any special provisions being required, the Ward Committee shall fund these, unless they are already catered for in the Cleansing Services budget.

Consultation with Other Interested Parties

70. Those organisations specified within the legislation, as listed in paragraph 26, shall also be consulted at this stage. Consultation with local representatives of such organisations, as well as their head offices is also required. Legislation also states that anyone expressing a desire to be included in the consultation process must also be consulted.

Consultation with Other Council Departments

71. Consultation shall be carried out with any other relevant departments within the local authority, as specified within Council report writing guidelines, such as Finance, Legal etc and their views noted on the report. This will prevent any conflicts of interest occurring with other schemes being implemented or considered by these departments.

Public Path Orders

72. An assessment of the routes proposed for closure or restriction shall be undertaken, to ascertain which Legal Orders are required and the most appropriate legislation to use (see Annex 3). The Feasibility Report shall advise the way in which the appropriate legislative criteria has been satisfied, or not, as the case may be.

Site Works Required

73. An assessment of the physical works required to implement the Gating Order shall be undertaken and the available options discussed within the Feasibility Report. This may involve liaising with gate manufacturers and locksmiths to determine the necessary gate and lock specification or installation requirements.

Planning and Highway Authority Consents

74. Planning consent for the installation of alley gates should not normally be required if the gates are being installed by or on behalf of the local authority. Part 12 of the General Permitted Development Order 1995 allows the local authority to erect 'any small ancillary building, works or equipment on land belonging to them for the purpose of any function exercised by them on that land. The right is subject to the qualification that such [structures] do not exceed 4 metres in height or 200 m³ in capacity.'

75. Although alley gates are not listed in the examples given at class A (b) of Part 12 of the GPDO, which includes lamp standards and control barriers, they would be considered as similar structures or works required in connection with the operation of the public service administered by the Council and, as they are under 4 metres in height, would not require express planning permission.

76. The Alleygating Officer shall also consult the Council's Highways Development Control Team and Transport Planning Unit, to identify any highway or local transport implications, such as Safe Routes to School schemes.

Estimated Costs

77. The Feasibility Report shall include a budget forecast, for the implementation of the proposed scheme. This shall include costings for:

- Legal Orders.
- Planning Consents (if applicable).
- Moving of Utility Company apparatus (if applicable).
- Physical Works on site, including all materials needed.
- Any other costs identified during the Feasibility Study.

Decision Made whether to Proceed with Scheme

78. Upon receipt of the Feasibility Report, the Ward Committee, on the advice of the local Ward Members if required, shall decide whether to proceed and expend funds on commissioning a Gating Order and allocate funding accordingly.

79. Once a decision has been made to implement a particular scheme, the Alleygating Officer will prepare a suitable report and present it to the relevant Council Committee or Advisory Panel for consideration. The decision of this Committee or Panel will be final.



GATING ORDER
OWNERS/OCCUPIERS AGREEMENT

(To be completed by each property owner / occupier affected by the proposals)

WARD: <>

SCHEME REFERENCE: <>

DETAILS OF SCHEME: Request to restrict alleyways in the <> area of York

Name and Address	Name and Address
Occupier Address 1 Address 2 YORK Postcode Telephone Number	Landlord/Owner (if different) Telephone Number
Agreement	
<p>*I am / We are the freehold / leasehold * owner(s) of the above property which is affected by the proposed Gating Order.</p> <p>OR</p> <p>*I am / We are the tenant / licensee or occupier(s)* of the above property which is affected by the proposed Gating Order.</p>	
<p>*I / We do not agree to the proposed alley closure and wish it to remain open to the public at all times.</p>	
<p>*I / We agree and consent to the proposed Gating Order and any necessary Legal Orders to restrict the use of the alley, as shown in the City of York Council Alleygating Policy, that may have to be made as a consequence.</p>	
<p>*I / We agree to any reasonable changes to the collection of refuse and household waste by City of York Council Cleansing Services, which may be necessitated by the restricted use of the alley.</p>	
Signed	Print Name
Signed	Print Name
Date	

*Delete as appropriate

Please continue overleaf if required



GATING ORDER PROPOSAL

(Before submitting a proposal please read the Council's Alleygating Policy).

Ward Committee Contact Details
<i>Telephone Number</i>
Request for Gating Order
Define the area to be subject to the proposed Scheme and attach a 1:1250 scale plan with the boundaries clearly marked.
Reason(s) for Proposal
State as fully as possible the reasons for the proposal and how it meets the criteria of the Alleygating Policy Include all available crime figures if available (a crime report will be obtained by the Alleygating Officer anyway).
Continue on separate sheet if required.
Confirmation of Supply of Information
This Gating Order proposal was discussed and agreed at the Ward Committee meeting on
Local residents who attended the above Ward Committee Meeting have been made aware of the Council's Alleygating Policy, and briefed on its content.
Local residents who attended the above Ward Committee Meeting have been advised that the Council cannot guarantee the success of any Gating Order proposal
Local residents who attended the above Ward Committee Meeting have been advised that gates or other structures will only be installed on Alleys if it can be achieved lawfully and that the Council will initiate criminal proceedings against any person who erects such structures without lawful authority.
Local residents who attended the above Ward Committee Meeting have been advised that a Gating Order shall only proceed subject to it being lawful and it being funded by the Ward Committee budget.
Signed Name Neighbourhood Co-ordinator – City of York Council
Date

LEGAL ORDER OPTIONS

OPTION ONE – ROUTES WITH NO HIGHWAY STATUS

Routes that do not have highway status

In general terms, if a route, path, or way, runs between two other highways, is used as a through route and has existed for a number of years (usually at least 20 years), there may be a reasonable presumption that highway rights exist. It is important that this matter is given consideration on a case-by-case basis, as the installation of any gates or barriers on a public highway, may constitute a criminal offence unless lawful authority can be demonstrated.

Notwithstanding the above there will be cul-de-sac alleys that do nothing more than serve the rear of properties. Although such routes may be on the List of Streets Repairable at Public Expense, some are unlikely to have acquired highway rights over them, but will probably be subject to private rights of access.

Subject to any private rights of access being safeguarded (See paragraph 23), routes of this nature that are not on the List of Streets Repairable at Public Expense, could be gated without the need for any complex or lengthy legal order processes. To do this, however, would need the consent of all affected residents.

OPTION TWO – USE OF GENERAL POWERS

Town and Country Planning Act 1990

The Town and Country Planning Act 1990, allows for the closure of a footpath, if it is necessary to allow development (approved by a valid planning consent) to take place. This essentially means that the development concerned, must actually build over the path itself, a simple change of use from say path to garden would not suffice as it is, in law at least, quite compatible for a path to run through a garden, therefore the criteria would not be met.

It is unlikely that the powers contained within the Town and Country Planning Act 1990 can be used to facilitate a Gating Order.

Highways Act 1980

The Highways Act 1980 is the principle piece of legislation that allows for the extinguishment of highways. The powers for closure are strictly defined by the legislation. This generally provides that extinguishments may only be made, if it can be demonstrated that the highway concerned is not needed/necessary for public use. Whilst this may be a somewhat subjective decision to make, it is clear that factors such as criminal, or anti-social behaviour, cannot lawfully be taken into account. If a route is heavily used by legitimate pedestrian traffic, it is unlikely that the legislative criteria can be met in order to close the path to prevent its misuse at other times.

OPTION THREE - USE OF NEW CRIME PREVENTION POWERS

Countryside and Rights of Way Act 2000 – Closure for Crime Prevention

The Countryside and Rights of Way Act 2000, amended S118 and S119 of the Highways Act 1980, by introducing new powers to close or divert public rights of way for the purposes of crime prevention. There are however, strict criteria that must be satisfied before such Orders can be made.

Firstly, following an application from the highway authority, the Secretary of State must designate the area where the paths are located, as an area within which the new provisions may be used. For such an application to be successful, the Highway Authority must persuade the Secretary of State that the area suffers from high incidences of crime.

It should be stressed that the designation of an area, as described above, does not, in any way, imply that any subsequent Extinguishment Order will be successful. It is still necessary for each proposal to fulfil all of the remaining criteria of the legislation.

Before an Order can be made the Authority must be satisfied, having taken into account the factors listed below, that it is expedient for the purposes of preventing or reducing crime which would otherwise disrupt the life of the community, to stop up that highway.

It must be satisfied that premises adjoining or adjacent to the highway are affected by high levels of crime and that the existence of the highway is facilitating the persistent commission of criminal offences.

Even if these criteria can, by the production of evidence be satisfied, an Order cannot necessarily come into effect. Before an Order can be confirmed/take effect, the Council must also be satisfied that it is expedient to stop up the highway having regard to:

- Whether and if so to what extent, the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998.
- The availability of a reasonably convenient alternative route, or if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway rather than stopping it up.
- The effect the extinguishment of the right of way would have, as respects land served by the highway, account being taken of the provisions as to compensation that may be payable.

Clean Neighbourhoods and Environment Act 2005 - Closure for Crime Prevention

The Clean Neighbourhoods and Environment Act 2005, which came into force on 1 April 2006, inserts a new S129, into the Highways Act 1980, which provides new powers to restrict the use of public rights of way for the purposes of crime prevention. Such restrictions, unlike S118B of the Highways Act, can be permanent, temporary, or conditional and are not dependent on an area being designated as an area of high crime by the Secretary of State.

A council may make a Gating Order in accordance with this Act in relation to any relevant highway for which they are the highway authority, if they are satisfied that premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour; that the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and it is in all the circumstances expedient to make the order, for the purposes of reducing crime or anti-social behaviour.

As with the CROW Act, even if these criteria can be satisfied, an Order cannot necessarily come into effect unless the highway authority is satisfied that it is expedient to stop up the highway having regard to:

- The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway.
- The likely effect of making the order on other persons in the locality.
- In a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

However, unlike the CROW Act, which permanently extinguishes public rights over a highway, a Gating Order can:

- Restrict the public right of way at all times, or in respect of such times, days or periods as may be specified in the order (eg only at night, or at weekends, etc).
- Exclude persons of a description specified in the order from the effect of the restriction (eg emergency services, council officers, utility companies etc).

The alley also remains the responsibility of the local authority even after gating, so it continues to be a highway repairable at public expense.

Before making a Gating Order in relation to a relevant highway the Council must be satisfied that:

- Premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour.
- The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour.
- It is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

Unlike other legislation used to extinguish public rights, the local authority may make the Order even if there are objections to the closure; as long as they are satisfied that closure is in the best interests of the local community. However, if there are objections from any of the emergency services, then the Order must go before a public inquiry. In the event of such an objection, the Act does give the Council the option of either abandoning the Order, or negotiating with the relevant emergency service to try and reach a compromise, thereby avoiding a costly public inquiry.

This legislation has been streamlined to make it easier and quicker to restrict the use of a problem alleyway, however, this does not mean that the criteria for making a Gating Order is any less than that used in the CROW Act. What it does do is introduce instances of high levels of anti social behaviour as being a main reason for closure, in the absence of high levels of crime and is designed to improve residents' quality of life.

Another main feature of using this legislation is the recommendation that local authorities review their Gating Orders on an annual basis, as there is no maximum limit to how long a highway can be gated. This ensures that the Gating Order remains useful as a crime or anti social behaviour reduction method. As highway rights are not extinguished, it would be a simple matter to revoke the Gating Order or vary the conditions.

Although annual reviews are recommended and closures encouraged to be temporary, this part of the Act seems to be contradictory. If there are high levels of crime and/or anti social behaviour enough to restrict the use of a public right of way, then this in itself is likely to reduce crime. The review will show this reduction in crime and it is expected then that consideration be given to re-opening the alley to public use. However, the chances are that re-opening the alley will lead to an increase in crime and anti-social behaviour back to its pre-restricted levels and create a situation where restriction of public use is again needed.

This situation appears to be counter productive and could prove to be costly. In view of this it is recommended that City of York Council will avoid temporary restrictions.

Conditional restrictions may be implemented if evidence shows that the crime or anti social behaviour occurs only at specific times, such as during the hours of darkness. Whilst this may seem like a good idea, the management of the gate closure must be taken into account, as, if the gates are not re-opened at the time specified on the Order, they will then become unlawful obstructions and leave the local authority open to prosecution. Unless this logistical problem can be properly managed in perpetuity, it would be unwise to consider conditional restrictions and some local authorities have decided not to pursue this course of action.

SUMMARY POLICY STATEMENTS

- Policy AG 1:** City of York Council is sympathetic to requests for Gating Orders, subject to their being lawfully implemented.
- Policy AG 2:** The Council will not authorise the installation of any gate, barrier or other structure, in, on or across any public highway, otherwise than allowed by law.
- Policy AG 3:** The issue of whether public highway rights exist along any route that is subject to a Gating Order request will be considered first and determined on a case-by-case basis by the Highway Authority. A Gating Order will not be progressed, where there is any dispute over the existence, or otherwise, of public highway rights; a decision that will be taken elsewhere.
- Policy AG 4:** Gating Orders may be progressed regardless of the required designation being granted.
- Policy AG 5:** A Gating Order may not be progressed, unless the majority (50% + 1), of interested parties have agreed, in writing, to the proposals as specified within the Alleygating Policy Document or they have not objected to such a proposal. In the event that less than the majority of interested parties have agreed or have not objected, it shall be the decision of elected Ward Members whether or not to proceed with the scheme.
- Policy AG 6:** Personal Identification Numbers (PIN's) will be issued to all legitimate parties on completion of the fitting of the gates. These parties will receive advanced notification if or when the PIN has to be changed at a future date.
- Policy AG 7:** The Council shall retain responsibility for the maintenance of alleys and Alleygates, and the issuing of PIN's etc, commencing when the Alleygates become operational. This work will be undertaken by the Alleygating Officer in line with manufacturer's recommendations and the Council's procurement policy.
- Policy AG 8:** Should the Council decide to make a conditional restriction of an alley (i.e. only at night), then the management and ongoing budgetary implications of carrying out that duty shall be taken into account prior to the decision being made. If this duty cannot be guaranteed then a Conditional Gating Order can be made for the length of time that the funding can be guaranteed.