
Decision Session
Executive Member for City Strategy

7 July 2009

Report of the Director of City Strategy

PUBLIC RIGHTS OF WAY – Proposal to restrict public rights over the access between Scarcroft Road back lane and Scarcroft Green, Micklegate Ward, York

Summary

1. This report considers the closure of an access point/gap in the low wall and ornamental railings, leading onto Scarcroft Green from Scarcroft Road back lane, Micklegate Ward, using Gating Order legislation in order to help prevent crime and anti-social behaviour (ASB) associated with the back lane (Annex 1 – Description and Location Plan).

Recommendation

2. It is recommended that the Executive Member accept **Option C** and resolve to:
 - i) Authorise the Director of City Strategy to instruct the Head of Civic, Democratic and Legal Services to make a Gating Order to close the access point/gap in the boundary, leading onto Scarcroft Green from Scarcroft Road back lane, Micklegate Ward, in accordance with s129A of the Highways Act 1980.
 - ii) Advise residents of Scarcroft View that they are able to pursue their own private gated access onto the green from their private alleyway should they wish to do so at their own expense.

Reason

3. In order that the access point/gap in the railings, leading onto Scarcroft Green from Scarcroft Road back lane, Micklegate Ward, can be closed by reinstating the low wall and railings to their original condition to help prevent crime and anti-social behaviour currently associated with the back lane.

Background

4. The gap in the boundary wall and railings was created when a substantial section of it was repaired by the council's Parks and Open Spaces team in 2002. The council carried out these repair works because the wall was in a dangerous state and the owners of it could not be traced. A detailed history of the wall, railings and access to the green can be found in Annex 6. See Annex 3 for photographs showing the structure as it is today.
5. Previous to the repair works being carried out, there were gaps in the railings, which allowed access onto Scarcroft Green over the low wall from the private alleyway to the front of Scarcroft View. Residents of Scarcroft View requested that when the wall and railings were repaired a gap be placed away from the front of the terrace to allow them easy access onto the green. Since then, however, evidence shows that the gap has encouraged youth nuisance, graffiti, noise and litter problems as well as damage to resident's property on the back lane.
6. Crime reports and comments from the Architectural Liaison Officer for North Yorkshire Police are detailed in Annex 4 followed by a selection of photographs taken by residents showing evidence of graffiti in November 2008 (Annex 5). The closure of this access point therefore meets the criteria of the legislation (see summary in Annex 2, Table 1).
7. It is proposed to close the gap by reinstating the original wall and railings instead of installing a gate. This proposal is based on the known history of the boundary as detailed in Annex 6.

Consultation

8. Statutory consultation for the proposed Gating Order was carried out in accordance with s129A of the Highways Act 1980 and included:
 - All affected residents and businesses.
 - All statutory consultees 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 North Yorkshire Police Authority.
 - North Yorkshire Local Access Forum.
9. Copies of the Notice were advertised in the Press, on site and on the council's Alley-gating web site.
10. Ward Members and Political Parties have been consulted. Their comments, verbatim, are:

Ward Councillors

Cllr Dave Merrett: *"The ward Councillors are in agreement that if generally all local residents (including those from Scarcroft Road) were happy then we would support the closure of the current public access by the return of the*

wall/fencing to try and address the vandalism problems in the back lanes there. We do not feel this sets a precedence of allowing gating for major streets with access to the Green - this particular location obviously has historical issues i.e. it been originally blocked and then the wall only relatively recently being removed.

We are aware of a separate request from the local residents from Scarcroft View, which fronts the Green, to have a private access. We would support that they be offered an opportunity to have a private locked access from their walkway/alleyway given their particular isolated position, on the proviso that they fund the costs and maintenance cost of the gate & lock."

Cllr Sandy Fraser: As above

Cllr Julie Gunnell: As above

Political Parties

Cllr Stephen Galloway: *"I have no comments to make on this proposal at this stage."*

Cllr Ruth Potter: *" I am aware that the Ward Councillors are in agreement that if generally all local residents (including those from Scarcroft Road) were happy then they would support the closure of the current public access by the return of the wall/fencing to try and address the vandalism problems in the back lanes there.*

They are aware of a separate request from the local residents from Scarcroft View, which fronts the Green, to have a private access and would support that they be offered an opportunity to have a private locked access from their walkway/alleyway given their particular isolated position, on the proviso that they fund the costs and maintenance cost of the gate & lock. This seems to be a sensible suggestion."

Cllr Ian Gillies: No comments received

Cllr Andy D'Agorne: No comments received

11. Five objections were received from residents. All five objectors live on Scarcroft View. Their objections relate to the proposed method of closing the gap in the boundary i.e. by reinstating the original wall and railings rather than by installing a gate, through which they would want access to the green for a number of reasons:
- Residents of Scarcroft View use this route from the green to access their properties more regularly than they use the route via the back lane as it is the more pleasant and convenient of the two;
 - All have lived there for a number of years and have always been able to access the green easily. Although there has never been a defined pathway that crosses the boundary, they were able to step over the low wall where a gap in the railings had been created by previous residents;

- The route via the back lane is poorly lit and “*aside from being inconvenient, this would present a considerable safety concern*”;
12. 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 as detailed in Annex 2.

Options

13. Option A: Do not authorise the making of the proposed Gating Order and leave the gap open for public use. This option is not recommended.
14. Option B: Authorise the making of a Gating Order, but install a gate to restrict access through the gap rather than restore the low wall and railings to its original condition. Additionally, give the PIN code required to operate the gate to residents of Scarcroft View only. This option is not recommended.
15. Option C: Authorise the making of a Gating Order and restrict access through the gap by reinstating the wall and railings to its original condition. Advise residents of Scarcroft View that they are able to pursue their own private gated access onto the green from their private alleyway should they wish to do so at their own expense. This option is recommended.

Analysis

16. Option A: This option would mean that crime and ASB is likely to continue at its present level, or even escalate and will continue to impact on the quality of life for residents living alongside or adjacent to the back-lane.
17. Option B: The installation of a gate to prevent the use of the access by the public will help reduce crime and ASB and would improve the quality of life for residents living alongside or adjacent to the back lane. However, due to the fact that no one has a private right of access through the gap in the railings, no one would be eligible for the PIN code that would be required to operate the gate.
18. For the purposes of the legislation residents of Scarcroft View are considered to be members of the public; they do not have a private right of access to the green through the gap in question. For this reason if the council were to give residents of Scarcroft View the PIN code it would be awarding them the privilege of continued public rights onto the green and would make it difficult for the council to deny other members of the public access to the gate should they apply for it.
19. Option C: The reinstatement of the wall and railings to close the gap leading onto the green would again help reduce the crime and ASB on the back lane. Due to the permanent nature of the structure, however, it would not allow access to the green to anyone, including those residents of Scarcroft View.

20. As ownership of the wall is not registered (see paragraph 38), if Scarcroft View residents wish to provide their own access onto the green from their private alleyway they are entitled to do so, at their own expense.
21. As the council's Parks and Open Spaces has taken on maintenance liability for the railings (see paragraph 38), they request that should residents of Scarcroft View choose to create their own access to the green, an agreement is made to ensure that both health and safety standards are met and conservation standards are adhered to. This option is recommended.

Corporate Priorities

22. Options B and C tie in with the council's Corporate Strategy, Priority Statement No5 to make York "a safer city with low crime rates and high opinions of the city's safety record."
23. This aim relates to improving the quality of life for York residents, by implementing a range of key objectives designed to reduce crime and the fear of crime and also tackle persistent nuisance behaviour, which can make life intolerable to some people.
24. Option A ties in with the council's policy to improve sustainable methods of transport, such as walking and cycling.

Implications

Financial

25. The cost of advertising the legal order (£721) has already been paid out of Safer York Partnership government funding.
26. There are no financial implications associated with Option A. Funding for the works that would be required for either option B or C is to be supplied by existing budgets within Neighbourhood Services (both options estimated to cost in the region of £1000) match funded by the Micklegate Ward Committee and/or target hardening.
27. Should Option B be approved, there will be ongoing maintenance cost of the gate and lock to be considered. There is currently no specific revenue budget for the maintenance of alley gates; these costs are presently met by the existing Public Rights of Way budget. The authority is responsible for maintenance of gates installed using Gating Orders.
28. Should Option C be approved then again the railings used to close the gap would be maintainable by the highway authority, although it follows that maintenance responsibility should perhaps be passed to Parks and Open Spaces due to the fact that maintenance liability for the rest of the structure was taken on when repairs were carried out to the wall and railings in 2002.

Human Resources (HR)

29. To be delivered using existing staffing resources.

Equalities

30. Gating or restricting access along a route presents a challenge in terms of fairness and inclusion. For example older and younger people, disabled people and people with young families are likely to find gating to be both an obstruction to their mobility as well as a solution to antisocial behaviour that may target them and affect them adversely.
31. Special consideration should be given to those people with disability who perhaps presently use the routes as shortcuts / access to their properties and would find any alternative route / access to their property inconvenient. Alternative routes should be free from obstructions and suitably paved.

Legal

32. Gating Order legislation gives the council powers to restrict public access to a relevant highway in order to help reduce crime and anti-social behaviour (ASB) associated with it. Annex 2 gives details of the requirements of this legislation along with details of Home Office Guidance on the use and life of a Gating Order.
33. Although the name “Gating Order” suggests that a gate should be used, the legislation states that “a barrier or barriers” can be used “for the purpose of enforcing the restriction provided for in the order” (Highways Act 1980 S129B(6)).
34. 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.
35. The council, as Highway Authority, has the power to make Gating Orders under Section 129A Highways Act 1980 (as amended), the routes in question being “relevant highways” by virtue of the Act. Members, however, should be aware that any decision made must be defensible at High Court, should the Order be challenged.

Crime and Disorder

36. Other than that discussed in the main body of the report and Annex 4, there are no other crime and disorder implications.

Information Technology (IT)

37. There are no Information Technology implications.

Property

38. The boundary wall is not the property of the council nor is it registered with the Land Registry (this does not mean it is not owned by anyone, just that it has not changed hands in the last 30-40 years), however the council took on maintenance liability for the railings when it paid for and carried out the works for the boundary to be repaired in 2002. Therefore, if Option C is approved and the gap closed, it would be possible for residents of Scarcroft View to

create their own private gated access at the front of their properties onto the green, should they wish to do so. This would have to be at their own expense and in compliance with the council's health and safety rules. There is no need for the council to draw up an access agreement as has been done for properties owners who have access onto council owned land elsewhere in the city.

Other

Transport Planning Unit – Safer Routes to School

39. Accessibility and road safety are two of the government's key priorities for transport policy and many of the policies in the Local Transport Plan have been adopted to improve these. The stopping-up of existing routes which currently act as short-cuts will reduce accessibility levels for users and potential diversion routes may be less safe for some users such as young children if they involve walking longer distances along busier roads, this has the potential to act as a disincentive for them to walk or cycle to school.
40. The health implications of the order should be considered as Gating Orders could potentially encourage the use of cars if the alternatives are too long or lack pedestrianised sections. This should be balanced against health impacts facing pedestrians from the ongoing crime or ASB in the alleyway. (paragraph 12 – Home Office Guidance relating to the making of Gating Orders 2006).

Neighbourhood Services

41. For some time the residents of 1-5 Scarcroft View and the residents of Scarcroft Road whose properties back on to the alley have been the repeated victims of anti-social behaviour which results in litter, graffiti, vandalism and groups of youths hanging around. This has occurred at all times of the day, both weekdays and weekends and has been ongoing for a couple of years.
42. It is hoped that once the gap has been closed that the lack of access will stop people using the alleyway as a thoroughfare and thus will reduce the amount of anti-social behaviour that is occurring. This in turn will improve the visual amenity value of the area, and will reduce the cost of graffiti removal funded by taxpayer's money.

Parks and Open Spaces

43. If residents wish to provide their own access in the wall they must follow proper health and safety rules as set by the council as well as conform to planning requirements, as Scarcroft Green is inside a conservation area. For instance, a gate should match the design of the surrounding railings.

Risk Management

44. In compliance with the council's Risk Management Strategy, there are no risks associated with Option A but there is a low risk (Financial – see paragraph 26, 27 and 28) associated with Options B and C.

Contact Details

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Report
Approved

Date

20-06-09

Wards Affected:

All

Micklegate Ward

For further information please contact the author of the report.

Background Papers:

Highways Act 1980
Crime and Disorder Act 1998
Countryside and Rights of Way Act 2000
Clean Neighbourhoods and Environment Act 2005 & the Home Office Guidance relating to the making of Gating Orders 2006
The 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)

Annexes:

- 1) Description and Location Plan of Access Point
- 2) Summary of Legislative Requirements for Proposed Gating Order
- 3) Photographs of Boundary Wall and Railings - 2009
- 4) Crime and Anti-Social Behaviour Statistics (including comments from the Architectural Liaison Officer for North Yorkshire Police)
- 5) Photographic evidence of graffiti taken in November 2008 by a resident
- 6) Known History of Boundary Wall and Railings
- 7) Photographs of Boundary Wall Before Repairs and Re-instatement of the Railings - 2001