
Meeting of the Executive Members for City Strategy and the Advisory Panel

26 March 2007

Report of the Director of City Strategy

PUBLIC RIGHTS OF WAY - REVIEW OF ALLEYGATING POLICY, PROCEDURE & PRACTICE DOCUMENT, AMENDED TO INCORPORATE NEW LEGISLATION.

Summary

1. This report sets out to inform the Advisory Panel of the need to review the content of the existing Alleygating Policy, Procedure & Practice Document, which was last revised in March 2004.
2. Section 2 of the Clean Neighbourhoods and Environment Act 2005 (CNE) became operative on 1 April 2006, by inserting a new Section 129 into the Highways Act 1980 and introducing 'Gating Orders'. This brings in new Alleygating powers for local authorities to use, as an alternative to legislation presently employed under the Countryside and Rights of Way Act 2000 (CROW), but has very similar criteria. It is recommended that the Advisory Panel approve **Option A** and advise the Executive Member to adopt the new policy document.

Background

CROW Act 2000 – "Alleygating"

3. The Countryside and Rights of Way Act 2000 amended certain sections of the Highways Act 1980 (HA); specifically S118 and S119.
4. Prior to the introduction of the CROW Act it was not possible to either close or divert a public footpath for crime prevention purposes, no matter how prolific or serious the crime was. The CROW Act introduced legislation allowing such closures, which has become known as Alleygating. The new S118B, deals with footpath closures and S119B, deals with footpath diversions.
5. The idea of Alleygating has been seen by many as one of the answers to combating crime and anti-social behaviour, in particular rear entry burglaries. In parts of the country where Alleygating has been carried out, there have been significant reductions in crime and anti-social behaviour and any scheme that has this effect, has therefore to be encouraged.

6. Alleygating schemes already implemented in the City of York Council administrative area have proven a success in combating crime and anti-social behaviour. In one alley alone, crime was reduced by 87.5% and by 30 to 40% in the street as a whole. There is therefore a strong indication that in addition to facilitating rear entry burglaries, the alley was also being used as an escape route for crimes committed in the street. Other gated alleys have also seen significant reductions in crime and anti-social behaviour, but not to the same extent and it would be unwise to suggest that this level of crime reduction could be achieved every time.
7. Following the implementation of the original Alleygating Policy in July 2003, it was found that residents objected to certain parts of the policy, namely the responsibility of repairs and maintenance to gated alleys. Residents were unwilling to take on these responsibilities, in fear of the possibility of potentially large repair costs should any major work be required in the alley, previously carried out at public expense.
8. The Alleygating Officer found that there would be no increase in spending for maintenance and repairs, if the Council retained these responsibilities in gated alleys; the large majority of which were highways repairable at public expense. The probability was that there would be a reduction in spending, due to the fact that these rear alleys would not be used as often, once gated.
9. The Alleygating Policy was therefore amended by the Executive Committee in March 2004. The new Policy gave residents the option of agreeing to take over responsibility of the gated alley, or handing back responsibility to the Council. In every Alleygating scheme completed in the city to date, residents have opted to hand back responsibility to the Council.

Clean Neighbourhoods and Environment Act 2005 – “Gating Orders”

10. When the Clean Neighbourhoods and Environment Act 2005 came into force it created another option for controlling public use of alleyways. The legislation is very similar to current Alleygating legislation, but does not require an alleyway to be in an area designated by the Secretary of State as a high crime area, as is required under the CROW Act. As this Act has only recently come into force, City of York Council does not yet have a policy document to manage its implementation.
11. In May 2005, the Alleygating Officer presented a report to the East Area Planning and Transport Sub-Committee, regarding a petition to close an alley that was not in any of the designated areas. As legislation available at the time did not allow the alley to be closed, the matter was resolved with the compromise of fitting a kissing gate and fence and Members were asked to consider reviewing the petitioners’ request, once the Clean Neighbourhoods and Environment Act 2005 came into force.
12. Members accepted the officer’s proposal, with the added recommendation that once the new Act came into force, a policy document incorporating the new Act, should be prepared to ensure that all alley gate proposals were dealt with in a consistent manner.

13. Because of the similarities of the two Acts and the fact that they both amend the Highways Act 1980, it would be more straight forward to use one piece of legislation covering all alley closures, rather than several pieces of legislation trying to achieve the same result.
14. The two main differences between the two Acts. Firstly, the CROW Act permanently extinguishes a highway, whereas a Gating Order restricts the public's use of a highway, but retains its highway status thereby allowing it to be returned to public use if required at a later date and secondly, an Order can be made to restrict the public's use, even if there are objections to it.
15. In addition, Home Office Guidance Notes recommend that all Gating Orders be reviewed on an annual basis, to assess their success or otherwise. This review should evaluate whether each 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.

Conditional Gating Orders

16. The CNE Act also allows a conditional restriction of an alley, so that it can be closed only at certain times of the day, or on certain days, such as at night or weekends. This could be useful if an alley only has problems after dark or at other times, but is well used and virtually crime free the rest of the time.
17. A Conditional Gating Order must include the details of the person responsible for the opening and closing of the gate and also the times (and days) when the gate is opened and closed. This is a statutory requirement which must be carried out in accordance with the conditions contained within the Order and failure to open the gate could constitute an unlawful obstruction, leaving the authority open to prosecution. More importantly, if the gate was not locked at the specified time and a member of the public entering it was to be injured, or fall victim to an unlawful act; or an adjacent property was damaged or burgled, this could leave the authority open to a civil liability claim, potentially costing the Council thousands of pounds in compensation claims. This undertaking will therefore have to be in place as long as the Order is in force and cannot be handed to adjacent residents.
18. At present, there is no department within the Council detailed with the statutory requirement of opening and closing gates, although there are departments that open and close the Bar Walls and certain parks within the city.
19. If Conditional Gating Orders are to be implemented, then this duty will have to be either taken on by one of these departments, or a post created for that purpose. This is a duty which will have to exist and be funded for as long as the Conditional Gating Order is in force and is not optional. Should this duty be contracted out to a private security company, such as Mayfair, then the cost of them managing the gates would be typically £4,500 to £5,500 per Gating Order per year. However, this cost might be more, or less, depending on the specific circumstances of each Order at that specific time.

20. Consideration has been given to the potential for time locks to be used instead of employing someone to open and close the gates.
21. In order to fit a time lock, there needs to be an electricity supply to the gate. There are three main methods of achieving this; battery power, mains power and solar power. Of these, batteries do not produce enough power to operate the type of lock needed for external use. The provision of mains power has health and safety implications over and above the cost of providing electricity to the gates, as it would need to be fitted in the same way and to the same specifications, as powered street furniture. The only other alternative is solar power, which requires a solar panel and rechargeable battery situated nearby and connected to the lock.
22. There is a possibility that solar panels may require planning permission depending on where and at what height they are mounted. This might not be granted if the alley is in a conservation area. Also, dependent on its location, the panel could be a target for vandalism.

The following is a breakdown of approximate costs for solar power.

• Cost per gate (fitted)	£1,000
• Legal closure process	£1,500
• Solar Panel (12volts, max 110A & 20W)	£250
• Rechargeable battery	£80
• Time lock kit with key override in case of power failure	£400
• Total per gate	£3,230

The above estimate does not include the cost of maintenance and repair to the gate, lock or solar panel, nor does it cover the cost of specialist fitting of the solar panel and locking mechanism.

23. In addition to the above, for this system to work correctly, without human intervention, it would require self-closing hinges. This creates further health and safety implications should the gates swing back onto a member of the public and is one of the reasons why self-closing hinges are not used in any of the alley gates presently fitted.
24. Another matter to take into consideration is the danger that someone might wedge the gates open. In this instance when the time lock operates ,with the gate wedged open, the gate cannot be closed without the overriding key. There is also the possibility of someone using the alley being between the two gates when the lock operates, thereby trapping them within the alley with no means of escape.
25. Should there be a fault resulting in a power failure; the lock can be programmed to fail in either the locked or unlocked position. The chances of a gate being wedged open, or a power failure with the lock open or closed, would have the same legal implications as those already mentioned in paragraph 16.

26. There does not appear to be any evidence of any local authority or private operator using security time locks without them being monitored either by CCTV or human presence. Therefore, due to the above issues of potential failure, safety, damage, maintenance and the legal implications, the use of time locks is not recommended.
27. It is recommended therefore, that unless resources are made available to enable the gates to be closed by hand for the life of the Order, then Conditional gating Orders should not be considered.

Consultation

28. City of York Council's Civic, Legal and Democratic Services have been consulted and any required amendments have been included in the policy document, with particular attention to paragraphs 42, 43, 46 and policy AG8.
29. City of York Council Street Scene are consulted on each closure proposal, however, their overall views have been included within the content of the Policy Document.

Options

Members have the following options: -

30. Option A – Recommended.

Endorse the new policy document covering all alley restrictions, using one piece of legislation. This option is recommended.

31. Option B – Not Recommended.

Retain the present policy for use with alley closures using the CROW Act and create a separate policy document to cover alley restrictions using the Clean Neighbourhoods and Environment Act 2005. This option is not recommended.

Analysis

32. Option A. Endorse the new policy document covering all alley restrictions, using legislation brought in by the Clean Neighbourhoods and Environment Act 2005. This process is easier, quicker and cheaper than the process used under the CROW Act. It gives the Council the option of making a Gating Order, even if there are objections, without having to pass the opposed order on to the Secretary of State for determination. The advantage of this is that such a scheme does not have to be held up by a single objector, as has happened on earlier occasions and it also gives the Council the option of revoking the Order at any time, as the highway rights are retained. This option is recommended.
33. Option B. Retain the present policy for use with alley closures using the CROW Act and create a separate policy document to cover alley restrictions using the Clean Neighbourhoods and Environment Act 2005. Although this

would still allow both pieces of legislation to be used, there is the possibility that there could be a greater chance of conflict or contradiction between the two policy documents. Using a single document is also more efficient than having to refer to two separate documents and thereby reduces the possibility of error when carrying out the legal processes which are slightly different for each piece of legislation. This option is not recommended.

Corporate Priorities

34. Both pieces of legislation are designed to reduce crime, the fear of crime and various forms of anti-social behaviour. They both tie in with the council's fourth Information Statement to "*Reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.*" This can be achieved by restricting the public use of alleys that attract the type of crime and anti-social behaviour, which affects the daily lives of law-abiding residents.

Implications

- **Financial**

35. At present the maintenance and repair of adopted alleys is funded from moneys set aside for maintaining public highways. As highway status is retained, this would continue without any extra costs being incurred and in fact may result in less expenditure due to public access being restricted. However, should Conditional Gating Orders be considered, then the following costs per Order must be taken into account and made available for the life of the Order:
 - A budget must be made available to carry out the necessary legal and physical processes - Approximately £2,500 (2 gates).
 - An annual budget must be made available for managing the opening and closing of the gate(s) - Approximately £4,500 to £5,500 per year (per alley for the life of the Order).
 - Consideration should also be given to the cost of revoking the Order.
36. A separate budget would have to be made available and the access management contract would be subject to the Council's procurement rules. There is currently no budget available for such orders and therefore should this approach be considered further work would need to be undertaken to determine how this could be funded. It would not be ideal to use Ward Committee budgets as they are only able to allocate funds for a 12-month period.

- **Human Resources (HR)**

37. There are no HR implications.

- **Equalities**

38. There are no equalities implications.

- **Legal**

39. City of York Council's Civic, Legal and Democratic Services have been consulted in order to ensure that the policy document has correctly interpreted the relevant legislation. Their legal opinion relating to Conditional Gating Orders is contained within paragraphs 17, 18 and 19, of this report and paragraphs 45 and 46 of the Policy document, with the advice that the council should not consider making such Orders, as there is a serious resource issue which could leave the council open to legal action. Any necessary amendments have already been incorporated into the document. There are no other legal implications.

- **Crime and Disorder**

40. There are no crime and disorder implications that have not already been discussed. Whichever option the Executive Member decides on, it will not alter these implications, as both options will allow City of York Council to fulfil its duties under the Crime and Disorder Act 1998.

- **Information Technology (IT)**

41. There are no IT implications.

- **Property**

42. There are no property implications.

- **Other**

43. There are no other implications.

Risk Management

44. In compliance with the Council's Risk Management Strategy. There are no risks associated with the recommendations of this report.

Recommendations

45. It is recommended that the Advisory Panel advise the Executive Member to accept **Option A** and resolve to: -
1. Endorse a single policy document known as the 'Gating Order Policy, Procedure and Practice Document', covering all aspects of alley closure, using the Clean Neighbourhoods and Environment Act 2005.
 2. Allow costs for maintenance and repairs to the alleys, to remain within the highway maintenance budgets, as highway rights would still exist.

Reason: To reflect new legislation.

Contact Details

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Report Approved **Date** 13/3/07

Specialist Implications Officers:

Financial – Patrick Looker, Finance Manager, City Strategy
Legal – Martin Blythe, Legal Services

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

1. Highways Act 1980
2. Crime and Disorder Act 1998
3. Countryside and Rights of Way Act 2000
4. City of York Council Alleygating Policy, Procedure and Practice as amended March 2004 (available on the CYC website).
5. Clean Neighbourhoods and Environment Act 2005
6. The Highways Act 1980 (Gating Orders) (England) Regulations 2006 (SI 2006 No537)

Annexes

1. Gating Order Policy, Procedure and Practice Document, March 2007