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

10 December 2007

Report of the Director of City Strategy

PUBLIC RIGHTS OF WAY - PETITION SEEKING CLOSURE OF THE SNICKET LEADING FROM CARRFIELD, WOODTHORPE INTO HERON AVENUE, FOXWOOD.

Summary

1. This report is in response to the receipt of a petition (see Annex 1) signed by 22 residents living in the Woodthorpe area, requesting the closure of the snicket leading from Carrfield into Heron Avenue, because of problems with criminal activity and anti-social behaviour.
2. The report recommends that the Advisory Panel advises the Executive Member to approve **Option A** and leave the snicket open to public use, as the criteria for a Gating Order, which would allow for the restriction of public access along it, has not been met.

Background

3. The snicket in the petition is situated between No24 and No26 Carrfield and continues in a northerly direction for 82 metres where it emerges between No13 Heron Avenue and No28 Teal Drive. For the first 32 metres it is not adopted, but for the last 50 metres it is an adopted highway under the control of City of York Council; it is therefore a public right of way (see plan Annex 2, Points A to B).
4. This snicket is one of a number of snickets in the area providing short cuts for pedestrians and cyclists, between and within the Ryecroft Avenue and Ashbourne Way area of Woodthorpe and the Foxwood Estate with its associated sports facilities. The provision and use of these snickets is in keeping with the Council's policy to reduce car usage.
5. In May 2006 a residents' petition requested a Conditional Gating Order to restrict access to two other snickets in the area. The first being the snicket between Carrfield and Chantry Close and the second being the snicket linking Carrfield and Foxton. These two snickets were included in the recently approved scheme to close off 28 alleys and snickets in the 2007/8 financial year.

The Petition

6. The petition, which is the subject of this report was posted to the Alleygating Officer on 11 September 2007. It has been signed by the occupants of 18 dwellings in Carrfield, asking for the snicket between Carrfield and Heron Avenue to be closed off.
7. The statement for the closure request reads: -

“Following an application to close two alleyways Carrfield to Chantry Close and Carrfield to Foxtan we the undersigned are petitioning for the closure of the alley way leading from Carrfield, between numbers 24 and 26 to Heron Avenue, Foxwood. Failure to close this alley will increase the amount of foot traffic along Carrfield and will not reduce crime.”

Crime Analysis

8. Crime analysis reports produced by Ian Cunningham (Safer York Partnership) indicate that no reports of crime or antisocial behaviour were reported to the police in the 6 month period between 1 April and 30 September 2007.

Relevant Law

9. Section 2 of the Clean Neighbourhoods and Environment Act 2005 inserted a new section into the Highways Act 1980, namely S129 and refers to ‘Gating Orders’. These regulations came into force on 1 April 2006.
10. Unlike Alleygating legislation brought in by the Countryside and Rights of Way Act 2000, which permanently extinguishes the highway, Gating Orders allow permanent, temporary, or conditional restrictions of public rights of way but the route still remains a public highway. The same criteria has to be met regarding crime and anti-social behaviour, but affected public rights of way do not have to be in a designated high crime area as they would under the Alleygating legislation.
11. In parallel with the legislation covering Alleygating, Gating Order legislation requires that crime and/or anti social behaviour must be high level and persistent, although what these levels should be is not defined in the Act.
12. Members approved the Council’s Gating Order Policy on 26 March 2007.
13. The Council’s Gating Order Policy, states that the levels of crime and anti social behaviour should be examined on a case-by-case basis.

Alternative Pedestrian Routes

14. As with any closure of a public right of way, reasonably convenient alternatives must be considered. Should this snicket be closed, the only alternative route between Carrfield and Heron Avenue would be along Ryecroft Avenue and Sherringham Drive, a distance of 397 metres from point A to point B (see Plan Annex 3).

Consultation

15. This report is to advise the Advisory Panel of the receipt of the petition and so no consultation has yet taken place. Should the Executive Member agree that the request for closure be progressed, then a further report would need to be prepared in line with the Council's Gating Order Policy, to allow both internal and external consultation to be carried out, along with a breakdown of all costs. Members from those wards affected have been consulted, no comments have been received.

Options

16. Option A. Do nothing and not progress the request to make a Gating Order to restrict public access along the snicket.
17. Option B. Progress the request to make a Gating Order under S129 of the Highways Act 1980 to restrict public use of the snicket.

Analysis

18. Option A - This option would leave the snicket open for use by the public. Because the crime and antisocial behaviour reports show that there have been no reported incidents of crime or antisocial behaviour in the 6 month period between 1 April and 30 September 2007 it is clear that the request to close the snicket does not meet the criteria of the legislation as detailed in para 11 above. This option is therefore recommended.
19. Option B - As the criteria of the legislation has not been met with regards to incident of crime and antisocial behaviour this option is not recommended.
20. The Advisory Panel should be aware that if the decision to progress with the Gating Order is approved and a Gating Order made, there is the possibility that the decision could be challenged in the High Court because of the lack of evidence of persistent crime or anti social behaviour. The Executive Member would therefore need to be prepared to defend any decision made.
21. In addition it could be argued that the alternative route, which would add an extra 376 metres (max) to a walk from Carrfield to Heron Avenue, cannot be considered as 'reasonable'.

Corporate Priorities

22. The recommended option ties in with the council's Corporate Priority No 2 - *Increase the use of public and other environmentally friendly modes of transport.*
23. The *hierarchy of transport users* is firmly embedded within the second Local Transport Plan (LTP2), with pedestrians and cyclists being given priority when considering travel choice. The retention of the snicket for public use during daylight hours fits soundly within Council transport policy. The encouragement

of travel by sustainable modes also corresponds with other 'wider quality of life objectives' as contained in the Community Strategy, such as those relating to health and also ties in with Objective 1.3 to: *Make getting around York easier, more reliable and less damaging to the environment.*

24. Option B would tie in with the council's Corporate Priority No 4 - *Reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York.*
25. 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. However, despite fully supporting this aim, the officer's recommendation still stays with Option A due to the fact that it would be difficult to argue that the level of crime meets the criteria of the legislation.

Implications

- **Financial**

26. Should the Executive Member decide to approve the progression of a Conditional Gating Order, funding would need to be sought to manage the opening and closing of the gates (am and pm) for the life of the Order. This would normally come from the Ward Committee budget and would need to be addressed in any subsequent closure report. There is no specific Alleygating budget to cover it.

- **Legal**

27. As detailed in para 20 any decision made by the Executive Member to restrict the use of this snicket would be open to legal challenge in the High Court, the cost of which would have to be met by the Council. For this reason, taking into consideration the lack of recorded crime and antisocial behaviour in the immediate area of the snicket, the Executive Member must be completely satisfied that the case for a Gating Order is met, before making a decision.
28. In addition to the above, there are legal implications should a Conditional Gating Order be the approved course of action; in that the opening and closing of the gates would need to be managed 7 days a week, 52 weeks of the year, including public holidays, for the life of the Order. Should this gate management fail, the council could be in breach of the Order and liable to prosecution for unlawful obstruction. It is open to any individual to initialise a prosecution for obstruction so the council would be vulnerable to such action for the life of the Order.

- **Crime and Disorder**

29. Other than that discussed, there are no other crime and disorder implications.
30. There are no implications affecting the following.

- **Human Resources (HR)**
- **Equalities**
- **Information Technology (IT)**
- **Property**
- **Other**

Risk Management

31. In compliance with the Council's Risk Management Strategy, there are no risks associated with the recommendations of this report.

Recommendations

32. It is recommended that the Advisory Panel advise the Executive Member to recommend **Option A**, and resolve to:
1. Refuse the petitioners' request for a Gating Order;
 2. Leave the snickets open for public use; and
 3. Review the crime and anti social behaviour statistics in 12 months, with a view to reconsidering the petitioners' request.

Reason

The reason for making this decision is that, at the present time, the level of crime and anti social behaviour occurring in the study area does not meet the criteria of the legislation, as set out in paragraph 11 of this report, which allows the conditional closure of alleys found to be facilitating the commission of persistent criminal activity and/or anti-social behaviour.

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Wards Affected: Dringhouses and Woodthorpe; Westfield

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. Clean neighbourhoods and Environment Act 2005
5. The Highways Act 1980 (Gating Orders) (England) Regulations 2006
6. City of York Council Gating Order Policy

Annexes

1. Petition
2. Location Map
3. Alternative route Map