

Annex 2

Summary of Legislative Requirements and Home Office Guidance for proposed Gating Order

1. Section 129A of the Highways Act 1980 (as amended) by the Clean Neighbourhoods and Environment Act 2005 (CNE) allows local authorities to make Gating Orders to restrict public access over any relevant highway (as defined by S129A(5)) to reduce and prevent crime and anti-social behaviour. In order that a highway can be considered for a Gating Order, it must be demonstrated that it meets all of the following legislative requirements:
 - a) Premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
 - b) The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
 - c) It is in all circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour. This means that the following has to be considered:
 - (i) The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
 - (ii) The likely effect of making the order on other persons in the locality; and
 - (iii) In a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.
2. Table 1 (below) shows how this proposed Gating Order meets the above requirements.
3. Home Office Guidance 2006 suggests that the council should give consideration as to whether there are alternative interventions that may be more appropriate to combat crime and anti-social behaviour before considering the use of a Gating Order. Alternative methods of crime prevention carried out in the Scarcroft View area to date are patrolling, offender-based operations and media campaigns to raise awareness about securing premises.
4. Although a Gating Order restricts public use over a route, its highway status is retained, thus making it possible to revoke or review the need for the Order. Home Office Guidance 2006 recommends that this review be carried out on an annual basis.

5. Access along a route which is restricted by a Gating Order is given to residents adjacent to or adjoining the restricted route (HA1980 S129B (3)) and anyone who has a private right of access over it (Gating Orders can only be made to restrict Public Rights of Way).

Table 1: Summary of legislative requirements for proposed Gating Order

		Scarcroft Road back-lane / Scarcroft Green
3 a) Premises adjoining/adjacent to highway affected by crime/ASB		Yes
3 b) Existence of highway is facilitating the persistent commission of criminal offences or ASB		Yes
3 c) Expedient in all circumstances to make the order for the purposes of reducing crime and ASB	3 c i) Likely effect of making the order on occupiers of premises adjoining/adjacent to highway	Access to Scarcroft Green restricted at all times – no private rights in existence
	3 c ii) Likely effect of making the order on other persons in the locality	Affects residents in locality – effects can be overcome if residents of Scarcroft View choose to provide their own access to the green from their private alleyway
	3 c iii) Availability of a reasonably convenient alternative route	Yes
Meets all requirements?		Yes