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## **Meeting of the Executive Members for City 27 January 2009 Strategy and the Advisory Panel**

Report of the Director of City Strategy

### **PUBLIC RIGHTS OF WAY – Proposal to Restrict Public Rights Over Alleyways in Guildhall and the Dringhouses and Woodthorpe Wards, York**

#### **PART 2 – DRINGHOUSES AND WOODTHORPE WARD**

##### **Summary**

1. This report (Part 2) considers the gating of 1 snicket in the Dringhouses and Woodthorpe Ward in order to help prevent crime and anti-social behaviour associated with the route (Annex 1 – Description and Location Plan).
2. The report (Part 2) recommends that Members consider the consultation responses and the legislative requirements for a Gating Order and either confirm or reject the decision made at the City Strategy EMAP on 29 October 2007 to make a Gating Order for the purpose of a night time closure.

##### **Background**

3. 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.

Table 1 (Annex 2) summarises whether this snicket meets the requirements of the legislation.

4. 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 Carrfield / Chantry Close area to date are patrolling, offender-based operations and media campaigns to raise awareness about securing premises.
5. Although a Gating Order restricts public use over an alleyway, 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 is carried out on an annual basis.
6. A Gating Order allows the Council to make an Order even if there are objections to it, as long as it is satisfied that the Order meets all the requirements of the legislation (as discussed previously).
7. The 24-hour restriction ("Full" Gating Order) of the snicket in Dringhouses and Woodthorpe Ward between Carrfield and Chantry Close was considered at the City Strategy EMAP on 29 October 2007. This report discussed the provision of a gate, but did not benefit from the guidance newly published by the Home Office. At the time, as the route was considered to be a safer route to school and therefore used during the day, Officers were instructed to pursue the introduction of a "Conditional" Gating Order and not the proposed "Full" Gating Order. As consultation was initially carried out on a "Full" Gating Order, it has been necessary, in order to fulfil legal requirements, to re-consult with residents and prescribed bodies, giving details of the proposed new time restrictions and also to seek a low cost method of opening and closing the gates. Crime figures have also been reviewed to reflect the current position (Annex 3).
8. The re-advertised draft order stated that the restriction should apply between 20:00hrs and 06:30hrs. Due to the high costs associated with manual operation of the gates, it is proposed that this gate be fitted with a magnetic locking mechanism. This mechanism will be operated by an electronic timer, the power supply for which will come from an adjacent lighting column. The gate will be fitted with a key pad in order for those residents who are eligible for the PIN code to access it during the hours of restriction. This locking system is a prototype and if the proposal is approved, it is recommended that the Gating Order be reviewed after a 3 month trial, the results of which will be reported to EMAP in order to determine progress.

## Consultation

9. Statutory consultation 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.
10. Copies of the Notices were advertised in the Press and at both ends of the snicket.
11. Councillors from Dringhouses and Woodthorpe Ward were consulted. Their comments, verbatim, are:
12. Cllr Ann Reid - *"We have supported residents' wishes to conditionally gate this snicket and Cllr Holvey presented the petition from residents that set the process in motion. Some residents have queried the details, what sort of locking mechanisms and what the hours would be but no one has told the Ward Councillors that they object to the principle. We think that the exact hours for closure need to take into account any comments from the residents directly affected. The 3 Ward Councillors support conditional gating of this snicket."*
13. Three objections have been received from residents and are discussed in paragraph 18, 19 and 20. All three objectors are residents of Carrfield or Chantry Close. Their objections cover a number of concerns:
  - that the closure would cause *"tension and "hostility"* in the neighbourhood;
  - that *"a more sensible gating [option] would be.... the snicket in the centre of Carrfield"* and *"to gate the ....access to Foxwood from the top of Ashbourne Way"*;
  - that there have been *"no problems in the last year [and] the "family ...have now left the area so [there is] consequently no more trouble"*;
  - that the closure will cause stress to certain elderly / disabled residents who use the route regularly to visit family members;
  - that the access PIN code *"will only be available to the residents of nos. 29 and 31 Carrfield"*;
  - when closed, there is not a reasonably convenient alternative route (Annex 1) for local residents to use who are not eligible for the PIN code;
  - Concern has been raised as to whether *"failure to provide.....the PIN number may contravene the Disability Discrimination Act 2005"* with

regard to those residents in the area who may find using the alternative route very difficult due to disability.

## Options

14. Option A : Confirm the making of a Gating Order, as instructed by the Executive Member decision on 29 October 2007, to restrict public use of the snicket at night.
15. Option B : Do not approve the proposed Gating Order.

## Analysis

16. Option A : Confirm the making of a Gating Order to restrict public rights over the snicket at night. This would enable a gate to be fitted on the route between Carrfield and Chantry Close, only allowing access to owners / occupiers of properties adjacent to or adjoining the highway. If confirmed, installation will be dependant upon the time it takes for the electrical service to be provided by NEDL.
17. Option B : Do nothing and let public rights remain over the snicket. Three objections have been received as detailed in paragraph 13. The snicket does not meet all of the legislative requirements needed for the making of a Gating Order.
18. Although it can be argued that the existence of the highway is facilitating the persistent commission of criminal offences and that premises adjoining or adjacent to the highway have been affected by crime or anti-social behaviour, there is not a reasonably convenient alternative route (Annex 1). The length of the snicket itself between points A and B (marked as a solid line) is 24m. The distance between point A along Carrfield, Ryecroft Avenue and Chantry Close to point B (marked as a dashed line) is approximately 500m.
19. Therefore closing the snicket at night will affect those residents of Carrfield and Chantry Close who are not eligible to be given a PIN code and who use the route at night on a regular basis.
20. One objector states that *"if we were to be furnished with the PIN number I would withdraw my objection"*. However, Gating Orders are intended to restrict access to everyone except those whose properties are adjoining or adjacent to the highway affected and anyone who can prove a private right of access. If this directive is not followed it would prove very difficult to deny access to any person who requests it simply because they use the route on a regular basis, regardless of whether they live on Carrfield, Chantry Close or elsewhere in the city. In all cases, if there is a reasonably convenient alternative route, then there should be no issue with regard to whether residents are eligible for access or not.
21. It is also worth noting the times of day that the majority of reported incidents have occurred in the 12 months since 1 October 2007 (Annex 3). If this pattern were to continue, the proposed night-time closure would, at best,

reduce crime and anti-social behaviour by only 31% (i.e. prevent 5 incidents of crime or anti-social behaviour a year at present levels).

## **Corporate Priorities**

22. Option A ties in with the Council's Corporate Strategy, Priority Statement No5 *"Reduce the actual and perceived impact of violent, aggressive and nuisance behaviour on people in York."*
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 B ties in with the Council's policy to improve sustainable methods of transport, such as walking and cycling.

## **Implications**

### **Financial**

25. Funding implications relate to officer time and administration costs as well as ongoing maintenance of the gates and locks should they be installed. Since there are no separately identified budgets for maintaining gates and locks any future maintenance requirements will have to be funded from limited Public Rights of Way budgets.
26. Funding for this prototype gate, which will cost approximately £3000, has been obtained from a combination of Ward Committee budget £1,500 and a one-off contribution of £1,500 from the Public Rights of Way budget. If successful, the future cost of alleygates and installation of this kind, including electricity supply, will be borne solely by the Ward Committee requesting the restriction.

### **Human Resources (HR)**

27. There are no human resources implications.

### **Equalities**

28. Gating 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.
29. 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. During the installation of the gates consideration should be given to the height of the

locks and the ease at which they can be opened and closed. (paragraph 13 – Home Office Guidance relating to the making of Gating Orders 2006).

### **Legal**

30. 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.
31. 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**

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

### **Information Technology (IT)**

33. There are no Information Technology implications.

### **Property**

34. There are no property implications.

### **Other**

### **Transport Planning Unit – Safer Routes to School**

35. 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.
36. 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).

## Risk Management

37. In compliance with the Councils Risk Management Strategy, the main risks that have been identified should Option A be approved are that which could lead to non-compliance with legislation (Legal and Regulatory – see paragraph 30 and 31) and internal budgetary pressure (Financial – see paragraph 25 and 26). Measured in terms of impact and likelihood, the risk score has been assessed at less than 16. This means that the risks only need to be monitored. There are no risks associated with Option B.

## Recommendations

38. Members are recommended to consider the consultation responses and the legislative requirements for a Gating Order and either confirm or reject the decision made at the City Strategy EMAP on 29 October 2007.

## Reason

39. To take into account additional information that was not available when the original decision was made.

## Contact Details

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Report  
Approved

Date 13.01.09

### Wards Affected:

All

Dringhouses and Woodthorpe

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

City Strategy EMAP for Carrfield / Chantry Close, 29 October 2007

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 Snicket
- 2) Summary of Legislative Requirements for Proposed Gating Order
- 3) Crime and Anti-Social Behaviour Statistics