

meeting	RIGHTS OF WAY COMMITTEE		
date	16 June 2010	agenda item number	11

REPORT OF THE HEAD OF SAFER AND STRONGER COMMUNITIES

REVIEW OF GATING ORDER POLICIES AND PROCEDURES

Purpose of Report

1. The purposes of this report are:
 - a) To assess the effectiveness of the County Council's trial policy and procedures.
 - b) To provide details of the proposed revisions to the County Council's draft policies and procedures which have arisen from operational experience.

Policy Framework

2. The Crime and Disorder Act (CDA) 1998 places a statutory duty upon the Police, local authorities, Probation, Health and Fire and Rescue to develop and implement a strategy to tackle crime and anti social behaviour in their area. To deliver this objective the Crime & Disorder Act 1998 (CDA) created statutory partnerships known as Crime and Disorder Reduction Partnerships (now known as Community Safety Partnerships- CSPs. Section 17 of the CDA also requires all statutory partners in the CSP to consider what impact their daily functions and activities will have upon crime and disorder; this duty applies to the County Council.
3. The Clean Neighbourhoods and Environment Act 2005 inserted sections 129A-129G into the Highways Act 1980. The Act allows highway authorities to introduce Gating Orders to restrict the use of a highway for the purpose of preventing crime or anti-social behaviour instead of permanently stopping it up or diverting it.

4. The Highways Act 1980 (Gating Orders) (England) Regulations 2006 specify the procedures councils must follow when they wish to make, vary or revoke gating orders. These regulations require councils to publicise their proposals and describe what information is to be made available. Councils are also required to consider any representations which may be made.
5. 'Guidance Relating to the Making of Gating Orders' was produced by the Home Office in March 2006. This document provides an overview of the relevant legislation and gives practical advice about both statutory and non-statutory procedures. The guidance is not statutory however; the Home Office recommend its use to prevent local authorities encountering operational difficulties.
6. A report was taken to Cabinet on 8 November 2006 which explained the legislation associated with the making of Gating Orders. That report recommended that the arrangements contained in Appendix 2, 'The procedure for restriction of the use of a highway by means of a gating order under Section 129A of the Highways Act 1980', should be trialled on a small number of sites before final approval was granted. The trial sites were then to be reviewed after twelve months.
7. A report was taken to the then Cabinet Member For Environment on 4 December 2007 which recommended the introduction of Gating Orders on various paths in the vicinity of the Manor Complex, Mansfield Woodhouse, a path adjacent to Foxhill Road in Carlton and a path adjacent to the Wildlife Conservation Area in Cotgrave.
8. The responsibility for making, reviewing, revoking and amending Gating Orders was delegated to the Rights of Way Committee at the meeting of the County Council on 18 June 2009.
9. The Rights of Way Committee approved their Code of Practice on 18 November 2009. The Code was approved for use on an interim basis for the next six meetings.

Trial Sites

10. The Gating Orders for Mansfield Woodhouse and Cotgrave were completed on 23 February 2009 and 18 May 2009 respectively. The Gating Order for the path adjacent Foxhill Road in Carlton is currently in abeyance because the proposed alternative route will be along a length of footway which is not yet adopted.
11. The Gating Order at Mansfield Woodhouse involved works at fourteen different locations, eleven were gated and three were fenced. The gates

and fencing were 1.8 metres high and constructed from galvanised and polyester coated steel mesh. Additional fencing was required to cover "gaps" and prevent climbing over adjacent walls etc. Plans illustrating the extents of the gated sections of footpath are included in this report as Appendix A.

12. The Gating Order at Cotgrave comprises a 1.8 metre high close-boarded fence and gate colour-coated dark green that extends for approximately two metres in length, from the edge of the adjacent property's (No.12 Would's Field) boundary fence to the south-eastern edge of the footpath. A plan illustrating the location of the gate is included in this report as Appendix B.
13. The two trial Gating Orders were reviewed in April 2010 and a report recommending their continuation will be submitted to the Rights of Way Committee in the early autumn.

Evaluation of the County Council's Policies and Procedures

14. Officers involved in the implementation of the two trial Gating Orders have reported the draft Guide to the making of Gating Orders on highways and public rights is generally fit for purpose.
15. The trial Gating Orders have illustrated that the statutory Community Safety Partnerships are the most appropriate mechanism to assess, prioritise and recommend Gating Orders co-ordinated through the County Council's Safer Communities Team.
16. No operational issues arising from the Gating Order at Would's Field, Cotgrave were identified.
17. Mansfield District Council (MDC) acting as NCCs Highways Manage and Operate Partner has identified a number of operational issues arising from the Gating Order at the manor Complex in Mansfield Woodhouse. These are as follows:
 - i) MDC have controlled the issue of keys and utilised a signing out sheet however, this is largely on a goodwill basis and does not prevent anyone copying keys or failing to return them. It is not clear how much effort would be invested in attempting to recover keys that have not been returned.
 - ii) Where residents have asked for keys for maintenance purposes MDC have opened and closed gates on dates agreed between MDC and residents. MDC have not issued keys to any residents.

- iii) With the gates closed and usage limited, it emerged on the annual detailed highways inspection that a significant amount of weed growth had become established. This growth was so vigorous MDC were obliged to engage their Parks department to clear it. The footfall of the path's previous users was evidently suppressing weeds. Damage to the paths arising from weed growth may need to be rectified prior to any future re-opening.
 - iv) The pathways are still being inspected on an annual basis as part of the Authority's normal highway and safety condition inspections.
 - v) Keys have been issued to utility companies upon demand however, on one occasion operatives working for Severn Trent Water replaced the original lock without permission.
 - vi) Street lights exist along the gated sections of path which results in these paths being illuminated during the hours of darkness.
18. No superior arrangements for the distribution of keys were identified during the review therefore it is recommended that the current advice contained in the procedure for restriction of the use of a highway by means of a gating order under Section 129A of the Highways Act 1980 remains unchanged. Changes to inspection frequencies are not recommended because Utility Companies, Emergency Services and members of the public undertaking maintenance works have legitimate reasons to use the gated sections of path. All other operational issues are addressed in the proposed amendments to the County Council's policies and procedures.

Proposed Revisions to County Council's Policies and Procedures

- 19. A report recommending approval of the following revisions to the County Council's policies and procedures will be submitted to the Cabinet meeting on 14 July 2010.
- 20. Gating Orders will fall within the remit of the Portfolio Holder for Community Safety, the Service Director for Community Safety, Resilience and Protection will deliver operational and management advice through the Safer Communities Team.
- 21. All references made to the Corporate Director Communities will be changed to read the Rights of Way Committee; this reflects the delegation of the responsibilities associated with Gating Orders.
- 22. The Guidance will be amended to allow the County Council to approve Gating Orders not requested by CSPs. Proposed Gating Orders arising

- from 'exceptional circumstances' relating to a vulnerable person or persons must meet all of the statutory tests that are required for conventional Gating Orders.
23. A new section will be added which specifies the use of automatic mortice deadlocks to prevent unauthorised replacement of pad locks and reduce the likelihood of gates being left unlocked.
 24. Additional details will be added to ensure effective consultation with people living in the area adjacent to the proposed gated area. This consultation is to be evidence in deciding if a Gating Order is an appropriate tool for crime or anti social behaviour reduction.
 25. It is proposed to revise and expand Section 14; this section contains details about reviewing Gating Orders. The proposed methodology incorporates all relevant Home Office advice and best practice used by other authorities. The proposed review methodology ensures the Rights of Way Committee is in a position to be able to exercise due executive oversight in decisions relating to Gating Orders.
 26. A number of minor amendments which make no substantive change to roles and responsibilities will be contained in the guidance document, they merely reflect changes in organisational terminology for example:
Cabinet Member for Community Safety and Partnerships *becomes* Cabinet Member for Community Safety
Strategic Director for Communities *becomes* Corporate Director Communities
Policy and Programmes Section *becomes* Policy and Standards Team
Environmental Planning *becomes* Planning Services.

Proposed Revisions to the Highway Network Management Plan

27. An enhanced weed treatment regime for gated sections of footway will be inserted into Section 5.1.10 Weed Treatment; the frequency of these treatments is yet to be determined.

Proposed Revisions to A Guide/Code of Practice for Street Lighting (and Associated Equipment) within the County

28. Future versions of this document will instruct that unless there are identified and justifiable safety reasons, street lights within gated sections of footpath are to be switched off, their lanterns are to be removed and they are to be capped to prevent the ingress of water.

29. A report recommending the adoption of a revised version of A Guide/Code of Practice for Street Lighting (and Associated Equipment) within the County will be submitted in due course.

Funding Arrangements

30. In general it is recommended that future Gating Orders will be funded by the Community Safety Partnerships. This will allow applications to be prioritised against other competing crime and anti-social behaviour reduction initiatives.
31. Funding for Gating Orders instigated by the County Council due to the vulnerable nature of a person or persons residing at an address (impacted on by the highway related crime and/or anti social behaviour issue) will be funded by the County Council.
32. The County Council recognises the positive impact privately funded initiatives can have upon community safety, to this end a new section will be added which deals with such funding arrangements. It is proposed that private individuals and organisations will be able to pay for gating schemes which the CSPs recommend but are unable to fund. Gating Orders funded in this manor will be required to meet the same legal tests as those which are conventionally funded. These tests are described in the County Council's guidance document. The applicant will be required to pay a commuted sum to the County Council for future maintenance and reviews, the period for calculating this sum will be 60 years as specified in the County Surveyors Society report Commuted Sums for Maintaining Infrastructure Assets.
33. The costs of maintaining and reviewing the two existing trial sites will be borne by the highway maintenance budget.

Consultation with Community Safety Partnerships

34. The Community Safety Partnerships (CSP) in Nottinghamshire have been consulted on the proposed changes to the process for implementing Gating Orders. The CSPs seem content with what is being proposed with the exception of the recommendation that CSPs are financially responsible for putting gates in place. Ashfield and Mansfield Community Safety Partnerships take the view that the County Council should fund gating orders, as they are a highway matter.

RECOMMENDATIONS

- i) That the proposed amendments to the procedure for restriction of the use of a highway by means of a gating order under Section 129A of

the Highways Act 1980 are considered and comments and any further amendments included in the report to Cabinet.

- ii) That proposed revisions to the Highway Network Management Plan and A Guide/Code of Practice for Street Lighting (and Associated Equipment) within the County are considered and comments and any further amendments included in the report to Cabinet.
- iii) The proposed revisions to the County Council's funding arrangements for Gating Orders are considered and comments and any further amendments included in the report to Cabinet.

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Comments of the Service Director – Finance

There are no immediate financial consequences arising from the adoption of this proposal. Any future costs arising from this proposal needs to be assessed and evaluated at that time. [DD - 29/04/10]

Legal Services' Comments

Committee has power to act as recommended. [MM - 04/06/10]

Background Papers Available for Inspection

Guide to the making of Gating Orders on highways and public rights of way - Nottinghamshire County Council - December 2009

Electoral Division(s) and Member(s) Affected

All