

WIRRAL COUNCIL

STREETSCENE & TRANSPORT OVERVIEW AND SCRUTINY COMMITTEE –7th JUNE 2007

REPORT OF THE DIRECTOR OF TECHNICAL SERVICES

PROPOSED GATING ORDER – FOOTPATH BETWEEN 32 & 34 BASSENTHWAITE AVENUE, NOCTORUM (CLAUGHTON WARD) SECTION 129 OF THE HIGHWAYS ACT 1980

1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek Members' endorsement to the commencement of legal procedures to restrict access at all times over a section of footpath, shown hatched black on the attached plan, by making a gating order under S129 of the Highways Act.

2.0 BACKGROUND

- 2.1 On 7th February 2006 the Environment & Transportation Select Committee resolved that the Director of Technical Services should commence legal procedures, under Section 257 of the Town & Country Planning Act 1990 to formally close a section of unadopted footpath linking Bassenthwaite Avenue to public right of way footpath number 4.
- 2.2 As indicated in the report to the Environment & Transportation Select Committee on 7th February 2006, the closure procedures would commence once the adjoining residents at 32 & 34 Bassenthwaite Avenue had successfully obtaining planning permission to extend their boundary walls and incorporate the footpath into their gardens.
- 2.3 Unfortunately, following this resolution no application for planning permission was forthcoming. Therefore the Director of Technical Services has been unable to commence the formal highway closure procedures under S257 because there is now no development to be carried out.
- 2.4 There are a number of different provisions available to apply for a highway to be closed. At the time of the previous report it was considered that S257 of the Town & Country Planning Act was the most appropriate for the above reason.
- 2.5 Following enactment of the Clean Neighbourhoods and Environment Act 2005 new powers were inserted into the Highways Act 1980 (Section 129 Gating Orders), offering the Local Authority an alternative method of restricting rights of way over a highway. In essence, S129 makes provision for the gating of minor highways that attract anti-social or criminal behaviour. It provides a Local Authority with a means to erect, or allow the erection of, a physical barrier to restrict public access to a highway over which the public would normally have a right of passage.
- 2.6 Under these new powers the Local Authority may make a Gating Order restricting access to certain highways provided that it is satisfied that:
- (a) the 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 the circumstances expedient to make the Order for the purposes of reducing crime or anti-social behaviour.

2.7 The circumstances referred to in (c) above include:

- a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
- b) the likely effect of making the order on other persons in the locality; and
- c) where the highway constitutes a through route (as is the case here), the availability of a reasonable convenient alternative.

2.8 It is apparent from our files that there has been anti-social behaviour reported by the Police and residents.

2.9 It should be noted that this is the first Gating Order processed by the Council and success is not guaranteed. There is a detailed procedure which the local authority must comply with in relation to the making of a gating order. Amongst other things, the proposed order has to be advertised and the Authority has to consider any representations as to whether or not the proposed gating order should be made.

2.10 The Director of Technical Services suggests that any such representations are brought back to the Streetscene and Transport Services Committee for consideration by Members. The Authority also has discretion to decide whether or not a public inquiry should be held in relation to the proposed order.

3.0 PROPOSALS

3.1 Your Committee is asked to note the making of a Gating Order to restrict access over the above section of footpath.

4.0 FINANCIAL AND STAFFING IMPLICATIONS

4.1 The Gating Order procedure will be carried out by existing staff as part of their normal duties.

4.2 This Order will be the first Gating Order made by this Authority. Therefore the Director of Technical Services will fund the initial legal and administrative costs together with the cost of erecting the gates.

4.3 If the matter proceeds to Public Inquiry additional costs would be incurred.

4.4 The costs of any subsequent Gating Orders must be met in full by the applicants.

5.0 EQUAL OPPORTUNITIES IMPLICATIONS

5.1 There are no specific ethnic minority, elderly persons or equal opportunities implications under this heading.

6.0 PLANNING IMPLICATIONS

6.1 There are no planning implications to this report.

7.0 COMMUNITY SAFETY IMPLICATIONS

7.1 Gating this footpath will alleviate problems experienced by the residents of Bassenthwaite Avenue immediately adjacent to the footpath who are subjected to vandalism and other antisocial behaviour by individuals who currently gather on the footpath.

7.2 Gating the footpath may act against attempts to encourage children to walk to school.

8.0 HUMAN RIGHTS IMPLICATIONS

8.1 There are no specific human rights implications arising directly from this report.

9.0 LOCAL AGENDA 21 IMPLICATIONS

9.1 The footpath is used by local walkers, cyclists and parents and pupils of Hillside Primary School. Gating the footpath may encourage greater use of cars and other motor vehicles.

10.0 ACCESS TO INFORMATION ACT

10.1 None.

11.0 LOCAL MEMBER SUPPORT IMPLICATIONS

11.1 The footpath is situated in the Claughton Ward.

12.0 RECOMMENDATIONS

12.1 Your Committee is asked to endorse that:

- (i) The Director of Technical Services makes a gating order under S129 of the Highways Act 1980 to restrict access at all times in respect of the footpath linking Bassenthwaite Avenue to Public Right Of Way Number 4; and
- (ii) Representations or objections as to whether or not the gating order should be made will be brought back to this Committee for consideration.

DAVID GREEN, DIRECTOR
TECHNICAL SERVICES

This report was prepared by Jayne Harris who can be contacted on 606 2196