

## **WIRRAL COUNCIL**

**CABINET – 4<sup>th</sup> NOVEMBER 2010**

### **REPORT OF THE DIRECTOR OF TECHNICAL SERVICES**

#### **PROPOSED GATING ORDER POLICY - SECTION 129 OF THE HIGHWAYS ACT 1980**

##### **1.0 EXECUTIVE SUMMARY**

1.1 Members are asked to consider and approve a Gating Order Policy for Wirral.

##### **2.0 BACKGROUND**

2.1 Gating Orders are covered by S129 of the Highways Act 1980 and the (Gating Orders) (England) Regulations 2006.

2.2 It should be noted that the making of Gating Orders is a discretionary power and there is no statutory requirement for a local authority to approve Gating Orders.

2.3 The Council has received requests as set out in Appendix 1 and it is necessary, therefore, for the Council to agree a policy for the consideration of these and future applications.

##### **3.0 PROPOSED POLICY**

3.1 It is proposed that the following policy is adopted for consideration of Gating Orders.

3.2 Applications will only be considered if they fulfil (a) and (b) as set down in the Gating Order Regulations i.e.

- (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 committing of criminal offences or anti-social behaviour

In addition it is proposed that the following criteria must apply before the Council will consider commencing the statutory Gating order procedure:

1. A Crime and Anti-Social Behaviour report for the previous 12 months is commissioned from the Wirral Joint Community Safety Team to assess whether there is a case for an order to be considered (i.e. that a and b above apply).
2. It can be shown that concerns of crime and anti-social behaviour genuinely outweigh opposition from non-residents.
3. That there is a suitable alternative route.
4. That other measures such as CCTV have been unsuccessful.

5. A written statement is received in support of the application from the Wirral Area Commander for Merseyside Police.
6. That there is an identified budget for the installation and maintenance of gates at the relevant location or that the matter be referred to the appropriate Area Forum for consideration for funding from one of their own funding streams.

3.3 Where all of the above criteria are met, the Authority consider the commencement of the statutory Gating Order procedure.

#### **4.0 ADDITIONAL CONSIDERATIONS**

- 4.1 Even where evidence is produced which confirms that criminal or anti-social behaviour exists, it may not be possible to close a section of highway due to the absence of a defined boundary structure to close up to i.e. public open space areas
- 4.2 Consideration must also be given to ensuring that Gating Orders do not cause excessive inconvenience to highway users and the design ensures that gates are wheelchair accessible.

#### **5.0 GATING ORDER PROCEDURE**

- 5.1 The proposed Order has to be advertised, local residents and statutory organisations consulted and written representations invited as to whether or not the proposed gating order should be made.
- 5.2 The Public Notice of a draft Order is then advertised requesting any written representations within 21 days.
- 5.3 If public objections are received, an authority may determine that a public inquiry needs to be held. Alternatively the Council may determine the matter without public inquiry but taking account of objections received. If no objections are received the Council can make the Order.
- 5.4 Once an order has been made, Section 129D of the Highways Act 1980 allows individuals to challenge the making of an order in the High Court within 6 weeks of the order being made on a procedural basis.
- 5.5 Gating orders should be reconsidered after a reasonable period of time when statistical evidence shows that the level of anti-social behaviour and criminal activity has been reduced and the highway can be re-opened following due consideration and consultation. Public consultation is required for this.

#### **6.0 FINANCIAL AND STAFFING IMPLICATIONS**

- 6.1 The Technical Services Department does not currently have a budget for gating orders and the four implemented so far have had to be funded from the highway maintenance revenue budget. The estimated cost of erecting gates is between £4000 and £5000 per site, depending on the size and complexity of each location, plus the ongoing maintenance costs, the value of which is unknown. Legal and advertising costs are additional to this.

- 6.2 In view of the number of requests now being received, it has been determined that there is a need to establish a policy for Gating Orders to ensure a uniform approach to all requests.
- 6.3 Members will be aware of the pressures on the highway maintenance budget and clearly as indicated in paragraph 3.2.6 identification of financial resources from within existing budgets will be necessary prior to agreeing to each order being implemented.
- 6.4 One possible source of future funding to be explored is from within the You Decide allocation to Area Forums.
- 6.5 In the guide list of services in the Forum questionnaire, alley gating is referred to under the Community Safety heading. However, the Forum remit is for funding to be allocated on the most requested suggestions, depending on the overall cost.
- 6.6 2010/11 funding has already been allocated but this type of funding could be available for future years.

## **7.0 EQUALITY IMPACT ASSESSMENT**

- 7.1 No negative impact on any equality group has been identified as a result of this policy.
- 7.2 Consideration is given to ensuring that gating orders do not cause excessive inconvenience to highway users and the design ensures that gates are wheelchair accessible.

## **8.0 PLANNING IMPLICATIONS**

- 8.1 It will be necessary to consult with planning officers where requests may affect a conservation area or gates exceed 2.0 metres in height.

## **9.0 COMMUNITY SAFETY IMPLICATIONS**

- 9.1 The Gating Order policy will assist in dealing with crime and anti-social behaviour.

## **10.0 HUMAN RIGHTS IMPLICATIONS**

- 10.1 There are no known implications arising under this heading.

## **11.0 LOCAL AGENDA 21 IMPLICATIONS**

- 11.1 There are no known implications arising under this heading.

## **12.0 SOCIAL INCLUSION IMPLICATIONS**

- 12.1 There are no known implications arising under this heading.

## **13.0 ANTI-POVERTY IMPLICATIONS**

- 13.1 There are no known implications arising under this heading.

#### **14.0 ACCESS TO INFORMATION ACT**

14.1 The Highways Act 1980 and (Gating Orders) (England) Regulations 2006 have been referred to in the preparation of this report.

#### **15.0 LOCAL MEMBER SUPPORT IMPLICATIONS**

15.1 This report is of interest to all Council Members.

#### **16.0 RECOMMENDATIONS**

16.1 Cabinet is requested to approve the gating order policy as set down in paragraphs 3 and 4 of this report.

DAVID GREEN  
DIRECTOR OF TECHNICAL SERVICES

#### **Appendix 1**

Requests have been received for gates to be erected at the following locations:

- 1) Larkhill Way / Dereham Drive Footpath, Upton
- 2) Olivia Close to Eastview Close, Noctorum
- 3) Wethersfield Road, Noctorum
- 4) Rear of 149 Home Farm Road, Woodchurch
- 5) Path between 60 and 62 Davenham Avenue, Oxton
- 6) Path adjacent to 47 Malpas Road, Wallasey
- 7) Path adjacent to 2 Deans Way, Birkenhead
- 8) Path from Town View to Ridley Street, Oxton
- 9) Various paths and highway around St Edwards Close, Birkenhead
- 10) Beaconsfield Road Underpass