

By: Director, Environment and Waste
To: Regulation Committee – 22 May 2007
SUBJECT: GATING ORDERS

CLASSIFICATION: Unrestricted

SUMMARY: A report establishing County Council policy and practice for the making of Gating Orders and the potential resource implications.

Background

1. (1) On the 1st April 2006 the Highways Act 1980 (Gating Orders)(England) Regulations 2006 came into force. The regulations brought into effect additional powers for the Highway Authority to make and revoke gating orders for a highway in order to prevent crime or antisocial behaviour on or adjacent to the highway.

(2) On the 17 May 2007 the County Council delegated the power to make, vary or revoke Gating Orders to the Managing Director of Environment and Regeneration. The terms of reference of the Regulation Committee were amended to include the making, variation or revocation of Gating Orders in circumstances where substantive objections have been received.

(3) The technical report (Appendix 1) sets out in greater detail the extent of the new power and a number of operational matters to be addressed to ensure its effective administration. The report also makes an initial assessment of the likely resource implications associated with the administration of the new powers which Members are asked to note.

Recommendations

2. Members are asked to note the following operational proposals for dealing with applications to make, vary or revoke Gating Orders:

- (a) Gating Orders that meet all of the necessary legislative criteria and are brought forward with the support and assistance of the Local Crime Reduction Partnerships will be sympathetically considered;
- (b) Gating Orders will be limited in extent to that which is necessary to address the problem, i.e. public use will as far as is possible be retained;

- (c) a review period will be set for any Gating Order made and is recorded with the Gating Order in the Register of Gating Orders;
- (d) consultation will as a matter of policy include all those organisations prescribed by legislation to receive copies of path orders;
- (e) representations will be invited from other individuals and bodies who wish to be notified of proposed Orders;
- (f) Planning Inspectorate Inspectors will be appointed to hear any Gating Order Public Inquiries; and
- (g) the resource impacts of Gating Orders will be kept under review and activity in this area will be limited to that which can be met within existing budget allocations.

Background documents: None

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TECHNICAL REPORT

Introduction. On the 1st April 2006 the Highways Act 1980 (Gating Orders)(England) Regulations 2006 came into force. The regulations brought into effect additional powers for the Highway Authority to make and revoke gating orders for a highway in order to prevent crime or antisocial behaviour on or adjacent to the highway.

Background: Powers to divert or extinguish public highway rights for the purposes of crime prevention were first introduced in the Countryside and Rights of Way Act 2000. The powers could only be exercised in areas designated for the purposes of crime prevention by the Secretary of State or on school premises and were viewed as a measure of last resort. Any diversion or extinguishment using the powers was irrevocable. In effect the installation of alleygates on public highways was almost impossible to achieve lawfully within the legislative framework available.

Many of those schemes carried out nationally, despite having been demonstrated to reduce crime and improve the quality of life of residents, would not stand up to legal scrutiny. They may leave the relevant authorities open to challenge in the courts, through the Local Government Ombudsman or to complaint to the Audit Commission.

The new powers introduced under the Clean Neighbourhoods and Environment Act 2005 (appendix 2), and brought into effect by regulation (Appendix 3) on 1 April 2006, enable the Highway Authority to restrict access to a public highway by gating it in order to prevent crime and antisocial behaviour on or adjacent to the public highway. The highway does not need to be in an area designated by the Secretary of State.

Gating Orders while preventing or limiting the use of the highway do not remove the highway rights associated with it. The use of the highway may, if appropriate to the circumstances, be limited at certain times. Importantly Orders may be varied or revoked should the crime or anti social behaviour be reduced.

A Gating Order may authorise the installation, operation and maintenance of a barrier to enforce the restriction. A council may install, operate and maintain any authorised barrier.

Guidance relating to the making of Orders produced by the Home Office (Appendix 4) makes it clear that Gating Orders, while not a measure of last resort, should be seen as a temporary measure to be used as a deterrent. Before making an Order the Highway Authority must be satisfied that premises adjoining or adjacent to the highway are affected by persistent crime or anti-social behaviour and that it is facilitated by the existence of the highway.

The County Council have an obligation under Section 17 of the Crime and Disorder Act 1998, as an Authority for the purposes of that Act in exercise of its various functions to do all it can to prevent crime and disorder in its area.

The County Council are committed to creating stronger safer communities and improving the quality of life for Kent residents, working with partners. Towards 2010 – Stronger Safer Communities.

Operation in Kent.

The procedure to be followed and the legal criteria to be met for Gating Orders are expressly dealt with in the Clean Neighbourhoods Act 2005 and the Highways Act 1980(Gating Orders)(England) Regulations 2006. Where set out by statute, as in this case, the legislative tests must be met and the process established through regulations rigorously followed. However there are matters associated with the making of Orders where a clear policy and process would be of benefit in enabling Officers and Members to: reach an informed decision on any application, report objections to Orders and administer the provisions effectively.

The power to make, vary or revoke Gating Orders was delegated to the Managing Director of Environment and Regeneration by full Council on the 17 May 2007. The terms of reference of the Regulation Committee were amended to include the consideration of Gating Orders and Orders to revoke or amend Gating Orders to which substantive objections are received at the same time.

Application

In Order that the County Council may appropriately consider applications for Gating Orders, applications should be brought forward through the local Crime and Disorder Reduction Partnership. The Local Crime and Disorder Reduction Partnerships are active within Borough and District areas and involve the County Constabulary, Community Safety Officers and other interested parties.

The Crime and Disorder Reduction Partnerships are best placed to advise the County Council whether the premises adjoining or adjacent to the highway are affected by persistent crime and antisocial behaviour that it is facilitated by the highway: and to provide evidence in support.

Perhaps more importantly it should be clear in any application that in gating the highway a reduction in crime and antisocial behaviour should be achieved. There would be little point in gating a highway if other points of access were available to the public.

It should also be the case that as a matter of policy Gating Orders are limited in extent to that which is necessary to prevent the problem, i.e. if the crime or anti social behaviour is associated with the night time economy then there is no reason why the highway should be closed during the day time.

Consultation

Notice of any proposed Gating Order must be given by the Council to all those bodies or individuals set out in the Highways Act 1980(Gating Orders)(England)Regulations 2006. Sections 4a to 4l. While most of the section is specific as to who should be consulted 4j,k & l are less specific. To ensure all views are properly considered in the process indication should be sought from those organisations that are normally consulted on public right of way change orders of any description as to whether they wish to be consulted. Representations should also be sought from any other groups or individuals who wish to be notified of any proposed Gating Orders by advertising on our website, KCC.gov.uk and in the local press.

Objections

It is hoped that it will be possible to achieve a level of consensus around a proposal to make a Gating Order and that it will be possible to resolve many objections through constructive debate with objectors. However, a council may proceed to make a Gating Order, following notice, in the face of objection or representation; unless objection is received from the Chief Officer of a Police Force, the Fire and Rescue Authority, NHS Trust or NHS Foundation Trust for the area. If objection is received from the above a Public Inquiry must be held should the Council wish to proceed.

There is established policy for reporting objections to Orders that in some way amend the Definitive Map and Statement of Public Rights of Way. The policy requires that substantive objections be considered by the Regulation Committee. Substantive is defined in respect of objections as meeting the requirements of the legislation and being relevant to the circumstances of the Order. To ensure a level of consistency across the Authority it is recommended that this same piece of policy be adopted for Gating Orders with objections reported to Members through the Regulation Committee. Three decisions would be open to Members: not to make the Order, to make the Order in the face of objection or to place the matter before a Public Inquiry.

Public Inquiry

Should it be necessary or appropriate to hold a Public Inquiry the Council must appoint a suitably qualified and fully impartial inspector to conduct it. PROW Public Inquiries are heard before Planning Inspectorate Inspectors familiar with the legislative requirements of the Orders they are being asked to reach decision on. They are entirely independent of the County Council. I recommend that Planning Inspectorate Inspectors be appointed to hear any Gating Order Public Inquiries.

Review

Gating Orders, as made clear in the advice from the Home Office, are seen as a temporary measure. It would therefore be appropriate to set a review period for any Order made. A decision would then be made at review as to whether to continue with, vary or revoke the Order and a further period for review.

Register of Orders

The County Council are obliged to maintain a register of Gating Orders which must contain all notices of proposals for Gating Orders and copies of all Orders made. The Register of Orders would be made available on the Kent.Gov.UK website and also Kent Gateway.

Resources

Gating Orders

The process of making an order is “resource hungry.” For instance public path diversion orders which follow a similar process to that set out for Gating Orders normally cost around £2500, excluding the cost of a Public Inquiry. The cost is met in normal circumstances by the applicant. Given the obligation on the County Council under Section 17 of the Crime and Disorder Act 1998 to do all it can to prevent crime and disorder in its area and the strong commitment to Stronger Safer Communities in Towards 2010, there may be an expectation that the County Council will meet the cost of any Order.

It should be noted that no additional resource has been made available to the County Council for this work in terms of either finding the necessary officer time to undertake the process or meet any of the associated costs such as advertising notices.

The regulatory impact assessment carried out by Government when introducing any new legislation identified a saving to local government in introducing the new measures. This was on the basis that the new provisions are more easily administered than those introduced under the Countryside and Rights of Way Act 2000 (CROW Act 2000) for crime prevention. The assessment indicates that additional resource was allocated to local government on the introduction of the CROW Act 2000 for the purposes of administering the crime reduction provisions. No account is taken of the costs involved in purchasing, installing, maintaining and operating gates.

Initially the County Council will meet the cost of making a small number of orders from existing budgets. The number of Orders made will however be strictly limited by the resource available although the numbers of Orders may be increased should partners be able to identify further sources of funding.

There is I believe the potential for significant numbers of applications to be received over a sustained period. Should this be the case it will be necessary

to identify on a priority need basis and commit additional resources to this area of work or set clear quotas for the number of Orders the Authority is able to make in any given financial year

The Countryside Access Group and Kent Highway Services are working closely to ensure common policy, practice and one point of contact is established for this area work so that all potential efficiencies are achieved and our customers receive the best possible service.

Gates

Substantial gates are required to enforce Gating Orders. The estimated cost of providing and installing a gate is in the region of £2000. Gravesham BC estimates the true cost is nearer £5000 per scheme. Should a Gating Order relate only to certain times or days it will be necessary to ensure the gate is unlocked when the Order is not in operation. No additional resource has been made available or identified for the provision, maintenance or operation of gates and it would not be possible to meet this cost from existing allocations without impacting on other statutory elements of the Countryside Access Group and Kent Highways Services work. Practical implementation of Gating Orders will only be possible if partners are able to meet the costs of gate provision, maintenance and operation..

The accurate assessment of the resource required for administering Gating orders will not be possible until the provision is widely understood and applications are being received. It will however be kept under regular review and the impact reported to Senior Officers and the Portfolio Holder when more properly understood.