

From: Director of Customer and Communities
To: Regulation Committee Member Panel – 24 September 2012
Subject: Proposed Gating Order – Public Footpath AU79 Ashford Church Yard.

Classification: Unrestricted

Summary: A report seeking a decision from the Regulation Committee Member Panel on whether to:

- (a) make a Gating Order, the effect of which is to allow the installation of a gate prohibiting access to Public Footpath AU79 at its junction with the High Street, between 22:00 pm Friday to 6:00am Saturday , and 22:00 pm Saturday to 6:00am Sunday; or
 - (b) cause a public inquiry to be held relating to the proposed gating order;
or
 - (c) to decline to make a Gating Order.
 - (d) in the event that a decision is taken to make a Gating Order establish a period of operation after which the effectiveness of the order should be reviewed
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1. Background

(1) On the 1 April 2006 the Highways Act (Gating Orders) (England) Regulations 2006 came into force. The regulations brought into effect amendments to the Highways Act 1980 providing the County Council, as the Highway Authority, with the power to make, revoke or vary gating orders. The powers may be exercised in order to prevent crime or antisocial behaviour on or adjacent to the highway, if the Highway Authority is satisfied that premises adjoining or adjacent to the highway are affected by the persistent commission of crime or anti-social behaviour, and that it is facilitated by the existence of 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. 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 to proposals. The County Council Constitution was then further amended to enable a Regulation Committee Member Panel to consider Gating Orders.

(3) Additionally section 17 of the Crime and Disorder Act 1998

states that the County Council “without prejudice to any other obligation imposed on it, it shall be the duty of each authority.... to exercise its various functions, with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area”.

(4) In 2010 Ashford Community Safety Unit submitted an application for a Gating Order in respect of Public Footpath AU79 Ashford Church Yard. This application could not be taken forward as the proposal would have had the effect of preventing access to a number of dwellings; a circumstance in which an order may not be made. The Community Safety Unit brought a further amended proposal, forward. This proposal addressed the technical failing in their original application.

(5) Public Footpath AU79 is recorded in the Definitive Map and Statement of Kent, the conclusive legal record of the existence, minimum status of, and alignment of public rights of way. The footpath along with Public Footpath AU80 forms a complete circuit of St Mary’s Church Yard in the centre of Ashford. Residential properties, businesses, a community hall and St Mary’s Church abut the public footpaths. St Mary’s Church is a place of worship and home to an arts trust. The Arts Trust run a programme of arts events at the Church.

(6) The public footpaths link Tufton Street with the High Street and are well used convenient routes passing through a conservation area of high amenity value. There are two principal means of ingress/ egress to the Church Yard from Tufton Street and one point of ingress/ egress to the High Street. There are also private means of ingress/ egress to the Church Yard most notably from the Bull Yard on the western side of the Church Yard, abutting Public Footpath AU79.

(7) The footways of Tufton Street and Bank Street and the pedestrianised High Street provide links between the same areas of the town centre. They are well lit with good natural surveillance. They also primarily pass business properties rather than residential properties. They are of a similar gradient and I believe equally convenient, although this is to some extent dependent on the journey undertaken. In the very worst possible case where a person in the High Street wished to access a property in the Church Yard at a time the gate was locked an additional distance of 400 metres would be added to a journey. However the probability is that any additional walking distance would be considerably less.

(8) Statistics relating to reported crime were submitted in support of the application, and were further updated to provide a temporal analysis. (appendix 1). The statistics clearly demonstrate

that persistent (enduring, constant, repeated) criminal and anti social behaviour occurs on and is facilitated by the existence of the footpath.

(9) The reported anti social and criminal activity included banging on doors and windows, criminal damage, urination through letter boxes and against residential properties, and general disturbance. Temporal analysis indicates peaks in criminal and antisocial behaviour during Friday and Saturday nights reflecting increased activity in the night- time economy at these times. I believe that there is a clear link between the movement of patrons between licensed premises and the worst of the crime and anti social behaviour.

(10) The statistics indicated that reported crime has continued over a number of years despite the introduction of measures to reduce the crime and anti-social behaviour. Policing and practical measures introduced in an attempt to reduce crime and asb in the area include:

- The introduction of additional street lighting and signage in Church Yard Passage
- The introduction of CCTV in Church Yard Passage
- Targeted policing, including increased foot patrols and plain clothes patrols.

The above measures have had no demonstrable lasting impact in reducing criminal and antisocial behaviour in the area.

(11) In addition to the reported criminal and antisocial behaviour, many residents wrote in support of gating the footpath citing many instances of crime and anti-social behaviour and the adverse impact that it has had on their quality of life. The ability of residents to take practical steps to reduce the crime and asb affecting them is limited to a considerable extent as properties directly abut the footpaths. The potential for amending properties by altering doors and windows is limited as there are planning constraints reflecting the conservation area status.

(12) A draft Gating Order was produced, notice of which was advertised in the local press and on site. Copies of the relevant documents were placed on deposit at Ashford Borough Council Civic Centre and the Kent Highways and Transportation Office at Henwood Road Ashford.

(13) In addition an informal consultation took place prior to drafting an order. The consultation targeted businesses, premises adjacent to the footpaths including St Mary's Church, businesses and residential properties as well as other interested parties.

2. Informal consultation

(1) In order to establish the potential impact of the introduction of a gate on premises adjacent to the footpath AU79 an informal consultation with residents and businesses was undertaken.

(2) A number of relevant points and concerns were received in respect of the proposal along with a number of general statements in support of the proposal and making reference to instances of crime and anti-social behaviour (CASB). The legislative provisions relating to gating orders are set out in such a way as to seek to balance the potential impact of the installation and locking a gate in reducing CASB with any dis-benefit or harm caused in preventing access to public users of a highway, and businesses and premises that rely on the highway for access. The key points are summarised below along with the observations of the Public Rights of Way and Access Manager:

(3) There is considerable evidence of CASB affecting properties adjacent to the public footpath, particularly those to the west side of the Church Yard. It is also self evident that the CASB must be facilitated by the existence of the footpath as it is the only means of access to the properties for those committing it.

(4) There are clearly issues relating to access to access to business and leisure premises. Concerns were specifically raised about the potential impact of a gating order on access to St Mary's Church both for late night services and Arts Trust events. These concerns included:

- A requirement for access associated with breaking down equipment and sets after events, and
- the need for emergency services to be able to access the Church, and
- the need for attendees to be able to safely evacuate in the case of an emergency.

The points made are valid, however I believe that they have been fully mitigated by amending the proposal to include an exception in the order that would in effect ensure that the route is not gated on dates or at times when late night services or events are taking place. Practical arrangements may be put in place to ensure that gates are only locked once the events have finished and any equipment has been broken and removed.

(5) Concerns were raised that a gating order may impact adversely on visitors to the area and late night commuters accessing the Town Centre from Ashford Station. While there is of course some potential for this at the times proposed this is likely to affect only small numbers of people. Notices would be displayed at

entrances to the path and on the gate that would provide clear information about the times that access would not be available

(6) It is not believed that the proposal would restrict access to any dwelling, indeed access is maintained to all dwellings. However, the gating of the path would require residents of the Church Yard visiting the town centre to take a less direct route home at times when the entrance is gated. In the very worst case this could potentially add 400 metres to a journey, in all probability considerably less.

Further, advice was sought from Legal Services concerning the impact of the introduction of a gate on access to dwellings. It is not considered that the introduction of a gate limits or restricts access to any dwellings given the number of other access points.

(7) There were a number of concerns expressed about the potential for a gating order to cause anti social behaviour as a result of loss of surveillance from members of the public walking through the area or as a result of late night “revellers” causing nuisance or damage when finding their way out blocked. Additionally the short cul-de-sac section of path leading to the gate may become a hidden area where CASB may take place. All of the above could of course prove to be accurate. However analysis of the reports of CASB and evidence of the Licensing Officer for the Borough Council point to a pattern of movement by pedestrians late at night associated with visiting licensed premises around the town centre. It is believed that the installation of a gate and locking of it on the days and times indicated would break or interrupt this pattern of movement and the CASB associated with it. During the first weeks of operation resources would be dedicated to patrolling the area and informing users of the route about the gating of the path in an attempt to minimise problems.

(8) If made the gating order would be reviewed periodically and certainly after a year of operation. If the levels CASB proved to be unaffected or adversely affected the gating order could be revoked or amended.

(9) The elected members for the area held disparate views, one fully supporting the proposal, one expressing concerns specifically relating to accessing St Mary’s Church for events when the gating order could be operating. I believe that this concern has been addressed, as set out in paragraph 2(4).

3. Response to the consultation on the Draft Order.

(1) Nine residents, elected members and former elected members for the area wrote expressing their support for the order.

(2) Observations on the order were received from:

- Kent Police, who also expressed support for the order, and
- A utility company who indicated the presence of apparatus at the site

(3) Five objections were received to the draft order. The objections largely re-iterated objections raised at the informal consultation stage that it was not possible to accommodate in the final order. The objections are summarised below along with the response of the Public Rights of Way and Access Manager.

(4) Objection

There remain concerns that in the small hours of Saturdays and Sundays the gate may in practice trap and frustrate antisocial persons who may then attempt to climb the gates, damage property and disturb residents. St Mary's Church and local residential properties may well bear the brunt of this antisocial behaviour.

A concern was expressed that once it is known that the area is effectively a cul-de sac then drug users and couples who wish to engage in sexual activities will start to think that they can use the area undisturbed.

One objector felt that the scheme was illogical, closing off the northern access only while allowing access at other points.

(5) Response

It is believed that the installation of a gate and locking of it on the days and times indicated would break or interrupt a pattern of movement between licensed premises and the CASB associated with it. Resources would be dedicated to patrolling the area and informing users of the route about the gating of the path during the first weeks of operation in an attempt to minimise problems at this time. Signs will be placed at entrance points.

(6) Objection

The presence of a locked gate would prevent evacuation in the case of emergency such as a person falling ill in the Church or at local residence.

(7) Response

The gate will be open the majority of the time. The emergency services will hold a key to the gate and there are other access points available.

(8) Objection

One objector is totally opposed to the permanent exclusion of the public, and suggests that the public are only locked out between

8pm and 8am for example.

(9) Response.

The order only provides for the gate to be locked 22:00 pm Friday to 6:00am Saturday, and 22:00 pm Saturday to 6:00am Sunday.

(10) Objection

Notices were not available at stated locations or the Gateway.

(11) Response

Notice of the Gating Order was advertised in the local press and on site. Copies of the relevant documents were placed on deposit at both Ashford Borough Council Civic Centre and the Kent Highways and Transportation Office at Henwood Road Ashford.

(12) Objection

Two regular users of the path enjoyed accessing the route at all times of day and objected to any restriction of the route, or access to the Church. One of the users stated that they had never witnessed any crime or antisocial behaviour within the Church Yard.

(13) Response

Gating Orders do require a decision to be reached on the balance between the benefits to residents should CASB be reduced, in terms of their quality of life, and the impact on the wider community of a loss of access. It is important to note that Gating Orders should be periodically reviewed and that they are not viewed as being a permanent or long-term solution. The evidence of the Community Safety Unit, Kent Police and residents clearly indicates persistent CASB occurring in the Church Yard.

(14) Objection

If made the order would require an ongoing commitment to the locking and unlocking gates.

(15) Response

Contracts are already in place for the management of parks and toilets etc. The locking and unlocking of gates will be accommodated within these contracts.

3. Decisions available to members:

In respect of the Ashford Church Yard Gating Order three decisions are available to the Regulation Committee Member Panel:

- (a) the proposed Order should be made;
- (b) a Public Inquiry is caused to hear representations objecting to or in support of the Order; or

(c) the Gating Order should not be made.

4. Recommendation

- (a) that the Gating Order be made; and
- (b) that if the Gating Order is made, it is reviewed in one year and revoked, amended or continued at that time as appropriate.

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