

**Cheltenham Borough Council**  
**Cabinet – 25 September 2012**  
**Gating Orders**

<b>Accountable member</b>	<b>Cabinet Member Housing and Safety, Councillor Peter Jeffries</b>
<b>Accountable officer</b>	<b>Director of Well Being and Culture, Sonia Phillips</b>
<b>Accountable scrutiny committee</b>	<b>Overview &amp; Scrutiny Committee</b>
<b>Ward(s) affected</b>	<b>All</b>
<b>Key Decision</b>	<b>No</b>
<b>Executive summary</b>	<p>The purpose of this report is to outline to members a criteria and process for the assessment and making of gating orders at Cheltenham Borough Council, to ensure a consistent and transparent approach around the borough.</p> <p>Back and side alley ways can become a source of crime in built up areas and legislation has been put in place by central government to enable closure of these and other highways. As a borough council we need to put in place appropriate procedures to ensure that this legislation can be implemented and that gating orders are made in appropriate circumstances. This includes being able to provide clear information about the criteria to be met for a gating order to be pursued and delegating powers to the Community Protection Manager to commence the process.</p>
<b>Recommendations</b>	<p><b>That the criteria and process for assessing requests and where appropriate making gating orders detailed in Appendix 2 be adopted for application throughout the borough.</b></p> <p><b>That delegated authority be granted to:</b></p> <ul style="list-style-type: none"> <li>• <b>The Community Protection Manager to initiate the initial assessment in response to a request for a gating order.</b></li> <li>• <b>The Director for Wellbeing and Culture in consultation with the Cabinet portfolio holder to ensure that the right criteria and conditions are in place and where appropriate authorise formal consultation to be carried out.</b></li> <li>• <b>The Director of Wellbeing and Culture in consultation with the Cabinet portfolio holder to authorise the making of a gating order where there are no unresolved written representations received during the formal consultation period,</b></li> </ul>

<b>Financial implications</b>	<p>If a gating order is deemed the best option for resolving crime and anti social behaviour issues (and this would be a last resort) then funding would be sought for each case from within the council's existing budgets and / or external sources. There is therefore no additional budget requirement arising as a result of this report.</p> <p>Ongoing maintenance costs for any gates installed will need to be factored in to the planning on a case by case basis.</p> <p><b>Contact officer: Sarah Didcote, Group Accountant</b>  <b>Sarah.Didcote @cheltenham.gov.uk, 01242 264125</b></p>
<b>Legal implications</b>	<p>The Clean Neighbourhoods and Environment Act 2005 authorise local authorities to make, vary and revoke gating orders in respect of highways in their area. The attached criteria will assist the Council in following due process if the Council receives a request for a gating order</p> <p><b>Contact officer: Sarah Farooqi, Principal Solicitor</b>  <b>sarah.farooqi@tewkesbury.gov.uk, 01684 272693</b></p>
<b>HR implications (including learning and organisational development)</b>	<p>No direct HR implications arising from this report</p> <p><b>Contact officer: Sarah Flury, sarah.flury@cheltenham.gov.uk, 01242 775215</b></p>
<b>Key risks</b>	<p>There is no dedicated funding available for implementing gating order requests. Risk assessment attached as appendix 1.</p>
<b>Corporate and community plan Implications</b>	<p>Communities feel safe and are safe: The use of gating orders will help in addressing high levels of crime (such as burglary, one of the improvement actions for 2012/13) and anti social behaviour (also an improvement action for 2012/13)</p>
<b>Environmental and climate change implications</b>	<p>Gating orders should result in a reduction in crime and anti social behaviour, which will improve the overall environment for residents.</p>

## **1. Background**

- 1.1** Section 2 of the Clean Neighbourhoods and Environment Act 2005 amended the Highways Act 1980 by inserting sections 129A and 129G which give Highway Authorities the power to make, vary or revoke gating orders in respect of highways within their area. This is achieved by enabling Highway Authorities to restrict public access to any public highway by gating it (either permanently or at certain times of day), without removing its underlying status as a highway. Highway authorities are able to make gating orders on the grounds of anti social behaviour as well as crime.
- 1.2** Cheltenham Borough Council's authority to make gating orders is by virtue of the Highways Agency Agreement, made under Section 101 of the Local Government Act 1972 and sections 2 and 19 of the Local Government Act 2000 with Gloucestershire County Council as Highway Authority, dated 20<sup>th</sup> June 2008 with effect from 1 April 2007 ("Agency Agreement"). Before making a gating order, Cheltenham Borough Council will require written consent from Gloucestershire County Council.
- 1.3** Cheltenham Borough Council will follow the Home Office guidance on the making of gating orders (March 2006) and the requirements of the Agency Agreement or any subsequent documents that supersede or add to or amend these documents when making any gating orders.
- 1.4** Before making a gating order, Cheltenham Borough Council will need to be satisfied that the statutory requirements in sections 129A and 129B of the Highways Act 1980 have been met.
- 1.5** Gating orders obviously require careful consideration given that the closing off of a highway can be contentious and have potential knock on effects in terms of access and convenience, for example where a shortcut is taken away, or on health and pollution where people may be discouraged from walking or cycling instead of driving. A balance based on consideration of the advantages and disadvantages of gating in each individual location would need to be struck.
- 1.6** In addition, the legislation and Home Office guidance are quite rigid in terms of the circumstances when a local authority may make a gating order and it is essential that these are applied consistently.
- 1.7** Currently there is no budget for implementing gating orders. The approximate costs (based on research in other areas) are likely to be as follows:
  - Legal services costs in the drafting of orders and public notices.
  - Public notice of order - £1000 each
  - Purchase and installation of 2 gates (as each gating order usually requires a gate at each end of the alleyway or right of way) - £3000
  - Co-ordination by the Community Protection Officer with the lead for Anti Social Behaviour (more if representations are received)
  - Public Inquiry (if applicable) including legal costs for other parties. Specialist legal advice if needed would cost at least £5000 but there should not be costs for a venue or planning inspector.
- 1.8** In order to ensure a consistent approach throughout the borough, a process for identifying whether a gating order would be appropriate has been drawn up and is attached as Appendix 2. It sets out what Cheltenham Borough Council will consider in the decision making process and how decisions will be made. The process is designed to fit with the legislation and the Home Office guidance and aims to provide a transparent set of rules

- 1.9 Once the process for assessment and authorisation of gating orders has been approved, applications to funding sources within and outside the Council will be made and match funding sought on a case by case basis for implementing gating orders which are found to meet the criteria.
- 1.10 The approved process will be applied to all new applications for gating orders, with each case being considered on its own merits.

## **2. Reasons for recommendations**

- 2.1 A number of requests for solutions to issues of crime and anti social behaviour caused by alleyways have been received over the last 2 years from around the borough and in a small number of these cases, gating orders may be appropriate.
- 2.2 The ability to authorise gating orders will provide another tool for addressing issues of crime and disorder within neighbourhoods. They would be considered alongside other methods available and used only where they would provide the most appropriate solution to the problem.
- 2.3 A process is proposed for the making of a gating order. It is proposed that the Community Protection Manager would have delegated authority to initiate the gating order process. Once the initial assessment is complete as above, there is a need to decide if there are grounds for going out to formal consultation with a view to implementing a gating order and it is suggested that the following delegated authorities be given:
- The Director for Wellbeing and Culture in consultation with the Cabinet portfolio holder be given authority to authorise formal consultation, which will include the drafting of an order and public notices.
  - If no written representations are received as a result of the consultation process, this means that the matter should not be contentious and therefore it is recommended that delegated authority be given to the Director for Wellbeing and Culture in consultation with the Cabinet portfolio holder to proceed.
  - Where written representations are received from the public or private organisations as a result of the consultation process and the objections can not be addressed, it is recommended that the matter be referred to Cabinet to either authorise the order or refuse the order.
  - If an objection is received from the Chief Officer of the Police, the fire and rescue service, an NHS trust or other local council there is a statutory requirement that the Council must hold a public inquiry.

## **3. Alternative options considered**

- 3.1 Gating orders would be implemented as a last resort following an examination of the problem and other possible solutions. Other measures which would be considered first via the Cheltenham Anti Social Behaviour Working Group when dealing with such requests include:
- Lighting
  - Security
  - Bollards or other barriers rather than a lockable gate
  - Environmental improvements to the alleyway to improve visibility or through working with the Townscape team to improve the alley and encourage more community ownership of it.
  - Referring the issue to the Highways Authority, referring vulnerable residents to relevant support and liaising with Planning.

#### 4. Consultation and feedback

- 4.1 The Cheltenham Anti Social Behaviour Working Group will review all requests for gating orders and form a task group to carry out the informal consultation that is part of the initial assessment (detailed in appendix 2).
- 4.2 Before a gating order can be made, there is a legal requirement to consult with the general public and certain groups who may be directly affected by the order. The appropriate groups are listed in the Highways Act 1980 (Gating Orders England) Regulations 2006 and referred to in the Home Office guidance.

#### 5. Performance management –monitoring and review

- 5.1 The Anti Social Behaviour Working Group will monitor how the process for assessing requests for gating orders works in practice and will monitor whether gating orders that are made have had a positive impact. The process will be kept under review and amended when appropriate.

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<b>Appendices</b>	<ol style="list-style-type: none"><li>1. Risk Assessment</li><li>2. Criteria and process for the making, amendment and review of gating orders.</li><li>3. Process chart (taken from the Home Office Step by Step Guide to Gating Problem Alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005).</li><li>4. Community Impact Assessment</li></ol>
<b>Background information</b>	<ol style="list-style-type: none"><li>1. Clean Neighbourhoods and Environment Act 2005</li><li>2. Highways Act 1980</li><li>3. Home Office Guidance Relating to the Making of Gating Orders March 2006</li></ol>

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	As no budget is attached to gating orders, there is potential for it being agreed that an order should be implemented (and raising expectation of local residents) but not having the resources to do it.	Sonia Phillips	22.6.12	3	2	6		At this stage it is not anticipated that many sites would be suitable for a full gating order. All other solutions will also be explored. Where possible funding sources and match funding will be sought for piloting orders in the most appropriate sites.		Sonia Phillips	
	Formal consultation on a gating order may lead to written representations from interested parties that mean a public inquiry is necessary, with the associated costs.	Sonia Phillips	22.6.12	3	1	3		At the initial assessment phase, where there is a clear lack of support for a gating order from one of the statutory parties, it is unlikely that moving to the next phase (formal consultation) would be authorised.		Sonia Phillips	
	The restriction of access to certain alleyways may have a negative impact on certain groups such as people with disabilities or the elderly.	Sonia Phillips	22.6.12	2	2	4		Each new gating order will be impact assessed to ensure that these groups are not unduly disadvantaged by it.		Sonia Phillips	
	The restriction of access where a gating order is used may discourage walking and cycling.	Sonia Phillips	22.6.12	2	2	4		A gating order will only be implemented where there is a significant crime or anti social behaviour issue and a balance will be struck between the		Sonia Phillips	

								implications of closure or non closure.			
<p><b>Explanatory notes</b></p> <p><b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p><b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p><b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											