

## Criteria and process for the making, amendment and review of gating orders

### Introduction

Section 2 of the Clean Neighbourhoods and Environment Act 2005 amended the Highways Act 1980 by inserting Sections 129A to 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 (permanently or at certain times of the day if applicable), without removing its underlying highway status. Highway Authorities are able to make “Gating” Orders on grounds of anti-social behaviour as well as crime.

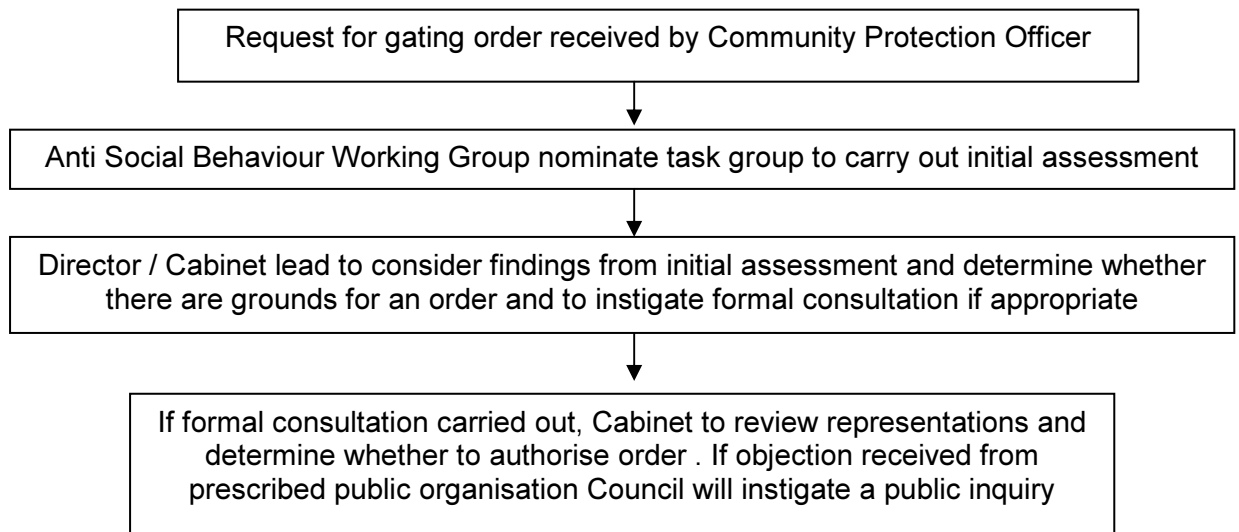
The Cheltenham Borough Council’s authority to make Gating Orders is by virtue of the Highways Agency Agreement made under Section 19 of the Local Government Act 2000 with the Highway Authority, Gloucestershire County Council dated 19 February 2008 and effective from 1 April 2007 (“Agency Agreement”). Before making a Gating Order, the Borough Council requires the written consent of Gloucestershire County Council.

Guidance was issued by the Home Office on the “Making of Gating Orders” in March 2006. Cheltenham Borough Council will follow the Home Office Guidance and requirements of the Agency Agreement or subsequent amendments to these documents when making any Gating Orders.

Before making a Gating Order the Borough Council needs to be satisfied of the statutory requirements.

### Process to be used to determine if a Gating Order is appropriate:

- The flow chart taken from the Step-By-Step Guide to Gating Problem Alleys (appendix 3) shows the full process to be followed which will be used to assess requests made.
- The chart below shows where requests for gating orders will go and more detail is provided below.



## Initial assessment – part 1

- A request for a gating order will be made to the lead officer, (the Community Protection Officer with the lead for anti social behaviour) by a member of the public or a partner agency via telephone, letter or email.
- The lead officer will report the request to the monthly multi agency Anti Social Behaviour Working Group meeting, which will delegate and monitor a task group of representatives of relevant agencies (normally but not exclusively to include Police, housing association where applicable and Cheltenham Borough Council) to undertake the initial assessment.
- The initial assessment will involve ascertaining whether or not the alleyway facilitates crime and / or anti social behaviour; checking whether the alleyway is a public right of way and could be gated and informally consulting the public and relevant organisations to find out whether in their view an order would be expedient for residents and the community as a whole and how many orders would be needed.
- Gating Orders will only be considered wherever it is concluded to be the most appropriate measure for reducing anti-social behaviour or crime and disorder arising from the relevant highway. Therefore other measures will need to be taken into consideration by the task group before a gating order is considered. These are:
  - Lighting
  - Improved security of the properties affected
  - Bollards or barriers to prevent vehicular access
  - Improving the environmental aspect of the alleyway to encourage wider use
  - Referral to other agencies such as Social Care, the Planning department or the Highways Agency.
- Documented and/or recorded evidence must be collated that demonstrates that persistent crime and/or anti-social behaviour is expressly facilitated by the use of the highway in question. In particular the Borough Council will need to be satisfied that premises adjoining or adjacent to the relevant highway suffer from crime or anti-social behaviour and the closure of the highway would act as a useful crime and/or anti-social behaviour reduction measure.
- Gating Orders must have Police support on the basis of crime and/or anti-social behaviour and a report will be compiled regarding options available, cost and likely effectiveness.
- The Highways Authority must give the Borough Council written permission for making a Gating Order.
- The findings from the initial assessment will be brought together by the lead officer in collaboration with the task group from the Anti Social Behaviour Working Group and the Community Protection Manager.
- The Community Protection Manager will present the initial findings in a report to the Director for Wellbeing and Culture and Cabinet lead for Housing and Safety who will determine whether it would be expedient to make the order for the purposes of reducing crime and disorder and authorise the instigation of the formal procedure below.

## **Formal procedure – part 2**

- Full consultation will be undertaken in accordance with the Highways Act 1980 as amended by Section 2 of the Clean Neighbourhoods and Environment Act 2005 before any Gating Orders are put in place. A period of 28 days will be given for representations to be made and the order publicised in the local press. The drafting of orders and public notices will be done in consultation with the Borough Solicitor.
- Details of people that merit exemption from an Order will be specified in the Gating Order and the publicity at the time of consultation. Any people identified as exempt will be advised before being named in a Public Notice and/or the Order.
- The name and contact details of the person responsible for maintaining the gate will be specified in the Gating Order as well as details of key holders. Anyone who is to be named in a Public Notice or Gating Order will be advised in writing prior to its publication and given an opportunity to object. This includes consultation and the Order itself.
- Representations from the public and from organisations will be collated and presented by the lead officer and Community Protection Manager and presented to the Director for Wellbeing and Culture and Cabinet lead who will authorise the making of the order where there are no unresolved written objections.
- 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, the matter will 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.

## **After an order is made – part 3**

- A period of 6 weeks will be given from the date that a Gating Order is made for any High Court challenge to be made. No gate will be ordered and installed until the expiry of this period, except in exceptional circumstances.
- Where a Gating Order is specified to be for a trial period at the end of the trial period the situation with regard location will be fully reviewed and all criteria will be reconsidered.
- The gating order will be registered and published on the council's website. A copy will also be held in the council office for at least 12 months.
- All Gating Orders will be reviewed by the Anti Social Behaviour Working Group at least every 12 months. The review will evaluate whether the Gating Order is acting as a useful crime and/or anti-social behaviour reduction measure. It will also assess the impact it is having on the community and discussions will be held with local residents to gauge whether the restricted access is causing excessive inconvenience.
- Gating Orders may be varied, or revoked where a review identifies that the original Gating Order is no longer appropriate. If a Gating Order is to be varied or revoked the procedure as outlined for initially making a Gating Order will be followed, as far as it can apply. Any variation or revocation will be fully advertised and consulted upon as outlined in the legislation. If appropriate a Public Inquiry will be held.

## **Other matters for consideration by the Borough Council**

- Where a Gating Order is being considered the Borough Council will balance the needs of the Community such as inconvenience and health implications, against the problems of crime and/or anti-social behaviour being experienced.
- Special consideration will be given to the impact a potential Gating Order might have on disabled users of the relevant highway to ensure that reasonable alternative routes are free from obstructions and are suitably paved and gates installed can if necessary be easily operated by a disabled user.
- Partial Gating Orders (where gates are only to be closed at certain times of day) will only be considered in exceptional circumstances.