

Subject:	Request for installing gates - Frederick Gardens
Date of Meeting:	24th November 2020
Report of:	Executive Director Economy, Environment & Culture
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Ward(s) affected:	St Peters and North Laine

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report seeks to explore what options exist to respond to residents' concerns expressed in their petition to install gates to stop through movement at Frederick Gardens.

2. RECOMMENDATIONS:

- 2.1 That the Committee agree to introduce signing improvements to reduce the use of the twitten as a through route.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 Frederick Gardens is a narrow twitten that provides strategic pedestrian linkages through the North Laines. The residents of Frederick Gardens have frontages and small gardens that lead directly onto the twitten and with the current pandemic this has caused concern related to safety with social distancing with the need to pass close to people using the twitten as a through route.
- 3.2 Closing any passageway or road can only be achieved through the use of a stopping up order or a public space protection order (PSPO).
- 3.3 When installing any formal barrier, the council has to consider the implications for all users including those with mobility issues that use the route, as it may be more direct than an alternative.
- 3.4 There are many twittens in the city that form a network of walking routes in the city and closing them will discourage walking and cycling as detours will also add to the distance needed to walk.
- 3.5 There are some users of the twitten who should be discouraged and signing may help with achieving this aim.
- 3.6 The various options are detailed below.

Stopping up

As a general principle requests of this nature are refused unless there is a clear requirement i.e. new developments that change the current layout of the

highway. Only the highway authority can apply for the public highway to be stopped up and must demonstrate to a magistrate that the highway is unnecessary, anyone can attend the hearing and may object to the stopping up. This would be extremely difficult to achieve in this case. If a stopping up order is granted then the land stops being highway and the owner of the land will own it unencumbered by highway rights. This means the residents will be responsible for the maintenance of the land including all liabilities.

Previous experience has demonstrated that this is extremely costly due to the need to have legal representation and for this reason the council would not pursue this option. Utility companies will almost certainly object to the stopping up.

Restricting the public right of way over a highway

The Council has the power under the Anti-Social Behaviour Crime & Policing Act 2014 to make a PSPO that restricts the public right of way over a highway if certain conditions are met. The PSPO must be reviewed every 3 years with full evidence and proof that it is required and that access to private dwellings is not restricted. Anyone affected by the PSPO has the right to make representations and objections and their representations and objections must be considered.. A PSPO that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction. Because of the conditions required for PSPOs these are unlikely to be granted unless there is very clear evidence that all other avenues to resolve any issues have been tried and that in the opinion of City Transport gating the highway is the only alternative.

A PSPO cannot restrict a right of way merely because residents of houses adjoining the right of way do not like the public using it. Nor can it restrict a public right of way over a highway for occupiers of premises adjoining or adjacent to the highway or where it is the only or principal means of access to a dwelling. The PSPO can only be used as a way of trying to prevent anti-social behaviour.

Because of the budget and resource requirements of PSPO's the council is not currently processing any new applications.

Installing a gate

Residents have suggested that gates that could be opened could be installed. The council has a statutory duty to ensure that the public highway is not obstructed in anyway. The public highway includes roads, pavements and footpaths that have a right of way. A gate on a footpath is an obstruction (except to prevent the movement of animals on agricultural land) and the Council cannot allow an unlocked gate to be installed on the twitten.

A restriction of a right of way is a serious matter and not granted without thorough consultation being undertaken including with local residents. Factors to be considered include:

- Whether access can be restricted by a PSPO or whether a right of way has strategic value

- The impact of the restriction, e.g. whether it is a primary means of access and if there are alternative routes available.
- The effect on any occupiers of premises adjoining or adjacent to the highway and the effect on other people in the locality.
- The availability of any reasonably convenient alternative route where the highway constitutes a though route.
- Alternatives, e.g. restricting the activities causing the anti-social behaviour rather than preventing access completely

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The options considered were closing the twitten using highway powers, using a PSPO and installing gates that are not locked.
- 4.2 Stopping up a highway (twitten in this case) is a difficult process to achieve. Due to the implications for objections, equalities and ongoing liabilities for the residents is not recommended as a way forward to close the twitten.
- 4.3 A PSPO is also a challenging process and requires clear evidence of anti-social behaviour and clear reasons that are not associated with just public access. It also has the same implications as stopping up.
- 4.4 Installing a gate obstructs the highway and explicitly affects those with mobility and sight issues.
- 4.5 Any closure will impact on access for the emergency services to properties.
- 4.6 Improving the signing is the preferred option and may discourage users who could avoid the twitten, but still allow access for those that need to use the route.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 If the recommendation is approved officers will be consulting with residents regarding what signing can be installed.
- 5.2 Ward Members have been consulted on the issues associated with the various options set out in the report and understand the practicalities of not taking these forward at this time and are content with the recommended option in this report.

6. CONCLUSION

- 6.1 The residents are clearly concerned but closing the twitten is not a viable solution with the legal constraints.
- 6.2 If some of the users that should not be using the route could be removed, this would help with tackling some of the concerns.
- 6.3 Investigating what signing improvements could be made may help with reducing the use it as a through route may help with reducing the impact.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The proposed recommendation for signing improvements will be funded from existing service budgets. This will be reviewed as part of monthly budget monitoring.

Finance Officer Consulted: Jess Laing

Date: 23/10/2020

Legal Implications:

- 7.2 The legal position and difficulties with closing a twitten, which is a public right of way, have been set out in the main report.

Lawyer Consulted: Stephanie Stammers

Date: 27 October 2020

Equalities Implications:

- 7.3 If the twitten was closed there could well be an impact on a resident who uses this twitten as their most direct walking route. Gates and barriers impact on those with visual impairment.

Sustainability Implications:

- 7.4 N/A

Brexit Implications:

- 7.5 N/A

Any Other Significant Implications:

None

Crime & Disorder Implications:

- 7.5 Closing the twitten will impact on the emergency services managing their response times to incidents in the twitten.

Risk and Opportunity Management Implications:

- 7.6 N/A

Public Health Implications:

- 7.7 N/A

Corporate / Citywide Implications:

- 7.8 Closing the twitten will impact on the emergency services managing their response times to incidents in the twitten.

SUPPORTING DOCUMENTATION

Appendices:

None

Background Documents

None

