

## Protocol for the assessment and delivery of Gating Orders

### Introduction

As a Highway Authority, Brighton & Hove City Council have a general obligation to “assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority” and to “prevent, as far as possible, the stopping up or obstruction of ... the highways for which they are the highway authority” (From the Highways Act 1980 S130 ‘protection of Public Rights’)

Throughout this protocol, these obligations should be borne in mind, establishing the presumption that highway access should remain uninterrupted unless the evidence and process detailed below can clearly demonstrate that temporary gating is fully justified in all aspects.

In April 2006, under the Clean Neighbourhoods & Environment Act 2005 (through inserting addition clauses into the Highways Act 1980) councils were given the power to restrict access to alleyways with a highway classification through the application of a ‘Gating Order’ – a mechanism which allows for alleyways to be closed 24/7 or for certain times without removing the underlying highway status and based upon the reduction of crime and antisocial behaviour. A Gating Order is seen as ‘temporary’ in that it does not permanently affect the highway status of the alleyway and that an Order can be revoked or amended by the issuing authority at any time. No upper time limit has been set for the life of an Order; however Gating Orders should be reviewed annually to ensure that they continue to be justified as a useful crime reduction intervention.

Information relating to current or planned Gating Orders is available on the BHCC Website, and the Environment Improvement Team is responsible for maintaining the register of Gating Orders issued by the council.

To date one order (Brunswick Row) has been delivered and others are being considered. The publicity generated by the initiative has led to a growing level of interest from residents living on or around problematic alleyways.

Gating Orders are currently delivered by the Environment Improvement Team, and the level of enquiries received exceeds the capacity of the Team to respond directly. The intention of this protocol is to assist in managing demand for this work by outlining the steps which an enquiry will be subject to and an indication of how we may prioritise applications, and ensuring that resident communities seeking a Gating Order are aware of the process followed and the issues and likely timescale involved in taking forward their request.

### 1. Procedure for responding to requests for gating

1.1 Sites will only be considered for Gating if they meet the key criteria set down in the Clean Neighbourhoods & Environment Act 2005:

- (a) premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
- (b) the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and

(c) it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

### 1.2 Stage one - Initial investigation

To make an initial assessment regarding the potential of a Gating Order or other intervention at the site, the following steps will be taken:

- a)** A generic community safety survey will be circulated to properties within and around the affected area. This will not specifically mention Gating or any other intervention, but will seek to identify the main issues and concerns in more detail which will assist in consideration of a range of potential interventions.
- b)** Site plans showing highway classification and BHCC freehold at and around the site will be obtained
- c)** Ward councillors will be contacted with a request for any additional information or comments
- d)** The issue will be raised at the relevant Local Action Team (LAT)/Sussex Police Joint Action Group (JAG) with a request for background information/comments
- e)** The Antisocial Behaviour (ASB) Team and Crime Reduction Initiatives (CRI) will be contacted for any background information/comments/site history/antisocial behaviour diaries
- f)** BHCC Conservation and Planning will be contacted to advise on heritage issues and any relevant planning history or known proposed developments material to the location.

The above information will be collated into a brief feasibility report outlining the issues and potential interventions, and this report will recommend the next steps. If the feasibility report findings are that a Gating Order would not be suitable for the location, this information and reasons will be shared with local stakeholders, and alternative interventions will be explored as appropriate.

If the feasibility report concludes that a Gating Order could provide a useful intervention, the process will move to Stage 2 below. It is estimated that Stage one would take from 4 – 8 weeks to complete

### 1.3 Stage Two – Developing a proposal

If the initial investigation indicates that a Gating Order may be a suitable intervention at the site the following detailed work will be undertaken:

- a)** Detailed evaluation against the criteria and recommendations set out in the Home Office guidance 'Clean Neighbourhoods and Environment Act- Guidance relating to the making of Gating Orders'
- b)** Detailed supporting evidence to establish the key criteria (1.1 a-c above) regarding crime and antisocial behaviour
- c)** Pre- consultation contact with the key statutory stakeholders as identified in the Clean Neighbourhoods & Environment Act 2005
- d)** Work with residents within and adjoining the affected area and key local stakeholders to design a workable scheme.
- e)** Pre consultation with BHCC Planning and Conservation Departments

At the close of this stage, a report will be submitted to the AD Public Safety which will consider the practical, legal and crime prevention aspects of the proposal, as well as the likelihood of the proposal being formalised as a Gating Order.

If the report findings indicate that an eventual Gating Order would not be feasible for any reason, or would not meet the full conditions of the Act, the recommendation would be to consider any further alternative interventions as appropriate. If the report findings indicate that a scheme could be put forward which would meet the requirements of the Act, and was feasible in all other aspects, the report recommendation would be to formalise the proposal into a draft Gating Order and to proceed with wider consultation and publication according to the requirements of the Act.

Because this stage is more complex, and is largely dependent upon input from bodies and individuals outside of the council, it is not possible to put a clear timescale on this work. We would hope however that stage two could be concluded within a period of 6 months.

### **1.4 Stage Three – consultation and publication**

- a) With the support of BHCC Legal Department, the proposal would be redrafted as a draft Gating Order
- b) As early as possible in Stage Three, the Local Access Forum would be given a copy of the draft order and invited to comment.
- c) The draft order would be published for wider consultation in accordance with the Act, and all relevant bodies and individuals would be informed.
- d) At the close of the public consultation period, and in the light of submissions received, the following options would be considered i) withdraw the draft Order, ii) amend the draft Order and re consult and iii) submit the draft Order to Environment Cabinet Member Meeting (CMM) for formal agreement
- e) If option i) or ii) were deemed appropriate, the process would return to the steps outlined in Stage Two, and these would be reviewed in the light of the public consultation with a second Stage Two report produced and acted upon as above.
- f) If option iii) were deemed appropriate, the AD for Public Safety would seek to place the Draft Order before Environment CMM for consideration and approval.

### **1.5 Stage Four – Approval and implementation**

- a) If Environment CMM did not approve the draft order, the process would be guided by whatever recommendations, requests or conditions as imposed by Environment CMM.
- b) If Environment CMM did approve the Draft Order, implementation would continue in line with appropriate legislative criteria.

### **1.6 Objecting to a proposed Gating Order**

- a) Throughout all stages of the process we will seek full input from the resident community and other interested parties in developing a proposal, and

informal objections and suggestions will be sought and welcomed at any time.

- b) Stage Three of the process, which includes the formal publication of a Draft Order within the community, in local press and on the council website will include the opportunity to raise formal objections to a proposed Gating Order.
- c) Statutory consultees identified in the Clean Neighbourhoods & Environment Act 2005 have the right to call for a public enquiry to a proposed Gating Order, and individuals may challenge an Order in the High Court.

## 2. Evidence of crime/antisocial behaviour

In gathering evidence in respect of a – c above, the following sources will be used:

**2.1 Reported crime and incident statistics:** Sussex police will be contacted for details on reported crime and incidents at and around the location.

**2.2 Evidence from the local Neighbourhood Policing Team:** This can include testimony from PC's or PCSO's who patrol the area and may include their view on the role of the affected area in 'facilitating the persistent commission of criminal offences or anti-social behaviour' details from their policing activities and comments and feedback which they have received from the community. Any Police testimony gathered in this way will be passed to the council via the relevant LAT or JAG.

**2.3 Resident testimony:** where residents or businesses have requested a Gating Order they will normally be asked to complete an incident diary or to make statements testifying to the nature of activities and their impact. The council will work with residents to support them in preparing their testimony and will give advice on how this information may be presented and which detail should be included.

Additionally, information will be sought from relevant council or partner agencies including CRI, Drug and Alcohol Action team (DAAT) and the Antisocial Behaviour Team

### 2.4 Priorities and key criteria:

Because resources are limited within the council to deliver Gating Orders, the following notes regarding setting priorities have been developed:

It is unlikely that more than 2 Gating Orders can be developed at any one time and priority will depend partly on when the site is drawn to our attention, but also on the following factors

**Type of crime/activity** - the following activities/offences will be given a higher priority:

- Public Place Violent Crime
- Acquisitive crime - eg burglary and theft
- Sexual assault
- Hate crime
- Drug dealing
- Harassment/victimisation

For offences of this nature, resident testimony must be supported by reported crime statistics with a serial number issued for each offence submitted.

### 2.5 Other relevant criteria

#### a) Street layout

Do residential properties front on to or have direct access on to the highway in question?

*Generally, a higher priority will be given to sites which have direct residential access, rather than (for example) alleys which follow a side or rear boundary with no direct residential access.*

**b) Use and access**

Does the highway enjoy legitimate day time use as a through route for non-residents?

*If this is the case, the presumption would be against 24/7 gating and a variable – night time only or weekend evening only would need to be explored*

Does the highway form part of a longer pedestrian or cycle route?

*If this is the case, the presumption would be against 24/7 gating and a variable – night time only or weekend evening only would need to be explored*

**3) Key partners**

- Is the proposal supported by the Chief Constable or appropriate senior police officer for the area?
- Is the proposal supported by the ward councillors for the area?
- Are any of the residents within the effected area likely to object to the proposals?

*If the police or ward councillors do not support the proposal, or if any resident within the affected*

*area is likely to object to the proposal, it is probable that the proposal will not succeed.*

**4) Setting a timescale**

Subject to the four stages identified above, the timescale for an individual project will additionally be affected by the following:

- a) Type of offences and priority level (see above)
- b) Quality of evidence – those projects relying mostly on resident testimony will usually be subject to an observation/monitoring period of 6 – 12 months between stage 2 and 3.
- c) Alternative interventions – where alternative interventions have been identified, then projects may be put on hold at any time to give an opportunity for alternatives to be delivered and monitored.
- d) Public consultation – depending upon the outcome of the consultation elements, projects may be revised or withdrawn at any time during the development process
- e) The issuing of a Gating Order is a *power* not a *duty*. This means that – even where the key tests are deemed to be met – the City Council is not obliged to issue a Gating Order, although the general obligations of equality of access to services and consistency would require that reasonable requests receive a considered response.
- f) The City Council does not have a dedicated budget to fund gating schemes, and identifying resources should be an early consideration in any proposal (and lack of available resources would justify refusal to progress with an Order or to delay its implementation)

- g) This protocol is intended by way of general guidance and without prejudice to considering each case on its merit.