

CHESHIRE EAST COUNCIL

Cabinet Member for Environmental Services

Date of Meeting: 14th June 2010
Report of: Tony Potts Community Safety Manager
Subject/Title: Objections to Gating Order

1.0 Report Summary

- 1.1 Objections have been received in relation to proposals to introduce a gating order on roads in the Crewe South Ward.
- 1.2 The objections are summarised and considered in this report.

2.0 Recommendations

That the Cabinet Member for Environmental Services, having considered the objections to the proposed gating order for roads in the Crewe South Ward, decide whether the order should be made as advertised.

3.0 Reasons for Recommendations

- 3.1 The Safer Cheshire East Partnership has considered and/or tried alternative solutions for tackling specific problems in the area.
- 3.2 The gating orders in question form part of a much wider scheme. The analysis of crime and disorder and the gating programme have been conducted on a ward wide basis to ensure, as far as possible, that gating does not cause displacement within the problem area. The gating order does not change the status of the alleyway from that of a highway; as such, any instances of fly tipping or dog fouling will be subject to prosecution.
- 3.3 In addition, those residents whose properties abut the sections of the highway but are excluded from the scheme, being 1-11 Lunt Avenue, 44 Tynedale Avenue, 69-59 Ruskin Road will, upon request, be provided with a key. Restriction of the public right of way over the alleyways will not therefore affect the use of the garage owners/users.
- 3.4 The Safer Cheshire East Partnership has considered a revised design of gate 335 to provide ease of access/manoeuvrability to adjacent garages. The design drawing will be available at the meeting.

- 3.5 The objection concerning loss of primary access relates to an empty property to the rear of Smallman Road. The only means of access to the property is via the alleyway to the rear of 10-34 Smallman Road which it is proposed to gate (no 330).

Under the Highways Act 1980 a gating order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling.

In relation to a highway which is the only or principal means of access to any premises used for business or recreational purposes, a gating order may not be made so as to restrict the public right of way over the highway during periods when those premises are normally used for those purposes.

It is not clear, at this stage, what the intentions of the current owner are in relation to the future use of the property. Historically, planning permission for change of use to a residential property has been sought and refused and further refused at appeal.

The existence of a gating order would be taken into consideration in determining any planning application. If the premises become occupied in the future, the gating order will have to be varied so that unencumbered access can be taken during business hours and if there is a change of use and the property becomes residential, the order will have to be revoked to provide access at all times. The owner will be provided with a key to allow him access to his property.

- 3.6 It is considered that the gating of the alleyways will contribute to the improved safety and security of residents by reducing crime, disorder and anti-social behaviour whilst causing minimal inconvenience to the public.

4.0 Wards Affected

- 4.1 Crewe South

5.0 Local Ward Members

- 5.1 Councillors Dorothy Flude, David Canon and Betty Howell.

6.0 Policy Implications including - Climate change - Health

- 6.1 None.

7.0 Financial Implications for Transition Costs (Authorised by the Borough Treasurer)

- 7.1 None.

8.0 Financial Implications 2009/10 and beyond (Authorised by the Borough Treasurer)

- 8.1 Ongoing maintenance and repair. It is estimated there will be a residual earmarked reserve amounting to £20,000 as at 31/03/2010. It is estimated that future on-going annual maintenance costs for alley gates will be £10,000 pa inclusive of alley gates included within this report. However, the Council will have to consider growth bids in the next MTFS review to fund on-going maintenance costs beyond 31/03/2012.

9.0 Legal Implications (Authorised by the Borough Solicitor)

- 9.1 A 'gating order' can be made provided the Council is satisfied that the premises adjoining the highway are affected by crime or anti-social behaviour, that the highway is facilitating the persistent levels of crime and/or anti-social behaviour and that in all the circumstances it is expedient to make the order. The test of expediency is a balance of the interests of those affected by the behaviour complained of and the interests of the travelling public. This report is sufficient to show that this is the case.
- 9.2 Under Section 129C the Council must undertake a consultation exercise before making the order, including erecting site notices and publishing notices on its website and in a local newspaper. The notice must invite written representations within a period of not less than 28 days. The Council is obliged to consider any representations that it receives before making the order and it may choose to cause a public inquiry to be held to consider any opposed order. This consultation/notice requirement has been carried out and this report satisfies the requirement to consider representations received.
- 9.3 Under section 129B of the Highways Act 1980, a gating order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling. Similarly, an order may not restrict the public right of way over a highway during periods when those premises are normally used for those purposes. Insofar as the objection relating to the Smallman Road property is concerned, this is not an impediment to the making of the order because the property is currently unused.
- 9.4 A person may challenge the validity of a gating order (within 6 weeks of the date on which it was made) in the High Court on certain specified grounds, being that the council had no power to make it or any requirement under the Act was not complied with in relation to it (and which substantially prejudices the interests of the applicant). On an application under this section the Court may suspend, quash (in full or part) or allow the gating order to stand.

- 9.5 The Council relies upon permitted development rights for the erection of the gates.

10.0 Risk Management

- 10.1 It is not considered that there is any realistic prospect of a successful legal challenge to the order. The provision of keys as indicated should further minimise that prospect.

11.0 Background and Options

- 11.1 On 3rd August 2009, the Cabinet Member for Environmental Services resolved that authority be granted to advertise an amended gating order under section 129A of the Highways Act 1980 and the gating order be made, subject to there being no objections, at the following locations and as shown on the plan attached as an Appendix to this report.
- 11.2 The gating scheme affects alleyways which run to the rear of properties 37-15 Lunt Avenue and 46-58 Tynedale Avenue, 57-1 Ruskin Road And 223-225 Nantwich Road and 42-20a Tynedale Avenue, 20a Tynedale Avenue to the rear of 225 Nantwich Road, and 14-32 Smallman Road.
- 11.3 In order to evidence the need for the alley gates which have been identified as requiring gating orders an examination of levels of criminal damage to a dwelling, anti-social behaviour and the levels of burglary has been completed. Analysis to identify areas that would benefit from alleygating has shown that the areas of Crewe South suffers from rear entry burglary rates, criminal damage and youth nuisance rates over twice the borough average. In the period 2006/2007 the area suffered from 578 Incidents of Anti-Social Behaviour, 81 Burglaries and 97 incidents of Criminal Damage & Arson. The situation remains unchanged and this application is for gating as part of the overall scheme to make this whole area safer by completing the gating that has already begun.
- 11.4 Specific Crime Incidents related to this alleyway in 2006/7 are:
ASB Incidents: 1136, 821, 198, 46, 75, 415, 682, 940, 151, 991, 619, 963, 221, 398, 98, 987, 493, 703, 655, 905, 120, 924, 840, 559, 589, 921. Burglary: cc07285257, cc07365945, cc08041929, cc08048655, 707429839. Criminal Damage: cc07182235, 0707281803, 0707430901, cc07157783.
- 11.5 The proposals were advertised and 6 letters/comments of objection have been received, the objections being summarised as follows:
- Residents excluded from the scheme will be more vulnerable.
 - Ease of access will be denied.
 - Manoeuvrability will be impaired.

- There will be a loss of primary access to a property.

The Officers have considered the objections and comment as follows.

- 11.6 The Safer Cheshire East Partnership has considered and/or tried alternative solutions for tackling specific problems in the area.
- 11.7 The gating orders in question form part of a much wider scheme. The analysis of crime and disorder and the gating programme has been conducted on a ward wide basis to ensure, as far as possible, that gating does not cause displacement within the problem area. The gating order does not change the status of the alleyway from that of a highway, as such, any instances of fly tipping or dog fouling will be subject to prosecution.
- 11.8 In addition, those residents whose properties abut the sections of the highway but are excluded from the scheme, being 1-11 Lunt Avenue, 44 Tynedale Avenue, 69-59 Ruskin Road will, upon request, be provided with a key. Restriction of the public right of way over the alleyways will not therefore affect the use of the garage owners/users.
- 11.9 There is an additional small alley which is excluded from the scheme and does not form part of the gating order. Residents have been advised that should additional funding be available for further gating schemes, the gating of this alleyway will be considered.
- 11.10 The Safer Cheshire East Partnership has considered a revised design of gate 335 to provide ease of access/manoeuvrability to adjacent garages.
- 11.11 The objection concerning loss of primary access relates to an empty property to the rear of Smallman Road. The only means of access to the property is via the alleyway to the rear of 10-34 Smallman Road which it is proposed to gate (no 330).

Under the Highways Act 1980 a gating order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling.

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It is not clear, at this stage, what the intentions of the current owner are in relation to the future use of the property. Historically, planning permission for change of use to a residential property has been sought and refused and further refused at appeal.

The existence of a Gating Order would be taken into consideration in determining any planning application. If the premises become occupied in the future, the gating order will have to be varied so that unencumbered access can be taken during business hours and if there is a change of use and the property becomes residential, the order will have to be revoked to provide access at all times. The owner will be provided with a key to allow him access to his property.

12.0 Overview of Year One and Term One Issues

- 12.1 This gating scheme forms part of a far wider gating programme across the area of Crewe; an area suffering from a number of areas of multiple deprivation. Alley gating provides relief from a basket of crime types, such as substance misuse, antisocial behaviour, arson, rear entry burglary, criminal damage, fly tipping, dog fouling and graffiti. In addition, the installation of alley gates greatly addresses resident's fear of crime, general safety and wellbeing within their homes. The gating or alleyways requires the continued support of Council in our efforts to provide a safer cleaner greener environment for residents at risk.

There is no anticipation of issues in year one term one, other than the lack of funding to continue the installation of gates at the required level.

13.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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