

REGENERATION AND DEVELOPMENT OVERVIEW AND SCRUTINY COMMITTEE

5 SEPTEMBER 2007

ALLEY GATE TASK GROUP

Report from: Robin Cooper, Director of Regeneration and Development

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1 Purpose of item

1.1 To consider the findings and proposals of the Alley gate Task Group.

2 Recommendations

2.1 The committee is asked to consider the proposed draft policy on Gating Public Rights of Way and Highways Land.

3 Background

3.1 At its meeting on 12 October 2006, the Committee agreed to establish a task group to carry out detailed work into long-term solutions with regard to alley gates including giving consideration to community safety issues and the environment.

3.2 The task group met on three occasions to discuss matters surrounding the various issues associated with alleyways which included: ownership of alleys; information stored on anti-social behaviour; alleys ranked in priority order for work to take place; legal powers; continued funding for alley gate schemes.

3.3 Officers compiled a draft policy document containing the outcome of discussions with the task group and Members have since commented on the document and made suggested changes to it.

3.4 Task group Members will attend the meeting and give the background to the work carried out.

4 Financial implications

4.1 The task group was informed that there were approximately 300 outstanding requests for alley gates and the cost of each gate is £500.

- 4.2 £13,000 has been set aside by the Community Safety Partnership for further alley gating schemes and the Partnership was waiting to hear from Kent Fire and Rescue Service whether they would match-fund another £13,000 to the scheme.
- 4.3 From next year this funding would not be ring-fenced specifically for alley gating schemes. Medway Council has already agreed to set aside £30,000 each year for the next three years.

5 Legal implications

- 5.1 The legal implications of the various issues associated with alley gating are contained within the draft document attached as an Appendix.
- 5.2 Specific legal implications will have to be dealt with on a case by case basis.

6 Background papers

Notes of task group meetings.

Section 5, Crime and Disorder Act 1998

Highways Act 1980

Town and Country Planning Act 1990

Countryside and Rights of Way Act 2000

Clean Neighbourhoods and Environment Act 2005

Environmental Protection Act 1990

Prevention of Damage by Pests Act 1949

Defra - The Code of Practice on Litter and Refuse (April 2006)

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Draft Policy on Gating Public Rights of Way and Highways Land Medway Council 2007

Background:

Medway, as a well developed urban area benefits from a significant and useful network of alleyways. These cover approximately XXX km. They are split between alleyways that are owned and maintained by the Council, alleys that contain a public right of way and alleyways that service groups of properties that are predominantly owned jointly by the properties that they service.

Although many alleyways are routes that benefit the community, there are a number of alleyways that assist and aggravate acts of antisocial behaviour or criminality. This type of behaviour can be challenged by a variety of interventions. These can include the temporary suspension or permanent closure of an alleyway.

All local authorities and certain other 'responsible authorities' (such as the Police), as listed under Section 5 of the Crime and Disorder Act 1998, have a duty under Sections 6 and 17 of that Act, to implement crime reduction strategies in an effort to reduce overall crime in their administrative area. One of the main crimes committed in this country and one which has the most impact on its victims, is domestic burglary.

It is an acknowledged fact, that burglars prefer to break into a house through the doors or windows at the rear or side of the building where there is less chance of being seen, whereas only 15% of domestic burglaries occur through the front doors or windows. A lockable gate at the entrance to an alley and which is difficult to climb will help to keep the number of burglaries down. In some parts of London and Liverpool, it has been demonstrated that such gates have brought down the number of rear access burglaries by up to 90% and 50% respectively. Although the overall average reduction may be less than that, there is no doubt that gating has a significant effect on reducing rear entry burglaries.

Complaints to the Police and Council regarding antisocial behaviour often relate to behaviour made worse by the easy access to alleyways especially when the legitimate use is lower, for example, after dusk. Central Government has acknowledged the links between crime, antisocial behaviour and alleyways, through a variety of legal changes.

Many public rights of way represent an important resource for local communities. Their use encourages community cohesion, protection of the environment and healthy lifestyles. It is accepted that restricting such rights of way should be considered only in extreme circumstances.

DETERMINATION OF HIGHWAY STATUS

Routes shown on the Highway Records

Many public rights of way or highways are already recorded on documents known as the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense. These are the Council's formal records of public highways. If a route is recorded on either of these documents, then with few exceptions, it is indisputedly a public highway.

Routes not shown on the Highway Records

In common with many Authorities throughout the country, there are a significant number of routes that exist, but are not shown in the Council's records. This does not mean that public highway rights do not exist, simply that they are unrecorded and that the legal records may need to be amended.

In general terms, if a route, path, or way runs between two highways, is used as a through route and has existed as such for a number of years (usually at least 20 years), then in the absence of any evidence to the contrary, it will be deemed to have been dedicated as a public highway.

Public highway rights may be established either under the provisions of the Highways Act 1980, or at Common Law. In either instance the evidential test is one of 'balance of probability' and in making a decision as to whether or not public highway rights exist, the Council must act in a 'quasi-judicial' manner. This means that the Council must act in the manner of a court of law and make its decision based only upon evidential fact. Issues such as desirability, privacy and security, although important, cannot lawfully be taken into account in determining whether a public highway has been created by long usage.

A request for a Gating Order will not be progressed where there is any dispute over the existence, or otherwise of public highway rights until those issues are resolved.

The Closure of Highways

The status of a public right of way or highway can be altered for a variety of reasons other than community safety, as contained in the provisions of the Highways Act 1980 or the Town & Country Planning Act 1990. These are outside the scope of this policy.

Powers to close alleyways for the purposes of crime prevention were first introduced by the amendments made to the Highways Act 1980 by the Countryside and Rights of Way Act 2000 (CROW Act 2000); this enables alleyways of a certain type, such as public footpaths and bridleways, to be closed through 'special extinguishment and diversion orders' and gated for crime prevention reasons. For a route to be eligible it must lie within a designated crime area (the Secretary of State has the power to designate an

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area for these purposes). It is unlikely that any areas within Medway would meet a request for such a designation.

From 1 April 2006, new powers to gate a highway in order to prevent crime or anti-social behaviour from occurring, are available to local authorities under the amendments made to the Highways Act 1980 by Section 2 of the Clean Neighbourhoods and Environment Act 2005 (the 2005 Act). This section of the Act introduces new powers that allow councils to make, vary or revoke free-standing gating orders (i.e. without removing the status of the highway) in respect of highways within their area. This has been achieved by inserting new sections 129A to 129G in the Highways Act 1980, which enable councils to restrict public access to any public highway by gating it (at certain times of the day or 24hrs per day if applicable), without removing its underlying highway status. The process is based on the existing procedure for making Traffic Regulation Orders.

These powers have the following benefits over those introduced by the CROW Act 2000 -

- they do not require the area in which the highway is located to be designated by the Secretary of State;
- they enable gating to take place if a highway suffers from crime and/or anti-social behaviour, and
- they enable a council to continue with a gating order, even if objections are made.

The Temporary Closure of Highways Alleyways

The provisions introduced by the 2005 Act allow Local Authorities to gate highways (i.e. roads and paths over which there are public rights of way except special roads, trunk roads, classified or principle roads, strategic roads and those designated by Regulations in the future.)

Before making a gating order, Medway Council must be satisfied that -

- Premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
- The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
- It is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour

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Medway Council must consider, in reaching a decision -

- The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
- The likely effect of making the order on other persons in the locality; and
- In a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

The Highways Act 1980 (Gating Orders) (England) Regulations 2006 govern the gating order-process. Under the Regulations a council must also keep a Register of gating orders available for public inspection.

The Regulations detail the process of consultation that Medway Council must follow to make a gating order.

The Council must publish a notice detailing the proposed gating on its website and in a local paper. The period of consultation is a minimum of 28 days. The Council must also place a notice of the proposal on or adjacent to the relevant highway

There is a duty to consult -

- All the occupiers of premises adjacent to or adjoining the relevant highway;
- Every council through whose area the relevant highway passes;
- Every chief officer of a police force through whose police area the relevant highway passes;
- Every fire and rescue authority through whose area the relevant highway passes;
- Every NHS trust or NHS foundation trust through whose area the relevant highway passes;
- Any local access forum through whose area the relevant highway passes;
- Any statutory undertaker who maintains services in the locality in which the relevant highway is situated;
- Any provider of gas, electricity or water services in the locality in which the relevant highway is situated;

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- Any communications provider in the locality in which the relevant highway is situated;
- Any persons who the council reasonably considers might have an interest in the proposed gating order;
- Any person who requests a copy of the notice; and
- Any person who has asked to be notified of any proposed gating orders.

The Regulations indicate that if the Chief Constable, Fire and Rescue Authority, NHS Trust or council for the area the route passes through object, then there must be a Public Inquiry. However, if other consultees object, there is no mandatory requirement for an Inquiry and the Council can continue with the scheme if it believes it is right to do so, after having considered the representations.

The process for holding a Public Inquiry that is mandatory under the Act is laid down in the Regulations, as is the content of the gating order and the process for variation or revocation.

Guidance from the Home Office indicates that the provisions contained in 2005 Act should be used for temporary gating and that for permanent closures, the previous legal provisions for removing public rights of way should be used.

Providing an application is made within 6 weeks of the commencement of a gating order, any person may apply to the High Court to contest the order on the basis that the Council had no power to make the order or that the provisions above were not followed.

Conditional Gating

The Council may receive requests to make a conditional Gating Order, thereby closing an alley during certain times and days (i.e. only at night etc). The responsibility for the locking and unlocking of the gates should be taken into account, as Regulation 8(e) of the Highways Act 1980 (Gating Orders) (England) Regulations 2006 (SI 2006, No 537) states that, “[A gating order must contain] contact details of the person who is responsible for maintaining and operating any barrier whose installation is authorised by the order”.

Under this regulation, it is not necessary for the ‘person’ in question to be a named individual. Instead, this can be any suitable position or role within the Council, such as the Anti-Social Behaviour Co-ordinator, or Highways Manager; although on a day-to-day basis the responsibility is likely to fall to the Alley gating Officer to ensure continuity of the Order. This way, the Order will not need to be changed every time a new person fills the role.

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Regulation 8(b) states that a Conditional Gating Order must also contain the times and dates when the public right of way will be restricted.

If responsibility for the opening and closing of the gates is handed to a group of residents, it must be understood that there are risks if they do not follow the procedure. There is also a health and safety implication and this process should not be used without appropriate risk assessments being in place.

Conditional orders should only be considered if the Council is satisfied that adequate provisions for opening and closing the gates are in place. In the event that the terms of the order are not complied with then the Council must review the order to see if it should be varied or withdrawn.

Duration of the Temporary Orders

The Act does not stipulate a maximum period that the orders can be in place although they are temporary orders. If enquiries are received asking the order to be lifted are received after the order has been in place for more than 12 months, then the Council will review the original decision to gate.

Community Safety Risk Assessments –

Priorities for the implementation of Gating Orders shall be decided on information provided by the Medway Community Safety Partnership, based upon the levels of reported crime and official crime statistics. Crime reports for the alley in question must therefore be sought from the Crime Analyst or Police Crime Prevention Officer.

If in the view of the Safer Communities Manager, other tactics or environmental improvements may prevent or significantly reduce the levels of crime or antisocial behaviour, then no decision to consider gating will be made until other routes have been exhausted.

Priority will be given to Gating Order proposals that prove demonstrable levels of the type of offences and incidents listed below.

A lower priority will be given to Gating Order proposals that prove demonstrable levels of the type of offences only listed under Category 2, 3 or 4 below.

Categories.

Category 1

Assault, Robbery, Domestic Burglary, Prostitution and Vehicle Crime (other than criminal damage).

Category 2

Arson, real fear of assault /robbery and drug dealing/taking. Repeated criminal damage, repeated nuisance motor vehicles.

Category 3

Persistent noise and anti-social behaviour based on congregating in the area, commercial scale fly tipping and extensive graffiti

Category 4

Domestic fly tipping of rubbish, dog fouling and graffiti. noise from the use of alley.

Other than category 1 incidents above, applications for gating of Highways land will not be accepted unless a Partners and Communities Together (PACT) meeting process, or other community focus groups are in place for the area to address local issues jointly with partner agencies and the community

Other Factors

A weighting factor will also be applied based on the number of individuals making a representation divided by the number of properties abutting the relevant alleyway.

Wider community views and the availability of suitable alternative routes will be taken into account.

Consideration will also be given to other forms of restricting access to alleyways as an alternative to full gating. These could for example include "Kissing Gates" or similar barriers to allow pedestrian access but prohibit entrance by vehicles.

Objections from the Police, Fire and Rescue and Health will be addressed to establish if there is a way that the scheme can be implemented to allow the objection to be withdrawn. If that is impossible, then only in exceptional circumstances will the Council proceed to a Public Inquiry in order to try to overcome the objection.

A proforma is attached to allow the priority assessment to be completed. A weighting factor will also be applied based on the number of individuals making a complaint divided by the number of properties abutting the relevant alleyway.

The Process for Issuing a Gating Order:

1. The Safer Communities Unit will create an assessment of the level and nature of antisocial behaviour looking at the situation based on the preceding 12 months. This will include any records of antisocial behaviour or reported crime. The law requires that the Council is satisfied that there is persistent crime or antisocial behaviour that affects premises joining or adjacent to the relevant path. They also have to assess that the existence of the path is facilitating this activity.

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2. If there is clear evidence of persistent behaviour then the Safer Communities Unit will assess what approach to gating would be least intrusive (for example only gating at periods of the day where there is little use and levels of antisocial behaviour are high).
3. The Safer Communities Unit, via the Multi-Agency Tasking and Co-ordination Group will consider if other tactics would address the issues in the area. They will also consider the linkage to the PACT process.
4. The Highways Team will be asked to indicate if there is a suitable alternative route and the likely impact on the area in terms of the Highways network. This would include an assessment of customer enquiries, access to schools, community resources, shops and other transport links.
5. If there is clear evidence that a gating order would prevent similar levels of antisocial behaviour occurring the Safer Communities Team will initiate a statutory consultation process as described in paragraph XXXX above. They will also include any relevant Ward Councillors and the Parish Council if one exists for the area in question.
6. The results of the consultation, together with the assessments of crime, antisocial behaviour and the effects on the local community will be collated. The decision to issue an order will be made under delegated powers by the Director of Regeneration and Development. This will be based on the following factors –
 - a. The level and severity of crime or antisocial behaviour.
 - b. The existence of a PACT meeting process.
 - c. The recommendations of the Safer Communities Service.
 - d. The views of statutory consultees.
 - e. The number of properties affected.
 - f. The possibility of successful alternative interventions.
 - g. The effect on the wider community.
 - h. The availability of suitable alternative routes if the alley is closed.
 - i. The effects and views of property owners that will have direct access to their property restricted.
 - j. Representations made by any other persons
 - k. The mitigation of the closure by applying it a specific times of the day
 - l. The likely ability of the community to assist in opening and closing the gate.
7. If the decision is taken to implement a scheme then the file will be passed to Legal Services to progress the issuing of the Order.
8. The process will be reviewed after 12 months if new objections are received after that time, or if the Council considers that a permanent extinguishment of the right of way would be appropriate.

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9. As these gating orders are temporary, the presumption is that the Council will bear the cost.
10. The Council will maintain a register of gating orders available for public inspection.
11. In implementing the scheme appropriate signage will be used to indicate the hours of operation together with contact details for the Council.

In order to prioritise schemes, the Council will consider applications twice per year in April and September.

If a scheme is rejected (rather than unfunded), the Council will not consider another application for 2 years unless the Police or Safer Communities indicate that the level of crime and antisocial behaviour has significantly increased.

Privately Owned Alleys

As the majority of the urban areas in Medway are not currently covered by definitive maps showing all public rights of way, there must always be a consideration if any factors suggest that privately owned alleyways are in fact a public right of way. If the Council is satisfied on the evidence provided that a public right of way exists it could make an order to modify the definitive map.

On the assumption that an alley is not subject to a public right of way, then it can be gated informally with the agreement of the landowner. A common situation for alleys running at the rear of properties is for the alleyway to be owned in small strips with all residents having a right of access over the totality of the route.

The Council can offer assistance in gating private alleyways. This offer could be made only if all the landowners and persons having rights of way over the alleyway have agreed.

Financial support from the Council should only be offered if crime and antisocial behaviour data shows it to be a priority.

In other cases the Council can offer a self help pack to residents to consider their own scheme.

If the Council offers support then assistance in terms of maintaining the gates would be the responsibility of the Council. However other maintenance issues including cleansing remain the responsibility of the landowner(s).

Unregistered Land

Temporary gating orders can only be applied to land that is the responsibility of the Highways Authority and cannot be applied to other areas of land.

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In the event that there is no identifiable owner, then consent to gate cannot be obtained .

As a result, there would only be two options open to the Council

- (1) If there were sufficient evidence of public use for more than 20 years the Council might be able to modify the definitive map and include the path as a public footpath, to which it would then be possible to apply a gating order. Such action might be subject to a public inquiry if there were objections.

(2) To attempt to acquire the land.

Planning Permission

Planning consent for the installation of alley gates should not normally be required if the gates are being installed by or on behalf of the local authority.

Part 12 of the General Permitted Development Order 1995 allows the local authority to erect 'any small ancillary building, works or equipment on land belonging to them for the purpose of any function exercised by them on that land. The right is subject to the qualification that such [structures] do not exceed 4 metres in height or 200 m³ in capacity.'

Although alley gates are not listed in the examples given at class A (b) of Part 12 of the GPDO, which includes lamp standards and control barriers, they would be considered as similar structures or works required in connection with the operation of the public service administered by the Council and, as they are under 4 metres in height, would not require express planning permission.

In relation to private schemes, planning permission would not normally be an issue provided the gate is less than 2 metres in height and not adjacent to a highway carrying vehicular traffic.

Environmental Impacts on Poorly Maintained Alleys

Publicly owned land

Under the terms of the Environmental Protection Act 1990, section 89, the Council has a duty to keep clean and clear of litter highways and land under the direct control of the Council which is open to the air and to which the public are entitled or permitted to have access. The Code of Practice on Litter and Refuse (April 2006) issued by DEFRA sets out the standards and response times to remedy land that falls below standard. Depending on the zone the response time can be as long as 28 days (or more if there are specific technical difficulties).

These provisions apply to other bodies such as the Highways Agency, education institutes and Rail operators.

Privately owned land

Litter Clearing Notices (Environmental Protection Act 1990, sections 92A-92C).

The Council has the power to issue Litter Clearing Notices where land in the area is defaced by litter or refuse and this is detrimental to the amenity of the area. This power was introduced into the 1990 Act by the Clean Neighbourhoods and Environment Act 2005, and replaces the previous system of Litter Control Areas.

Litter Clearing Notices can be used to tackle litter on most types of land, which are open to the air, other than those areas for which there is already a responsibility to clear litter and refuse under section 89. It therefore offers a tool for dealing with litter on private land that can often be blown or otherwise carried into neighbouring areas. The main features of the system are:

A notice can be served without prior designation of a litter control area, and it is an offence not to comply with a Litter Clearing Notice;

The Council is able to specify the standard to which land must be cleared;

If land is not cleared, or is not cleared satisfactorily, the Council can enter the land, clear it itself, and recover the costs of doing so.

Guidance indicates that, wherever possible, the Council should work in partnership with land owners and occupiers to resolve problems caused by heavily littered land. In issuing a notice, the Council should consider the role that it can play addressing the cause of the litter problem, particularly in specifying steps to be taken to prevent future defacement.

Section 59 Environmental Protection Act 1990.

This provides powers for the Council to serve a notice on the occupier of land to requiring the removal of controlled waste unlawfully and knowingly deposited. Where a person fails to meet these requirements the Council may clear the waste and seek to recover the costs.

Part III (Statutory Nuisance) Environmental Protection Act 1990.

The Council can serve an abatement notice if an accumulation or deposit is considered to be prejudicial to health or a nuisance. Reasonable costs can be recovered by the authority in abating or preventing the recurrence of a statutory nuisance for which a notice has been served. Inert material, however, would not be categorised as a statutory nuisance.

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Section 215 Town and Country Planning Act 1990.

This allows the Council to serve a notice on the owners and occupiers of land, requiring the site to be tidied up if the condition of any land is in such a state as to adversely affect the amenity of the neighbourhood. Non-compliance is punishable (s.216) by a fine not exceeding level 3 (currently £1,000) on the standard scale.

Section 4 Prevention of Damage by Pests Act 1949.

A local authority can serve a notice requiring an owner to remove, at his own expense, accumulated waste for the purpose of keeping land free from rats and mice. Costs can be recovered should the council have to remove it.

Practical Enforcement Issues

In relation to some areas of land it is impossible to identify the owner of land (it is unregistered). The current street cleansing contract only covers land for which the Council has a statutory duty. An appropriate response would be to engage services such as the Kent Probation Service to secure assistance in clearing land.

In other cases, many privately owned alleyways are owned section by section by the properties that border on to the alleyway, with a right of way over the entire length. In many cases this can amount to a very significant number of houses sharing the ownership. This effectively would make enforcement or recovery of costs unviable.

In the case of privately owned alleyways, an appropriate response is to offer and facilitate a community clean up with the Council providing facilities to dispose of the waste and to offer advice.