

**Response to the report and advice  
of the  
Dudley Borough Local Access Forum**

**“Gating Orders” - The Dudley Experience.**

Gating Orders under S129A of the Highways Act 1980 are now being widely used by authorities as one element to try to tackle anti-social behaviour and crime. The ability to gate certain highways was brought in as an addition to existing legislation under S118B of the Highways Act 1980 which could permanently stop up public paths due to crime but not solely ASB. In this regard the Council has always been mindful of the requirements of those sections of the Highways Act 1980 and the “Guidance on Crime Prevention on Public Rights of Way – Designation of Areas” (DA) published February 2003 by Defra and “Guidance to the making of Gating Orders” (GO) published March 2006 by the Home Office.

In the heading document the Forum has advised the Council, mainly through questions, on eleven aspects of Gating Orders. The Council’s reply to the advice is as follows:-

***3.1.1. It must be recognised at the outset by all parties to a Gating Order that the confirmation of such an order is NOT an extinguishment order.***

Para 8 (GO) states “This provision is intended to be used as a deterrent for temporary closures while the crime and ASB is persistent. Following the reduction of crime/or the ASB, the highway restrictions can be varied or revoked.

***3.1.2. Before a Local Authority considers taking a request for a Gating Order forward it should be satisfied that the path is and has been well maintained over an appropriate period.***

Para 5.13(DA) states “Local Government are encouraged towards positive management such as steps to clean up and carry out repairs on problem rights of way.” Para 14 (GO) states” local authorities should give consideration as to whether there are alternative interventions that may be appropriate (and more cost effective)...Nevertheless Gating should not be seen as a last resort.”

***3.1.3. Is the perceived problem(s) of anti-social and criminal behaviour of a transient nature?***

The legislation requires that “premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour.” This information can come from a variety of sources, though primarily via professional analysis from within the Local Police Force. The source of the data, its relation to the path and the question of transience is always a factor in their analysis.

***3.1.4. What alternative measures have been taken to resolve or alleviate those perceived anti-social and criminal activity problems?***

In addition to the response to 3.1.2, Para 5.13(DA) continues “consideration of the use of lighting /street furniture and other environmental improvements, use of ASBO’s, setting up neighbourhood watch schemes and other schemes to encourage informal surveillance.” In addition to these considerations, the Council is always mindful of the principles of “Secured by Design” when, ideally paths, should contain all the elements of being wide, well lit and open to natural surveillance. This is enforced by the Council’s “Design for Community Safety” Supplementary Planning Guidance.

***3.1.5. Anecdotal evidence is unacceptable. Therefore, what is the Police evidence for the alleged anti-social and criminal activity? Has the evidence been filtered and can it positively be attributed to the path?***

See the response to 3.1.3

***3.1.6. Is the proposed alternative route truly as convenient?***

The legislation requires that the Council must be satisfied that, “in the case of a through route, the availability of a reasonably convenient alternative route.”

***3.1.7. Is a closure likely to affect local trade and/or facilities?***

The legislation requires that the Council must take into account “the likely effect of the making of the Order on the premises or adjacent to the highway” and “the likely effect of the making of the Order on other persons in the locality.”

***3.1.8. Have the needs of the disabled and elderly been properly assessed?***

Para 13 (GO) states “Special considerations should be given to the impact a potential order might have on disabled users of the highway to ensure that alternative routes are free from obstructions and are suitably paved.”

**3.1.9. *Is a 24/7 (total) closure really necessary? Would the problem be resolved or alleviated if the path were to be closed for lesser periods? – for example during the hours of darkness etc.***

The Council are mindful of legislation that may allow paths to remain open at certain times and whenever reasonably possible it will do so. However, this must be balanced against ability of the Council to practically manage and finance such opening and closures.

**3.1.10. *Is there a periodical review of the continued closure provided for within the Order? How frequent is it and upon what criteria will the review be considered?***

There is no set review period for continual closures within the legislation. However, individual orders will be reviewed by the Council, in partnership with the Police, to see whether they need varying or revoking. This will be based on the available crime and ASB data available at that time.

**3.1.11. *If the Order is confirmed and brought into effect the path must not be subsumed into neighbouring properties. (see 3.1.1 above).***

Gating Orders do not extinguish the public right over the highway. One of the key elements in fighting crime and ASB is to give land and property a “sense of ownership”. A gated path between two barriers could be conceived as a place of abandonment leading itself to anti-social encroachment and fly tipping. By giving a length of path “sense of ownership”, but not legal ownership, such problems can be averted.

I thank you for you advice on this matter.

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