

Dudley Borough Local Access Forum

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Chairman: Michael F Freer



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Mr David Jacobs
Project Engineer
Dudley Metropolitan Borough Council

19th November 2008

Dear Mr Jacobs

1. Thank you for your observations in respect of our report and for acknowledging our statutory advisory role. In many respects the Forum and yourself follow a parallel path. We each fulfil a role in advising the decision makers and we should share a **positive attitude** towards protecting Public Rights Of Way and see loss of amenity value in respect of them as **a failure**. Indeed that philosophy was inspirational in the compilation of our report, *'Gating Orders' – The Dudley Experience*.
2. In general, your representation reinforces the view that loss of a footpath to a Gating Order should be seen as a last resort with other strategies being formally tried and reported upon before the **negative** approach to public mobility, contained within a Gating Order, is even considered. The Forum has indicated a logical approach to that end and has identified serious flaws within one confirmed Gating Order (Murcroft Road) and a similar situation with another (Filecutter's) that is currently under consideration. In your Council's *"Draft Right of Way Improvement Plan"* it is stated that, *"Dudley MBC considers that Gating Orders and Special Extinguishment Orders are only to be used as a last resort after all other mitigation methods have been investigated."* In assessing the worthiness of any Gating Order, the Forum pursues that supported approach and did so with the Gating Orders that we are so critical of.
3. Within your undated response to the Forum, you state,

"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 the ability of the Council to practically manage and finance such opening and closures."
4. Whilst it may not have been intentional upon your part, this **negative** approach to Public Rights of Way has the wrong emphasis. Legislation should not be seen to *"allow paths to remain open"* but **to keep them open**, with Gating Orders seen as a **temporary** measure to deal with a problem. As such when a Gating Order has been thoroughly and publicly justified, with all manner of improvements and interventions tried to alleviate problems, it should only close off the amenity at necessary times of day. This would at least minimise the adverse impact upon legitimate and responsible users.

5. Your approach, which we have already identified in the two Gating Orders that we have studied in depth, does use total closure as a financial expedient rather than as a necessity to deal with the problem. We advise in the strongest possible terms that this is wrong. If funding is a bar to trying alternative measures in resolving the problems of anti-social behaviour, then funds should be diverted from such as the ‘*Safe Communities*’ programme – a perfectly legitimate exercise. Furthermore, the whole question of Gating Orders is becoming (perhaps inevitably) a political issue and with that in mind it is incumbent upon elected members to identify and utilise funds/budgets from other Council sources to ensure that all other methods, short of a Gating Order itself, have been given a fair chance to succeed. Additionally, we recommend that your financial estimates for the Gating of paths should be revised to take account of the day-to-day cost of opening and closing the gates. **Only in exceptional circumstances of need relating directly to problems on the path**, and certainly not as a financial expedient for the Council, should total closure throughout the day be considered. In such unusual cases, where the Gates will not be opened at prescribed periods during the day, the financial costs of maintaining the gates and paths, against the day that they may be reopened, should be taken into account.
6. The Forum would potentially be more supportive of Gating Orders if they were only used as a last resort and then only to close the affected path, on a daily basis, for the minimum amount of hours that is necessary. That is not the current situation and we see a real danger that all Gating Orders by DMBC will be used for total closure during their protracted period of use on a particular path.
7. In respect of evidence to support Gating, you state,

“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.”
8. Such evidence is not ‘rocket science’ and Forum members assure you that they are quite capable of understanding and evaluating it for themselves if it is presented to the Forum, as it should be. In stating that such evidence was poor in relation to Murcroft Road and the Filecutter’s paths, the Forum are not critical of the police but of the evidence itself. In both of those cases alternative strategies short of Gating were not reported and therefore, presumably, not tried.
9. In relation to review of Gating Orders you state,

“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.”
10. Apparently a review of the Murcroft Road Gating Order has taken place although the Forum were not invited to participate in that review and have not been advised of a report of it. You were advised at our meeting that Forum members are extremely concerned by our exclusion and the reasoning behind it. We formally request that we be included within such reviews, which should be scheduled at regular intervals, of say 6 months, and that the review should be formally recorded. We await your reply. Without

11. Finally, we are surprised by your following comment, given the experience in respect of your Murcroft Road 'Gating Order'. You state,

“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.”

12. In closing the Murcroft Road Public Right of Way, you attempted to apply that which you define in the above paragraph. In reality you have created exactly the unacceptable circumstances of “*a place of abandonment leading itself to anti-social encroachment and fly tipping*” that you apparently were trying to avoid. That was clearly demonstrated by way of our photographic presentation, which you attended. Hence our surprise that you have not modified your views in the light of the Murcroft Road experience.

13. Above all it must be remembered that a Gating Order **is not an extinguishment** and there should be a reasonable expectation, in the public interest, that footpaths will be reopened when circumstances allow.

The above response was approved by Dudley Borough Local Access Forum at the meeting of the 19th November 2008 and is sent on behalf of the Forum by the undersigned.

Yours sincerely

M F Freer

This letter constitutes formal advice from Dudley Borough Local Access Forum. Dudley Metropolitan Borough Council is required, in accordance with section 94(5) of the Countryside and Rights of Way Act 2000, to have **regard** to relevant advice from this forum in carrying out its functions.