
Select Committee on Community Safety and Community Services - 13th March 2008.

Report of the Director of the Urban Environment

Legislation relating to crime and anti-social behaviour on public highways.

Purpose of Report

1. To review the actions open to the Council in light of legislation on closure of highways on the grounds of crime and anti-social behaviour.

Background

2. Special Extinguishment Orders (SEO's) and more recently Gating Orders (GO's) have now been enacted that enable a public highway to be closed for a stipulated period on the grounds of crime and/or anti-social behaviour.
3. Orders have to be advertised and in the case of a SEO, an unresolved objection can lead to a hearing or Public Inquiry. An objection or representation to a Gating Order, however, is referred back to the Order making authority for consideration. This latter procedure may enable the closure of paths to be more expedient.

Definitions

4. A public highway or public right of way (PROW) is a way which the public has a right to pass and repass at all times; in respect of a PROW this is more normally associated with a right on horse, cycle or on foot.
5. Special Extinguishment Orders (or rarely used Diversion Orders) apply to public footpaths and bridleways. These orders are based on persistent high levels of crime and anti-social behaviour.
6. Gating Orders can apply to all highways apart from strategic roads. These Orders can be based solely on anti-social behaviour.

Requests for closure

7. Government Guidance for SEO's. and GO's states "*In general, rights of way do not cause or facilitate crime*" and Councils are clearly guided not to use closure orders before other measures are considered. Further "*Because of the potential effect of the powers, assurances were given in Parliament that the intention was for the closure and diversions to be used sparingly by local councils and not as a first response to tackling crime*" it is therefore envisaged that powers will only be

used in exceptional circumstances”

8. The Council receives about 20 requests per year to close public footpaths from a variety of sources and the Council has a responsibility, in conjunction with the Police, to investigate the circumstances. It is the case that about 9 out of 10 requests do not merit final considerations for closure either due to low level of crime and incidents or adoption of simple alternative local actions including; works on site, intervention by the Police, community schemes or simply recognition that the issue is transient. Consulting with other neighbouring authorities reflects this experience.
9. When the prospect of closure is raised an initial assessment is made and any reasonable request for a closure of a path is referred to the Crime Reduction and Architectural Liaison Officers (CRLO - who have specialist knowledge in this field) who co-ordinates the Police response. This liaison procedure ensures that the Council and the Police have a coordinated approach to the situation based on actual crime and incident data.
10. The CRLO comment as to whether they would recommend closure purely on the crime and / or anti-social grounds. Collation of Incident reporting is made difficult as many incidents are unreported or not logged relative to a path. If there is a negative response from the CRLO it is extremely unlikely that the request would stand up to legislative scrutiny and the interested parties are informed.
11. If there is a robust case based on crime and /or anti-social behaviour the Council and the Police with others will then look at all the circumstances, including what other measures could be done to mitigate the problem, which may include improving the general environment of a path by, say, better lighting or cutting back vegetation from boundaries. Meetings with officers from Community Safety and /or the land owning committee are undertaken to assess the issues.
12. By this method, which can be lengthy, every effort is made to fairly deal with requests for closure in an appropriate manner. The Cabinet Member for Transportation is kept informed of such highways that may lead to closure.

Council Policies and “Secured by Design”

13. There is a wide range of national and local policies that embrace more sustainable travel in particular walking and cycling and encouraging the use of off road routes. These policies, for the benefit of the law abiding, are part of the considerations under Government Guidance that are to be balanced against problems that may be occurring.
14. Highway officers involved in the planning process are mindful of this sensitive balance in preparation of planning briefs and consideration of planning applications.
15. In conjunction with the Police, proposed links are subjected to guidelines set out in the Council’s Supplementary Planning Guidance “Design for Community Safety” and the Home Office “Secured by Design”.
16. Most concern is raised where there are older paths that are narrow, ill lit, have some form of route deviation and generally lack natural surveillance or on wide roads serving industrial estates.

The present situation

17. Two public footpath gating orders have been completed; a path in Wollescote connecting Murcroft Road to Wychbury Road (at a cost of £7500) and a path crossing Gornal Cemetery.
18. Further gating orders include;
 - a vehicular highway on a Council owned industrial estate off Hayes Lane, Lye (approved).
 - a vehicular highway at Fens Pool Ave serving an industrial estate (under imminent consideration)

Pedestrian passage through the estates will not be affected,

19. Special Extinguishment orders;
 - a path crossing the Ridge Primary School in Wollaston, Stourbridge, confirmed (now awaiting physical works)
20. In respect of the "File Cutters" public footpath, Church Road to Summerhill Road was advertised but a change in crime levels meant that a Gating Order has now to be considered. A Decision Sheet on this is being prepared and the situation will be reported verbally to this Committee.
21. **Appendix A** indicates the number of Special Extinguishment or Gating Orders for public footpaths in the West Midlands.
22. Legislation and the relative merits of the two order making procedures to close public rights of way are set out in the table in **Appendix B**.
23. It can be seen that the procedure associated with SEO's and orders under the Highways Act is very lengthy and many local authorities, certainly in the West Midlands, in light of recent South East Inspector's decisions, have looked to the Gating procedure instead. However, the benefit of a SEO is that the land can be taken back into private ownership with the Highway Authority releasing all responsibility.
24. Consultation
This report is supported by the West Midlands Police.

Conclusion

25. In so far as the closure of most highways on the grounds of crime and anti-social behaviour is concerned, the Council does have the necessary powers, but it is necessary to overcome the following restraints:-
 - There is sufficient degree of evidence based crime and anti-social behaviour.
 - The Police support the closure of the highway.
 - There are no other reasonable practical measures that would deal with the problem.
 - The Council have had regard to all circumstance.
 - There is finance available.

Finance

26. There is no budget set aside for SEO's or Gating Orders. The costs of the operative orders and works have come from Housing, Bereavement Services, Schools and a Business Centre budgets. It is proposed that the gating of Fens Pool Ave will be part funded by the West Midlands Police.
27. Works on non highway paths on Council owned land have been undertaken from various forms of Community Safety budgets. It is felt that the physical element of the extinguishment or gating of all paths should also be met from such budgets.
28. The cost of daily closure would be an ongoing revenue cost and could not be met from existing budgets. It is not thought wise for the public to operate gates due to possible claims.

Law

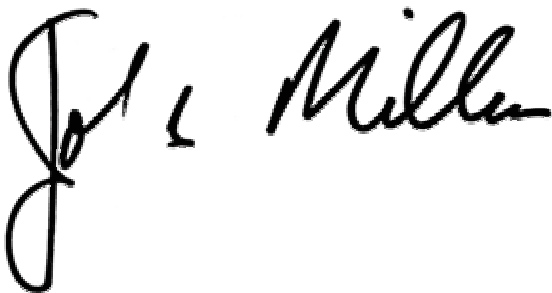
29. Special Extinguishment Orders are carried out under S118B of the Highways Act 1980.
30. Gating Orders are carried out under Section 129A of the Highways Act 1980.

Equality Impact

31. As part of the considerations as to whether a path can be closed, the Council assesses the impact on different sections of the community.

Recommendation

32. That members note the report.



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List of Background Papers

Guidance to Local Government on:-

Crime Prevention on Public Rights of Way – Designation of Areas, Sections 118B and 119B Highways Act 1980, dated February 2003.

Guidance relating to the Making of Gating Orders, March 2006.

APPENDIX A

Authority	Approval	Orders made	In operation
Birmingham	1	1	1 (gates stolen)
Coventry	3	3*	2
Dudley	3	3	2
Sandwell	1	0	0
Solihull	1	1	1
Walsall	4	4	1
Wolverhampton	7 (subject to legal approval)	0	0
Stoke on Trent **	21	21	21

* One order is subject to High Court Challenge

**This work was undertaken with a £135,000 regeneration budget. At least 50% of the Orders were on back alleys on terraced estates which in Dudley would not be deemed to be public rights of way.

Special Extinguishment Orders under S118B of the Highways Act 1980 (SEO's)

APPENDIX B

Paths that cross land occupied for the purposes of a school	Other Public Paths	<u>Objections</u>
<p>It must be shown that there it is expedient for the purpose of protecting the pupils or staff from violence, harassment, alarm or distress, or any other risk to their health and safety.</p> <p>It does not, therefore, depend on high levels of crime. In the case of The Ridge Primary School the crime element relating to the buildings was very low and it was felt appropriate to secure a public right of way outside of the school hours.</p> <p>Although, it may be easier, in practice, to show a need for closure, the Council must be mindful of measures the school have taken to improve security, whether the Order will lead to a substantial improvement in security, the availability of a reasonable alternative route and the effect of the Order on land served by the highway.</p>	<p>For the vast majority of paths, this is a two stage procedure. Before a SEO can be made to close a path the Council has to provide documentation to the Secretary of State (SoS) that the path is in high crime area. This will include descriptions of consultation with the Crime and Disorder Reduction Partnerships, the types of serious crime and other offences and their consequences and occurrence, the effect on adjoining properties, vulnerability to repeat, disruption to the community and mitigation measures.</p> <p>Should the Council be successful with this first stage, as was the case of the "File Cutters", the SoS grants a Crime Prevention (Designation Areas) Order. However this does not allow a path to be closed, the second part of procedure is required under Section 118B of the Highways Act 1980, which seemingly mirrors the process but on a more local scale.</p> <p>This second stage order means the Council must be satisfied that it would be expedient for the purpose of preventing or reducing crime that would otherwise disrupt the life of the community.</p> <p>It must appear that the premises adjacent or adjoining to the highway are affected by high levels of crime and that the highway is facilitating the persistent commission of criminal offences.</p> <p>Before making the Order the Council shall consult the Police and Fire Authority.</p> <p>The Council must be satisfied it is expedient to confirm the Order having regard to all the circumstances, in particular to the extent to which it is consistent with the Council's Community Safety Strategy, the availability of a reasonable alternative route and the effect of the Order on land served by the highway.</p>	<p>In both cases of a SEO, any unresolved objection must be submitted to the SoS who may call for some form of a hearing or a Public Inquiry.</p>

<u>Any Non Strategic Highway</u>	<u>Objections</u>
<p>These were recently introduced by the Government and runs in parallel with SEO's. Although the legislation and Government Guidance means that the grounds and criteria for Gating Orders are very similar to the considerations for SEO's , there is a distinct different. Unlike SEO's, which relies on persistent high levels of crime, Gating Orders can be made based on crime and/or anti-social behaviour and can regulate the types of traffic and times of passage..</p> <p>The major downside of such an Order is that the land over which the highway passes remains highway and therefore still the responsibility of the highway authority, with ongoing revenue implications that gating entails.</p> <p>It would be unsustainable to think that all highways are capable of being gated within reasonable financial limits. It very much depends upon the way access can be prevented.</p> <p>To gate against "soft" boundaries, such as bushes and to some extent wooden fencing, would not secure closure as vandals would simply "create" an alternative access. Where hard boundaries stand adjacent the path, like gable ends of houses, there is more chance of success.</p> <p>Gating, and any associated fencing, needs to be to a high specification which can be very expensive. However, it reduces the high probability that the gates, its locking mechanism and fencing itself will be vandalised. There also needs to be a sense of ownership of the land so that the void between gates does not become a place where troublemakers can still gather and where litter and vermin are attracted.</p>	<p>Objections and representations are referred back to the Council and not the Secretary of State.</p> <p>As a result the procedure is tends to be quicker than for SEO's allowing for local decisions.</p> <p>The Council also has the power to vary or revoke such orders</p>