

# Dudley Borough Local Access Forum

## ‘Gating Orders’ – The Dudley Experience

### 1. Introduction

- 1.1. Few people would challenge the importance of urban footpaths, particularly in times of combating global warming and obesity. Unfortunately we also live in times of anti-social behaviour expressed explicitly, for instance, in terms of graffiti. Nowhere is immune and yet the humble urban footpath between housing, often unflatteringly referred to as an ‘alleyway’, is singled out in new legislation with ominous threats of easy closure. In many ways the importance of these paths to our future needs, as the urban population grows, has been forgotten. To urban pedestrians they are of much greater importance, in daily life, than their rural recreational counterparts. That does not undermine the importance of the wonderful network of countryside paths that add so much to quality of life.
- 1.2. Urban rights of way do not cause crime or anti-social behaviour, nor does the closing of them eradicate this cancer from our society. Furthermore, closures do not apprehend or punish offenders but, ironically, punishes the innocent legitimate users and, inevitably, will have negative consequences to some people in respect of whether they choose to walk or use their cars.
- 1.3. Legitimate users are encouraged when footpaths are properly maintained, with litter and other obstructions removed to enhance the experience. In turn that appropriate use is an antidote to the activities of wrong doers and encourages the public to not only use but also value the benefits of such paths. In many cases this results in the local public taking possession of ‘their’ paths in the civic pride sense.
- 1.4. ‘Gating Orders’, as a consequence of Section 2 of the Clean Neighbourhoods and Environment Act 2005, are a reality to be acknowledged and dealt with. Such Orders are a new tool within the hands of highway authorities and they can have some value if used responsibly and with discretion. Dudley Borough Local Access Forum (DBLAF) has indeed supported gating orders where these have minimum adverse impact upon responsible users, but would assist with known problems. One such order involved a footpath through the grounds of a crematorium where the Forum acknowledged the problem amidst such sensitive circumstances. ‘Gating’ was supported on a timed basis with the path locked during the hours of darkness but available when the greatest volume of use occurred. Another order<sup>1</sup> was supported on a timed basis through the grounds of a school. Elsewhere, a gating order was supported that involved erecting a barrier to prevent unauthorised vehicular use whilst still allowing pedestrian access.
- 1.5. In sharp contrast DBLAF has considered ‘gating orders’ by Dudley Metropolitan Borough Council where the Forum considered that the proposed closures had not been appropriately evaluated and justified. ‘Closure’ is the correct term, for although ‘gating orders’ are generally considered to involve restricted use and/or temporary restrictions to access, it is clear that the Council are intending to use them for permanent closures with paths subsumed into the grounds of neighbouring properties. Whilst it is claimed that the line of such a path is protected for re-

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<sup>1</sup> Whilst this was not a Gating Order, it was similar in nature and effect.

opening at some future date, the reality is almost certainly that the path is lost in perpetuity. It does not make sense, nor is it financially prudent, to remove all evidence of the path if the intention to reopen it is sincere. Proportionally, Dudley Council is dedicating more money to such misleading closures than is being directed to the appropriate maintenance of paths. Indeed most paths do not receive any maintenance unless the public complain. This results in evident neglect, encouraging abuse by a minority of individuals. In turn this discourages the very users that society wishes to enjoy them. The vicious circle, encouraged by wilful neglect, gives urban the Public Right of Way (PROW) a bad reputation and, by the application of the new legislation, threatens their very existence.

- 1.6. The Dudley 'gating order' experience was initiated with eight Public Rights of Way, which a crime liaison officer for the police had identified to the Council. The Access Forum was told that the police officer recommended closures, principally on grounds of litter, graffiti and lack of maintenance. The Forum disagreed with gating in the circumstances described and advised the Council accordingly. Since that time, the Forum, when faced with possible gating orders, have been advised that the views of the police are of major and, by implication, greater importance than those of the Forum. This is a cause for concern since the views of an individual police officer are not necessarily definitive as shown by the Forum's experience.
- 1.7. Of course police information is valuable when it involves hard evidence and a detailed report of the efforts that the police have embraced to address problems. Recalling that PROW do not cause crime or anti-social behaviour and that culprits are not punished by closure, such detailed information from the police is a minimum that the legitimate users of the paths and residents living adjacent should expect, when closure may be the outcome. Of course appropriate policing will also deter wrong doers.
- 1.8. Closures of footpaths are predictably popular in various quarters and for a variety of reasons. These might include the removal of an adjacent neglected eyesore path, which affects property values, or the very presence of the path feeds a fear of crime, even when that fear is not justified. Whilst these would not be legitimate grounds for a gating order, the incentive to pursue such orders will be great for some. In some parts of the country the situation is escalating, as the prospect of closures with comparative ease, becomes public knowledge. It is therefore important that each potential 'gating order' is subjected to the veracity of a series of 'tests' to establish whether a 'gating order' is justified or not. Dudley Borough Local Access Forum has already experienced potential permanent closures by way of 'gating orders' where such ordered scrutiny has not been applied.

## 2. Specific Examples

- 2.1. **The first example** involved a commodious, well-surfaced and long established urban path, which provided access to open countryside. A section of that path, past only four houses, was proposed for gating. The Highways Authority was initially inclined to pursue permanent closure by way of designating it to be within a high crime area under the terms of the Countryside and Rights of Way Act 2000. However, that procedure was abandoned in favour of the simplified approach provided by gating. Many of the crimes reported bore no relationship to the path – either being relatively remote from it or of no significance, such as cases of domestic violence. When reported to the Forum no attempt had been made to

analyse the crimes to establish whether or not there was an identifiable relationship with the path.

- 2.2. The evidence that existed, besides not being filtered, was only placed before the Forum, in plan form, on the evening of the meeting. The nomenclature of the plans was not explained and it was nigh on impossible for members to scrutinise such evidence and simultaneously concentrate on the meeting as it proceeded. Understandably such a situation is not conducive to Forum members being in a position, as statutory consultees, to adequately perform their duty and proffer informed advice. The plans were collected and removed by the Council officer at the end of the meeting. Members pointed out that such key information should be provided well in advance of the meeting with members retaining copies within their files. No undertaking to remedy the situation was forthcoming. The Forum is sympathetic to concealing sensitive information and if this was the concern of the Council, although that was not expressed, then the Council could choose to report such evidence in a format to protect anonymity.
- 2.3. The path has now been closed *permanently* without any attempt, even if a gating order was justified, to restrict the order to *temporary* closure for certain times of day – usually in the hours of darkness. No evidence was proffered to show that this was not possible or unrealistic. Furthermore, the path was not physically gated but is being subsumed into neighbouring properties. Whilst the order is initially for three years, DBLAF has no doubt that the path is unlikely to be made available again. Effectively, it has been lost on the basis of poorly presented and argued evidence. The alternative route mentioned in the Council’s report takes the walker on a considerable detour along neighbouring roads amidst the pollution/hazards of vehicular traffic. A comparison of the alternative route and that to be lost was not reported or discussed in the officer’s report, nor was the impact upon disabled users and the elderly adequately addressed. It appears that no other interventions were tried and considered as an alternative to closure. Problems can occur on any path, caused by a small minority of people. These are normally transient situations, recognised in current Home Office guidance, and are not circumstances to lead to permanent loss of a path. The outcome of closure is that the victims are the legitimate users who previously enjoyed responsible use of the path. The current legislation and guidance has allowed the latitude for such a situation, unsatisfactory in footpath terms, to occur.
- 2.4. **The second example** involves a path of great antiquity where the crime/antisocial behaviour situation is improving and the path has not been appropriately maintained during the five-year period that the Highway Authority has been seeking to close it. Earlier attempts to close this path, on the basis of crime and prior to the advent of gating orders, were refused by the Secretary of State because of a flawed approach/procedure by the Council.
- 2.5. The failure to maintain has resulted in considerable obstructions along the path, mainly from accumulated litter and natural vegetative growth, restricting the free flow of passage by users. Electric lighting was not operational.
- 2.6. A site visit by the Forum left members in no doubt that this prolonged neglect is a major factor in relation to problems associated with the path. Indeed members still cannot understand how a path that had been high profile in the press, over a five year period, could be so badly neglected. The poor conditions and the failed lighting would discourage even avid users. The light is shrouded, even when working, in the

uncontrolled growth of a tree. Bad press may also have deterred some users from enjoying the path. The ‘monster’ is nowhere near as bad as its reputation leads some to believe.

- 2.7. On the day of the Forum visit, accompanied by the author of the gating order report, members were pleasantly encouraged by the use being made of this path, which provides a valuable pedestrian link between areas of interest. Users of all ages were seen enjoying the benefit it provided. Clearly they knew of the paths existence because it was otherwise unmarked and did not appear to be a PROW.
- 2.8. Crime and antisocial behaviour within the grounds of a neighbouring school was cited as a reason for permanent gating of the path. However, a police report could not corroborate that access was being made from the path. Indeed the author of the gating order had received a report, on the morning of the Forum visit, that windows in the school had been broken. Blame was firmly laid upon the path. When the Forum members actually examined the situation, the windows could not have been broken from the path and the fence and grass beyond it did not indicate that entry had been gained from it. A walk around the perimeter fence of the school, beyond the precincts of the path, indicated other possible entry points in more secluded circumstances. It was noted that the school was not doing all that could be done by way of inexpensive measures to significantly improve their property security.
- 2.9. The report of crime and antisocial behaviour emanating from the path was lacking in decisive evidence and relied largely upon hearsay. Members did see graffiti but of course that is not uncommon.
- 2.10. Members, given the protracted period of controversy concerning the path, expected to be apprised of youth initiatives etc that had been tried to deal with any problems, but nothing was forthcoming and it appears that no alternative actions other than depriving the public of a facility had been considered.
- 2.11. Members walked the alternative routes being suggested but found these to be significantly longer along poorly maintained footways amid noisy traffic. The gating report had described the routes increased length in terms of extra time but the forum members, with mixed levels of fitness, failed to achieve the designated ‘qualifying times’. The author of the gating report had not taken this into account, nor had he considered the disabled user and the other factors that cast an unfavourable light upon the alternatives. Needless to say the alternative should have been compared to the path in question in terms of length rather than time taken.
- 2.12. More issues arose and it has taken a concerted effort by the Forum to get the path maintained although the inadequacies were pointed out promptly, both verbally and in a written report. This inability to react positively and promptly by the Council is disappointing and of considerable concern.
- 2.13. The officer of the report is moving for total gating closure of the path, whilst the main protagonists for gating, a resident and a councillor, accept that the problem periods relate only to the hours of darkness.

### **3. The Way Forward**

- 3.1. Clearly the present situation is unacceptable and will continue, if left unchecked. The Dudley experience indicates that changes should take place. Consequently, the Forum advises that the following procedures for the consideration and application of gating orders should be adopted:

- 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.**
- 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.**
- 3.1.3. Is the perceived problem(s) of anti-social and criminal behaviour of a transient nature?**
- 3.1.4. What alternative measures have been taken to resolve or alleviate those perceived anti-social and criminal activity problems?**
- 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?**
- 3.1.6. Is the proposed alternative route truly as convenient?**
- 3.1.7. Is a closure likely to affect local trade and/or facilities?**
- 3.1.8. Have the needs of the disabled and elderly been properly assessed?**
- 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.**
- 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?**
- 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).**

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