

CHESHIRE WEST AND CHESTER

REPORT TO EXECUTIVE MEMBER

Date of report: Thursday 30 September 2010
Report of: Community Safety Manager
Executive Member: for Area and Community Councillor Lynn Riley

THE PROPOSED GATING OF PART OF HAZEL ROAD LINK PATH, CHESTER PART 8A HIGHWAYS ACT 1980

This is not a Key Decision

1.0 What is the report about?

1.1 A proposal to make an Order under Part 8A of the Highways Act 1980 to gate part of a public footpath in Chester between Poplar Road towards Hazel Road and the alley way from Hazel Road towards Downsfield Road.

2.0 What Decision is required by the Portfolio Holder?

2.1 Whether or not the proposed Order should be made.

3.0 How does the Decision contribute to the Council's Corporate Priorities?

3.1 The proposed Order is designed to achieve a reduction in crime, disorder and antisocial behaviour (ASB). As such it contributes to the Safer and Stronger Communities imperative to ensure that communities are safe and secure with a reduced fear of crime and harm. It also contributes to the Environmental Sustainability imperative by helping to build clean, attractive, and healthy environments for our people to live and work in.

4.0 Report Details

Legislative Background and Decision Criteria

4.1 Part 8A of the Highways Act 1980 and associated regulations enable councils to make Gating Orders permitting gates to be erected across public highways to restrict how they are used. Before a council can make a Gating Order it must be satisfied that:-

4.1.1 premises adjoining or adjacent to a public highway are affected by crime or ASB;

4.1.2 the existence of the public highway is facilitating the persistent commission of criminal offences or ASB; and

It is, in the circumstances, expedient to make the Order for the purposes of reducing crime or ASB taking into account the likely effect of the Order on occupiers of premises adjoining or adjacent to the highway, other persons in the locality and the public using the route, and the availability of a reasonably convenient alternative route.

- 4.2 In addition, an Order can not be made so as to:-
- 4.2.1 restrict the right of way over a highway for occupiers of premises adjoining or adjacent to the highway;
 - 4.2.2 restrict the right of way over a highway which is the only or principal means of access to any dwelling;
 - 4.2.3 in the case of business or recreational premises, restrict the public right of way over a highway which is the only or principal means of access during periods when the premises are normally used for that purpose.
- 4.3 The decision whether to make an Order is effectively an exercise in balancing the right of the public to make legitimate use of the highway concerned against the impact that crime, disorder or ASB facilitated by the highway is having on the local community.
- 4.4 Consideration should be given as to whether there are any viable alternatives to a Gating Order which may address the problems experienced. Consideration should also be given to whether any person or class of person should be excluded from the effect of a Gating Order and whether the Gating Order should be implemented on a 24 hours a day 7 days a week basis (24/7) or perhaps just take effect at certain times or on certain days.
- 4.5 Gating Orders must be reviewed by the Council from time to time to ensure that they are still necessary and appropriate. Gating Orders can be varied or removed to respond to changes in the circumstances which led to an Order being made in the first place. Stronger Safer Partnerships Team will continue to be a key holder for the gates throughout the time they are in place.

The Proposal

- 4.6 The proposal relates to an alley which is not listed on Cheshire West and Chester's "Definitive Map" of public rights of way. It is, however, on the "list of streets" which is a register of public highways that the Council is responsible for maintaining. It is therefore a public highway and the Part 8A of the 1980 Act can be applied.
- 4.7 The proposal is to gate approximately 73 metres of footpath in-between Hazel Road, Downsfield Road and Poplar Road as illustrated within evidence file and on the attached plan.

- 4.8 This proposal has been brought forward as evidence suggests that there exists a disproportionate amount of reported incidents of crime and ASB in the area surrounding the proposed gating site. It is believed that the behaviour complained of is facilitated by the section of footpaths in question as the alley ways provide a convenient or concealed means of access and egress for those who indulge in the reported behaviour.
- 4.9 It is considered that there are no other viable or preferable options to deal with the reported crime and disorder issues due to the cost and likely transient effect of potential measures which renders the same disproportionate in comparison to the anticipated costs and effectiveness in gating the proposed section of footpaths. As such the alternative crime reduction resources would be better deployed in other locations.
- 4.10 It is considered that the Order should take effect on a 24 hour 7 days a week basis due to the likely effect of the Gating Order on occupiers of premises adjoining or adjacent to the highway. Also in relation to effects on other persons in the locality, particularly having regard to the availability of a reasonably convenient alternative route rendering resources required for a managing opening and closing arrangements disproportionate.
- 4.11 Keys to the intended alley gates would be provided to occupiers of premises adjoining or adjacent to the highway upon request to ensure that their necessary access is not restricted. The only or principal means of access to any dwelling, business or recreational premises is unaffected by the proposed Gating Order. Keys will also be allocated to members of the community who evidence mobility difficulties, such keys will be allocated on a case by case basis. Safer Stronger Partnerships Team will continue to be the main contact point for the time that the alley gates are installed.

The Evidence

- 4.12 A detailed evidence file will be produced to the Executive Members in support of the proposal. Whilst the evidence file is confidential in accordance with the provisions of the Data Protection Act 1998 its contents can be summarised as follows:-

4.12.1 A combined analysis of crimes and incidents of ASB within 100 metres of Hazel Road, Downsfield Road and Poplar Road alley-ways reported to Cheshire Police from the periods of August 2009 – July 2010 in total 48 reports were received.

Consultations

- 4.13 Informal consultations in relation to this proposal have been undertaken with:-
- 4.13.1 The Cheshire West and Chester Crime and Disorder Reduction Partnership (CDRP) consisting of the following statutory members: Cheshire Police; Cheshire Fire and Rescue Service; Cheshire Probation Service; Cheshire Police Authority and Cheshire West and Chester Borough Council.

4.13.2 Local Residents at:-
Hazel Road
Downsfield Road
Poplar Road

4.13.3 The Community Safety Team who consulted:

Local Government:

Cllr Arthur Harada
Cllr Razia Daniels
Cllr Richard Short
Cllr Lynn Riley

Emergency Services:

Cheshire Police HQ
Cheshire Fire and Rescue Service HQ
Cheshire Primary Care Trust

4.13.4 The Highway Authority

4.13.5 Chester Port Neighbourhood Policing Inspector Ian Thorpe.

4.13.6 The Executive Member for Culture and Regeneration Councillor Richard Short and Executive Member for Prosperity Councillor Herbert Manley.

4.13.7 The Executive Member for Community & Environment Councillor Lynn Riley.

4.14 From 28 forms returned 22 (78.4%) were in favour of the Gating Order and 6 (21.6%) were against. 1 resident against the gating order lives on Cliveden Road, with the remaining complainants stating the inconvenience of walking the extra distance offered by alternative routes being the reason for the objection, these residents did not live in close proximity to the alleyways.

4.14.1 Concerns were raised and have been responded to through more focused consultation with residents of Hazel Road in August 2010, 30 door to door consultations were completed. 27 (90.1%) residents supported the installation of the gates, 2 (6.6%) residents indicated no preference and 1 (3.3%)_objected on the grounds of feeling alternative routes were unsafe for children to walk along. The alley ways in question have been evidenced by consultation with Community Safety Wardens, Cheshire Police and local residents to facilitate the persistent commission of criminal offences and ASB, to restrict this highway would aim to reduce such behaviour.

4.15 Support for the gating order has been received from the local residents, the CDRP, the Emergency Services, and local councillors. The Highways and Public Rights of Way Service have not objected to the making of the Order. It is

considered that the benefits of the proposed order outweigh the objections that have been received.

5.0 Conclusion

- 5.1 It is considered that the legal requirements for making a Gating Order as summarised in paragraphs 4.1 and 4.2 above have been satisfied.
- 5.2 Careful consideration has been given to the effect of the gating order on occupiers of premises adjoining or adjacent to the highway and to other persons in the locality including the public making legitimate use of the route. Having regard to the availability of a reasonably convenient alternative route it is considered in all the circumstances expedient that the proposed order be made.

6.0 Recommendation

6.1 That:-

6.1.1 Officers be authorised to give formal notice of the Council's intention to make an Order pursuant to Section 129A of the Highways Act 1980 in the form of the attached draft Order; and,

6.1.2 upon expiry of the statutory notice period and in the absence of any objections received during the statutory notice period (other than objections the nature and substance of which have already been considered during the informal consultation exercise undertaken) Officers be authorised to make the said gating order and erect barriers pursuant to the same; and,

6.1.3 the effect of the Gating Order and ambient crime and disorder and ASB issues be kept under review

7.0 What will it cost?

7.1 The estimated costs of promoting a Gating Order and procuring and installing the Gate are estimated to be in the region of £7000. This cost will be met by funding streams identified within the Community Safety Team Budget.

8.0 Legal Considerations

8.1 The legal considerations are dealt with in the body of this report. In addition, the decision to make an order can be challenged in the High Court on the basis that a procedural requirement has not been complied with or that the Council had no authority to make the Order.

9.0 What risks are there and how can they be reduced?

9.1 The risks have been addressed in the body of this report.

10.0 What is the impact of the decision on equality and diversity issues?

10.1 The proposed Gating Order has no adverse impact on matters of equality of diversity.

11.0 Are there any other options?

11.1 The availability of alternative options has been addressed in the body of this report.

For further information:

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Background Documents:

Interim Making Places Safer Policy document

Confidential Evidence File