

ED2. EXECUTIVE DECISIONS BY A CABINET MEMBER OR AN OFFICER

A. Report Title: PROPOSAL TO MAKE A GATING ORDER IN RESPECT OF PART OF PUBLIC FOOTPATH 129 BETWEEN COLLEGE AVENUE AND BRADLEIGH AVENUE GRAYS	
B. Report Author(s): Head of Strategic Planning & Delivery	Tel: 01375 652710 E-mail: amillard@thurrock.gov.uk
C. Decision Maker: Cllr N Rockcliffe – Decision referred from Head of Service	
D. Position held: Cabinet Member for Highways & Transport	
E. Key decision: NO	F. Delegation ref:
G. Is the decision urgent? NO	
H. If yes, state why.	
I. DECISION (strike out whichever does not apply) : 1. I agree the recommendations in the attached report for the reasons given in the report; OR 2. *My decision is: *The reason for my decision is: * Continue overleaf or on an additional sheet if necessary.	
Signed: N Rockcliffe	Date: 24 September 2008
J. Decision Taken under Portfolio Holder's Delegated Power: Signed: L Meadows (Interim Deputy Head of Legal Services) Date: 24/9/08	
Date decision received by Dem. Services: 26 September 2008	Date decision published: 26 September 2008
Implementation date:	

3 October 2008

Relevant O & S Committee:

Environment Overview & Scrutiny Committee

15 September 2008

**Report to the Portfolio Holder for Highways and Transport
PROPOSAL TO MAKE A GATING ORDER IN RESPECT OF
PART OF PUBLIC FOOTPATH 129 BETWEEN COLLEGE
AVENUE AND BRADLEIGH AVENUE GRAYS**

**Report of: Head of Strategic Planning and Delivery (Decision Delegated to the
Portfolio Holder for Highways and Transportation)**

Purpose:

To decide whether to make a Gating Order for a part of Public Footpath 129
between College Avenue and Bradleigh Avenue, Grays

Wards affected: Grays Thurrock

Key decision: No

1. RECOMMENDATION:

1.1 That the Council proceed to make a Gating Order, for an initial 12-month period.

1.2 That implementation of the gates is undertaken immediately following a six-week appeal period or a High Court ruling, as appropriate.

1.3 That the decision be reviewed in 12 months having regard, inter-alia, to the effectiveness of the Gating Order in reducing existing levels of anti-social behaviour.

2. INTRODUCTION:

2.1 In January 2007 the Transportation Manager was asked to investigate the possibility of making a gating order for the purposes of restricting public access to part of Public Footpath 129.

2.2 In June 2008 a report was considered by Cabinet to commence the process for making a Gating Order under Section 129A of the Highways Act 1980 and the

Highways Act 1980 (Gating Orders) (England) Regulations 2006 (“2006 Regulations”).

- 2.3 Cabinet resolved to authorise the commencement of the notification and consultation processes on the proposal to make a Gating Order to prohibit pedestrian access in respect of part of Public Footpath 129 between College Avenue and Bradleigh Avenue at all times and the restriction to continue for a period of 12 months, subject to review by the Council.
- 2.4 Cabinet also required that a report on the outcome of notification and consultation be brought to the Portfolio Holder for Highways and Transportation for a final decision to be made. This report fulfils that Cabinet resolution.

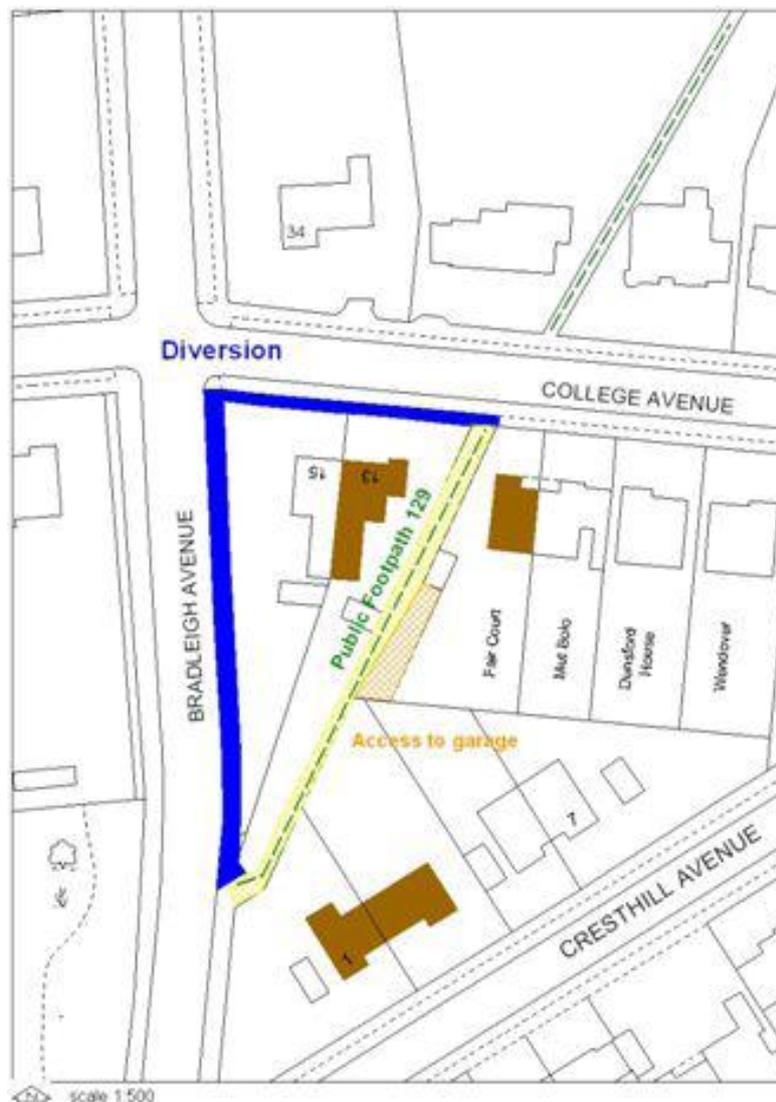
3. BACKGROUND:

Gating Orders

- 3.1 Recent amendments to highways legislation, namely the Highways Act 1980 and the Highways Act 1980 (Gating Orders) (England) Regulations 2006, provide the Council with the power to make a Gating Order over a highway for which it is the highway authority where:
- (a) Premises adjoining or adjacent to the highway are effected by crime or anti-social behaviour;
 - (b) The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and
 - (c) It is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.
- 3.2 Before deciding whether an Order should be made it is necessary for the procedures required under the Highway Act 1980 (Gating Orders) (England) Regulations 2006 to be followed. This includes notification of and consultation on the proposal to make the order. All representations resulting from that process must be considered and the expediency of making an order will need to be assessed in the light of those representations and all other material considerations. Further details of the procedure and relevant consideration are explained in the Legal Implications set out below.
- 3.3 It is pertinent to note that the Council previously took steps to affix gates preventing access to this part of Footpath 129. Local people living in and around the area who did not consider access to this part of the Footpath should be closed voiced considerable opposition. The Thurrock Local Access Forum objected to the actions of the Council, however this was principally due to the Council having not followed the correct legal procedures at that time for making a Gating Order.

3.4 Figure 1 below shows the location of the section of Footpath 129 in question and the diversion that would result if the Gating Order were implemented.

Figure 1 – Location of proposed Gating Order



3.5A notice of intention to make the proposed gating order, which invited views from the public, was published in the Thurrock Gazette on 4 July 2008 with a closing date of 4 August 2008. The notification was also publicised by notices on the site of the Gating Order proposal and on the Council's website.

3.6 The Council served the requisite public and personal notices and has complied with the requirements of the notification and consultation procedure set out under the Highways Act 1980 and the 2006 Regulations.

4. PUBLIC NOTICE REPRESENTATIONS

4.1 The representations received by the Council in response to the Public Notices are summarised at Appendix 2, and contain a wide range of opinions on the matter. A petition opposing the proposal was received as part of the representations. A map showing the location of residents who made representations is at Appendix 1.

Supporters

- 4.2 The supporters of the Gating Order include residents who border FP129 at the northern end at College Avenue who experience and have reported the antisocial behaviour. Residents adjacent to the section of FP129 north of College Avenue and south of Langthorne Crescent (not subject to this proposal) also support the proposal.
- 4.3 The supporters for the proposal cite the antisocial behaviour as the principal reason and consider that the costs of gating would be recovered by reduced maintenance costs.
- 4.4 The Headmaster of the nearby Grays Convent has supported the proposal.
- 4.5 Essex Police did not provide any representation in response to the Public Notices. As reported in the further to June 2008 Cabinet Report, Essex Police have previously written to the Council expressing categorical support for the section of footpath concerned to be permanently closed. These letters are replicated at Appendix 3. This position has been reaffirmed in a subsequent E-mail (also at Appendix 3).

Objectors

- 4.6 Other local residents affected include residents of St George's Avenue. Footpath 129 is on their route in the direction of Grays centre. Some of these residents have objected individually and some have included their signatures in the petition received. The petition does include some residents who also objected as individuals.
- 4.7 The principal objections concern loss of use of the footpath, views that the problem is not serious and that the gates would be a waste of money. They also add that where Footpath 129 joins a yard or manoeuvring area for a resident's garages this provides an area for gatherings. Securely fencing and/or gating this area from the footpath would reduce this area available for gatherings and may reduce the antisocial behaviour levels to those of the rest of the footpath. It would be the responsibility of the resident as landowner to secure this boundary.
- 4.8 All three of the Thurrock Council Ward Members have objected to the proposal.
- 4.9 The Chairman of the Central Grays Community Forum has objected to the proposal.
- 4.10 Regulation 6 of the Highway Act 1980 (Gating Orders) (England) Regulations 2006 states that the Council may cause a public inquiry to be held in relation to the proposed Gating Order. The Council must hold an inquiry if any of the following object.
- The Chief Police Officer
 - A Fire and Rescue Authority
 - Any Council or

- A NHS Trust or NHS Foundation Trust
None of these have objected and therefore, the Council is not required to hold a public inquiry.

4.12 No Utility Companies have lodged any objection.

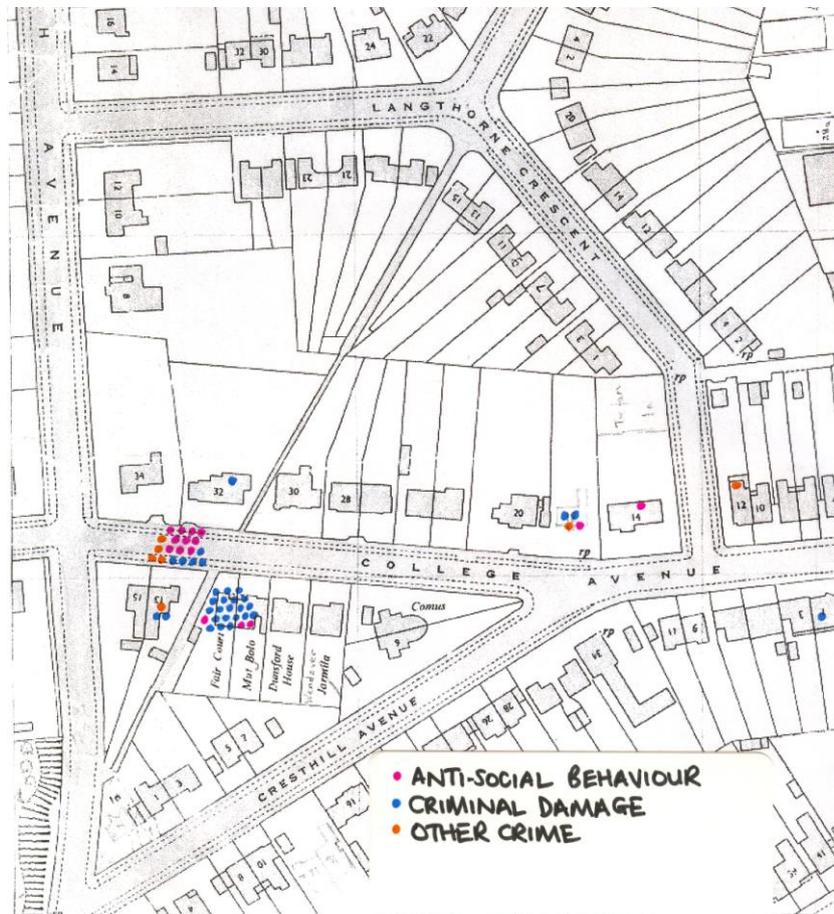
5. ISSUES AND/OR OPTIONS

5.1 In order to determine whether a Gating Order should be made, consideration needs to be given to the legal tests as set out at Paragraph 3.1 of this report to be met to achieve such a restriction of access and initial public consultation on the proposal needs to be undertaken.

Premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour.

5.2 Figure 2 shows an extract from police records showing the Crime Reports in College Avenue for the two-year period between August 2006 and August 2008. Crime reports are assigned to Ordnance Survey Grid References and represent the location of the reported crime. The level of antisocial behaviour and criminal damage occurring is self-evident.

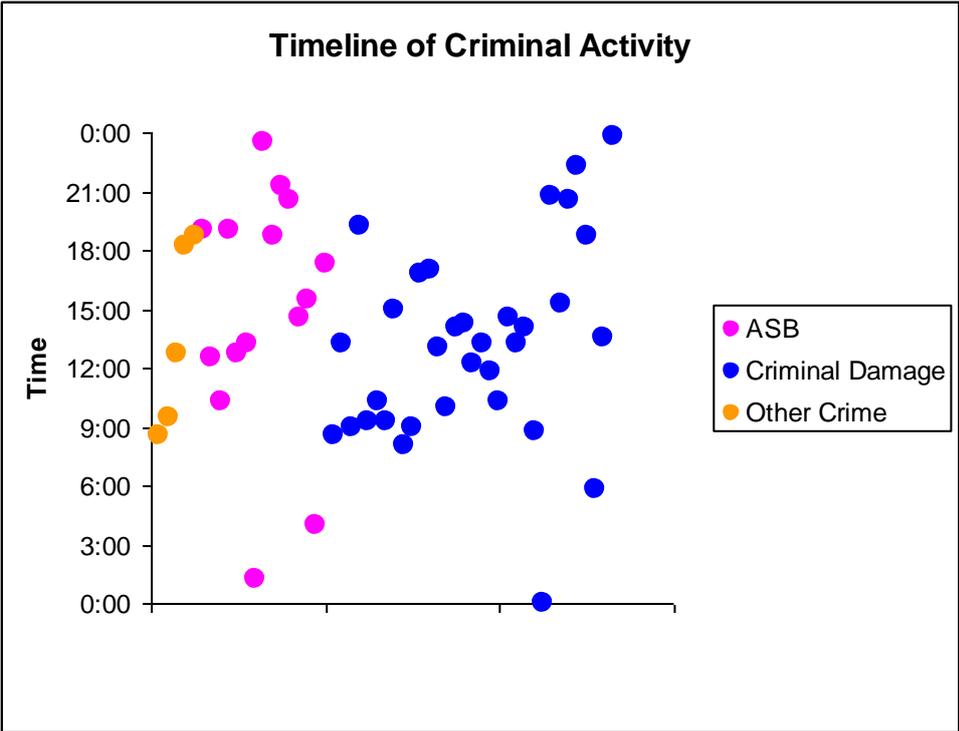
Figure 2 – Essex Police Crime Reports (Aug 2006 → Aug 2008)



The existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour.

- 5.3 Essex Police have previously supported the making of a Gating Order, noting that they have attempted a number of solutions for Footpath 129 including considering lighting, CCTV and high visibility patrolling, but report in a letter dated 17 April 2007 that they have not had any positive outcomes (See Appendix 3a).
- 5.4 Further letters from Essex Police dated 27 February and 11 March 2008 (at Appendix 3b/c) confirm that criminal and antisocial behaviour, such as arson, graffiti, sexual activity, criminal damage, urinating, depositing of litter, condoms and tampons has become worse during the year.
- 5.5 The letter of the 11 March 2008 also states that there is no time reference to the incidents. It is evident from the Crime Reports that criminal activity is not restricted to any particular time of day. Figure 3 below shows that activity is just as likely if not more likely to take place during daylight hours. This suggests that a partial closure would be ineffective, although the Crime Reports are based upon notification to the police, which may vary from the time of the actual incident being reported.
- 5.6 The footpath is facilitating the commission of criminal offences and anti-social behaviour as the footpath is a low-lit footpath with a bend to the left where the suspects cannot be seen at either end of the footpath. The premises adjacent to this part of the footpath, namely Faircourt, College Avenue and 13 College Avenue, are affected by crime and anti-social behaviour.

Figure 3 – Timeline of criminal activity (Essex Police Crime Reports Aug 2006 → Aug 2008)



It is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

5.7 Further to the consideration thus far, an alternative route exists to using this part of Footpath 129 by walking along Bradleigh Avenue and College Avenue. This route is 30 metres greater than the length of the footpath. It is depicted on Figure 1. This alternative route does not present any significant barrier or health risk to any part of the community as opposed to using the footpath, indeed given the nature of criminal activities taking place along the path as referred at Paragraph 5.4 it represents a safer option.

Assessment of Risk

5.8 Table 1 below shows the risks associated with whether or not to proceed with the proposed Gating Order.

Table 1 – Risk Assessment

Decision	Risk	Likelihood	Impact
FOR GATING	Large number of objections from local residents will be overridden	H	M
	Objections from local councillors overridden	H	M
	Petition apparently ignored	H	M
	Apparent conflict with duty to keep highway and footpath network open	M	M
	Adverse publicity	H	M
	Further complaints and/or references to the Ombudsman	H	H
	Possible call-in of the decision	H	M
	Possible High Court challenge (the grounds are limited and)	M	H
	Possible Judicial Review (the risk here is limited because of the statutory right of appeal to the High Court)	M	H
AGAINST GATING	Local residents most affected by anti-social behaviour disappointed	H	M
	Anti-social behaviour continues	H	M / H
	Further damage to property	H	M / H
	Continued costs to the council in dealing with graffiti removal	H	M / H
	Apparent conflict with the Council's duties associated with crime and disorder	M	M
	Adverse publicity	M	M
	Further complaints and/or references to the Ombudsman	H	H
	Possible call-in of the decision	L / M	M
	Possible Judicial Review	M	H

- 5.9 The risks are finely balanced. Should the Council not make an Order the affected residents may make further complaints to the Local Government Ombudsman for misadministration or seek Judicial Review on grounds of the Council not exercising their responsibilities under Section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in the course of its decision making. The Head of Legal Services is of the view that neither challenge would be successful given the deliberations that the Council has given to the finely balanced interests.
- 5.10 Should the Council decide to make an Order the objectors would have a statutory right of appeal to the High Court. Also the Council could be challenged by way of Judicial Review for on the grounds of acting irrational. As the different interests are finely balanced, and the Council can show it has taken into account all relevant factors and disregarded irrelevant factors the latter challenge would, in the view of the Head of Legal Services be unsuccessful.

6. CONCLUSIONS

- 6.1 It is clear from all the information contained within this report that the decision to be taken in this matter is highly sensitive and finely balanced. There is no overwhelming case either for or against proceeding with the Gating Order.
- 6.2 Having regard to the results of the consultation exercise and all other available information, it is considered that:
- a) Premises adjoining/adjacent to the highway are effected by anti-social behaviour.
 - b) That the existence of the footpath is facilitating the persistent commission of anti-social behaviour.
 - c) In all the circumstances (including the consultation responses received and the length and nature of the diversion that would result if the Gating Order is made) that it is expedient to make the Order for the purposes of reducing anti-social behaviour.
- 6.3 It is recommended that the Gating Order be limited to an initial 12 month period, to allow review by the Council.

7 MEMBER CONSULTATION

- 7.1 Ward Members were sent copies of the Notice and have provided responses as referred in Section 4.

8.0 IMPACT ON CORPORATE PRIORITIES:

- 8.1 The Gating Order accords with the Council priorities to create a safer environment, tackle crime, antisocial behaviour and making people safer by

improving the physical environment but this has to be balanced against the impact it will have on users of the footpath and the local residents.

RELEVANT POLICIES

The Council is in the preliminary stages of producing a policy on Gating Orders. An initial draft has been produced for internal circulation to Council officers, prior to future consideration by Council Members and/or Cabinet.

FINANCIAL IMPLICATIONS

The cost of erecting the gates is as follows:

- £560 Retrieval of gates from store and re-installation (capital)
- Annual maintenance costs £300

In addition to the cost of erecting and maintaining the gates, a saving will be realised in respect of cleaning up the aftermath of some of the activities that have taken place along the footpath as referred to in paragraph 5.6. This has not been specifically costed as it is difficult to give a precise figure.

LEGAL IMPLICATIONS

Under S129A (3) of the Highways Act 1980, before the Council makes the gating order, it has to be satisfied that the following criteria have been met:

- (a) premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;
- (b) the existence of the highway is facilitating the persistent commission of the criminal offences or anti-social behaviour; and
- (c) it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour.

Under S129A (4) of the above Act, the circumstances referred to in (c) above include:

- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;
- (b) the likely effect of making the order on other persons in the locality; and
- (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

Regulation 5 of the 2006 Regulations provides that Council shall consider any representations as to whether or not the proposed gating order should be made.

The Council has to consider if it is in the public interest to make the gating order. It is a matter for the Council to consider what weight is attached to the representations received and to have regard to and balance against the factors and circumstances in support and in opposition of making the gating order as set out in the Report.

The Council has to balance the crime and anti-social behaviour concerns against the impact it will have on users of the highway and the local residents.

The Home Office Guidance dated March 2006 states that the gating order provision is intended to be used as a deterrent for temporary closures while the crime or anti-social behaviour is persistent. It is not to be used to permanently gate the highway. Local authorities should also be satisfied that residents and members of the public who use the relevant highway would not be inappropriately inconvenienced by its gating.

DIVERSITY & EQUALITY IMPLICATIONS

There are no direct diversity implications noted in this report.

OTHER IMPLICATIONS

The Council, by considering the proposal to make a gating order, has taken into account their legal duty imposed upon them by S.17 of the Crime and Disorder Act 1998, namely, to consider the crime and disorder implications while exercising their duties, for example, under the Highways Act 1980.

There are no diversity implications noted in this report.

BACKGROUND PAPERS

Contained in Appendices

Contact: Andy Millard

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Delegated Decision:

After consideration of this report that has been referred to me by the relevant Head of Service and following consultation with the appropriate ward councillors, I have used my delegated authority to approve the recommendations set out at paragraph 1 of this report for the reasons stated in the report.

Name: Councillor Neil Rockliffe

Position: Portfolio Holder for Highways and Transportation

Date of Decision:

Deadline for call-in:

In the event of any departure from the original proposed decision, the rationale for departing from that proposed decision must be stated.