

**TO: 1. THE MEMBERS OF THE PUBLIC RIGHTS OF WAY AND GREENS COMMITTEE**

Councillors: Jackson, Daniels, Crew, Quartley, D Brown, Main and Cole

**2. OFFICERS:**

Christine Pouncett, Public Rights of Way Officer, Wilder House

Terry Bullock, Traffic Manager, Wilder House

Kevin Hill, Solicitor, 3<sup>rd</sup> Floor, Council House

Frances Horner, Solicitor, 3<sup>rd</sup> Floor, Council House

**3. RECORDS:** Minute Book, DSO, Evelyn Pearce and spares (pink).

**PUBLIC RIGHTS OF WAY AND GREENS  
19<sup>th</sup> January 2009**

**STATEMENTS/PETITIONS**

No.	AGENDA ITEM NO.	TITLE	NAME
1.	5.	Claimed footpath from Johnsons Lane.	Roy Uter
2.	5.	Claimed footpath from Johnsons Lane.	Kevin Davis
3.	5.	Claimed footpath from Johnsons Lane.	Roy Creasey
4.	5.	Claimed footpath from Johnsons Lane.	Rebecca Ellis
5.	5.	Claimed footpath from Johnsons Lane.	Ruth Essex
6.	5.	Claimed footpath from Johnsons Lane.	Louise Guy
7.	5.	Claimed footpath from Johnsons Lane.	Andrew Smith
8.	5.	Claimed footpath from Johnsons Lane.	Mark Sands
9.	5.	Claimed footpath from Johnsons Lane.	Collette Bourn
10.	NA	Draft Gating Order Policy – <i>please note that a copy of the Draft Gating Order Policy document referred to in this statement is available on the City Council's website. Hard copies will also be circulated at the meeting.</i>	Steve Virgin and David Mock

## QUESTIONS

No.	AGENDA ITEM NO.	SUBJECT	NAME
1.	NA	Legal costs incurred by the City Council.	Peter Gould



Public Rights of Way and Greens Committee  
The Council House  
College Green  
Bristol  
BS1 5TR

Reply to Mr Roy Uter  
Telephone (0117) 9224035  
Our ref RU/NA  
Your ref  
Date 13 January 2009  
Fax (0117) 9224676  
Email roy.uter@bristol.gov.uk

Dear Sirs,

**Landowner Statement  
Application for Modification of Definitive Map at  
Whitehall Playing Field (Packers Field) and Whitehall Primary School**

As Portfolio Management Officer for Whitehall Playing Field and Whitehall Primary School I provide the following statement in relation to the application for the creation of a Public Right of Way over Whitehall Playing Field and land at Whitehall Primary School. Both of the above properties are part of the Councils CYPS (Children and Young People's Services) Portfolio.

CYPS contested the PRoW between 1988 and 2004 by erecting signs around the periphery of the playing field. The signage advised the land is private property and that there is no public right of way crossing the site.

CYPS object to the creation of a ProW over the playing field used by the City Academy and the land between the tennis and ball courts at Whitehall Primary School.

The claimed PRoW is proposed to cross land belonging to Whitehall Primary School, shown between points D-E in appendix A. CYPS would like to object to the creation of this PRoW as they consider it will threaten the well being of pupils and the security of the school as the claimed PRoW passes between the tennis court and ball court over land used by the school. This will lead to members of the public associating or mixing with pupils of the school without vetting or the proper checks required by CYPS.

The claimed ProW will permit uncontrolled access to the playing field by members of the public, which is considered to present an unnecessary risk to pupils from members of the public. In addition the users of the ProW may sustain injury when passing over or close to the game pitches.

If this PRoW is created the school and academy can apply to have the PRoW diverted or closed to protect their establishments, by way of Paragraphs 8 and 12 of Schedule 6 of the Countryside and

**Central Support Services**

Property & Local Tax Division  
B Bond  
Smeaton Road  
Bristol BS1 6EE

Carew Reynell  
Director of Central Support  
Services



2005-2006  
Promoting Racial Equality  
2006-2007  
Transforming the Delivery of  
Services Through Partnerships  
2007-2008  
Healthy Schools  
Preventing and Tackling  
Anti-social Behaviour

Website  
[www.bristol.gov.uk](http://www.bristol.gov.uk)



INVESTOR IN PEOPLE



CONSTRUCTING  
EXCELLENCE  
in the built environment

PUBLIC FORUM STATEMENT NO. 1

Rights of Way Act 2000, which inserts sections 118B and 119B into the Highways Act 1980.  
This appears appropriate as CYPS have a duty of care to the protection of pupils.

Yours Faithfully

A handwritten signature in red ink, appearing to read 'Roy Uter', with a stylized flourish at the end.

Roy Uter

## PUBLIC FORUM STATEMENT NO. 2

Dear Bristol City Council

I am writing to make a supporting statement for the public footpath application pertaining to Whitehall Playing Fields (Packers Field).

I moved to Bristol four and a half years ago, and was made aware of this route by people who I played football with on the field. Up until the field was closed off and developed by the City Academy, I was using this route to cross from Johnsons Lane to the Cycle Path, and vice-versa. I was also aware of it being marked in my Bristol A-Z.

In all the time that I followed this route, I was never once asked to leave the field or told that I was breaking any kind of rules. I can also state that I never had to force entry to the site, it was always freely open to the public.

I hope that this statement will help to support the protection of this long-held and valuable right of way for the Whitehall and Greenbank communities.

Please email me to confirm that this statement has been received and logged.

Kind regards

Kevin Davis

## PUBLIC FORUM STATEMENT NO. 3

I see that there is an application to restore the footpath right of way across Packers Field in Whitehall.

I would like to support that application. I have lived here since 1971 and am familiar with the layout and use of this field before it was stolen by BCC and given to the City Academy. I objected to that process at every step of the way, starting with the initial application and regard the effective blockage of informal public access to Packers Field as an example of gross moral turpitude on the part of BCC and the City Academy. I believe the people concerned are aware of my views.

Turning specifically to the footpath I confirm that it was well known and in use when I arrived here and that I contributed to that use as did my family. Access was always open and both the old Bristol City Council and Avon County Council made no attempt to block the footpath route. The local geography makes clear that this footpath, served by a major stone ramp from Johnsons Road at Junction 11 on the cycle track, was in place well before Packers developed the field for local use and I have personally seen the path across the field marked on old maps.

BCC cannot credibly maintain that the blockage of this path was anything other than part of their plan to give this publicly accessible area to a private, commercial organisation. See 'gross moral turpitude, above.

I look forward to reality breaking through!

Yours very sincerely,

Royce Creasey

## PUBLIC FORUM STATEMENT NO. 4

Hi Lucy

I believe that you are collating information in regarding of the footpath application being made re Packers Field in Whitehall and I wished to submit information in support.

I have used this footpath since 1994 when I first moved to the Whitehall area in Bristol & living in Woodcroft avenue I used it to get from Johnsons Lane / Whitehall to the cycle track at Greenbank & over to Easton.

This route across the land known as Packer's field, was a well known route, as a way to access both communities. It was commonly known in both the Whitehall and Greenbank areas as a way to walk between both communities & to get to Easton.

No one ever prevented me from using this route to and fro, or told me that I couldn't use the pathway, and I never had to climb over or go through any kind of barriers between the two point outlined on the map submitted.

To my knowledge the route had been used long before I ever began to use it and I never encountered any impediment to my continuing to do so before The Academy took the lease.

With kind regards

Rebecca Ellis

## PUBLIC FORUM STATEMENT NO. 5

I would like to make a statement in support of the application to recognise and protect the footpath /rights of way through Packers Field. I have been using this footpath ever since i came to live in Bristol 5 years ago and it is an important route for me to reach the cycle path from Whitehall. The route has always been openly accessible and has been used by the local community for many years as far as I know. I have never seen any signs preventing the use of this pathway and I have never had to force open obstacles for using it. This route is an important right of way for pedestrians and cyclists to get around the city more safely and I strongly support it being protected.

Yours Sincerely,

Ruth Essex

## PUBLIC FORUM STATEMENT NO. 6

I am writing in support of the application for a public footpath through Packers Field.

As you will be aware, all the records show that a public footpath was in existence right up until the moment The City Academy locked the gates on the Whitehall side.

I have been using the path myself since 1999 both to access the cycle path, Greenbank and, Packers allotment site.

The path was well known to everyone in the area and at no point was I ever turned back or faced with a locked gate.

In addition, where before I had a really pleasant five minute walk across the field I now have to walk up Whitehall Road, along Gordon Road and then run the gauntlet of the little side road which feeds into the allotment and has cars permanently parked on the pavement. It now takes a good quarter of an hour and I have to cope with pollution and noise from the incessant traffic.

In addition where I regularly bumped into people on my way across the field and got to catch up on local gossip I seldom see anyone now. The field was a central part of our community, a safe place for children, a link to Greenbank and an informal space which, without fail, threw up a friendly face whenever we walked through.

To return our footpath to us would go a long way to healing a very bruised community and allowing us finally to have our voices heard even it is a whisper rather than a shout.

Thank you for your time

Louise Guy (local resident and allotment holder)

## **PUBLIC FORUM STATEMENT NO. 7**

I understand that a recognised footpath/right of way application across Packers Field is being heard next Monday.

In support of this application I should like to add the following information from my using the path.

I have known and used this path for many years. As a teenager in the late 1970's I used it to cross from my parents house in St George across St Georges Park to visit friends in Greenbank. Later on in the 1980's/1990's whilst living in Easton I would access Packers Field via the path from Greenbank to play football, visit my parents in St George or a girlfriend who lived on Whitehall Road. During this use I have never been stopped or challenged on my right to use the path and there were no signs saying it was a restricted route. Also no gates or fences barred access during this time.

I no longer live in Bristol, but as a Bristolian born and bred, believe that this path has been a well-known and used route for local people crossing between Whitehall Road and Greenbank. It should be protected as such for the future.

Regards

Mr Andrew Smith

## PUBLIC FORUM STATEMENT NO. 8

I would like to forward my concern about the footpath that runs thru packers field.

My family have lived and worked in Bristol all my life and I am 42. One of our favourite walks would be along the cycle path then across that wonderful open free space of packers field to Whitehall or St Georges park.

In all the years that we used the adjoining path there was never any obstruction, trouble or hindrance making for a very much-needed break and a feeling of space and freedom.

I implore that that there is definitely an important need to keep the access thru Packers field and any obstruction would, in my mind, be part of the damage to well being of civilians that is perhaps not understood by people that don't walk in the community.

Please keep the path open.

Yours sincerely

Mark Sands

## PUBLIC FORUM STATEMENT NO. 9

I am writing to confirm that I have used this footpath frequently over the last 8-9 years at least. I live in Whitehall and use this as a way to get to Greenbank and Easton - to shop, visit friends and also when I had a work studio in Greenbank.

I tend to cross the field and go onto the footpath that runs parallel to the cycle track or you can go straight on to the cycle track.

Living close to the field as I do I have seen a man cross this on a daily basis I presume to go to work as he wears an Ikea top, plus people have often used it to get from Whitehall or Greenbank to get to the allotments at Packers Allotments. I have also seen school children use it from Greenbank before going to school at Whitehall primary.

I know a number of people in Whitehall in my street and the neighbouring streets who have lived in the area for more than a decade who have also used it in the past.

I hope this is helpful - I would be happy to comment further if you need more information.

Many thanks,

C Bourn

Dear Councillor

It has come to our attention that the Public Rights of Way & Greens Committee will soon adopt a formal Bristol City Council policy that involves a consultative process, which council officers will have to follow, if sufficient evidence is obtained to justify closing a Public Rights of Ways. This evidence would involve that whenever it can be shown there is an occurrence of crime, anti-social behaviour, flytipping, vermin etc and that there is a connection with the Public Right of Way remaining open, a gating order should be issued when the council is satisfied that all of its statutory duties have been met.

As local residents of Oldbury Court Road and Vassall Road (Fishponds) with a Public Right of Way that links our two roads (PROW No 163), we have been involved in discussion with council officers over the lack of a formal policy, and have strongly hoped that one would be adopted by Bristol City Council soon. Therefore, we strongly welcome the efforts of this committee towards adopting such a policy.

However, we need the committee to note that as residents, we have spent nearly 18 months in tiring discussions with Traffic Management and Bristol City Council officers about the absence of an official Bristol City Council policy and about how the such a policy, if it correctly included the new powers granted in the Clean Neighbourhoods & Environment Act 2005 (CNE Act 2005), would give power back to local communities that were able to provide evidence that they would benefit from the implementation of the Gating Order provisions. We have been less than happy with the directions these discussions have gone. So your adoption of a new policy, as a committee, should help end the confusion that has reigned.

As strong advocates of the CNE Act 2005, and as local residents who have fallen foul of the lack of clarity in terms of its implementation by Bristol City Council officers, we are very keen to see that any draft policy that involves processes to cover applications for a gating order is closely in line with the CNE Act 2005.

It is in our interests to do so, as if the CNE Act 2005 is misapplied, for example, and additional standards with regard to the burden of proof of evidence to shut a PROW are added, it becomes nigh on impossible for any group of residents, let alone [alone] ourselves, to EVER

achieve the level of proof required to see a Gating Order under the CNE Act 2005 applied.

Turning to the Minutes of the PROW Green Committee 27/10/08.

There are a number of clauses in these minutes that alarm us as they seem to be adding additional hurdles and requirements that far exceed the CNE Act 2005. For instance, nowhere in the CNE Act 2005 does it suggest a % level of support for a scheme. In the case of ourselves, there are 38 houses who would be contacted in the process of community consultation. If the Bristol City Council officer proposed 90% rule is applied, only three and 'a bit' residents could block a scheme that the other 35 would be in favour of. We have three old ladies in this block of 38 who are physically scared to open the doors to anyone canvassing as they fear attack - when we meet them in the street and they see us - they are all in favour of gating our lane due to crime immediately.

However, there [their] reluctance to respond to phone calls, open the door to callers etc could be interpreted as a 'no' to any proposed scheme. As the CNE Act 2005 does not require it - this clause should be deleted. There is also another clause about legal costs regarding the processing of a gating order. Again it is nowhere to be seen in the CNE Act 2005. There is an attempt to exclude the Police Community Trust as a possible source of part funding for any applicants/residents seeking to get a gating order adopted. There is an attempt to insert a provision that a count of the number of people using the lane be inserted in the policy - again not a legal requirement according to the CNE Act 2005 if evidence exists to show that there is crime, anti-social behaviour, fly tipping and it is linked in some way to the path remaining open.

As our PROW No 163 is likely to become the test case for your committee's new policy during the latter part of 2009, all we are seeking is a little fairness and honesty and that the council policy that is adopted is AS CLOSE AS POSSIBLE to national legislation (the CNE Act 2005).

To help the Committee in its deliberation, we have read and marked up the suggested passages in the committee minutes from 27/10/08 that we believe do not comply with the act, or, that are vague, unclear, or could be used to raise the threshold to achieve a gating order so high that it will be achieved perhaps once a lifetime.

We have done so as we see a number of points that go way beyond the powers intended in the Clean Neighbourhood & Environment Act 2005.

So, in the spirit of goodwill, we have tried to develop a form of words for the committee to consider that retain all of the original Bristol City Council thinking AND IS also in line with the CNE Act 2005

The guiding principals have been

- 1) Trying to find a form of words that is grammatically sharper that conveyed the original meaning but eliminated any ambiguities and moved the policy closer to the CNE Act 2005
- 2) Trying not to make any wholesale changes that would not be unacceptable to anyone
- 3) Tying to think of the wider picture and longer term benefit of the council and not about our own particular interest

There are two attached documents ('Amended' is marked with our proposed suggestions as to how the Minutes could better reflect the CNE Act 2005) ('Extract' is what your Minutes from the 27/10/08 actually say) please free to print out both documents and consider the proposals as a formal committee.

[http://www.opsi.gov.uk/acts/acts2005/ukpga\\_20050016\\_en\\_2#pt1-l1g2](http://www.opsi.gov.uk/acts/acts2005/ukpga_20050016_en_2#pt1-l1g2)

[http://www.opsi.gov.uk/acts/acts2005/ukpga\\_20050016\\_en\\_2#pt1-l1g2](http://www.opsi.gov.uk/acts/acts2005/ukpga_20050016_en_2#pt1-l1g2)

(this link takes you straight to an official copy of the text and wording of the Clean Neighbourhood & Environment Act 2005, the spirit of which we believe the council hopes to include in the forthcoming draft policy)

Attached is also a copy of the BCC Draft Policy Gating

Orders January 08 - so you can cross-reference our points against this document and see just how wildly this Minutes from the 27/10/08 differ from the draft original policy.

Regards

Steve Virgin and David Mock

PS: We have been in consultation over this direct approach to you with our councillors and they suggested we ask your permission to make a formal statement to the committee next Monday.

Extract from the PRow & Greens Committee Meeting of 27/10/08

<http://www.bristol.gov.uk/item/committeecontent/?ref=wa&code=wa005&year=2009&month=01&day=19&hour=14&minute=00>

PROWG

19.10/08 DRAFT GATING ORDER POLICY

The Committee considered a joint report of the Director of City Development and Director of Neighbourhoods (Agenda Item No. 6) advising of the draft Gating Order Policy, Procedure and Practice document and requesting views and suggestions on its content, prior to final approval by the Executive Member for Sustainable Development.

The representative of the Director of City Development introduced the report. Below is a summary of the salient points;

- The City Council was ordinarily obliged to take action in the event that a Right of Way or Highway was blocked. However, the proposed Gating Policy would give the City Council powers to close a route if **crime, fear of crime and anti-social behaviour** was sufficiently problematic, and clearly attributable to the relevant route.
- The draft Gating Policy **is** intended to help overcome crime and anti-social behaviour, but **should** only be used **after alternative solutions** such as CCTV and lighting, have been **either tried, or reviewed, and subsequently dismissed**.
- The City Council **should** closely follow a number of set procedures, including statutory consultations, in order to restrict access to a route. The emergency services **should be consulted on any** proposed gating scheme.
- Gated routes **should** be reviewed in **line with national legislation**, so that if the anti-social behaviour ceased, **an option for the route to be re-opened** can be considered if **beneficial**.
- Some footpaths **are less frequently** used by members of the public, so it **has been** more straightforward to gate these locations. When a footpath **is** gated, the public's right of way was removed.
- **At least half** the cost of installing gating **should** be primarily met by the applicants. It **is** hoped that residents **will have** more ownership of a scheme if they **have paid in part** for it themselves. Funds may be available from Avon and Somerset Constabulary to support gating **in some cases**.
- **The level of responsibility** for the cost of maintaining the gates would be decided **on a case-by-case basis**, as the City Council is reluctant to **automatically** bear the cost,
- A 'Step-by-Step Guide to Gating Problem Alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005' had been produced by the Government and could be found at the following link; [www.respect.gov.uk](http://www.respect.gov.uk).

In response to questions asked by Members, the representative of the Director of City Development informed the Committee that;

- Prior to gating a route, the City Council would need to consider the availability and convenience of alternative routes. **Although** the number of people that use a route is a **helpful** measure, it **must be balanced against the levels of crime on the route itself, in making any final decision on gating policy**
- Whilst there are options available for gates to only be closed at night time, this **should be assessed on a case-by-case basis for suitability** need to be facilitated by a willing volunteer or funded by the City Council.
- There were a number of potential implications if the City Council failed to open/close a gate at the agreed times. For example, someone could get shut in, by accident, or houses could get burgled.
- The potential for using timed locks, that automatically locked/unlocked gates at a specified time, would be looked into.
- Whilst the amount of gating scheme funding that was available from Avon & Somerset Constabulary was **finite**, some applications **have** been successful.
- The relevant Executive Member would decide whether any gating scheme funding would be provided by the City Council. Should this be approved, the funds would be administered by a suitable department, such as Safer Bristol.
- In some circumstances, local residents may wish to conduct fund raising to pay for a gating scheme. It **is** possible that other departments of the City Council, such as Parks, may be willing to make a contribution.
- The responsibility for gathering evidence to support a gating application would lie with the applicant **but advise and support from council officers can be sought**
- If utilities equipment needed to be relocated in order to install gates, the cost would be significantly higher.
- When local residents were consulted regarding the proposed gating of a route, this would be facilitated by Avon & Somerset Constabulary, or Safer Bristol. Relevant stakeholders, such as the Ramblers' Association and ward Members, would be included.
- It was unlikely that a proposed gating scheme would be supported by 100% of local residents, but the scheme could proceed if **90%** were in favour.

**UNACCEPTABLE – an overwhelming majority – at least three out of four – some phrase of this nature**

- Whilst some gating schemes had already been installed in the City, they had been on privately owned land.

- **The nature of the Policy meant that problems with anti-social behaviour would be dealt with on a reactive, rather than proactive basis.**

- **The amendments to the draft Policy that had been suggested by the Public Rights of Way Liaison Group had been noted.**

RESOLVED - that the report be noted

<http://www.bristol.gov.uk/item/committeecontent/?ref=wa&code=wa005&year=2009&month=01&day=19&hour=14&minute=00>

PROWG

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The representative of the Director of City Development introduced the report. Below is a summary of the salient points;

- The City Council was ordinarily obliged to take action in the event that a Right of Way or Highway was blocked. However, the proposed Gating Policy would give the City Council powers to close a route if anti-social behaviour was sufficiently problematic, and clearly attributable to the relevant route.
- The draft Gating Policy was intended to help overcome crime and anti-social behaviour, but would only be used in extreme cases. Alternatives, such as CCTV and lighting, should be tried in the first instance.
- The City Council would closely follow a number of set procedures, including statutory consultations, in order to restrict access to a route. The emergency services may object to a proposed gating scheme.
- Gated routes would be reviewed, probably annually, so that if the anti-social behaviour ceased, the route would be re-opened.
- Some footpaths were not generally used by members of the public, so it was more straightforward to gate these locations. When a footpath was gated, the public's right of way was removed.
- The cost of installing gating, including the legal fees, would be primarily met by the applicants. It was hoped that residents would have more ownership of a scheme if they had paid for it themselves. Funds for those with limited means may be available from Avon and Somerset Constabulary.
- It had not yet been established who would be responsible for the cost of maintaining the gates, but the City Council would be reluctant to bear the cost, particularly as the gates may be subject to vandalism.
- A 'Step-by-Step Guide to Gating Problem Alleys: Section 2 of the Clean Neighbourhoods and Environment Act 2005' had been produced by the Government and could be found at the following link; [www.respect.gov.uk](http://www.respect.gov.uk).

- Any comments on the policy should be sent to the report author, by the end 30th November 2008.

In response to questions asked by Members, the representative of the Director of City Development informed the Committee that;

- Prior to gating a route, the City Council would need to consider the availability and convenience of alternative routes. The number of people that used a route, multiplied by the distance travelled, was a useful measure.
- Whilst it was possible for gates to only be closed at night time, this would need to be facilitated by a willing volunteer or funded by the City Council.
- There were a number of potential implications if the City Council failed to open/close a gate at the agreed times. For example, someone could get shut in accidentally or houses could get burgled.
- The potential for using timed locks, that automatically locked/unlocked gates at a specified time, would be looked into.
- Whilst the amount of gating scheme funding that was available from Avon & Somerset Constabulary was very limited, some applications had been successful.
- The relevant Executive Member would decide whether any gating scheme funding would be provided by the City Council. Should this be approved, the funds would be administered by a suitable department, such as Safer Bristol.
- In some circumstances, local residents may wish to conduct fund raising to pay for a gating scheme. It was possible that other departments of the City Council, such as Parks, may be willing to make a contribution.
- The responsibility for gathering evidence to support a gating application would lie with the applicant.
- If utilities equipment needed to be relocated in order to install gates, the cost would be significantly higher.
- When local residents were consulted regarding the proposed gating of a route, this would be facilitated by Avon & Somerset Constabulary, or Safer Bristol. Relevant stakeholders, such as the Ramblers' Association and ward Members, would be included.
- It was unlikely that a proposed gating scheme would be supported by 100% of local residents, but the scheme could proceed if 90% were in favour.
- Whilst some gating schemes had already been installed in the City, they had been on privately owned land.

- **The nature of the Policy meant that problems with anti-social behaviour would be dealt with on a reactive, rather than proactive basis.**
- **The amendments to the draft Policy that had been suggested by the Public Rights of Way Liaison Group had been noted.**

RESOLVED - that the report be noted.

**GATING ORDER POLICY,  
PROCEDURE & PRACTICE DOCUMENT**

**SECTIONS 129A to 129G OF THE HIGHWAYS ACT 1980  
(Inserted by the Clean Neighbourhoods  
and Environment Act 2005)**

January 2008

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## **A INTERPRETATION**

1. This policy shall apply to highways referred to in the legislation as 'relevant highways', i.e. those footpaths, bridleways or restricted byways recorded on the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense. It may also include 'Gulliksen' estate paths over which the public has access [Gulliksen v Pembrokeshire County Council (2002)], but does not include motorways, trunk roads or classified roads.
2. Although a Gating Order will prevent or limit the use of a highway, it does not remove the highway rights associated with it. An order may, in appropriate circumstances, limit the use of the highway to certain times of the day and orders may be varied or revoked should the crime or anti-social behaviour be reduced.
3. A Gating Order may authorize the installation, operation and maintenance of a barrier to enforce the restriction or closure. A council may install, operate and maintain any authorized barrier.
4. **This document sets out Bristol City Council's policy and procedure for dealing with requests for Gating Orders and the implementation of any subsequent works.**

## **B INTRODUCTION**

5. **Powers to divert or extinguish certain public highways for the purposes of crime prevention, i.e. Special Diversion or Extinguishment Orders under Sections 118B & 119B of the Highways Act 1980, were first introduced by the Countryside and Rights of Way Act 2000. The powers could only be exercised in areas designated for the purposes of crime prevention by the Secretary of State, or on school premises, and were viewed as a measure of last resort as any resulting diversion or extinguishment of a highway was irrevocable.**
6. **On the 1<sup>st</sup> April 2006 the Highways Act 1980 (Gating Orders) (England) Regulations 2006 came into force, which provide additional powers for the Highway Authority to make (and revoke) gating orders in order to prevent crime or anti-social behaviour on or adjacent to the highway. Unlike the 'Special' Orders referred to above, the highway does not need to be in an area designated by the Secretary of State. Also, public rights are effectively 'restricted' and not 'extinguished' by a gating order and the authority remains responsible for the public highway. These new powers were introduced through the Clean Neighbourhoods and Environment Act 2005, which inserted new Sections 129A-129G into the Highways Act.**
7. **The Clean Neighbourhoods and Environment Act also had the effect of amending the Crime & Disorder Act to require relevant authorities, when implementing crime and disorder reduction strategies, to include anti-social and other behaviour adversely affecting the local environment. This duty is without prejudice to any other obligation imposed upon the Council and does not alter the requirement to**

**carry out any other statutory duty. Therefore a balance will need to be struck between the Highway Authority's duty to assert and protect the rights of the public to the use and enjoyment of highways and other conflicting policies, strategies and duties when considering proposals for gating orders.**

8. Guidance relating to the making of Gating Orders produced by the Home Office specifies that such orders, whilst not a measure of last resort, should be seen as a temporary measure to be used as a deterrent. Before making an Order the Highway Authority must be satisfied that premises next to the highway are affected by persistent crime or anti-social behaviour that is facilitated by the existence of the highway. It is recommended that councils review each Order on an annual basis, to assess the impact it is having on the community and to gauge whether restricted access is causing excessive inconvenience. The guidance makes it clear that to revoke or vary an Order, it is necessary to follow the same procedure required for making the initial order.
9. If the intention is to permanently gate the highway, a Special Extinguishment Order should be used (see Legal Options at Annex 1). Alternatively, if the conditions specific to the highway warrant quick action, a highway can be temporarily gated under the Gating Order regulations pending the processing of a Section 118B order. However, the end result of closing a public highway is that it is no longer maintained at the public expense. Therefore, permanent closure may lead to the land becoming a derelict, unmaintained and unlit area, attractive for flytipping and the criminal activities which closure was intended to curtail.

#### *Routes not shown on the Highway Records*

10. In common with many Authorities throughout the country, there are a significant number of routes that are used by the public, but are not shown in the Council's records. This does not mean that highway rights do not exist, simply that they are unrecorded and that the legal records may need to be amended.
11. In general, if a way runs between two highways, is used as a through route and has existed as such for a number of years (usually at least 20 years), then in the absence of any evidence to the contrary, there may be a reasonable presumption that highway rights exist or have been established.
12. **Public highway rights may be established either under the provisions of the Highways Act 1980, or at Common Law. In either instance the evidential test is one of 'balance of probability' and in making a decision as to whether or not public highway rights exist, the Council must act in a 'quasi-judicial' manner. This means that the Council must act in the manner of a court of law and make its decision based upon evidential fact. Issues such as desirability, privacy and security, although important, cannot lawfully be taken into account.**

13. A request for a Gating Order in respect of an unrecorded route will not be progressed where there is any dispute over the existence, or otherwise, of public highway rights, with the exception of 'Gulliksen' paths (see paragraph 1 above).

*The Highway Authority's Statutory Duties and Powers*

14. Other circumstances under which gates or structures can be installed on public highways are strictly controlled by the provisions of the Highways Act 1980 and, even if lawfully installed, such gates or structures cannot be locked or used to prevent free passage by any legitimate user. The criteria for the authorisation of gates or structures are clear and unambiguous: the route concerned must be a footpath or bridleway; the land concerned must be in use for agricultural purposes and the gates or structures must be required for the purposes of controlling the ingress or egress of animals. Therefore, a request for a Gating Order will not satisfy these criteria.
15. Gates or structures may also be installed for the safety of persons using the route, but similarly, their installation must not prevent actual use of the route by any member of the public.
16. The Council cannot authorise the installation of any gate, barrier or other structure in, on or across any public highway, under any other circumstances. Before any such gate or structure could be lawfully installed, it would first be necessary to legally extinguish the public highway, which would require a legal order.

*Planning Permission*

17. Formal planning permission may be required for the erection of such gates. In certain instances permitted development rights may apply pursuant to the Town & Country Planning (General Permitted Development) Order 1995. It would depend on such factors as the situation and the size of the gates. No formal planning permission is required, for instance, in respect of the erection, construction, maintenance, improvement or alteration of a gate adjacent to a highway used by vehicles provided the height of the gate does not exceed 1 metre (Sch.2, Part 2 Class A of the Order).
18. Gates are not listed in the examples given at Schedule 2, Part 12(b) Class

A of the Order, which includes lamp standards and control barriers, and advice should be sought as to whether they would be considered as similar structures or works required in connection with the operation of the public service administered by the Council.

19. Schedule 2, Part 2 – Minor Operations – Class A of the GPDO does provide for the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. However, development is not permitted by Class A if: *“the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed one metre above ground level.”* Under Section 3(6) of the GPDO, planning permission is not granted if the gates will create an obstruction to the view of those using any route used by vehicular traffic, so as to be likely to cause danger to such persons.

**The criteria under which Gating Orders will be considered**

20. There must be clear evidence that the premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour.
21. There must be clear evidence that the existence of the highway has directly resulted in the persistent commission of criminal or anti-social behaviour.
22. The likely effectiveness of an order to gate the path to reduce crime and anti-social behaviour should be weighed against the likely effects of making the order on:
  - The occupiers of premises adjoining or adjacent to the highway;
  - members of the public who use the highway;
  - the emergency services;
  - statutory undertakers.

In respect of health and mobility implications, Home Office Guidance recommends that a Health Impact Assessment is carried out if there is any doubt over the availability of alternative routes and/or the proposed times the gates will be closed. Also that special consideration should be given to: (a) ensuring that alternative routes are free from obstructions and are suitably paved; and (b) the height of locks and ease of opening when installing gates. It is important that there are sufficient grounds for an order to be made, as individuals may challenge it in the High Court under Section 129D of the Highways Act 1980 if the conditions for making the order have not been complied with.

23. Alternative means of preventing crime and anti-social behaviour should be considered and weighed against the option of closing the path before it is decided to proceed with a gating order; e.g. the installation of security lighting, redeployable or covert CCTV, or working with Neighbourhood

Policing teams and detached Youth Work teams to focus on the area over a defined period of time.

24. In order for an application to be successful, documentary records are required such as Police incident reports detailing the frequency of occurrence and severity of crime etc. that is facilitated by the existence of the highway.

## **C APPLICATIONS FOR GATING ORDERS**

### **Preliminary assessment**

25. Requests for Gating Orders should be made to the Highway Authority, who will make an initial assessment as to whether the proposal affects a 'relevant' highway (see p. 1, para. 1 and p.2, para. 13 of this policy), and if so will undertake a pedestrian count and investigate the availability of suitable alternative routes. If a relevant highway is affected, the Highway Authority will invite an application via a 'Gating Order Application Form' (Annex 2) and request the evidence of crime or anti-social behaviour from the Applicant and/or Land Manager in respect of land in private ownership; or the delegated Council officer in respect of Council-owned land (see Section D below, page 8, regarding the criteria used to prioritise applications). The applicant, land manager or delegated officer will be responsible for initiating and coordinating the crime intervention options and consideration of alternative measures for dealing with the issues at hand. The outcomes of intervention will be reported back to the Highway Authority (i.e. Traffic Management officer, Planning Transport & Sustainable Development) who will review the evidence to ensure it satisfies the statutory tests and recommend whether or not to proceed to make and publish a Draft Gating Order. If objections are received from the emergency services that are not subsequently withdrawn, the Highway Authority will refer the matter to the Executive Member (Access and Environment) for a decision to hold a Public Inquiry.
26. The applicant and/or land manager or delegated Council officer are responsible for ensuring that the necessary funding is identified to cover the legal costs of processing the order and the practical works required to implement any Gating Order made.

### **Informal consultation**

27. In respect of Gating Orders, the legislation does not specify that informal consultation of the general public is required. However, Home Office guidelines recommend that Councils consult those organisations likely to take an interest in any proposal to gate a highway, such as the Bristol Physical Access Chain and local representatives of the Ramblers'

Association, Living Streets and the Open Spaces Society (see DoE Circular 2/93). In addition, Councils should provide a justification and evidence for an order before it is made through a Notice in the local newspaper, giving details of where members of the public can find more information if necessary. Consequently the Council's usual practice of informal consultation on Public Path Orders should be adopted for proposed gating orders at an early stage, to gauge responses from local user groups, affected residents, local Ward Members, emergency services and utility companies. This will prevent unnecessary and costly procedures going ahead if the highway closure is likely to be unpopular, or requires the diversion of utility service equipment.

### **Initial Proposal / Application**

28. The Highway Authority will undertake an assessment of the highway proposed for closure or restriction, to ascertain whether a Gating Order is the most appropriate legislation to use (see Annex 1) before issuing an application form.
29. Upon receipt of a Gating Order Application, the Highway Authority will instruct the applicant and/or land manager or delegated Council officer to undertake the crime data assessment and crime intervention options and compile a Report on the outcomes. The Report will advise and enable the Highway Authority to decide whether or not to proceed to make and publish a Draft Gating Order.

### **Preparing a Report on Crime Intervention results**

30. The Applicant's Report shall include the outcomes of the following informal consultations, where appropriate:

#### *Consultation with Local Residents and Land Owners*

31. Informal consultations shall be undertaken with all residents/owners of properties and businesses within and immediately adjacent to a highway subject to a request for a Gating Order. The responses received shall be used to ascertain whether there is a genuine need for the scheme and to gauge local support. When Gating Order consultation documents are sent out, they should include a draft copy of the proposed gating order.

#### *Consents*

32. During the informal consultation period, all property owners and occupiers

who are affected by the proposals contained within a Gating Order, will be requested to complete an Agreement Form (see Annex 3) in respect of the following:

- The proposed Gating Order;
- **to agree to any changes to the collection of refuse that may be required by the proposed gating of the highway.**

- 33. Although it is recognised that a 100% response is not always possible, consideration should be given to abandoning the proposed order if there has not been agreement in writing received from the large majority of interested parties to the proposal, or if a substantial number of objections are received during the informal consultation stage.**

#### **Protection of Private Rights**

34. Gating Order procedures are wholly concerned with restricting public rights over highways and will not affect existing private rights of residents, businesses, or other relevant parties (such as utility companies) having access over those highways.

#### **Consultation with Utility Companies**

35. The Utility Companies (gas, water, electricity etc.) must be consulted to ascertain at an early stage which of these companies, if any, have their apparatus on or under any highway that may be subject to a gating proposal. The Utility Companies will require the retention of their rights of unhindered access, or may require the relocation of their apparatus, if it appears they will be affected by the proposals.
36. If the Utility Companies require unhindered access to their apparatus, they may not consent to the installation of any structure across the route. The Council may not therefore be in a position to proceed with any gating order proposals, as the relocation of their apparatus may cost a considerable sum of money (potentially thousands of pounds) and should be avoided. If apparatus is affected by the proposal and a decision is made to proceed with a Gating Order, the applicant and/or land manager or Council department shall fund such relocation works.

#### **Consultation with Emergency Services**

37. Consultations shall be undertaken with all of the Emergency Services (Fire & Rescue, Police and Ambulance) and other Authorities for the area (see paragraph 52 below), as they may potentially require access along a highway subject to a gating order proposal. It must be born in mind that should any one of these services object to a Gating Order, then in the absence of a satisfactory resolution of the objection, a public inquiry will

have to be held. Therefore it is important at the informal consultation stage to establish reasons for possible objections (e.g. nearby emergency fire exit opening into the highway) and the Applicant and/or Managing Agent or delegated Council officer should attempt to reach a compromise to the satisfaction of both parties. For example, it may be that the design of the gate at the location under review can be altered to accommodate relevant safety requirements; or it may be necessary to alter the location of the gate itself.

#### Consultation with Safer Bristol Partnership

38. If the Safer Bristol Partnership has not initiated the gating order application, they (and/or the Council land managing department, if Council owned land) shall be consulted on any Gating Order proposals and requested to:
- Assist with providing relevant crime figures and statistics relating to the highway;
  - advise how, and in what way, the proposal is consistent with the Crime and Disorder Strategy;
  - advise whether other Crime Reduction Initiatives are being undertaken in the immediate area (e.g. CCTV, targeted patrols etc).

#### Consultation with Refuse Collection / Cleansing Department

39. The Council's Cleansing Services should be consulted to establish whether any changes or special provisions will be required for refuse collection. If they are required, the Applicant and/or Managing Agent or relevant Council department must fund these, unless already catered for in the Cleansing Services budget.

#### Consultation with other Interested Parties

40. Those organisations specified within the legislation (listed in paragraph 52 below) shall also be informally consulted at this stage. This will include consultation with local representatives of such organizations and anyone expressing a desire to be included in the consultation process.

#### Consultation with other Council Departments

41. Consultation shall be carried out with relevant officers within the local authority, such as the Property Portfolio officer, Finance and Legal officers etc., and their views noted in the report to prevent any conflicts of interest.
42. The Council's Development Control and Transport Planning teams should

be consulted, to identify any planning, highway or local transport implications, including Safer Routes to School schemes and the availability of alternative access routes (see paragraphs 17-19 and 22 of this Policy).

#### Assessment of Site Works required

43. An assessment of the physical works required to implement the Gating Order shall be undertaken and available options discussed within the Report. This may involve liaising with gate manufacturers and locksmiths to determine the necessary gate and lock specification or installation requirements.

#### Estimated Costs

44. The Report shall include a budget forecast for the implementation of the proposed scheme and include costings for:
  - Legal process, including advertising costs and possible Public Inquiry;
  - Planning Consents (if applicable);
  - Moving of Utility Company apparatus (if applicable);
  - Physical Works on site, including all materials needed;
  - Maintenance of permanent notices on site following confirmation of Order and whilst order is in force, plus costs of opening and closing gates if time limited;
  - Any other costs identified during the Crime Intervention study.

#### **Review of the Evidence**

45. Following receipt of the Report, the Highway Authority will review the evidence contained in the Report and base its recommendation on whether the appropriate legislative criteria has been satisfied, or not, as the case may be.

#### **Decision made whether to Make and Publish a Draft Gating Order**

46. Subject to the Application satisfying the statutory tests under Section 129A (3) & (4) of the Highways Act 1980, the Highway Authority's recommendation to the Director of PTSD to make and publish a Draft Gating Order must also specify whether the applicant and/or land manager or relevant Council Department has agreed to meet all costs in respect of the legal process and the works required to implement the scheme.
47. If no objections are received (or objections are made by interested parties – see Paragraphs 31-40 above), the

application will be referred back to the Director of PTSD who will decide whether to make the final Order or to hold a discretionary Public Inquiry. N.B. If objections are received from the Emergency Services, the application will be referred to the Executive Member (Access and Environment), who must decide to hold a mandatory Public Inquiry.

#### D PRIORITISATION OF APPLICATIONS

48. **The priority given to each Application will be based on the levels of reported crime and official crime statistics set out in the Report to the Highway Authority. Crime data for the highway in question must therefore be sought from the Crime Analyst or Police Crime Prevention Officer.**
49. Priority will be given to Gating Order proposals that prove demonstrable levels of the type of offences listed under Category 1 and 2 below, although in the absence of such evidence, offences in Category 3 below may be considered, but will be given a lower priority.

##### Category 1

**Robbery, Domestic Burglary and Vehicle Crime.**

##### Category 2

Arson, real fear of assault /robbery and drug dealing/taking.

##### Category 3

**Noise and anti-social behaviour, fly tipping of rubbish, dog fouling and graffiti.**

#### E IMPLEMENTATION OF GATING ORDERS

##### LEGAL PROCESS

50. Before making a Gating Order, there must be a formal consultation period of not less than 28 days, where the council shall publish on its website and in the local newspaper, a Notice:
- Identifying the highway to be restricted;
  - Setting out the effect of the proposed Gating Order;
  - Identifying any alternative routes available to pedestrian/vehicular traffic;
  - Setting out a draft of the proposed Order;
  - Inviting written representations or objections to the Notice.

51. A copy of the Notice and draft Order map must also be displayed on or adjacent to the highway to be restricted for a period of at least 28 days, in order for members of the public using the highway to be made aware of the effect of the proposed Gating Order, and inviting representations (in writing) as to whether or not an order should be made to the address indicated on the notice. The draft Gating Order must contain:

- A statement that the conditions set out in section 129A(3) of the Act have been met;
- the dates and times that public use of the highway will be restricted;
- details of any persons excluded from the effects of the restriction;
- details of alternative routes;
- contact details of person responsible for maintaining and operating any barrier authorized by the Order.

52. Copies of the Notice and the draft Gating Order must be sent to the following people (as listed under Regulation 4):

- All the occupiers of premises adjacent to or adjoining the relevant highway;
- every council through whose area the relevant highway passes;
- every chief officer of a police force through whose police area the relevant highway passes;
- every fire and rescue authority through whose area the relevant highway passes;
- every NHS trust or NHS foundation trust through whose area the relevant highway passes;
- any local access forum through whose area the relevant highway passes;
- any statutory undertaker who maintains services in the locality in which the relevant highway is situated;
- any provider of gas, electricity or water services in the locality in which the relevant highway is situated;
- any communications provider in the locality in which the relevant highway is situated;
- any persons who the council reasonably considers might have an interest in the proposed gating order;
- any person who requests a copy of the notice; and
- any person who has asked to be notified of any proposed gating orders.

- 53. Local Ward Members should also be included at this stage, as they are likely to have been involved during the informal consultation period.**

Objections to draft Gating Order

54. If no objections are received within the statutory timescales, the draft Gating Order will be presented to the Director of Planning, Transport and Sustainable Development (PTSD) for authority to make the Order.
55. Where interested parties raise objections that are not withdrawn, a decision can be made by the Director of PTSD whether or not to make the Order. In order to make that decision, the Director must be satisfied that the interests of the local community outweigh the rights of users of the highway and if so, the Order can be made. Whilst it is important to consider all representations, the Council has a discretion as to whether or not to hold a Public Inquiry, unless objections are lodged by the emergency services.
56. Where an objection is raised by certain authorities such as the Police, Fire & Rescue Service, or the Ambulance Service, a public inquiry must automatically be held. Consequently the disputed Order will be referred to the Executive Member (Access and Environment), who must decide to hold a Public Inquiry.
57. Contrary to other Public Path Order procedures, the Council itself is required to appoint an Inspector from the Planning Inspectorate to hold a public inquiry into a proposed gating order and not the Secretary of State. The Council must publicise the public inquiry and write to all those who made representations on the draft Order. The Applicant for the gating order and/or the land manager or the relevant Council Department will meet the legal costs of holding the inquiry.
58. A Gating Order cannot be made until either a period of 28 days has lapsed from the date of the advertising of the Notice, or any public inquiry held in accordance with the legislation has been concluded.

Displaying the Gating Order

59. Once a Gating Order has been made, a copy must be displayed at Council offices and advertised on the Council's website for a period of 12 months from the date of making the Order. Copies should also be sent to those specified in paragraph 52 of this Policy. A register of all Gating Orders must be kept at Council offices and made available for public inspection during normal business hours.
60. A copy of the Gating Order must also be situated at each end of the highway in a prominent position for as long as the order is in force and the

public's right to use the highway is suspended. It is the Council's responsibility to ensure that it remains visible and legible.

#### Installation of Gates

61. Upon completion of the legal order process, all physical works and materials shall be commissioned and undertaken by the applicant and/or land manager or delegated Council officer in line with the manufacturer's recommendations and the Council's Procurement Policy. Funding may be available from other bodies involved with the implementation of the Council's duties under the Crime and Disorder Act, which will reduce the overall costs of the scheme.

#### Issue of Personal Identification Numbers (PIN)

62. If a decision is made that the gates are to be operated by means of a coded keypad lock, which will require a Personal Identification Number (PIN), all parties with a legitimate need for access shall be issued with a PIN. Applicants for a PIN should provide proof of their identity and address. It is recommended that codes are changed periodically, or at other times deemed necessary for security reasons and all legitimate parties informed in advance of the date of the change and the new PIN.

#### Maintenance and Management Issues

63. As Gating Orders do not extinguish highway rights the Council will, in addition to the maintenance of the highway, become responsible for the gates and the issuing of PIN's etc., from the date that the gates become operational. This work will be undertaken by  
  
the relevant Council officer and any repairs, maintenance and cleansing of the highway will be as and when required and to comply with the Council's legal obligations.

#### **Conditional Gating Orders**

64. **If the Gating Order is conditional, and the highway is closed during certain times and days (e.g. only at night etc.), the person responsible for the locking and unlocking of the gates should be specified in the Order. Regulation 8(e) of the Highways Act 1980 (Gating Orders) (England) Regulations 2006 (SI 2006, No 537) states that:**

***“[A gating order must contain] contact details of the person who is responsible for maintaining and operating any barrier whose installation is authorised by the order”***. Under this regulation, it is not necessary for the ‘person’ in question to be a named individual. Instead, this can be any relevant position or role within the Council, such as the Anti-Social Behaviour Team Manager, or Highways Manager. However, on a day-to-day basis the responsibility is likely to fall to a delegated officer to ensure continuity of the Order. Consequently, the Order will not need to be changed every time a new person fills the role.

- 65. Regulation 8(b) states that a Conditional Gating Order must also contain the dates and times when the public right of way will be restricted. Should the gates not be opened at the specified times, the authority would be guilty of committing an offence of unlawful obstruction of the highway and could face prosecution in a court of law. Similarly, should the gates not be closed at the specified time and a member of the public was to become locked in or subject to assault or robbery, or an adjacent property is burgled, then the Council could have a civil liability for compensation.**
- 66. Responsibility for the opening and closing of the gates cannot therefore be handed to adjacent residents and must be managed correctly by the Council.**
- 67. It is important to note that there is presently no Council department with resources in place to take on the responsibility of, or with officers employed to carry out, the opening and closing of such gates. Consequently, should the authority decide to make Conditional Gating Orders, specific resources will have to be identified for this purpose.**

## **F INTERNAL FUNDING**

### *Staffing Implications*

- 68. Officer time (e.g. officers from Highways, Legal Services and the land-managing Department or Safer Bristol) will be required to process Gating Order applications and to oversee the implementation of schemes through to completion. If the Council owns the land, an officer from the relevant Department will be delegated to co-ordinate the collation of crime intervention and other options. In respect of private land, an officer may be delegated from Safer Bristol or relevant Council Department to provide support to the applicant and/or land manager.**
- 69. In respect of Conditional Gating Orders, consideration should be given to creating a suitable post and ancillary staff, in perpetuity, to oversee and implement the duties of locking and unlocking**

gates made under such Orders. Alternatively, these duties could be incorporated, in perpetuity, with any existing staff already tasked with similar duties. Should this duty be contracted out to a private security company, the management costs will be subject to the Council's procurement rules.

70. If resources are not secured for these associated duties, the Council will be reluctant to implement Conditional Gating Orders for the reasons set out in paragraph 65 of this Policy. The associated duties will have to be resourced if the Council is to issue conditional gating orders.

#### Budgetary Implications

71. All costs relating to the implementation of Gating Orders (e.g. the legal costs of processing orders as well as the cost of any physical works) shall be funded by the applicant and/or the land manager or relevant Council land holding Department, in addition to any outside funding which may be available.

#### Compensation

72. There is no provision included in the Gating Order regulations for the payment of compensation to any party who suffers a loss or damage, e.g. the loss of a rear access to property, as a result of the Order.

#### Statutory Undertakers

73. **The implementation of a Gating Order may require the relocation of apparatus owned by utility companies (gas, water, electric, telephone etc). Costs relating to the relocation of such equipment are often very expensive and should be avoided if at all possible. Notwithstanding this, all statutory undertakers will retain their right of access to closed highways.**
74. **In the unlikely event of such expenditure being required, it will be funded by the applicant and/or land manager or from the relevant Council Departmental budget.**

#### Maintenance

75. Following the implementation of a Gating Order, the Council will retain responsibility for maintenance of the highway, gates and notices. This will be funded from the relevant Departmental budget, or the Council's Highway Maintenance budget, as agreed by department heads.

#### Review of Gating Orders

76. Home Office guidance recommends that Councils review each Gating Order annually to evaluate whether it is acting as a useful crime or anti-social behaviour measure and to assess the impact it is having on the community. Local residents should be consulted and user surveys held to gauge whether the restricted access is causing excessive inconvenience.

#### G TIMESCALES

77. Dependent on circumstances, it is estimated that a Gating Order should take no more than 6 to 8 months to implement following receipt of a formal Application. However there are factors which may impact on the timetable for making Orders outside the control of the Council, such as:

- **The completion and return of Agreement forms by residents/owners;**
- **objections to a Gating Order leading to a Public Inquiry.**

78. The following matters may also effect completion dates:

- Delay experienced in obtaining crime data and reporting on the outcomes of intervention;
- the scheduling and deadlines required to report the recommendations of the Highway Authority to the Director of PTSD or to the Executive Member (Access and Environment);
- the granting of planning consent (if applicable).

#### H SUMMARY OF GATING ORDER PROCESS

79. See Procedure Flowchart at Annex 4.

## LEGAL ORDER OPTIONS

### OPTION ONE – Routes that do not have highway status

In general terms, if a route, path, or way, runs between two other highways, is used as a through route and has existed for a number of years (usually at least 20 years), there may be a reasonable presumption that highway rights exist. It is important that this matter is given consideration on a case-by-case basis, as the installation of any gates or barriers on a public highway, may constitute a criminal offence unless lawful authority can be demonstrated.

Notwithstanding the above, there will be cul-de-sac alleys that do nothing more than serve the rear of properties and are unlikely to have acquired highway rights over them, but will probably be subject to private rights of access.

Subject to any private rights of access being safeguarded (see paragraph 34 of the Gating Order Policy), routes of this nature that are not included in the List of Streets Repairable at Public Expense or shown on the Definitive Map and Statement, nor are “Gulliksen”-type paths (see paragraph 1 of the Gating Order Policy) could be gated without the need for any complex or lengthy legal order processes; e.g. police ‘Alley gating’ schemes. To do this, however, would need the consent of all affected residents.

### OPTION TWO – Use of General Powers

#### *Town and Country Planning Act 1990*

Section 257 of the Town and Country Planning Act 1990 allows for the closure of a footpath, if it is necessary, to allow development to take place (i.e. approved by a valid planning consent). This essentially means that the development concerned, must actually build over the path itself, a simple change of use from say path to garden would not suffice as it is, in law at least, quite compatible for a path to run through a garden, therefore the criteria would not be met.

It is unlikely that the powers contained within the Town and Country Planning Act 1990 can be used to facilitate a Gating Order.

#### *Highways Act 1980*

Section 118 of the Highways Act 1980 is the principle piece of legislation that allows for the extinguishment of highways. The powers for closure are strictly defined by the legislation. This generally provides that extinguishments may only be made, if it can be demonstrated that the highway concerned is not needed/not necessary for public use. Whilst this may be a somewhat subjective decision to make, it is clear that factors such as criminal, or anti-social behaviour, cannot lawfully be taken into account. If a route is heavily used by legitimate pedestrian traffic during daylight hours, it is unlikely that the legislative criteria can be met in order to close the path to prevent its misuse at other times.

## OPTION THREE - Use of new Crime Prevention Powers

### ***Countryside and Rights of Way Act 2000 – Closure or diversion for Crime Prevention***

The Countryside and Rights of Way Act 2000 introduced new powers to close or divert public rights of way for the purposes of crime prevention via 'Special Orders'; i.e. new Sections 118B and 119B of the Highways Act 1980 as inserted by the CROW Act. There are however, strict criteria that must be satisfied before such Orders can be made. If the Highway Authority is minded to process a Special Order, it must first apply to the Secretary of State to designate the area where the public right of way is located as an area within which the Special Orders may be used. The Highway Authority must provide evidence to the Secretary of State that the area suffers from high incidences of crime.

**It should be stressed that the designation of an area by the Secretary of State does not, in any way, imply that any subsequent Extinguishment Order will be successful. It is still necessary for each proposal to fulfill the criteria specified in the legislation. Before an Order can be made the Authority must be satisfied, having taken into account the factors listed below, that it is expedient for the purposes of preventing or reducing crime which would otherwise disrupt the life of the community, to stop up that highway. It must also be satisfied that premises adjoining or adjacent to the highway are affected by high levels of crime and that the existence of the highway is facilitating the persistent commission of criminal offences.**

Even if the Highway Authority is satisfied that the evidence satisfies these criteria, an Order will not necessarily succeed. Before an Order can be confirmed and take effect, the Council must also be satisfied that it is expedient to stop up the highway having regard to:

- 1. Whether and if so to what extent, the order is consistent with any strategy for the reduction of crime and disorder prepared under section 6 of the Crime and Disorder Act 1998.**
- 2. The availability of a reasonably convenient alternative route; or if no reasonably convenient alternative route is available, whether it would be reasonably practicable to divert the highway rather than stop it up.**
- 3. The effect the extinguishment of the right of way would have, as respects land served by the highway, account being taken of the provisions as to compensation that may be payable.**

### ***Clean Neighbourhoods and Environment Act 2005 - Gating for Prevention of Crime and Anti Social Behaviour***

The Clean Neighbourhoods and Environment Act 2005, which came into force on 1 April 2006, inserted Section 129 into the Highways Act 1980, i.e. 'Gating Orders'. These new powers enable the restriction of the public use of relevant highways for the purposes of the prevention of crime and anti-social behaviour. Such restrictions, unlike Section 118B of the Highways Act, can be temporary, or conditional and are not dependent on an area being designated as an area of high crime by the Secretary of State.

A council may make a Gating Order in accordance with this Act in relation to any

relevant highway for which they are the highway authority, if they are satisfied that premises adjoining or adjacent to the highway are affected by crime *or* anti-social behaviour. The Council must also be satisfied that the existence of the highway is facilitating the persistent commission of criminal offences *or* anti-social behaviour; and it is expedient to make the order, for the purposes of reducing crime *or* anti-social behaviour.

As with Special Orders, even if these criteria can be satisfied an Order will not necessarily come into effect unless the Highway Authority is satisfied that it is expedient to stop up the highway having regard to:

1. The likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway.
2. The likely effect of making the order on other persons in the locality.
3. Where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

However, unlike a Section 118B Special Order, which permanently extinguishes public rights over a highway, a Gating Order can:

- Restrict the public right of way at all times; or in respect of such times, days or periods as may be specified in the order (e.g. only at night, or at weekends, etc.);
- Exclude such persons as specified in the Order from the effect of the restriction (e.g. emergency services, council officers, utility companies etc.).

The highway also remains the responsibility of the highway authority after gating, so it continues to be a highway repairable at public expense.

Before making a Gating Order in relation to a relevant highway the Council must be satisfied that:

1. Premises adjoining or adjacent to the highway are affected by crime *or* anti-social behaviour.
2. The existence of the highway is facilitating the persistent commission of criminal offences *or* anti-social behaviour.
3. Taking all factors into account, it is expedient to make the order for the purposes of reducing crime *or* anti-social behaviour.

Unlike other legislation used to extinguish public rights, the local authority may make the Gating Order even if there are objections; as long as they are satisfied that the Order is in the best interests of the local community. However, if there are objections from any of the emergency services, then the Council must hold a public inquiry.

Although the legislation has been streamlined to make it easier and quicker to restrict the use of a problem highway, this does not mean that the criteria for making a Gating Order is any less stringent than that introduced by the CROW Act. However, the legislation enables instances of high levels of anti-social behaviour to be a main reason for closure even in the absence of high levels of crime, and is designed to improve residents' quality of life.

Home Office guidance recommends that local authorities review their Gating Orders on an annual basis to ensure that such orders remain useful as a crime or anti-social behaviour reduction method, as there is no maximum limit to how long a highway can be gated. As highway rights are not extinguished, it would be a simple matter to revoke the Gating Order or vary the conditions.

However, there does appear to be contradictions in respect of this guidance. If there exists sufficiently high levels of crime and/or anti-social behaviour to warrant the restriction of public use of a highway, then gating itself is likely to lead to a reduction. Any subsequent review will reflect this reduction in crime and consequently the authority should give consideration to opening up the highway to public use. However, the chances are that re-opening will facilitate an increase in crime and anti-social behaviour back to its pre-restricted levels and thus create a situation where restriction of public use is once again required.

Despite these reservations, there may be circumstances that allow the implementation of conditional restrictions if evidence shows that the crime or anti-social behaviour occurs only at specific times, such as during the hours of darkness. In these cases it is imperative to take the management of the gate closure into account, as, if the gates are not re-opened at the time specified on the Order, they will become unlawful obstructions and leave the local authority open to prosecution. Unless this logistical problem can be properly managed in perpetuity, it would be unwise to consider conditional restrictions.

**COUNCIL LOGO**

**GATING ORDER APPLICATION**

(Before submitting a proposal please read Bristol City Council's Gating Order Policy).

<b>Applicant Contact Details</b>
<b>Name</b>
<b>Address</b>
<i>Telephone Number</i>
<b>Request for Gating Order</b>
Define the highway to be subject to the proposed Scheme and attach a 1:1250 scale plan with the boundaries clearly marked.
<b>Reason(s) for Proposal</b>
State as fully as possible the reasons for the proposal and how it meets the criteria of Bristol City Council's Gating Order Policy Include all available crime figures if available (a crime report will be obtained by the Council's Delegated Officer anyway).
Continue on separate sheet if required.
<b>Confirmation of Supply of Information</b>
<b>This Gating Order proposal was discussed and agreed at the</b> ..... meeting on .....
Local residents who attended the above Meeting have been made aware of the Council's Gating Order Policy, and briefed on its content.
Local residents who attended the above Meeting have been advised that the Council cannot guarantee the success of any Gating Order proposal
Local residents who attended the above Meeting have been advised that gates or other structures will only be installed on highways if it can be achieved lawfully and that the Council will initiate criminal proceedings against any person who erects such structures without lawful authority.

Local residents who attended the above Meeting have been advised that a Gating Order shall only proceed subject to it being lawful and it being funded by Applicant and/or the relevant Council Department budget.

**Signed** ..... **Name** .....  
(E.G. Neighbourhood Coordinator or Ward Councillor)

**Date** .....

COUNCIL LOGO

GATING ORDER  
 OWNERS/OCCUPIERS AGREEMENT  
 (To be completed by each property owner / occupier affected by the proposals)

WARD: <>

SCHEME REFERENCE: <>

DETAILS OF SCHEME: **Request to restrict highway in the <> area of Bristol**

Name and Address	Name and Address
Occupier  <b>Address 1</b> <b>Address 2</b> <b>BRISTOL</b> <b>Postcode</b>  Telephone Number	Landlord/Owner (if different)      Telephone Number
<b>Agreement</b>	
<p>*I am / We are the freehold / leasehold * owner(s) of the above property which is affected by the proposed Gating Order.</p> <p><b>OR</b></p> <p>*I am / We are the tenant / licensee or occupier(s)* of the above property which is affected by the proposed Gating Order.</p>	
<p><b>*I / We do not agree to the proposed highway closure/restriction and wish it to remain open to the public at all times.</b></p>	
<p><b>*I / We agree and consent to the proposed Gating Order and any necessary Legal Orders to restrict the use of the highway, as shown in the Bristol City Council Gating Order Policy, that may have to be made as a consequence.</b></p>	
<p><b>*I / We agree to any reasonable changes to the collection of refuse and household waste by Bristol City Council Cleansing Services, which may be necessitated by the restricted use of the highway.</b></p>	
<p>Signed ..... Print Name .....</p> <p>Signed ..... Print Name .....</p> <p>Date .....</p>	

**\*Delete as appropriate    Please continue overleaf if required**

## **ANSWERS TO MR GOULD'S QUESTIONS**

Q1. What was the cost of hiring a QC to put the Council's case at the Purdown Inquiry?

A. The Council employed Mr Leslie Blohm for the two day inquiry, which cost £7,500 plus VAT.

Q2. How can the hire of a QC be justified in a simple case where the opposition was not professionally represented?

A. The case was not a "simple one" as it involved the potential diversion of a footpath onto a school playing field. The outcome of the inquiry will have profound implications for the school in question. Mr Blohm was able to offer the Council independent advice on the application. He also had previous knowledge of the site in question and the many issues that the applicants had raised as he assisted the Council at the Town and Village Green application regarding the same site. Instructing officers from the Children and Young Persons Team were of the firm opinion that the piece of land in question was vital to the proper running of the school and they sought the best possible representation. The fact that the applicants were not represented was immaterial.

Q3. What is the cost of hiring a barrister to present HA section 116 closures in the Magistrates' Court?

A. The legal team that advises on public right of way and village green matters have no knowledge of any barrister being instructed to represent the Council on such an application. If a barrister were to be instructed his/her fees would depend on such factors as the barrister's seniority, the complexity of the application, the amount of preparation required, the length of the hearing etc.

Q4. How can this [the instructing of a barrister] be justified when solicitors have right of audience?

A. Solicitors employed by the Council represented the Council in respect of the last two such applications, in respect of Turtlegate Avenue and Huntingham Road. Such applications would normally stay "in house". A barrister would be considered for instance if the application was unduly complex or there were resource issues internally or the barrister had been instructed to act in relation to the application site on another application/matter.