NOTTINGHAM CITY COUNCIL

GUIDANCE NOTES FOR MAKING AN APPLICATION FOR A GATING ORDER

SECTION 129A HIGHWAYS ACT 1980

REVISED MARCH 2009

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Nottingham
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INTRODUCTION

From April 2006, the City Council acquired a new power to make "Gating Orders" to restrict public access to help deal with crime and/or antisocial behaviour. This new power is provided by the Clean Neighbourhoods and Environment Act 2005 which amended the Highways Act 1980. The Council may make a Gating Order to restrict the use by the public of a "relevant highway" and may authorise the placing of gates at each end.

A "relevant highway" is a "way" over which the public have access and includes alleyways, footpaths and bridleways as well as carriageways (roads) other than special roads, trunk roads, classified or principal roads and any other path or track that is considered a public right of way. Some "ways" may be private, for example where they serve the rear of properties only. The Traffic Management Team will be able to advise you if you are unsure whether the route that relates to this application is a public right of way. The restriction may be full time or part time so that, for example, a highway may be gated only at night but open during the day. A Gating Order may be subsequently revoked or varied and does not enable the highway to be used for other purposes e.g. for a building to be erected on the highway.

These Notes are for guidance purposes only for completing the application form and provide a summary of the Gating Order procedures. They are not a statement of law.

PART 1: GENERAL INFORMATION

SECTION 1 - GATING ORDER LEGISLATION AND THE COUNCIL'S LEGAL OBLIGATIONS (THE "STATUTORY TESTS")

Paragraphs 1 to 6 below are known as the "Statutory Tests". Before the Council can interfere with a highway (for example to close or divert it) over which the public have certain rights (for example a right to walk or a right to drive) they must first make a legal order. Before making a Gating Order and erecting a gate the Council must be able to demonstrate that the tests have been satisfied. The Gating Order legislation contained in the Highways Act 1980 section 129A enables the Council to make a Gating Order only where it is 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; and
(3) it is in all the circumstances expedient to make the order for the purposes of reducing crime or antisocial behaviour.

The circumstances referred to in paragraph (3) above include:-

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

SECTION 2 - THE ROLE OF THE COUNCIL'S AREA COMMITTEES

The Council has ten Area Committees, covering the City of Nottingham. Each Committee consists of local Ward Councillors, representatives from local businesses, neighbourhood watch groups, local residents, community groups and other interested individuals. Meetings may also be attended by local Police Officers, the Council's Community Protection Officers, Police Community Support Officers and the Fire Station Officer for that area.

The role of Area Committees in the Gating Order process is to decide, at their Committee meeting, on the basis of evidence / other relevant information which the case Officer has received and assessed, whether a proposed Gating Order should be authorised. Once the case Officer is satisfied there is enough evidence / other relevant information to fully satisfy the statutory tests (see Page 2, Part 1 'Statutory Tests' above), a report will be taken to the relevant Area Committee for their authorisation to proceed with the making of a proposed Gating Order. Following their meeting, you will be informed of the Committees decision (see Page 6, Part 3, Section 2 below).

Committees generally have six bi-monthly meetings per annum. It may be beneficial for you or your neighbours to attend a Committee meeting, which may be an ideal opportunity to raise and discuss any problems that you are experiencing. Dates of meetings may be obtained from the Council's Committee Services on 0115 9155030 or from the Council's web site at www.nottinghamcity.gov.uk. Alternatively a member of the Traffic Management Team will be able to advise you.

Please note: only applications that are supported by evidence and other relevant information covering a period of not less than 12 months that fully satisfy the statutory tests (see Page 2, Part 1 'Statutory Tests') will be submitted to the Area Committee.

SECTION 3 - THE ROLE OF THE CRIME DISORDER PARTNERSHIP

The Crime Disorder Partnership collects and analyses crime and antisocial behaviour incident data and other related information from a number of sources for the City of Nottingham. They provide the 'Hot Spot Tasking' group with this data. Hot Spot Tasking is a partnership between the Crime Disorder Partnership, the Council, the Police, the Probation Services, Nottingham City Homes, the local NHS Trusts and the Fire and Rescue Service. Representatives of each of these bodies attend regular meetings where geographical areas of crime, disorder and antisocial behaviour are identified and incident data and evidence is considered. Resources are then allocated, with priority being given to tackle identified hotspots.

In the Gating Order process the role of the Crime Disorder Partnership is to provide the case Officer with crime and antisocial behaviour incident data which helps build an evidenced based profile of the types of reported incidents occurring in the neighbourhood and how they may, or may not, be related to the highway.

PART 2: COMPLETING THE APPLICATION

Part 2 will help you complete the Application Form

SECTION 1: APPLICANTS CONTACT DETAILS

Please provide your full contact details, including your full name (not just your initials) address and postcode, phone number and email address. Please use BLOCK capitals. This will help us to keep you up to date with the progress of your application. Your details will only be used for the purpose of this application and for no other purpose. Your details will be shared with other agencies, such as the Police and Crime Disorder Partnership, as part of the application process. Signing the application form indicates that you agree to share your details in this way.

SECTION 2 - CONTACT DETAILS OF OTHER COUNCIL STAFF YOU MAY HAVE CONTACTED REGARDING THIS APPLICATION

Please provide the contact details of any City Council staff that you have discussed either the problems with the highway and/or your application. For example you may have discussed this with the Council's Community Protection Officers or Local Housing Office. The more information you can provide now may save time in the future.

SECTION 3 - CONTACT DETAILS OF POLICE OFFICER(S) YOU MAY HAVE CONTACTED REGARDING THIS APPLICATION

Please provide the contact details of the Police Officers and/or Police Community Support Officers that you have discussed either the problems with the highway and/or your application. The more information you can provide now may save time in the future.

SECTION 4 - DESCRIPTION / LOCATION OF THE HIGHWAY

To enable us to clearly identify the highway which this application refers to, it is important that you provide as much information as possible. In the description you may use house/property numbers that the highway is adjacent to, or located near, or other physical landmarks such as a park, petrol station or electricity sub station. Ordnance Survey grid reference points may also be a good way of describing where the highway is located.

You are advised to attach a plan to the application showing the location of the highway. The plan should be of a reasonable scale which will enable us to identify the full width and length of the highway and determine whether or not there are any suitable alternative routes should the highway be gated (see Page 2, Part 1 'Statutory Tests'). Please mark clearly the location of the highway.

If necessary, the Traffic Management Team will be able to provide you with a plan for this purpose. Please put your name on the plan along with your signature and date. This will ensure we can match the plan with the corresponding application.

SECTION 5 - EVIDENCE / OTHER RELEVANT INFORMATION IN SUPPORT OF THE APPLICATION

Page 2, Part 1 of these Notes sets out the 'Statutory Tests'. The Councils Area Committees must be fully satisfied these tests have been met before they authorise the making of a proposed order. For example; the Committee must consider whether or not *premises adjoining or adjacent to the highway are affected by crime or antisocial behaviour* and whether or not *the highway is facilitating the persistent commission of criminal offences or antisocial behaviour* (see Page 2, Part 1 'Statutory Tests') These questions can only be answered by considering the available evidence and other relevant information.

Along with the Application Form and these Guidance Notes, we have provided you with 'Incident Log Sheets' which you should use to log the details of any incidents related to the highway. To fully satisfy the legal requirements (see Page 2, Part 1 'Statutory Tests') for making a proposed Gating Order, and in particular the 'persistent commission' requirement, the Application must be supported by evidence / other relevant information covering a minimum period of 12 months*.

***Please note: the 12 month period should include at least 6 months evidence / other relevant information that occurred before you received the Application Form and at least 6 months evidence / other relevant information that occurrs after the date you received the Application Form.**

An application cannot be processed until we have received at least 12 months evidence / other relevant information.

After you have submitted the Application and Incident Log Sheets you may continue to log any incidents and then submit them to the Council right up to the date of the Area Committee meeting, which will ensure we have up to date information for the meeting.

In addition to completing the Incident Logs Sheets, please report all incidents of antisocial behaviour to the Councils ASB team on 0115 9152020 and all incidents of a more serious nature (that are directly related to the highway) to the local Police station and/or the neighbourhood Police Community Support Officers and /or the Council's Community Protection Officers. When reporting the incidents please provide as much information as possible and explain exactly how the highway contributed to the incidents. This will ensure that all incidents, that are directly related to the highway, are officially recorded and available to support the proposed Gating Order, if one is considered necessary.

SECTION 6: PERIODS THAT YOU BELIEVE THE HIGHWAY SHOULD BE GATED

We expect the period of time when the highway will be gated to coincide with the period when the majority of reported crime or antisocial behaviour is occurring. This period will be reflected in the evidence / other relevant information to support the application. Before and after this period, the gate will be open and the restriction over the highway removed. This will ensure the period the gate was locked would be most effective in reducing crime or antisocial behaviour. It will also ensure that the highway

was gated for the minimum period of time and that commuters and day to day users of the highway would still be able to use it to access local services, schools, shops and public transport, especially at peak commuter times.

In some cases, the levels of crime or antisocial behaviour may be so high that, to be affective, the highway may need to be permanently gated during all times of the day and night. Again, this can only be established through the available evidence / other relevant information.

Please note: Don't forget to sign and date the Application Form

PART 3: DETERMINING THE APPLICATION

Part 3 explains what happens when the Council receives an Application

SECTION 1 - HOW LONG WILL IT TAKE FOR A DECISION TO BE MADE ON THE APPLICATION?

When we receive an application the case Officer will check that it is supported by evidence / other relevant information covering the minimum requirement of at least 12 months (see page 5, Part 2 Section 5 above). If it meets this requirement, the case Officer will then request crime and antisocial behaviour incident data from the Crime Disorder Partnership (CDP). Using the CDP data, your log sheets and the log sheets from other premises adjoining and adjacent to the highway, the case Officer will liaise with the Nottinghamshire Police Crime Reduction Manager (CRM) for the neighbourhood. The CRM will provide the case Officer with an evidenced based assessment of the area around the highway and whether or not a Gating Order is the best option to help reduce the reported incidents.

As long as the Application is supported by the minimum requirement of at least 12 months (see page 5, Part 2 Section 5 above), a decision will be made on the Application within 2 months from the date the Council receives it.

If the application is approved, the request for the Gating Order will be submitted to the next bi-monthly meeting of the Area Committee for your local area. The decision by the Area Committee will be approximately 4 months from the date we receive the application.

If the application is not approved, we will write to you explaining why we cannot proceed with it. Unless there is substantial new evidence / other relevant information made available to the Council, we will take no further action with the application.

SECTION 2 - WHAT HAPPENS IF THE COUNCIL NEEDS FURTHER EVIDENCE / INFORMATION?

When we receive an Application and supporting evidence / other relevant information (see page 5, Part 2, Section 5 above) the case Officer will check whether it satisfies the statutory tests (see Page 2, Part 1 'Statutory Tests' above). If the available evidence does not demonstrate, fully, that the statutory tests can be satisfied, we will need to collect further evidence / other relevant information and we will contact you to

discuss this in more detail. We will also need to discuss this with the local Police and Crime Disorder Partnership to see if they can provide any additional evidence / other relevant information. At the end of this, if the evidence still does not satisfy the statutory tests, we will write to you and explain why we cannot submit the application to the Councils Area Committee.

SECTION 3 - CONSULTATION

When we receive an application, we ask other people in the local area what they think about the idea of gates. For example, will a gate inconvenience them and do they use the highway to access their property and would they support a Gating Order. We write to the adjoining and adjacent premises asking their views and we will also ask them to supply evidence / other relevant information using the same Incident Log Sheets that we have sent out to you.

If the decision by the Area Committee is to proceed with an application requesting a Gating Order, a Notice of the proposed order must be published in a local newspaper, on the Council's web site and on or adjacent to the highway. Adjoining and adjacent premises will also be sent a copy of the Notice along with all the statutory consultees. This is a legal requirement which must be carried out at least twenty eights days before a proposed order may be made and gates erected. This period gives anybody the opportunity to comment on the proposed order. The Notice must include the general effects of the order, the times when the highway will be gated (and open), the alternative route that is available should the highway be gated and an address where people may send their objections or other comments.

SECTION 4 - WHAT HAPPENS IF SOMEONE OBJECTS TO THE PROPOSED ORDER?

During the 28 day consultation period the Council may receive objections. What happens next depends on who objects. If the objection is from the Police, National Health Service or the Fire and Rescue Service, the Council cannot progress with the proposed order and a Public Inquiry will be necessary. If a member of the public or other statutory body (for example any provider of gas, water or electricity) objects, the Council may cause a Public Inquiry to be held or the Council may use their discretion and overrule the objection.

All objections will be referred back to the Area Committee for their decision on how they wish to proceed in light of the objections. The Area Committee may wish to proceed to a Public Inquiry or they may decide to review their earlier decision or to modify the proposed Gating Order to reflect the objections, for example they may decide to alter the hours that the gates are opened and closed.

A valid objection may be that the evidence that the case Officer and/or the Area Committee took into consideration when deciding to proceed with the proposed order does not show *that premises adjoining or adjacent to the highway are affected by crime or antisocial behaviour* or *that the higway is not facilitating the persistent commission of criminal offices or antisocial behaviour* (see Page 1, Part 1 'Statutory Tests' above).

If the Area Committee decides to proceed to a Public Inquiry, the Council will be expected to provide the evidence / other relevant information that the case Officer and/or Area Committee took into consideration when deciding to proceed with the proposed order. The Council must also demonstrate, through the evidence / other relevant information, that the incidents are still occurring at the time of the Public Inquiry. There are no guarantees that at the end of the Public Inquiry the proposed order will be upheld

PART 4 – OTHER INFORMATION

SECTION 1 - PLANNING PERMISSION FOR THE GATES AND FENCING

In the majority of cases, where the gates and/or fencing abut a highway used by vehicular traffic and exceed one metre in height or in any other location exceed two metres in height, planning permission will be required. A planning application will therefore need to be submitted to the Council's Planning Authority and planning permission will need to be granted before the gates and/or fencing is erected. Notices advertising the application must be posted on site and advertised in the Public Notices section of the Nottingham Evening Post. There is a twenty one day statutory consultation period during which anyone may make objections or representations to the Planning Application.

SECTION 2 - PROVISION OF KEYS

There may be a number of people who have legitimate reasons to access the highway during the period when it is gated. These may include:-

- Emergency services
- Adjacent property owners/occupiers
- City Council staff
- Utility companies such as water, gas, electricity

SECTION 3 - CITY COUNCIL CONTACT DETAILS

If you require further advice on the Gating Order process or you wish to discuss your application in more detail, please contact:- John Lee, Senior Rights of Way Officer, Nottingham City Council, Traffic Management, Environment and Regeneration, Lawrence House, Talbot Street, Nottingham NG1 5NT, Tele: 0115 9156078, email: John.lee@nottinghamcity.gov.uk