

# MERTHYR TYDFIL COUNTY BOROUGH COUNCIL STRATEGY ON ALLEY GATING SCHEMES

## POLICY OBJECTIVES

**POLICY AG 1:** Merthyr Tydfil County Borough Council will only encourage and support the lawful implementation of alley gating schemes where crime and/or anti-social behaviour reduction can be demonstrated.

- 1.1 The overall policy objective is the speedy and lawful implementation of alley gating schemes in the County Borough through a simplified process and rational use of resources, where crime and/or anti-social behaviour reduction and neighbourhood renewal benefits can be demonstrated.
- 1.2 Alley gating schemes can contribute towards the delivery of this pledge through the co-ordination of alleyways which are shown to be adversely impacted by crime and/or anti-social behaviour which can be intelligence-led.
- 1.3 The closing off of alleyways can be achieved through use of a stopping up order under s116 Highways Act 1980. This legislation is still available to local authorities, but includes the permanent extinguishments of rights of way. In April 2005 the Clean Neighbourhoods and Environment Act 2005 was brought in to try and address these difficulties by introducing “Gating Orders”. These can be applied in areas where there are problems of crime or anti-social behaviour.

## THE HIGHWAY AUTHORITY’S DUTIES

- 2.1 The Council has a statutory duty to protect all public highways, whether registered on the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense or otherwise, and failure to undertake this duty could result in the Council acting unlawfully. The council must therefore exercise caution before embarking upon any proposals that may adversely effect or interfere with the rights of the public to pass and re-pass along any public highway, or potential highway.
- 2.2 The Council also has a duty, along with the police and other “responsible authorities” to reduce and prevent crime within their administrative area under s17 Crime and Disorder Act 1998. This may mean that these two duties conflict with, or contradict each other and therefore this conflict or contradiction must be minimised.

### Authorisation of gates or similar structures on highways

- 2.3 All gates or similar structures, if installed on a public highway, constitute an obstruction. However, under certain circumstances, these obstructions may be legitimised, after which they may be referred to as “lawful obstructions”. A structure will only constitute a lawful obstruction if it is authorised by the relevant Highway Authority, who may only grant such permission if an Act of Parliament specifies that it may do so.

- 2.4 The circumstances under which gates or other structures can normally 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 these gates or structures are clear and unambiguous.

## **IDENTIFICATION AND PRIORITISATION FOR ALLEY GATING AREAS**

**Policy AG 2:** The Council will prioritise gating, closure or diversion activity, giving due regard to priorities that may be drawn up by the Council within the established regeneration areas.

- 3.1 Requests for alley gating schemes are to be made to the Director of Customer Services in the first instance.
- 3.2 This policy does not restrict the right of individuals or groups to make closure applications without recourse to resources available to the Council.
- 3.3 A study will be undertaken to enable a decision to be made on any alley gating scheme proposal. The report will be carried out by the Council and will include, although not exclusively, the following,
- Consultation with local residents and land owners
  - Consultation with Highways
  - Consultation with local ward members
  - Consultation with the police
  - Consultation with emergency services
  - Consultation with utility companies
  - Consultation with other interested parties
  - An assessment of whether any legal orders are required and if so, the most appropriate legislation to use
  - An assessment of the physical works required
  - Estimated cost

## **DETERMINATION OF HIGHWAY STATUS**

### Routes shown on the Highway Records

- 4.1 Many public rights of way or highways are already recorded on documents known as the Definitive Map and Statement and/or List of Streets Maintainable at Public Expense. These are the Council's formal records of public highways. If a route is shown on either of these documents, then with few exceptions, it is undisputedly a public highway.

### Routes not shown on the Highway Records

- 4.2 In common with many Authorities throughout the country, there are a significant number of routes that exist, 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 legal records may need to be amended.

- 4.3 In general terms, if a route, path, or 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 (under s31 Highways Act 1980).
- 4.4 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, cannot lawfully be taken into account.

## **LEGISLATION**

**Policy AG 3:** Cabinet will decide any application for an alley gating order on a highway that is shown on the List of Streets Maintainable at Public Expense or that relates to a public right of way recorded on the Definitive Map and Statement.

**Policy AG4:** The Council will use Gating Orders as the primary legislation tool to implement alley gating schemes. However, the Council will where necessary use any other legislative route when a Gating Order is not appropriate. The Council will decide the most appropriate legislation to use to carry out alley gating schemes, through a project group set up for this purpose.

- 5.1 The Council will use Gating Orders under s129A Highways Act 1980 as the primary legislative tool to deliver alley gating schemes. However, the gating/closure of alleyways can be implemented in a number of different ways, including:
- By extinguishing the right of way that exists over the alleyway using s116 Highways Act 1980
  - By stopping up a highway through s247 and s257 Town and Country Planning Act 1990 to allow development to take place.
- 5.2 All procedures for dealing with the closure of problem alleyways will remain open to the Council.
- 5.3 An “alley gating” scheme is a very simple crime prevention method involving the installation of lockable gates to the end of alleyways or rights of way that exhibit problems of crime and anti-social behaviour. The purpose of alley gating is to prevent the access to such alleyways or public rights of way by unauthorised persons, in order to reduce the opportunity to commit crime and/or anti-social behaviour.
- 5.4 Alley gating schemes seek to tackle these issues through the use of gating orders. These are not meant to be permanent and should be reviewed on an annual basis (according to Welsh Government Guidance). Gating orders involve restriction of access over a relevant highway rather than extinguishing the highway status and/or public rights of way. This restriction will still allow free access for legitimate users through the installation of a lockable gate. Legitimate users and statutory authorities will be offered keys as a means to gain access.

5.5 A Gating Order under s129A allows a Local Authority to restrict access to a public right of way without changing its status, either as highway or public right of way. The gating order will be in effect for a period of time as stated under the order. During any time the order may be varied so as to increase the length of time the order is in effect or to revoke the order as required. Before any legal orders are processed under these powers the Council must be satisfied that the following conditions are met:-

- Premises adjoining or adjacent to the highway are affected by crime and/or anti-social behaviour
- The existence of the highway is facilitating the persistent commission of criminal offences and/or anti-social behaviour
- It is in all cases expedient to make the order for the purposes of reducing crime and/or anti-social behaviour.

The circumstances referred to here should include:

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

5.6 All requests, recommendations and considerations relating to alley gating schemes will be referred to an Alley Gating Project Group for a decision. The Project Group will consist of a member of Legal Services, Town Planning and Highways together with a member of the Traffic Section or Rights of Way Section. This group will make a recommendation to Cabinet.

5.7 The Highways Act 1980 (Gating Orders) (Wales) Regulations 2007 which underpin the relevant provisions of the Clean Neighbourhoods and Environment Act 2005, came into force on 19<sup>th</sup> February 2007. These regulations give the council powers to restrict access to paths and alleyways during certain times of the day, or at all times, through a gating order. This allows more flexibility in closing alley ways where a permanent closure is not appropriate. The process for overcoming objections is dealt with internally

5.8 Gating Orders are not permanent, nor do they change the status of the highway or public rights of way. Merthyr Tydfil County Borough Council will retain responsibility for the affected alley way (where the highway is adopted) and the gates.

## **CONSULTATION AND CONSENTS**

**Policy AG 5:** Merthyr Tydfil County Borough Council will only support alley gating schemes that have undergone comprehensive local consultation, and where all reasonable steps have been taken to address any local objections. Schemes will also need to demonstrate positive support from the majority of affected residents and owners.

6.1 All property owners and occupiers (within the immediate vicinity of the proposed gating area), any statutory undertakers responsible for any services that may be located in the alleyway, who are affected by the proposals contained within the alley gating scheme will be consulted, irrespective of which legislation is being used to implement the scheme.

- 6.2 In all instances, before making any order the Council will consult with:
- All the occupiers of premises adjacent to or adjoining the affected highway
  - The Chief Officer of Police through whose area the affected highway passes
  - Every fire and rescue authority through whose area the affected highway passes
  - Any local access forum through whose area the affected highway passes
  - Any statutory undertaker who maintains services in the locality in which the affected highway is situated
  - Any communications provider in the locality in which the affected highway is situated
  - Any person who the council reasonably considers might be affected by the proposed order
  - Any person who requests a copy of the notice
  - Any person who has asked to be notified of any proposed orders
  - Local ward members

### **DELIVERY**

**Policy AG 6:** Merthyr Tydfil County Borough Council will support the most appropriate delivery arrangements for alley gating schemes.

### **MAINTENANCE**

**Policy AG 7:** Where the Council agrees to make an order under s116 Highways Act 1980, the County Borough Council will not accept responsibility for the ongoing maintenance of the extinguished highway.

- 7.1 Where closure of a highway or public right of way is by means of a stopping up order under s116 Highways Act 1980, residents and owners of adjoining premises will be responsible for the ongoing maintenance of the alley way and the gates.

**Policy AG 8:** In accordance with s129A Highways Act 1980 the team implementing the gating order must ensure that provisions are made for the maintenance of the alley gates before they are erected.

#### **Gating Orders under s129A Highways Act 1980**

- 7.2 As the status of the alley way does not change, residents do not become responsible for the maintenance of the alley way of the gates. The team implementing the gating order will ensure that a maintenance programme is in place for the gates before they are erected.

### **REGULATIONS**

**Policy AG 9:** The Council will follow the procedures set out in the Highways Act 1980 (Gating Orders) (Wales) Regulations 2007.

- 8.1 s2 Clean Neighbourhoods and Environment Act 2005 insert s129A to s129G into the Highways Act 1980. These sections empower councils to make, vary or revoke orders restricting the public right of way over the highways to which they relate (through “Gating Orders”). Gating orders may be made by councils where they are satisfied that premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour; that existence of the highway is facilitating the commission of criminal offences or anti-social behaviour; and that it is in all the circumstances expedient to make the order for the purposes of reducing crime or anti-social behaviour. Gating orders may be varied by councils where they are satisfied that in all the circumstances it is expedient to do so for the purpose of reducing crime or anti-social behaviour. Procedures in relation to gating orders are set out in the Highways Act 1980 (Gating Orders) (Wales) Regulations 2007.
- 8.2 In particular, these Regulations make provision with respect to
- Publicity relating to a proposal to make, vary or revoke a gating order
  - Representations as to the remaking, varying or revocation of a gating order
  - Public inquiries
  - Content of gating orders
  - Registers of gating orders