

**ALLEY GATING ON PUBLIC HIGHWAYS CARDIFF COUNCIL
POLICY & STRATEGY 2020**

HOUSING & COMMUNITIES (COUNCILLOR LYNDIA THORNE)

AGENDA ITEM: 6

Reason for this Report

1. To seek approval by the Cabinet of the proposed new Alley Gating Policy Document: ***Alley Gating on Public Highways – Cardiff Council Policy & Strategy 2020*** to ensure alley gating schemes can continue to be implemented in accordance with current legislative requirements and operational practises.

Background

2. All Local Authorities and other “responsible authorities” (such as the police) have a duty under Section 17 of the Crime and Disorder Act 1998 to do all that they reasonably can to prevent crime and disorder in their areas (including anti-social and other behaviour adversely affecting the local environment).
3. Alley Gating is a simple and effective measure that helps reduce the levels of crime and anti-social behaviour that may otherwise persist to the detriment of local communities.
4. Working with the police, local businesses and residents, alley gating can help Local Authorities to deter and prevent an array of criminal and anti-social activities occurring in back lanes, including burglaries, underage drinking, substance misuse, environmental crime and arson.
5. The Alley Gating Policy underpins commitments set out in Cardiff Capital Ambition document, including:
 - **Housing & Communities:** Help make Cardiff communities a safe place to live by addressing anti-social behaviour and working with partners to promote inclusion across the city.
 - **Clean Streets, Recycling & Environment:** implementing Public Spaces Protection Orders to remove anti-social behaviours with regards to littering and fly-tipping.

6. In 2008, Cardiff Council implemented an Alley Gating policy, and continues to support and recognise the importance of these schemes. Since then, over 180 lanes have been gated, benefitting approximately 7,500 properties and helping to limit opportunities for crime, anti-social behaviour and environmental issues such as fly tipping. The initiative helps to support the police and other Council services such as Street Cleansing to direct resources to other areas of need.
7. Alley Gating Schemes have proved very popular and successful in Cardiff. There is currently a list of over 150 lanes that have been put forward for consideration for gating. Feedback on completed schemes has found that more than 83% of respondents believe that the gates help to reduce crime and ASB in their areas, and make them feel safer in their homes.

Issues

8. The 2008 Alley Gating Policy is outdated. Therefore, a new Alley Gating Policy and Strategy has been put forward to reflect the existing legislative requirements and set out the current operational considerations and procedures that are involved in the delivery of gating schemes.
9. The main changes to the new policy account for:
 - a) Legislative changes- the use of Public Spaces Protection Orders (PSPOs) under the Anti-Social Behaviour, Crime & Policing Act.
 - b) Clarification of current processes used to manage the demand for alley gating.
 - c) Clarification of scheme parameters.
 - d) Clarification of the current gating procedure used to implement each gating scheme
 - e) Clarification of how the policy meets with the Council's current statutory requirements (via the Statutory Screening Tool, Appendix A)

a) Legislative Changes

10. In 2014, the tools available for Local Authorities to consider alley gating changed, following the introduction of new legislation. Gating Orders (previously under the Highways Act) were replaced with the introduction of Public Spaces Protection Orders (PSPOs) under the Anti-Social Behaviour, Crime & Policing Act (the Crime & ASB Act).
11. Whilst Gating Orders and PSPOs have similar effects, the Crime & ASB Act introduced additional statutory requirements that must be satisfied as part of the gating process. Under the old legislation (The Highways Act), in order to be satisfied that the Council should make a Gating Order it had to be content that premises adjoining or adjacent to the highway were affected by crime and ASB.
12. The new legislation (the Crime & ASB Act) requires that the Council must be content that activities carried out in a public space have a detrimental

effect on the quality of life of those in the locality in order to make a PSPO. The shift from purely highways based issues to more wider 'public spaces' is the key statutory change. Furthermore, an additional mandatory key stakeholder is now included in the consultation process, the Police and Crime Commissioner (PCC).

13. The former Gating Orders did not have a formal expiry date whereas PSPOs are time-limited for a maximum of 3 years and so must be reviewed before they expire to determine if they should be extended, revoked or varied. There is a requirement to consult with the same key partner stakeholders (the Police, PCC, highways) as well as residents before determining whether to extend, vary or discard the order.
14. The legislation does not clearly define the resident consultation process. The process for reviews carried out to date has involved writing a single-page letter to residents adjoining the lane to say that the intention to extend the order but offering them an opportunity to comment before the order is extended. Representations are considered prior to reaching a decision on whether to extend an order.
15. There are 151 Gating Orders and 64 PSPO's currently in place, linked to over 300 lanes across the City. To date, of the 64 PSPO's that have been made since 2015, 39 have been reviewed and following statutory and resident consultation, all 39 have been extended for a further 3 years and the gates remain in place.
16. The 151 Gating Orders (affecting over 6,000 properties), which are now subject to the current legislation are due to expire in October 2020, therefore these orders need to be reviewed prior to expiry. As further PSPO's are made there will be an additional rolling programme of reviews necessary. The review requirement of the new legislation means that there is a significant impact on both staff and legal service resources. This is currently being monitored.

b) Processes

17. Alley gating continues to be in high demand in Cardiff with over 70 requests received each financial year. Only a limited number of schemes can be delivered each year due to funding and resource constraints. Any lanes requested for gating are added to a list of requests for gating.
18. Prior to 2014, lanes were assessed on an individual basis and a prioritisation exercise covering all requests for gating was not in place. In order to ensure a fair and consistent approach, in 2014 Neighbourhood Regeneration implemented a prioritisation exercise for the purpose of identifying lanes in highest need from the list of gating requests. This is to ensure all lanes that have been requested for gating are assessed at the same time (and against the same criteria) to identify a programme of gating which focuses on the highest priorities for the Council at that time, in terms of crime, ASB and environmental conditions. This has been determined to be the fairest approach to managing the demand.

19. Those lanes identified as the highest priority (subject to funding and resource availability) are then included for further investigation as part of the alley gating programme.
20. Lanes that are not identified as part of the programme remain on a list of gating requests. Once an alley gating programme nears completion (and subject to securing further funding), the list is used to identify lanes for the next prioritisation exercise.
21. The alley gating programme is determined for a 2 year period, and the prioritised schemes are initiated at various times during the programme period to ensure they can be managed effectively with the resources available. Each scheme involves a number of stakeholders and can take in excess of 9 months to complete due to the consultation and legal processes required.
22. Funding for alley gating is secured on an annual basis. Therefore funding may need to be carried forward (or reprioritised) where schemes are unable to be completed within the allocated funding period to ensure the programme is delivered.

c) Scheme Parameters

23. Since 2008 a number of operational parameters have been applied when delivering Alley Gating schemes that were not originally captured in the Alley Gating Policy. For example:
 - The Council will consider gating unregistered alley ways (i.e. not adopted) but not ahead of lanes which the Council are responsible for.
 - Privately owned lanes will not be considered for gating.
 - Requests have been made for privately funded gating schemes, however the alley gating programme is determined on a strictly evidence based approach to ensure fairness, transparency and consistency.
 - Electronic gates are not included in the scope of gating schemes due to public safety concerns.
 - Technical constraints are given due consideration, such as the position of gates, interference with garage access and adjacent boundary walls.
24. These parameters have been clarified in the updated policy.

d) Gating procedure

25. The current operational procedure has been included in the updated Policy to accurately reflect the legislative changes, updated processes and scheme parameters outlined above.
26. The PSPO review process is a significant addition to the procedure as it requires ongoing stakeholder and resident consultation along with legal input to ensure the PSPO can remain in place for periods beyond 3 years.

Consultation

27. As key partners in the process, the following Council Service Areas have been consulted on the proposed Alley Gating Policy:
- a. Planning, Transport & Environment:
 - Neighbourhood Services (Public Rights of Way / Highways Team)
 - Neighbourhood Services (Recycling Services, Waste Education & Enforcement Team)
 - Transport Planning Policy & Strategy
 - b. Housing & Communities (Anti-Social Behaviour Team)
 - c. Governance & Legal Services
28. South Wales Police is also a key partner in the alley gating process. Together with Waste Enforcement and Transport Planning, South Wales Police are engaged early in the process to identify priority lanes for the Alley Gating Programme, and continue to be consulted as individual gating schemes progress.

Local Member consultation

29. Local Members are consulted as part of the operational process to investigate and deliver priority alley gating schemes.

Reason for Recommendations

30. The approval of the new Alley Gating Policy Document: ***Alley Gating on Public Highways – Cardiff Council Policy & Strategy 2020*** will ensure alley gating schemes can continue to be implemented in accordance with current legislative requirements and operational practises.

Financial Implications

31. The installation and ongoing maintenance costs of gates installed will need to be met from existing Council budgets or bid for as part of regeneration or similar grant funding.

Legal Implications

32. The Cabinet Report ('the Report') recommends the adoption of an updated Alley Gating Policy and Strategy as the Council's previous policy on the same is outdated due to changes in legislation.
33. As mentioned in the Report, pursuant to the Crime and Disorder Act 1998 Local Authorities have a duty to do all they can to prevent crime and disorder in their areas which includes anti-social and other behaviour adversely affecting their areas. The Anti-social Behaviour, Crime and Policing Act 2014, allows a Local Authority, after consultation with the public, Police, Crime Commissioner and other relevant bodies/stakeholders, to make Public Spaces Protection Orders (PSPO) if it is reasonably satisfied that two conditions are met.

34. The first of these is that activities carried out in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality or that it is likely that activities carried out will have such an effect.
35. The second is that the effect or likely effect of the activities is, or is likely to be of a persistent or continuing nature; is or is likely to be such as to make the activities unreasonable and justifies the restrictions imposed by the PSPO.
36. A PSPO identifies the public place referred to and sets out a number of conditions, such as;
 - a) prohibiting specified things being done in the area,
 - b) requiring specified things to be done by persons carrying on specified activities in that area, or
 - c) covering both of those prohibitions.
37. Prohibitions or requirements may be imposed if they are reasonable to impose through the PSPO –
 - a) to prevent the detrimental effect referred to from continuing, occurring or recurring; or,
 - b) to reduce the detrimental effect or to reduce the risk of its continuance, occurrence or recurrence
38. An interested person may appeal to the High Court to question the validity of a PSPO, or a variation of a PSPO. An appeal must be made within the period of 6 weeks beginning with the date on which the PSPO or variation is made. The grounds on which an appeal can be made is that the Local Authority did not have the power to make the PSPO, or that particular prohibitions or requirements imposed by the PSPO or the requirements set by the respective legislation have not been complied with.
39. A PSPO may not have effect for a period of more than 3 years; however, that period can be extended for a further 3 years if it continues to be necessary.
40. The decision about the recommendations in the Report must be made in the context of the Council's public sector equality duties. The Council also has to satisfy its public sector duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must in making decisions have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The Protected characteristics are age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief.
41. The Report identifies that an Equality Impact Assessment ('EIA') has been carried out and is appended to the Report at Appendix C. The purpose of the EIA is to ensure that the Council has understood the potential impacts of the proposal in terms of equality so that it can ensure that it is making

proportionate and rational decisions having due regard to its public sector equality duty. The decision maker must have due regard to the Equality Impact Assessment in making its decision.

Well Being of Future Generations (Wales) Act 2015

42. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
43. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2019-22. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
44. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
 - Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
45. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

General

46. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations; (e) be fully and properly informed; (f) be properly

motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

47. The decision maker should have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011, the Welsh Language Standards and the Active Travel (Wales) Act 2013.

HR Implications

48. There are no HR implications for this report.

RECOMMENDATION

Cabinet is recommend to approve the Alley Gating Policy Document: Alley Gating on Public Highways – Cardiff Council Policy & Strategy 2020 (Appendix 1)

SENIOR RESPONSIBLE OFFICER	SARAH MCGILL Corporate Director People & Communities
	13 March 2020

The following appendices are attached:

- Appendix A: ***Alley Gating on Public Highways – Cardiff Council Policy & Strategy 2020***
Appendix B: ***2.C.PPCF.002 Statutory Screening Tool***
Appendix C: ***Equality Impact Assessment – Alley Gating, Rear Lanes***

The following background papers have been taken into account:

- ***The Anti-Social Behaviour, Crime & Policing Act 2014***
- ***Cardiff Council's Existing Alley Gating Policy 2008***