London Borough of Croydon

GATING ORDER POLICY AND PROCEDURE

June 2007
# CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>BACKGROUND INFORMATION</td>
<td>3</td>
</tr>
<tr>
<td>THE NEW POWERS TO MAKE A GATING ORDER</td>
<td>4</td>
</tr>
<tr>
<td>WHAT IS A PUBLIC RIGHT OF WAY?</td>
<td>4</td>
</tr>
<tr>
<td>UNDER WHAT CIRCUMSTANCES CAN GATING ORDERS BE USED?</td>
<td>5</td>
</tr>
<tr>
<td>PUBLICITY</td>
<td>6</td>
</tr>
<tr>
<td>CONSULTATION</td>
<td>8</td>
</tr>
<tr>
<td>PLANNING PERMISSION</td>
<td>8</td>
</tr>
<tr>
<td>REPRESENTATIONS (OBJECTIONS) FROM INTERESTED PARTIES</td>
<td>9</td>
</tr>
<tr>
<td>THE GATING ORDER AND ADJACENT HIGHWAYS</td>
<td>9</td>
</tr>
<tr>
<td>CHALLENGING GATING ORDERS</td>
<td>10</td>
</tr>
<tr>
<td>FORM AND CONTENT OF A GATING ORDER</td>
<td>10</td>
</tr>
<tr>
<td>REGISTER OF GATING ORDERS</td>
<td>11</td>
</tr>
<tr>
<td>PROVISION OF KEYS</td>
<td>11</td>
</tr>
<tr>
<td>VARYING, REVOKING AND REVIEWING A GATING ORDER</td>
<td>12</td>
</tr>
<tr>
<td><strong>Schedule 1</strong></td>
<td></td>
</tr>
<tr>
<td>LIST OF PRESCRIBED ORGANISATIONS</td>
<td>13</td>
</tr>
</tbody>
</table>
BACKGROUND INFORMATION

Croydon Council’s vision is “A safe, healthy, prosperous and sustainable future for the whole community”.

The Council’s six top priorities reflect the concerns of local people and as such guide the delivery of all our services.

- Better and fair access to services
- Improving health and social care
- Reducing crime and disorder
- Education and lifelong learning
- Regenerating the borough
- Improving the environment

Crime and Disorder Act 1998

The Crime and Disorder Act places a statutory responsibility on “responsible authorities” (which local authorities are classed as) to work in partnership “… to reduce crime”. As a result of the Crime and Disorder Act, Crime and Disorder Reduction Partnerships have been set up across the nation with a responsibility to develop a Crime Reduction Strategy, based on consultation, and a local crime audit every 3 years. The Act also implemented new powers to tackle crime and anti-social behaviour, such as Anti-Social Behaviour Orders and Parenting Orders. Although these powers can be used by a range of organisations, central to them is the need to consult. The mechanism for this in Croydon is the Anti-Social Behaviour Forum which is serviced by the Council’s Community Protection Team.

Local Government Act 2000

This Act created a new discretionary power for principal local authorities in England and Wales to do anything they consider likely to promote or improve the economic, social or environmental well-being of their area. The power came into force on 18 October 2000.

Anti Social Behaviour Act 2003

The Anti-Social Behaviour Act extends powers of the police and local authorities to tackle nuisance and anti-social behaviour (“ASB”).

Clean Neighbourhoods and Environmental Act 2005 (“CNEA”)

This Act introduced a wide range of enforcement powers for Local Authorities such as the power to impose fixed penalty notices for:

- Nuisance Parking
- Vehicle Abandonment
- Litter Offences
- Graffiti and Fly-posting
- Noise from premises
- Audible Alarms
• Abandoned Shopping Trolleys
• Dog fouling

The above Act also introduced new powers for local authorities to make Gating Orders to tackle crime and/or ASB.

THE NEW POWERS TO MAKE A GATING ORDER

The CNEA inserts new provisions in the Highways Act 1980 (Section 129A to 129G) which enable a local highway authority to gate a highway similar to existing powers under Section 118B and Section 119B of the Highways Act 1980 but there is no requirement for the highway to be designated by the Secretary of State as required under Sections 118B and 119B.

The Council can, therefore, by making Gating Orders restrict public access to public rights of way to assist in the reduction of crime or anti-social behaviour. The legislation provides that public right of way can be so restricted at all times, or in respect of such times, days or periods as may be specified in the Gating Order. Furthermore, a Gating Order may exclude persons of a description from the effect of the restriction imposed by such Order.

Furthermore, the making of a Gating Order does not permanently extinguish any existing rights of way (unlike a stopping up order where underlying highway status is removed) and the Gating Order can be revoked or varied once made if circumstances warrant it. The Council will review the Gating Order, once made, as set out in this document.

A Gating Order can be made if the highway suffers from persistent crime or ASB. Importantly, it enables the local authority to continue with the making of a Gating Order, even if objections are made, as long as they are not from specified bodies and the Council is satisfied it is expedient and in the best interests of the local community to proceed with the making of a Gating Order. (subject to procedural steps detailed below).

The making of a Gating Order was delegated, by the Cabinet on 11 December 2006, to the Director of Environmental, Cultural and Sports Services (now known as Director of Environment, Culture and Public Protection) and to Traffic Management Cabinet Committee (if considered necessary by the Director). Any proposal to make a Gating Order that impacts on existing public rights of way must additionally be referred to the Public Rights of Way Sub-Committee.

WHAT IS A PUBLIC RIGHT OF WAY?

To explain what is meant by “Public Rights of Way” it is first necessary to look at the definition of a “highway”. A highway is any way over which the public have right to pass and re-pass including all roads. In the physical sense a public right of way is the same as a highway. However, a “right of way” is the legal right to walk, ride or drive over it. A public right of way “may take different
forms” and are shown on the Definitive Maps* which the Council are legally required to keep.

The list below describes different types of rights of ways which may be shown:

- **Footpaths** - the right of way is on foot only;
- **Bridleways** - for pedestrians, horse riders and bicyclists (who must give way to people on foot or on horseback);
- **Byways open to all traffic (BOATs)** - carriageways over which the right of way is on foot, on horseback and for vehicular traffic, but which are used mainly for the purposes for which footpaths and bridleways are used (i.e. by walkers and horse riders).
- **Restricted byways** Sections 47-50 of the Countryside and Rights of Way Act 2000 (as amended) introduced a new category of highway called the “restricted byway”. This is a highway over which the general public have restricted rights of way namely, on foot, on horseback or leading a horse and a right of way for vehicles (excluding mechanically propelled vehicles).
- **Alleyways** whilst often used by the general public, are not necessarily recorded as Public Rights of Way on the Definitive Map. Therefore, the Definitive Map must be checked to ascertain whether or not the right to use the alleyway is in fact a public right of way.

*To inspect the Maps and indeed any information regarding Gating Orders in Croydon please contact Community Safety Services: 020 760 5448

**UNDER WHAT CIRCUMSTANCES CAN GATING ORDERS BE USED?**

The making of Gating Orders will not be appropriate in all cases and other alternatives to deal with environmental anti-social behaviour should be explored first. The criteria and procedure set out in the legislation must be met.

Before making a Gating Order the Council must be satisfied that the three statutory criteria set out in Section 129A(3) of the Highways Act 1980 and listed below are met:

(a) the premises adjoining or adjacent to the highway are affected by crime or anti-social behaviour;

(b) the existence of the highway is facilitating the persistent commission of criminal offences or anti-social behaviour; and

(c) it is in all the circumstances expedient to make the order for the purpose of reducing crime or anti-social behaviour.

Section 129 A(4) of the 1980 Act provides that the circumstances referred to in Section 129A (3)(c) above 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 cases where the highway constitutes a through route, the availability of a reasonably convenient alternative route.

It is important that people who use these relevant highways understand why a Gating Order has been proposed. Therefore, the Council needs to provide evidence that these criteria are met. Ideally, this evidence and justification should appear on the Notice in the newspaper, with details of where members of the public can find more information if necessary.


PUBLICITY

Gating Orders can have implications for various groups of people, such as walkers who may oppose the termination of certain rights of way. For this reason, it is essential that Gating Orders are satisfactorily publicised before they are made.

Regulation 3 of the above-mentioned Regulations sets out what steps Local Authorities should take to publicise the proposed Gating Order.

The Council must publish a Notice in a local newspaper and on the Council’s website. The legislation states that the notice should include the highway affected, the general effect of the order and identify the alternative routes which would be available to pedestrians and vehicular traffic if the proposed order were to be made. However, in practice this information will be included in the proposed Order itself, so the notice only needs to:

• include a draft of the proposed Order and details of the highway affected;
• identify alternative routes that members of the public may take; and
• invite representations (in writing) as to whether or not a Gating Order should be made, within a period of notice that is at least 28 days.

A similar Notice or Notices, containing all the information stated above, should be placed on or adjacent to the relevant highway at both ends, in order that people who want to use the highway can see that it is intended to make the Gating Order and the effect of such Order being made.

These Notices need to be visible enough to draw their attention, and make it clear what the implications of the intended Order will be. The regulations do not specify a minimum time period for which notices should be displayed before the Gating Order comes into force as local circumstances may make this difficult to
achieve. However, wherever possible, these notices should be displayed to coincide with the notices published on the website and local paper, i.e. for a minimum of 28 days before the Gating Order is made. It is the responsibility of the Council to ensure that notices are maintained in a condition that ensures they remain visible and legible. The Notices will be checked on a regular basis to ensure this.

Regulation 4 also requires the Council to give a copy of the Notice to the following:

(a) all the occupiers of premises adjacent to or adjoining the relevant highway;

(b) every Council through whose area the relevant highway passes;

(c) every chief officer of a police force through whose police area the relevant highway passes;

(d) every fire and rescue authority whose area the relevant highway passes;

(e) every NHS trust or NHS foundation trust through whose area the relevant highway passes;

(f) any local access forum through whose area the relevant highway passes;

(g) any statutory undertaker who maintains services in the locality in which the relevant highway is situate;

(h) any provider of gas, electricity or water services in the locality in which the relevant highway is situated;

(i) any communications provider in the locality in which the relevant highway is situated;

(j) any person who the Council reasonably considers might have an interest in the proposed gating order;

(k) any person who requests a copy of the notice; and

(l) any person who asked to be notified of any proposed gating orders.

The Council should also inform anyone they reasonably consider might have an interest in the proposed Order. This could include a wide range of groups. It is the responsibility of the Council to decide who this might include and would consider notifying a variety of groups that are likely to take an interest in the gating of a highway.
The majority of highways will be urban alleyways that suffer from ASB and crime; however rural highways can suffer from ASB and crime too. Therefore, it is important to ensure that any group who has a particular interest in the highway on which the Order will be made is given an opportunity to comment.

Schedule 1 at the end of this document provides contact details for Croydon based organisations that have requested we consult with them about all Gating Order proposals. It is recommended that the Council seeks to engage with these organisations as early on in the process as possible in order to effectively consider all interventions to tackle the ASB and crime.

CONSULTATION

The consultation period is to be a minimum of 28 days.

All persons/interested parties likely to be affected by a proposed Order must be notified.

The Croydon Society who are affiliated to The Open Spaces Society and The Ramblers Association have specifically asked to be notified of any gating order proposals in Croydon. (contact details can be found in Appendix 1 at the end of this document)

PLANNING PERMISSION

In cases where the height of the gate is over 2 meters planning permission will need to be sought. In granting permission the local planning authority have regard to the following policies:-

The relevant policies of the Croydon Replacement Unitary Development Plan (the Croydon Plan) are SP3, UD2, UD6, UD8, RO11 and RO14.

Developments will need to be considered to be satisfactory in relation to:

(a) the appearance of the development in the street scene
(b) the relationship of the development to adjacent property
(c) the character of the development in the surrounding area
(d) the impact of the amenities of the occupiers of adjacent and nearby properties
(e) the light and outlook of occupiers of adjacent and nearby properties
(f) the privacy of occupiers of adjacent and nearby properties
(g) the relationship of the development to trees to be retained
(i) the safety and security of buildings and the spaces around them and having regard to all other matters raised.
REPRESENTATIONS (OBJECTIONS) FROM INTERESTED PARTIES

Regulation 5 provides that a Council shall consider any representations as to whether or not the proposed Gating Order should be made whether in response to the consultation and publicity or otherwise.

If there is considerable objection to the Order, it is necessary for the Council to be absolutely sure that there are sufficient grounds for the Order to be made. Particular attention should be given to balancing the crime and anti-social behaviour concerns against the impact it will have on users of the highway and local residents.

The Council is obliged to hold a public inquiry if the objections are from specified bodies and these bodies are specified in Regulation 6(2) and are namely, the chief officer of a police force, fire and rescue authority, NHS trust or NHS foundation trust and any other Council through whose area the relevant highway passes.

If objections are received from any other parties the Council is not obliged to hold a public inquiry but must consider these.

The ultimate discretion as to whether or not to proceed with the making of the Gating Order rests with the Council which must undertake a balancing exercise taking into account all the circumstances and determine whether or not it is expedient to make the Gating Order.

THE GATING ORDER AND ADJACENT HIGHWAYS

Section 129B (3) provides that a Gating order may not be made so as to restrict the public rights of way over a highway of occupiers of premises adjoining or adjacent to the highway.

THE GATING ORDER AND ONLY MEANS OF ACCESS

Section 129B(4) provides that a Gating Order may not be made so as to restrict the public right of way over a highway which is the only or principal means of access to any dwelling.

Furthermore, Section 129B(5) provides that in relation to the highway which is the only or only principal means of access to any premises used for business or recreational purposes, a Gating Order may not be made so as to restrict the public right of way over the highway during the periods when those premises are normally used for those purposes.

The Council therefore, needs to consider all the surrounding circumstances before making a Gating Order. It is also to be noted that the wording of the legislation is not mandatory and states that the Gating Order “may not” be made as opposed to “must not” be made.
CHALLENGING GATING ORDERS

Section 129D of the Highways Act 1980 allows individuals to challenge the making of an Order in the High Court within six weeks of the Gating Order being made. The Order can be challenged on the ground that either the Council had no power to make or any statutory requirements have not been met.

A full justification, with evidence, should be something that the Council will have on file to provide to anyone who objects to the Gating Order, or who requests an explanation for the proposed order.

Responses to those who object should be comprehensive, and specifically address their concerns. It is in the interests of all parties to conclude this process promptly and without unnecessary delay. Ideally, consideration should be concluded 28 days (or less) after the final date in which written representations can be made.

FORM AND CONTENT OF A GATING ORDER

In reality, Gating Orders are quite simple straightforward documents. Regulation 8 provides that the Gating Order must contain information as specified in that Regulation.

Firstly, the Order must include a statement asserting that the conditions set out in Section 129A (3) of the Highways Act, 1980 have been met.

In effect, this means that the Council is satisfied that anti-social behaviour and/or crime exists in the area around the Gating Order, that the existence of highway is facilitating persistent commission of criminal offences or anti-social behaviour and that a gating order would be beneficial for tackling crime and anti-social behaviour in the area and the Council considers it expedient to make the order.

In addition to the initial statement, the Order should include:

- the dates and times that the public right of way will be restricted;
- the location where the gating order will be situated;
- details of any persons who are excluded from the effect of the restriction;
- details of alternative routes available to pedestrians and vehicular traffic during the period the relevant highway highway is restricted and
- the name and contact details of the person who is responsible for maintaining any gate authorised by the order.

There is no statutory model, upon which Gating Orders should be based.
REGISTER OF GATING ORDERS AND STEPS TO BE TAKEN ONCE AN ORDER HAS BEEN MADE

After an Order has been made a copy should be displayed in similar positions on the highway as was the Notice in such a manner that it is still visible to members of the public and remain in place 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. Furthermore it is recommended that the notice is made of metal to reduce weather and potential criminal damage.

Pursuant to Regulation 17 a copy of the Order should also be placed in a prominent position in the Council for at least 12 months from the date the Order is made, and be published on the Council’s website.

The Council is required to keep a Register of Gating Orders which is to be open to inspection during normal business hours and which must contain the following information:

(a) copies of all notices of proposals for the making , variation or revocation (as the case may be) of Gating Orders

and

(b) copies of all Gating Orders made by the Council.

the Council must supply a copy of a Gating Order to anyone who requests them and pays a reasonable charge, (decided by the Council).

PROVISION OF KEYS

A number of individuals and groups will have legitimate purpose or business to pass through gates. These can include, but is not limited to, property owners and occupants, statutory undertakers, such as telecommunication companies and utility companies, the emergency services and, of course, Council officers on business.

Therefore, early in the process of making the Gating Order, the Council needs to undertake an assessment of the likely number of individuals needing keys to enter the particular highway subject to the Gating Order.

Clearly, it is important that keys are issued to the relevant groups who will need them and in particular the emergency services as this may impact on the speed at which they can provide their service.

It is the responsibility of Community Safety Services to ensure all parties are informed and issued with keys.
VARYING, REVOKING AND REVIEWING A GATING ORDER

Once a Gating Order is in place, it is possible for the Council to vary or revoke the order (pursuant to Section 129F of the 1980 Act and the Regulations 9-16)

The legislation provides that a Council can vary a Gating Order made so as to either further restrict any public right of way or to reduce the restriction if considered expedient to do so.

The Council can also revoke the Gating Order made if it is satisfied that the restriction imposed by the order is no longer expedient in all the circumstances for the purposes of reducing crime or anti-social behaviour.

Therefore, any variation/revocation proposal will need to comply with the key principles of reducing crime and ASB while not excessively inconveniencing users of the gated highway.

The Council needs to follow the procedure set out in regulations to revoke or vary an Order, i.e. advertising the general effect of the proposed varied or revoked Order (as the case may be) in a newspaper, notifying relevant agencies and individuals, considering representations, and prompting a public inquiry when certain bodies object.

REVIEW OF GATING ORDERS

The Council intends to review Gating Orders on an annual basis. This review should evaluate whether the Gating Order is acting as a useful crime or ASB reduction measure. It should also assess the impact it is having on the community and discussions should be held with local residents to gauge whether the limited access is causing excessive inconvenience.

Data will need to be gathered from several sources for the review process and each case will need to be judged on its own merits.

The Council will seek the views of local residents 3 months before the review date. This information will form the basis of the qualitative data for the review process. In all cases recorded crime statistics will also be used to prepare the review report.

Community Safety Services will compile all review reports which will be presented at the most appropriate decision making body on a case by case basis e.g.

- Anti-Social Behaviour Forum
- Safer Neighbourhood Partnership Action Group (SNT PAG)
- Joint Action Group (JAG)

If you require further information please contact: Community Safety Services
Telephone: 020 760 5448
LIST OF PRESCRIBED ORGANISATIONS

The Secretaries of State have prescribed certain organisations to which authorities must send copies of the statutory notices of orders made under the following Regulations.

- The Town and Country Planning (Public Path Orders) Regulations 1993
- The Public Path Orders Regulations 1993
- The Wildlife and Countryside (Definitive Maps and Statements) Regulation 993 and
- The Rail Crossing Extinguishment and Diversion Orders Regulations 1993

The names and address of these organisations are listed below together with details of the type of order for which notification must be given. In addition, these organisations have also requested that they be consulted on Gating Orders or proposals before they are made.

<table>
<thead>
<tr>
<th>Prescribed Organisation</th>
<th>Proposal Orders For which Consultation is requested</th>
<th>Person, Address to Which pre-order Consultation papers, Should be sent</th>
<th>Orders for which Statutory notice Must be given</th>
<th>Person, Address to Which statutory Notices on the Making and Confirmation of orders must be sent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Auto Cycle Union</td>
<td>All cases</td>
<td>The appropriate Local Representative as Notified to the Authority DEBBIE WALMSLEY 01788 566400</td>
<td>All orders made In England and Wales</td>
<td>Auto Cycle Union, ACU House, Wood Street, Rugby, Warwickshire CV21 2XY</td>
</tr>
<tr>
<td>British Horse Society</td>
<td>All cases</td>
<td>BHS local Representative as Notified to the Authority ACCESS DEPARTMENT 01926 707700</td>
<td>All orders made In England and Wales</td>
<td>BHS Headquarters Stoneleigh Deer Park Kenilworth Warwickshire CV8 2XZ</td>
</tr>
<tr>
<td>Byways and Bridleways Trust</td>
<td>All cases</td>
<td>BBT local nominee If notified to the Authority THE SECRETARY (address opp.)</td>
<td>All orders made In England and Wales</td>
<td>The Byways &amp; Bridleways Trust PO Box 117 Newcastle upon Tyne NE3 5YT</td>
</tr>
<tr>
<td>Cyclists Touring Club</td>
<td>All cases</td>
<td>Cyclists Touring Club Catterell House 69 Meadow Godalming Surrey GU7 3HS</td>
<td>All orders made In England and Wales</td>
<td>Cyclists Touring Club Catterell House 69 Meadow Godalming Surrey GU7 3HS</td>
</tr>
<tr>
<td>Open Spaces Society</td>
<td>All cases</td>
<td>Croydon's local representative :- The Croydon Society The Chairman of the Croydon Society The Croydon Society</td>
<td>All orders made In England and Wales</td>
<td>Open Spaces Society 25A Bell Street Henley-on-Thames Oxon</td>
</tr>
</tbody>
</table>
| **The Ramblers Association** | All cases | RA local representative  
As notified to the Authority  
**SARAH GARDENER**  
**FOOTPATH POLICY**  
**0207 339 8500** | All orders made  
In England and Wales | Ramblers Association  
2nd Floor,  
Camelford House,  
87-90 Embankment  
SE1 7TW |
| --- | --- | --- | --- | --- |
| **The Cycle Forum Croydon** | All cases | Derek Stidder,  
Group Engineer Traffic, Transportation & Road Safety  
Taberner House  
Park Lane  
Croydon  
CR9 1JT | All orders made  
In England and Wales | Derek Stidder,  
Group Engineer Traffic,  
Transportation & Road Safety  
Taberner House  
Park Lane  
Croydon  
CR9 1JT |

Please note that the names and addresses of the person to whom notice must be sent may change from time to time. The prescribed organisations have been asked to ensure that authorities are notified well in advance of such changes. Authorities should of course ensure that their own records are kept up to date in this respect.

Croydon Council checked all of the above contacts and addresses during May 2007.