



# CARDIFF COUNTY COUNCIL'S STRATEGY FOR ALLEY GATING SCHEMES





# CARDIFF COUNTY COUNCIL'S STRATEGY ON ALLEY GATING SCHEMES



## POLICY OBJECTIVES

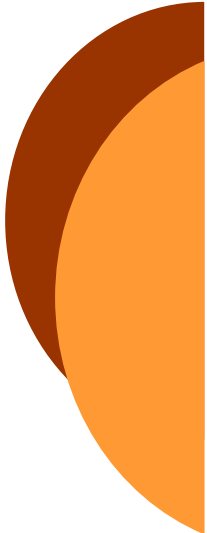
**Policy AG 1:** Cardiff County Council will only encourage and support the lawful implementation of alley gating schemes where crime and/or anti-social behaviour reduction can be demonstrated.

1.1 The overall policy objective is the speedy and lawful implementation of alley gating schemes in the city 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 Cardiff County Council's Community Safety Partnership operates a multi agency approach to community safety issues. Its pledge is 'to reduce crime and disorder, and to improve community safety to make Cardiff a safer place to live, work and visit. Also to increase public reassurance, reduce the fear of crime and the social and economic costs of crime'.

1.3 Alley gating schemes can contribute towards the delivery of this pledge through the co-ordination of gating of alleyways which are shown to be adversely impacted by crime and /or anti-social behaviour which can be intelligence-led.

1.4 The closing off of alleyways can be achieved through use of a stopping up order under Section 116 of the 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

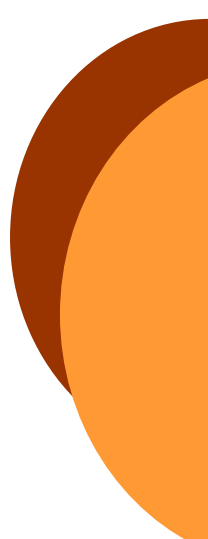
2.1 The Council has a statutory duty to protect all public highways, whether registered on the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense or otherwise, and failure to undertake this duty could result in the Council acting unlawfully. The Council must therefore 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 public 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 Section 17 of the 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 Housing Management & Neighbourhood Planning within their established regeneration areas, and by the Cardiff Community Safety Partnership within other areas of the city.

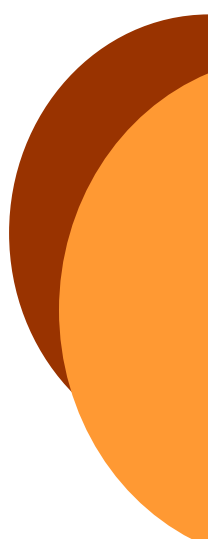
3.1 Requests for alley gating schemes are to be made to the Alley Gating Officer in the first instance.

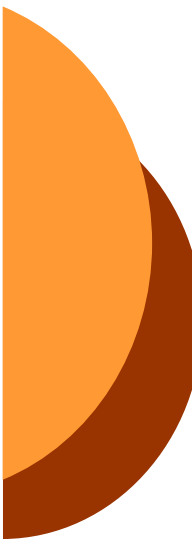
3.2 This policy does not restrict the right of individuals or groups to make closure applications without recourse to resources available to the city council.

3.3 A feasibility study will be undertaken to enable a decision to be made on any alley gating scheme proposal. The feasibility 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 the Cardiff Community Safety Partnership
- Consultation with Neighbourhood Planning
- Consultation with Housing Management
- Consultation with Highways Operations
- Consultation with local ward members
- Consultation with emergency services
- Consultation with utility companies
- Consultation with any other interested parties
- An assessment of whether any legal orders are required and if so, the most appropriate legislation to use and team to implement this
- An assessment of the physical works required
- Estimated costs

3.4 Priorities for the implementation of alley gating schemes shall be decided in conjunction with Housing and Neighbourhood Planning (within established regeneration areas where funding is secured). Schemes shall be chosen and implemented through these teams in areas with strong community support for the proposals.





3.5 Priorities for the implementation of alley gating schemes in other parts of the city shall be decided by the Cardiff Community Safety Partnership, based upon:

- Hotspots identified based on an analysis of the levels of reported crime and official statistics
- Additional areas where the implementation of alley gating schemes would prove cost-effective and achieve economies of scale
- Areas with strong community support for the alley gating

## **DETERMINATION OF HIGHWAY STATUS**

### **Routes shown on the Highway Records**

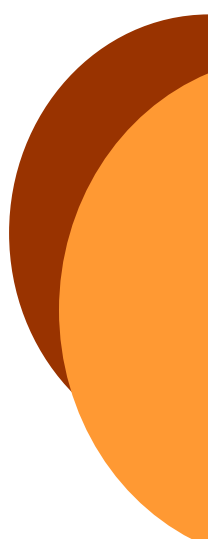
4.1 Many public rights of way or highways are already recorded on documents known as the Definitive Map and Statement and/or the List of Streets Maintainable at Public Expense. These are the Council's formal records of public highways. If a route is recorded on either of these documents, then with few 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 the 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 Section 31 of the 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:** The City & County Solicitor or other employees authorised in accordance with articles 13.4 & 13.5 of the Constitution shall sign off all closure/gating orders.

5.1 The City & County Solicitor or other employees authorised in accordance with articles 13.4 & 13.5 of the Constitution shall consider applications for closure orders irrespective of which legislation is being used. A Record of Decision must be obtained for every scheme prior to any closure or gating order being implemented.

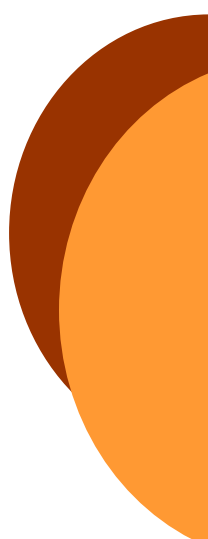
**Policy AG 4:** The Council will use Gating Orders as the primary legislative tool to implement alley gating schemes. However, the council will where necessary use any other legislative route when a Gating Order is not appropriate. The Council will decide the most appropriate legislation to use to carry out alley gating schemes, through a Project Group set up for this purpose.

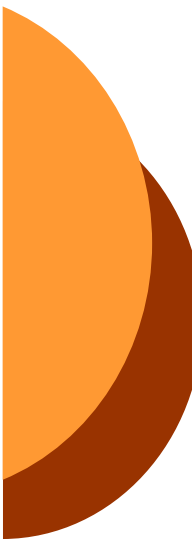
5.2 The council will use Gating Orders under Section 129A of The Highways Act 1980 as the primary legislative tool to deliver alley gating schemes. However, the gating/closure of alleyways can be implemented in a number of different ways, including:

- By extinguishing the right of way that exists over the alleyway using Section 116 of the Highways Act 1980.
- By stopping up a highway through Section 247 and 257 of The Town and Country Planning Act 1990 to allow development to take place.

5.3 All procedures for dealing with the closure of problem alleyways will remain open to the Council.

5.4 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 which 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.





5.5 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 Assembly 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.

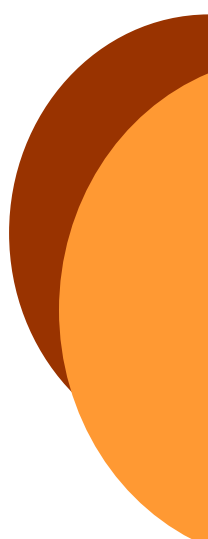
5.6 A Gating Order under section 129A allows a Local Authority to restrict access to a public right of way without changing its status, either as a highway or public right of way. The gating order will be in effect for a period of time as stated under the order. During anytime the order may be varied 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 new powers the Council must be satisfied that the following conditions are met:-

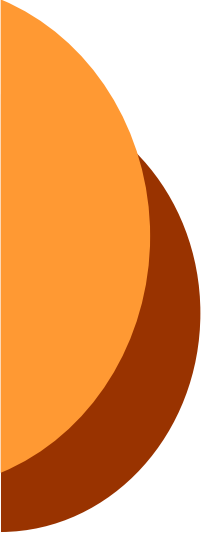
- Premises adjoining or adjacent to the highway are affected by crime and/or anti-social behaviour
- The existence of the highway is facilitating the persistent commission of criminal offences and/or anti-social behaviour
- It is in all cases expedient to make the order for the purposes of reducing crime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

5.7 All requests, proposals, 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 members of the Community Safety Partnership (including emergency services), Housing, Traffic & Transportation, Neighbourhood Planning, Legal Services and Highways Operations. This group will make recommendations whether to progress schemes or not. These recommendations will be passed to the Operational Manager for Housing and Neighbourhood Renewal to sign. This will form a Record of Decision which will be used to instruct Legal Services to progress the relevant order.

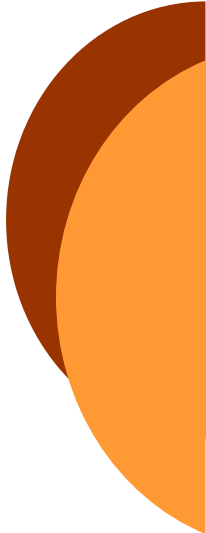




## Regulations

5.8 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 19th 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 which drastically cuts down the length of time taken to obtain a gating order.

5.9 However, gating orders are not permanent, nor do they change the status of the highway or public rights of way. Cardiff County Council will retain responsibility for the affected alley way (where the highway is adopted) and the gates. The importance of a strong community commitment to the gating order and its maintenance cannot be underestimated. Therefore community engagement and extensive consultation is important to the success of any alley gating scheme.





## CONSULTATION AND CONSENTS

**Policy AG 5:** Cardiff County 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 an alley gating scheme will be consulted, irrespective of which legislation is being used to implement the scheme. All will be asked to sign written agreements to consent to (with no obligation to return response) the alley gating scheme and all proposed gating orders that may be made.

6.2 In all instances, before making any order the Council shall consult with:

- (a) all the occupiers of premises adjacent to or adjoining the affected highway;
- (b) every community council through whose area the affected highway passes;
- (c) every chief officer of a police force through whose area the affected highway passes;
- (d) every fire and rescue authority through whose area the affected highway passes;
- (e) the Welsh Ambulance Services NHS trust;
- (f) any local access forum through whose area the affected highway passes;
- (g) any statutory undertaker who maintains services in the locality of the affected highway;
- (h) any provider of gas, electricity or water services in the locality in which the affected highway is situated;
- (i) any communications provider in the locality in which the affected highway is situated;
- (j) any person who the council reasonably considers might be affected by the proposed order;
- (k) any person who requests a copy of the notice; and
- (l) any person who has asked to be notified of any proposed gating orders.
- (m) local ward members



## **DELIVERY**

**Policy AG 6:** Cardiff County Council will support the most appropriate delivery arrangements for alley gating schemes, depending on local circumstances, to maximise additional benefits.

7.1 Alley gating schemes shall be undertaken using the most appropriate delivery arrangements. The schemes may be undertaken by council staff or other agencies depending on local circumstances.

7.2 All efforts should be made to maximise additional benefits of alley gating schemes such as street greening and environmental improvements.

## **MAINTENANCE**

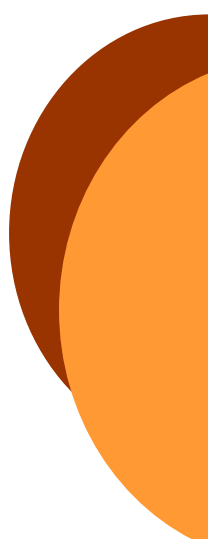
**Policy AG 7:** Where the council agrees to make an order under Section 116 of the Highways Act 1980, the County Council will not accept responsibility for the ongoing maintenance of the extinguished highway. The initial setting up works will be co-ordinated by the Council in line with manufacturer's recommendations and the Council's procurement policy, but alley gating scheme maintenance will be taken up by the affected stakeholders.

8.1 Where closure of a highway or public right of way is by means of a stopping up order under Section 116 of the Highways Act 1980, residents and owners of adjoining premises will be responsible for the on going maintenance of the alley way and the gates. Where appropriate, residents should be encouraged to set up, participate in and contribute to arrangements for key holding, care and maintenance of the gates and alleyway.

**Policy AG 8:** In accordance with Section 129A of the 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 section 129A of the Highways Act 1980**

8.2 As the status of the alley way does not change, residents do not become responsible for the maintenance of the alley way or 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:** In establishing alley gating schemes, the Council will follow the procedures set out in the Highways Act 1980 (Gating Orders) (Wales) Regulations 2007.

9.1 Section 2 of the Clean Neighbourhoods and Environment Act 2005 inserts Sections 129A to 129G 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 the 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 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 new provisions of the 1980 Act, The Highways Act 1980 (Gating Orders) (Wales) 2007.

9.2 In particular, these Regulations make provision with respect to:

- (a) publicity relating to a proposal to make, vary or revoke a gating order
- (b) representations as to the making, varying or revocation of a gating order
- (c) public inquiries
- (d) content of gating orders; and
- (e) registers of gating orders.

## **REVIEW**

10.1 The Council will formally review this strategy at intervals of no longer than three years.

