CHESHIRE WEST AND CHESTER

REPORT TO EXECUTIVE MEMBER

Date of report:	Monday 23rd November 2009
Report of:	Community Safety Manager
Executive Member:	for Area and Community Councillor Lynn Riley

THE PROPOSED GATING OF PART OF PUBLIC FOOTPATH 33 WINSFORD – PART 8A HIGHWAYS ACT 1980

This is not a Key Decision

1.0 What is the report about?

1.1 A proposal to make an Order under Part 8A of the Highways Act 1980 to gate part of Public Footpath No. 33 in the Parish of Winsford (FP33).

2.0 What Decision is required by the Portfolio Holder?

2.1 Whether or not the proposed Order should be made.

3.0 How does the Decision contribute to the Council's Corporate Priorities?

3.1 The proposed Order is designed to achieve a reduction in crime, disorder and antisocial behaviour (ASB). As such it contributes Safer and Stronger Communities imperative to ensure that communities are safe and secure with a reduced fear of crime and harm. It also contributes to the Environmental Sustainability imperative by helping to build clean, attractive, and healthy environments for our people to live and work in.

4.0 Report Details

Legislative Background and Decision Criteria

4.1 Part 8A of the Highways Act 1980 and associated regulations enable councils to make Gating Orders permitting gates to be erected across public highways to restrict how they are used. Before a council can make a Gating Order it must be satisfied that:-

4.1.1 premises adjoining or adjacent to a public highway are affected by crime or ASB;

4.1.2 the existence of the public highway is facilitating the persistent commission of criminal offences or ASB; and

4.1.3 it is, in the circumstances, expedient to make the Order for the purposes of reducing crime or ASB taking into account the likely effect of the Order on occupiers of premises adjoining or adjacent to the highway, other persons in the locality and the public using the route, and the availability of a reasonably convenient alternative route.

4.2 In addition, an Order can not be made so as to:-

4.2.1 restrict the right of way over a highway for occupiers of premises adjoining or adjacent to the highway;

4.2.2 restrict the right of way over a highway which is the only or principal means of access to any dwelling;

4.2.3 in the case of business or recreational premises, restrict the public right of way over a highway which is the only or principal means of access during periods when the premises are normally used for that purpose.

4.3 The decision whether to make an Order is effectively an exercise in balancing the right of the public to make legitimate use of the highway concerned against the impact that crime or ASB facilitated by the highway is having on the local community.

4.4 Consideration should be given as to whether there are any viable alternatives to a Gating Order which may address the problems experienced. Consideration should also be given to whether any person or class of person should be excluded from the effect of a Gating Order and whether the Gating Order should be implemented on a 24 hours a day 7 days a week basis (24/7) or perhaps just take effect at certain times or on certain days.

4.5 Gating Orders must be reviewed by the Council from time to time to ensure that they are still necessary and appropriate. Gating Orders can be varied or removed to respond to changes in the circumstances which led to an Order being made in the first place.

The Proposal

4.6 The proposal relates to public highway that is recorded on the Definitive Map of Public Rights of Way for the Borough of Cheshire West and Chester as Public Footpath No. 33 Winsford. The alleyway was created following the development of the Greenfields Park estate to allow for the continuation of the existing FP33.

4.7 The proposal is to gate approximately 22 metres of FP33 from Pinewood Road to Whitby's Lane (Public Footpath No. 32 Winsford) as illustrated on the attached plan.

4.8 This proposal has been brought forward as evidence suggests that there exists a disproportionate amount of reported incidents of crime and ASB in the area surrounding the proposed gating site. It is believed that the behaviour

complained of is facilitated by the section of FP33 in question because it provides a convenient or concealed means of access and egress for those who indulge in the reported behaviour.

4.9 It is considered that there are no other viable or preferable options to deal with the reported crime and disorder issues because the cost and likely transient effect of potential measures renders the same disproportionate in comparison to the anticipated cost and effect of gating the proposed section of FP33. As such the alternative crime reduction resource would be better deployed elsewhere.

4.10 It is considered that the Order should take effect on a 24/7 basis because the likely effect of the Order on occupiers of premises adjoining or adjacent to the highway and on other persons in the locality particularly having regard to the availability of a reasonably convenient alternative route render the resources required for a managed opening and closing arrangement disproportionate.

4.11 Keys to the alley gate would be provided to occupiers of premises adjoining or adjacent to the highway upon request to ensure that their necessary access is not restricted by the Gating Order. The only or principal means of access to any dwelling, business or recreational premises is unaffected by the proposed Gating Order.

The Evidence

4.12 A detailed evidence file will be produced to the Executive Members in support of the proposal. Whilst the evidence file is confidential in accordance with the provisions of the Data Protection Act 1998 its contents can be summarised as follows:-

4.12.1 A combined analysis of crimes and incidents of ASB within 100 metres of the Pinewood Road, Whitby's Lane, and Leaf Grove area reported to Cheshire Police for the periods 1 July 2006 to 31 July 2007 and 1 June 2008 to 12 March 2009 reveals 53 crimes and 139 incidents of antisocial behaviour being a level disproportionate to comparable levels in the locality.

4.12.2 Evidence of 20 Pinewood Road/Leaf Grove households attesting to the impact of crimes and incidents of antisocial behaviour.

Consultations

4.13 Informal consultations in relation to this proposal have been undertaken with:-

4.13.1 The Cheshire West and Chester Crime and Disorder Reduction Partnership (CDRP) consisting of the following statutory members: Cheshire Police; Cheshire Fire and Rescue Service; Cheshire Probation Service; Cheshire Police Authority and Cheshire West and Chester Borough Council.

4.13.2 Local Residents

Pinewood Road Nos 1-29 (not 13)
Leaf Grove Nos 1-11 &15-17
Delamere Street Nos 153-159 & 161 (businesses backing onto path)
Greenfields Primary School
St Joseph's Catholic Primary School
St John's Church, Delamere Street

4.13.3 The Public Rights of Way Service who consulted:

Local Government:
Winsford Town Council
Councillors: Gaskill, Barton & Parkinson

Emergency Services:
Northwest Ambulance service
Cheshire Police HQ
Cheshire Fire and Rescue Service HQ

Utilities:
United Utilities PLC
British Telecom
National Grid
SP Manweb PLC

User groups:
Byways and Bridleways Trust
Open Spaces Society
Ramblers Association
Mid-Cheshire Footpath Society
Peak and Northern Footpath Society
British Horse Society
Trail Riders Fellowship
British Driving Society
Cyclists Touring Club

4.13.4 The Highway Authority

4.13.5 Ellesmere Port Neighbourhood Policing Inspector

4.13.6 The Executive Member for Culture and Regeneration Councillor Richard Short

4.13.7 The Executive Member for the Environment Councillor Neil Ritchie

4.14 Objections to the Gating Order have been received from The Mid Cheshire Footpath Society and Peak & Northern Footpaths Society based on levels of legitimate usage of the footpath.

4.15 Support for the order has been received from the local residents, the CDRP, the Emergency Services, the Executive member for Area and Community, the Executive member for Culture and Regeneration and the Executive member for Highways and local councillors. The Highways and Public Rights of Way Service have not objected to the making of the Order.

5.0 Conclusion

5.1 It is considered that the legal requirements for making a Gating Order as summarised in paragraphs 4.1 and 4.2 above have been satisfied.

5.2 Whilst the objections set out above are noted, careful consideration has been given to the effect of the Order on occupiers of premises adjoining or adjacent to the highway and to other persons in the locality including the public making legitimate use of the route. Having regard to the availability of a reasonably convenient alternative route it is considered in all the circumstances expedient that the proposed order be made.

6.0 Recommendation

6.1 That:-

6.1.1 Officers be authorised to give formal notice of the Council's intention to make an Order pursuant to Section 129A of the Highways Act 1980 in the form of the attached draft Order; and,

6.1.2 upon expiry of the statutory notice period and in the absence of any objections received during the statutory notice period (other than objections the nature and substance of which have already been considered during the informal consultation exercise undertaken) Officers be authorised to make the said gating order and erect barriers pursuant to the same; and,

6.1.3 the effect of the Gating Order and ambient crime and disorder and ASB issues be kept under review

7.0 What will it cost?

7.1 The estimated costs of promoting a Gating Order and procuring and installing the Gate are estimated to be in the region of £5000. This cost will be met by funding streams identified within the Community Safety Team Budget.

8.0 Legal Considerations

8.1 The legal considerations are dealt with in the body of this report. In addition, the decision to make an order can be challenged in the High Court on the basis that a procedural requirement has not been complied with or that the Council had no authority to make the Order.

9.0 What risks are there and how can they be reduced?

9.1 The risks have been addressed in the body of this report.

10.0 What is the impact of the decision on equality and diversity issues?

10.1 The proposed Gating Order has no adverse impact on matters of equality of diversity.

11.0 Are there any other options?

11.1 The availability of alternative options has been addressed in the body of this report.

For further information:

Officer: Jane Makin
Tel No: 01244 973464
Email: jane.makin@cheshirewestandchester.gov.uk

Background Documents:

Interim Making Places Safer Policy document

Confidential Evidence File