

**Report To:** Cabinet

**Date of Meeting:** 1<sup>st</sup> March 2021

**Report Title:** Proposals to make public space protection orders in relation to alley gating to address serious community safety issues raised by members of the local community

**Report By:** Mike Hepworth, Assistant Director, Environment and Place

**Key Decision:** Yes

**Classification:** Open

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### **Purpose of Report**

To enable cabinet to determine whether to authorise the gating of 3 alleyways seriously affected by anti-social behaviour under powers contained in the Antisocial Behaviour, Crime and Policing Act 2014.

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### **Recommendation(s)**

1. That cabinet authorises the Assistant Director Environment and Place in conjunction with the Chief Legal Officer, to implement the statutory legal process required to gate the 3 public rights of way described in the report.
2. Subject to 1 above, the council formally reviews the gating arrangements no later than 2 years after they commence.

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### **Reasons for Recommendations**

As a result of long standing serious anti-social behaviour affecting 3 public rights of way, the council has been asked to consider gating them using powers set out in the Antisocial Behaviour Crime and Policing Act 2014.

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## Background to the Alley Gating Proposals

1. In recent years two public rights of way in St Leonards and one in central Hastings have been the focus for considerable crime and antisocial behaviour. All of these footpaths are also Public Rights of Way (PROW):-
  - Valentine's Passage, Central St Leonards, Public Right of Way (No.94)
  - Laser Lane, Central St Leonards Public Right of Way (No.97)
  - Havelock Road to Priory Square Public Right of Way (No.175)
2. Residents and local businesses have asked the council and police several times to take steps to deal with the crime and antisocial behaviour associated with these footpaths. The behaviour reported includes: drug dealing, noise and shouting (from drug dealers and potential clients), street drinking, arson, public defecation, prostitution, fly-tipping, graffiti, dog fouling, litter accumulations and some instances of public place violent crime.
3. Each PROW has a different profile of crime and antisocial behaviour, but reports continue to identify these footpaths as needing further crime prevention interventions. These unacceptable behaviours obviously affect the quality of life of residents and the trading environment and operation of nearby businesses reliant on trade from residents and visitors to the area.
4. Increased patrols by police and council wardens, as well as the use of re-deployable CCTV cameras, can only be a temporary solution and has been tried several times. Gating these footpaths is thought to be a more effective measure. However, gating has not been used on public rights of way in Hastings since legislation changed in 2014 with the introduction of the Antisocial Behaviour, Crime and Policing Act 2014.
5. Support for safe and usable streets, including the need to address community safety issues, is regularly found in planning national design guides, and is a recognised part of environmental design practice.
6. This report sets out the background to the proposals, the legal measures that need to be taken (such as consultation), and the feedback from the public consultation.
7. Two of the footpaths proposed for gating (Laser Lane and Valentine's Passage), are within the 'Safer Streets Project' area in St Leonards. This 'Safer Streets Project' is one of 35 Government funded schemes to improve security, extend guardianship and provide crime prevention advice and engagement. The funding for the project was targeted at lower super output areas (LSOAs) with high three-year acquisitive crime rates. Two LSOAs in St Leonards met the government criteria and therefore 2 of the 3 gating proposals can be funded through the local Safer Streets Project.

## Alley gating implementation and the legal framework

8. The Antisocial Behaviour, Crime and Policing Act 2014 gives local councils the power to gate public rights of way using the Public Space Protection Order (PSPO) process. The PSPO can restrict access, such as gating the PROW. The criteria for using gating orders stipulates that it must demonstrate it will positively affect the antisocial behaviour, crime and disorder exhibited along PROWs that:-
  - has had, or is likely to have, a detrimental effect on the quality of life of those in the locality.
  - is, or is likely to be, persistent or continuing in nature.
  - is, or is likely to be, unreasonable; and justifies the restrictions imposed.

## Consultation

9. There is considerable evidence of ongoing crime, disorder and antisocial behaviour associated with each of the PROWs proposed for gating previously collected from residents, the council, landowners and police before the consultation took place.
10. Statutory consultees for the proposed gating are the Highways Authority, and officers have therefore liaised with the East Sussex County Council (ESCC) Public Rights of Way Unit, Sussex Police, local councillors and any resident or land-owner on or near the PROW likely to use it.
11. The formal public consultation took place during the calendar month of December 2020. But in addition to this, the Community Safety Manager has been actively working with residents and businesses in the vicinity of the 3 alleys for a long time and reports that there is strong support for the proposals.

## Consultation feedback

12. A summary of anonymised detailed feedback received from the consultation can be found in appendix one.
13. Sussex Police responded supporting the gating proposals, as all three PROWs have been the focus of considerable amounts of crime and antisocial behaviour throughout recent months and years.
14. The Hastings Business Improvement District (BID) and the Hastings Business Crime Reduction Partnership (BCRP) also both responded supporting the proposals.
15. Given that, apart from one other objection to the Valentine's passage proposal, the only objections to all 3 proposals were received from the ESCC Rights of Way Unit, it is important that their feedback is given careful consideration. Their entire response is included in appendix one.
16. The ESCC Public Rights of Way Unit acknowledged that it was difficult to quantify the extent to which the paths themselves contribute to the antisocial behaviour and crime issues locally, and they have not witnessed first-hand evidence associated with the paths. They are substantially reliant on the Borough Council's assessment that the measures are justifiable and in the interest of the local community. They were concerned about the use of the gating power in addressing issues which have the potential to affect a large proportion of urban paths.
17. ESCC recognised that the network of paths and passageways in Hastings is important in both a utility sense and as a character feature of the town. It is vital that the intentions of these proposals are weighed against the loss of these historic routes to the public. In this respect the impact of the proposals on residents in the locality needs to be considered in a broad sense and should be based on more than just the narrow assessment of how closure of the paths will impact journeys from A to B.
18. The Borough Council needs to be satisfied that the factors affecting these paths are such that the proposals do not set an untenable precedent for dealing with similar problems elsewhere on the footpath network. The threshold for closing paths to the public clearly needs to be high to avoid a situation where the network risks being gradually and permanently eroded.
19. ESCC emphasised that it is important to recognise that these measures are not permanent and cannot be seen as the extinguishment of public rights. The status of the paths as highways would be unchanged by these proposals.
20. It is also important to recognise that the Borough Council needs to continue to provide the services it is currently obliged to provide, such as street cleaning. However, routine ongoing access can be given to the council's street cleansing service.

21. ESCC will retain responsibilities as the highways authority, and it could also inherit problems as a result of these proposals. Residents who retain access to the paths could inevitably view the gated alleyways as private access in time. This could generate issues of encroachment and to some extent this could result in future resentment towards any possibility of the paths being reopened to the public. The need to review these measures after three years needs to be born in mind.
22. For all these reasons, it would be ESCC's preference to see a less restrictive approach attempted. They would suggest, initially at least, that closure of the paths at night with access maintained during defined hours should be attempted. However, the evidence gathered shows that anti-social behaviour and crime occur in these alleys throughout the day and night. ESCC suggest that in conjunction with Police patrols and measures to assist in dealing with day-time offending, such as restrictions to gatherings, it must be at least a reasonable possibility that a better result for the community could be achieved. ESCC feel that the outright closure of these paths to the public seems likely to create problems and potentially sets a precedent which will not be possible to follow in all such cases. However, such measures have already been tried, and as well as not really working, they are not sustainable for the authorities concerned.
23. If it is intended that the Order be made as proposed, ESCC would welcome assurances as to how issues with the potential neglect and privatisation of gated paths be mitigated. In this respect, all residents and local businesses have agreed to manage and essentially own the gates and manage the alley e.g. cleanliness. A legal document (*A simple letter*) will be drawn up to clearly indicate future responsibilities. Laser Lane has 2 street lights that are included in the gating area. These will need to be accessed by ESCC and agreement of this will be obtained by them as part of their streetlight improvement plans in the Safer Streets area.
24. Notwithstanding these concerns, ESCC have said they should be explicitly cited as being exempt for the purposes of performing its responsibilities as the Highway Authority. We believe this refers to the need to maintain their PROW maps and to maintain the streetlights, and we don't believe this should be an obstacle to proceeding with the gating proposals, given the co-operation of the residents and businesses already referred to above.
25. ESCC also say the suggested alternative route for footpath 175 is identified as the route from Priory Square to Havelock Road via the throughway beneath Lacuna Place. This route is not yet designated as either public highway or public open space. ESCC would suggest that it cannot serve as the reasonably available alternative, in accordance with s.64(1) (c) of the Act.
26. Alternative routes to PROW 175 aside from the Lacuna Place underpass are 300m-400m in length. Agreement with the owners of Lacuna Place is being sought to retain the open route. The Local Plan consultation (regulation 18) has identified the perimeter of Priory Square to be secured as part of future developments. More detail is provided below.
27. ESCC requested their objection to these proposals, pending the remedy of the issues, be identified in the draft Order.
28. ESCC's responses are discussed in more detail below. Mitigation to each of these is already underway but must be weighed against the antisocial behaviour and crime related issues associated with each footpath.

### **Valentine's Passage (St Leonards) residents feedback.**

29. A high number of residents living in or near Valentine's Passage responded, and were in favour, with only one resident objecting, concerned about displacing the antisocial behaviour issues described.

30. It should be noted that some residents affected by the ongoing antisocial behaviour in the Passage have offered to take responsibility for both management and repair of the proposed gates and the ongoing management of the footpath.

### **Laser Lane (St Leonards) residents feedback**

31. There are few residents living in the proposed gated part of Laser Lane. By far the largest users are the businesses along Kings Road who store their 1280 litre trade waste bins in the entrance. ESSC highways enforces the removal of these bins if they become problematic, but there has been little recent enforcement and traders have continued to utilise this area for bin storage. The Borough Council continues to issue s.47 notices under the Environmental Protection Act 1990 to ensure these bins are not causing any detriment to the public realm.
32. There has been recent development of flats along the alley, and planning application HS/FA/06/00535 includes further enhancement to the appearance of the lane. The property developer is keen for residents to take on responsibility for maintenance of the lower gate, whilst the Hastings and St Leonards Business Crime Reduction Partnership has offered to manage the gate at the Kings Road junction on behalf of the local businesses, subject to planning permission being approved for the gate at the Kings Road entrance.

### **Havelock Road to Priory Square (Central Hastings) residents feedback**

33. This short PROW leads to Priory Square. Gates already exist which the public house paid for. The licensee has been told to keep them open by ESCC Highways pending the decision on the use of formal gating powers.
34. The landlord has witnessed considerable antisocial behaviour in recent times. There have been several attempts to break into the building. Public place violence has spilled into the alley from Havelock Road associated with the taxi rank. The landlord has accepted responsibility for managing the gates should they be agreed.
35. Recent development plans for Priory Square, as part of the Borough's Local Plan consultation (Regulation 18), include the securing of Priory Square's perimeter to Priory Streets and Havelock Road. The Gating of this footpath would assist in progressing this requirement.

## **POLICY IMPLICATIONS**

### **Equalities or community cohesiveness**

1. Clearly if the gating of the alleys is implemented it could be argued that people who are no longer able to use the alleys are being discriminated against. However, access will be afforded to all those who need continued access because they live or work in the properties backing onto the alleys. Plus, there are alternate routes.
2. A reduction in the crime and anti-social behaviour associated with the withdrawal of unfettered access to the alleys is likely to result in improved community cohesiveness amongst the micro-community retaining access because they live and/or work in properties backing onto the alleys.

### **Crime and fear of crime**

3. A reduction in the crime and anti-social behaviour associated with the withdrawal of unfettered access to the alleys is highly likely to result in reduced fear of crime in the immediate area of the alleys.

## Risk Management

4. N/A

## Environmental Issues

5. So long as the council's street cleansing service are provided with keys and/or keypad access to the alleys, they are likely to be easier to maintain and no longer be fly tipping and litter hotspots.

## Economic/Financial Implications

6. The Safer Streets Project is providing all funds for the 2 footpaths in St Leonards. In Central Hastings Castle Ward, the Havelock Road-Priory Square footpath, gates have already been installed by the adjacent public house. The licensee has been informed by the ESCC Rights of Way Unit to keep the footpath open and the gates unlocked until such time as the gating order proposals are determined.

## Organisational Consequences

7. N/A

## Legal Implications

8. It is essential that the council follows the legal provisions set out in the Antisocial Behaviour, Crime and Policing Act 2014, and any associated statutory guidance. This primarily relates to the need for proper consultation, including with specified statutory consultees as mentioned in paragraph 27 above.
9. In a sense the ESCC Rights of Way Team are duty bound to object in principle to the proposal to gate any PROW. However, as they acknowledge, there is a bigger picture that requires careful consideration. Local residents and businesses are suffering significant issues due to the long-standing ongoing crime and anti-social behaviour associated with these 3 alleys.
10. Plus the very fact that Government enacted the Antisocial Behaviour, Crime and Policing Act 2014, containing provisions enabling local councils to gate alleys, clearly means that the ESCC objections don't necessarily mean the alleys should not be gated.
11. It is also possible for the council to offer some reassurance to the Rights of Way Team in as much as:-
- suitable management of the gated alleys will be provided by local residents for both Valentine's Passage, and the Havelock Road to Priory Square footpath, and that the gate management in Laser Lane will be split between residents in the new development and the Hastings & St Leonards Business Crime Reduction Partnership.
  - The council can review the orders at any time and must do so at least every 3 years. Subject to formally reviewing an order (including carrying out the associated statutory consultation), the council may vary or revoke an order. This means that the gating measures proposed are not permanent and can be changed to reflect changing circumstances. It is suggested that if these 3 alleys are gated, each is reviewed no later than 2 years later.

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## Wards Affected

Central St Leonards and Castle Wards

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## Policy Implications

Reading Ease Score: 38.4

### Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Y
Crime and Fear of Crime (Section 17)	Y
Risk Management	N
Environmental Issues & Climate Change	Y
Economic/Financial Implications	N
Human Rights Act	Y
Organisational Consequences	N
Local People's Views	Y
Anti-Poverty	N
Legal	Y

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## Additional Information

Appendix 1 – anonymised feedback from the consultation on the gating proposals

Appendix 2 – draft gating orders including associated location plans

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## Officer to Contact

Mike Hepworth – Assistant Director Environment and Place

[mhepworth@hastings.gov.uk](mailto:mhepworth@hastings.gov.uk)

01424 783332

John Whittington – Community Safety Manager

[jwhittington@hastings.gov.uk](mailto:jwhittington@hastings.gov.uk)

01424 451438