

Report to: Cabinet

Date of Meeting: 7 November 2022

Report Title: Proposal to gate a footpath in Baird Ward and agree the relevant public space protection order.

Report By: Natasha Tewkesbury, Customer services, Communications and Emergency Planning Manager

Purpose of Report

To authorise the gating of a footpath in Baird ward seriously affected by anti-social behaviour under powers contained in the Antisocial Behaviour, Crime and Policing Act 2014.

Recommendation(s)

- 1) That cabinet authorises the customer services, communications and emergency planning manager in conjunction with the Chief Legal Officer, to implement the statutory legal process required to gate the public right of way (ESCC Ref; No 232) described in the report by varying the existing gating order that is already in place for the public right of ways: ESCC Refs: Nos. 94, 97 and 175.

Reasons for Recommendations

As a result of long standing serious anti-social behaviour affecting a public right of way in Baird ward (No 232), the council has been asked to consider gating it using powers set out in the Antisocial Behaviour Crime and Policing Act 2014 to restrict general access.

To enable the gating of the footpath proposed, approval is sought to vary and extend the existing Public Space Protection Order already in place for other gated footpaths.

Introduction

1. The Public Right of Way Number 232, between Hoad's Wood Road and Pilot Road has been at the centre of antisocial behaviour, littering and criminal damage in Baird ward for many years.
2. Residents have asked the council and police on many occasions to take steps to deal with the crime and antisocial behaviour associated with this footpath. Antisocial behaviour reported includes: noise and shouting, arson, public defecation, fly-tipping, graffiti, dog fouling, litter accumulations, and serious criminal and other property damage (including the use of a firearm).
3. 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 with no long standing affect. Gating this footpath is a more permanent and effective measure to stop the antisocial behaviour.
4. Gating has been used on public rights of way subject to antisocial behaviour in Hastings since March 2021.
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.

Alley gating implementation and the legal framework

6. Section 61 of the Anti-Social Behaviour Crime and Policing Act 2014 allows the Council to vary a Public Space Protection Order (PSPO) already in force by increasing the restricted area or by altering prohibitions or requirements, or adding a new one. Therefore the legislation provides for the inclusion of gates prohibiting general access to a further passageway by way of a variation of the existing PSPO.
7. Section 60 of the Anti-Social Behaviour Crime and Policing Act 2014 Act provides the council with the ability to extend a PSPO by a maximum of 3 years if there are reasonable grounds to that the extension is necessary to prevent the occurrence or recurrence of the activity that the PSPO sought to prohibit.
8. Section 59(2) and (3) of the 2014 Act requires the following conditions are met:
 1. That activities carried on in the passageway have had a detrimental effect on the quality of life of those in the locality or are likely to do so.
 2. That the effect, or likely effect, of that activity
 - a. is, or is likely to be of a persistent or continuing nature,
 - b. is, or is likely to be, such as to make the activity unreasonable, and
 - c. justifies the restrictions imposed.
9. Evidence is required to support the extension of the PSPO beyond the original 3 year duration and to include a footpath not previously gated as per the above conditions.
10. Section 64 of the 2014 Act, which deals with restrictions over a public right of way over a highway confirms that you must also consider the following in the proposed gating:
 - a) the likely effect of making the order on the occupiers of any adjoining or adjacent properties.
 - b) Likely effect of making the order on other persons in the locality

c) Reasonably convenient alternative routes

Consultation process

11. There is considerable evidence of ongoing crime, disorder and antisocial behaviour associated with the Public Right of Way (PROW), Number 232, between Hoad's Wood Road and Pilot Road from residents, the council, land-owners and police before the consultation took place.
12. Statutory consultees for the proposed gating are the Highways Authority (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.
13. The formal public consultation took place from 2 August to 2 September 2022. The Community Safety Manager also chaired two local public meetings, the first requested by Cllr Turner, was attended by ward councillors and the community safety portfolio councillor to discuss the antisocial behaviour issues associated with this footpath. Over 20 residents attended the first meeting in March 2022 and expressed the need for greater policing, as well as the need to gate this and possibly other footpaths in the area. A follow-up drop-in session in June 2022 was held to review police interventions. The Community Safety Manager has been actively working with residents, Cllr Turner, local police and Optivo Housing in the vicinity of this footpath for a long time and there is strong support for this proposal.

Consultation summary

14. Anonymised detailed feedback received from the consultation can be found in Appendix 1.
15. Residents - a small number of local residents responded but overwhelming supported the gating of the footpath and detailed the nature and impact of the antisocial behaviour which takes place in the footpath and the effect on them.
16. Sussex Police - responded supporting the gating proposals, as the PROW has been the focus of considerable amounts of crime and antisocial behaviour throughout recent months and plays a role in linking other areas of antisocial behaviour in the ward and surrounding area.
17. ESCC Public Rights of Way service - object to the proposal to gate the footpath for a number of reasons. The serious incidents mentioned by the service are not thought to fall within the scope of the type of persistent ASB problems the PSPO gating powers were intended to address. It is also suggested that the use of motorbikes illegally on the path should be dealt with by enforcement or other measures rather than closure of the footpath. They are also concerned that the evidence of incidents and/or crime reports did not support the case for a PSPO as the proportionate measure but did acknowledge that it was difficult to quantify the extent to which the paths themselves contribute to the antisocial behaviour and crime issues locally.
18. ESCC public rights of way service also suggest the 2 properties exposed to the footpath would need to consider measures instead of the gating. The character of the footpath and its general location does not distinguish it from other paths in the area. Nor any reason why it should be particularly susceptible to problems of anti-social behaviour. In this respect, the proposal to gate it risks setting a very difficult precedent for the protection of the public's access to other paths. It is obviously

crucial that incidents which are attributable to identifiable individuals do not prompt restrictions which limit the freedom of the law-abiding majority.

19. ESCC also suggest that the practical implications of gating the path should also be considered. The PSPO would have to be reviewed after three years. The path would therefore need to remain physically available and capable of being reinstated. Since no access is gained to properties from the path, the only use of it would be by the adjoining residents for the occasional maintenance of boundary fences and hedges. Problems of litter and fly tipping may occur and the path must be secure. The gates would also be out of keeping with the neighbourhood.

Recommendations

20. 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 which has been completed.
21. Appendix 2 shows the location of the footpath and the proposed gates and the alternative route.
22. The responses of the consultation are in support of gating the footpath apart from the ESCC Rights of Way Team who have objected to the proposal to gate any PROW.
23. The Antisocial Behaviour, Crime and Policing Act 2014 does contain provisions enabling local councils to gate alleys, therefore the ESCC objections don't necessarily mean the footpath should not be gated. The council must consider the evidence and determine if this is sufficient to extend the PSPO to include the footpath in question between Hoad's Wood Road and Pilot Road in Baird Ward.
24. The consultation responses and evidence of continuing antisocial behaviour and incidents taking place in the footpath meet the conditions of the Anti-Social Behaviour Crime and Policing Act 2014 as detailed above in paragraph 8.
25. It is also possible for the council to offer some reassurance to the ESCC Rights of Way Team in as much as:-
- suitable management of the gated alleys will be provided by local residents.
 - the gating order's status will be reviewed in line with at least the statutory requirement of every 3 years.
26. Planning guidance has been sought. Feedback states that there are no restrictions associated with the installation of gates on this footpath.
27. The recommendation is that the Public Right of Way, Number 232, between Hoad's Wood Road and Pilot Road is gated.
28. The existing Public Space Protection Order for gated footpaths would be varied and extended to add this footpath. The draft proposed PSPO is attached at appendix 3.

POLICY IMPLICATIONS

Equalities or community cohesiveness

29. Clearly if the gating of the footpath is implemented it could be argued that people who are no longer able to use the footpath are being discriminated against.

However, access will be afforded to all those who need continued access because they live in the properties backing onto the alleys.

30. A reduction in the crime and anti-social behaviour associated with the withdrawal of unfettered access to the footpath 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

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

Risk Management

32. None

Environmental Issues

33. So long as the council's street cleansing service are provided with keys to the footpath, it is likely to be easier to maintain and no longer be a fly-tipping and litter hotspot.

Economic/Financial Implications

34. The cost of the gates ,estimated at approximately £4K, will be covered by the current community safety revenue budget. Ongoing management and maintenance will be the responsibility of local residents adjoining the footpath

Organisational Consequences

35. None

Wards Affected

Baird, Central St Leonards and Castle

Implications

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

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	Yes
Risk Management	No
Environmental Issues	Yes
Economic/Financial Implications	No
Human Rights Act	Yes
Organisational Consequences	No
Local People's Views	Yes
Anti-Poverty	No

Additional Information

Appendices

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

Appendix 2 – Map of footpath

Appendix 3 – Draft proposed variation of gating PSPO

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