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## Order Decision

Site visit made on 19 September 2017

**by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 08 November 2017**

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### Order Ref: ROW/3172218

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) by Herefordshire Council and is known as the Bridleway CL70 (Part) Clifford; Public Path Diversion Order 2016.
- The Order is dated 16 October 2016 and proposes to divert part of a public right of way shown on the Order plan and described in the Order Schedule.
- There was one objection outstanding when Herefordshire Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation.

**Summary of Decision: The Order is confirmed.**

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### Procedural Matters

1. No one requested to be heard with respect to the Order and I therefore made an unaccompanied site inspection, taking into account the written representation received by the Order Making Authority (the 'OMA').

### The Main Issues

2. The Order is made under section 119 of the Highways Act 1980 (the 'Act') in the interests of the owners of the land crossed by the public path. Sub-section (6) of the Act sets out that "*The Secretary of State shall not confirm the a public path diversion order...unless...satisfied that the diversion to be effected by it is expedient...in the interests of the owner, lessee or occupier of land crossed by the path or way or of the public...and further that the path or way will not be substantially less convenient to the public in consequence of the diversion and that it is expedient to confirm the order having regard to the effect which*
  - (a) *The diversion would have on public enjoyment of the path or way as a whole,*
  - (b) *The coming into operation of the order would have as respects the land over which the right is so created and any land held with it..."*
3. Sub-section 2 sets out that a "...diversion order shall not alter a point of termination of the path or way...(where it is on a highway) otherwise than to another point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public."
4. An objection was made on the basis that part of the path would run along a hazardous road with another part occupying steeply sloping ground. In addition, the objector maintained that the order does not specify the works to be carried out prior to the order confirmation.

5. Also, I am required to take into consideration any material provisions of a Rights of Way Improvement Plan ('ROWIP') prepared by the Council. Although I have been provided with a copy of the OMA's ROWIP, this plan is slightly out of date and no submissions have been made in respect of such plan.

## **Reasons**

Whether it is expedient, in the interests of the owner, that the right of way in question should be diverted

6. The application was made by the owners of Locksters Pool Farm who in conjunction with the OMA have made several attempts over many years to resolve outstanding issues relating to the condition and uncertain routing of the path, which because of river bank erosion and or land erosion, contains an impassable section requiring users to meander haphazardly through the existing farm yard and past two residential properties. The proposed diversion would take the bridleway away from the access tracks to the residential properties and farmyard; it would avoid the working farm yard comprising of cattle sheds and a cattle crush and be away from the eroded river bank.
7. I consider that the diversion of the route away from the access tracks and farm yard would have benefits for those working on the farm and would provide increased privacy and security for the occupiers of the dwellings. On this basis, I conclude that it would be expedient, in the interests of the landowner, to divert the bridleway.

Whether the point of termination of the new right of way will be on the same highway or highway connected with it, and will be substantially as convenient to the public

8. The existing route terminates at point A on the unclassified highway U75201; the proposed route would terminate at point C on the same highway. I accept the OMA's view that whilst the termination points are 360m apart, there is no evidence that users then continue in one direction in preference to the other. In fact, point C is closer to the strategic footpath trail, the Wye Valley Way.
9. On balance, I am satisfied that the proposed route would be substantially as convenient to the public.

Whether the new route would be substantially less convenient to the public

10. The existing route is not easily identifiable once entering Locksters Pool Farm; the farmyard is relatively busy with farm machinery and agricultural activity. It is not clear to users how to navigate through the farm complex. Once past the farmyard there is evidence of land subsidence and river erosion with the result that sections of the path appear to disappear on the ground. The proposed route by contrast takes the path away from farmyard activity along an easily identifiable route allowing little opportunity for deviation. In this respect, and despite the increased length, I find that the proposed route along a former railway line and then across open fields would be easy to navigate.
11. Although I acknowledge the Open Spaces Society's concerns that the proposed route between points A and C would mean that users would need to navigate along a relatively narrow section of unclassified highway U75201 for a short stretch, this to a certain extent already takes place as the premier footpath trail, the Wye Valley Walk, follows the U75201 in a south westerly direction

from point C. On the ground I observed a number of small passing places, including the large grassed area beside the former railway bridge. The unclassified highway at this point appears to be very quiet as described by the OMA.

12. I did not find that the proposed route between points E to F to be unacceptably steep and indeed appeared comparable to the existing gradient as the land rises upon leaving the farm complex. The point made by the OMA that the topography of the Wye Valley means that relatively steep sections of public rights of way is a typical occurrence is not an unreasonable point to make.
13. Because the termination point would move from point A to point C and making use of the unclassified highway for part of the new route, the length of the new route utilising the public highway would either be lengthened or shortened by approximately 360 metres depending on the direction taken by users as they leave or join the unclassified highway. Notwithstanding, I am satisfied that the proposed route would not be substantially less convenient to the public, which is the test that needs to be applied.

The effect of the diversion on public enjoyment of the route as a whole

14. The new route points C to B would extend travelling distances by an additional 80 metres when compared to the existing route A to B. However the proposed route would negate the requirement for the public to follow past two dwellings and thence through an active working farm complex with little to help define the precise path routing. At this point, the combination of existing structures together with the uncertain routing undermines the enjoyment of longer distance views.
15. By comparison, the proposed route drops to the side of an attractive arched stone railway bridge of some historic and architectural interest and continues to follow the attractive leafy glade of the former railway line before opening out with open vistas over the River Wye and the grandeur of the Radnor Forest upland area to the north-east beyond.
16. Following a period of heavy rainfall prior to my site visit, I found that the proposed route to be relatively firm underfoot, unlike sections of the existing route close to the river.
17. As indicated by the objector, the order does not specify the works to be carried out prior to the order confirmation; however, responsibility in this respect lies with the OMA and does not affect my consideration in relation to the public enjoyment of the bridleway.
18. Taking these factors into account, I am satisfied that the diversion route would have a positive effect on the public enjoyment of the path as a whole.

The effect that the coming into operation of the Order would have with respect to other land served by the existing route and the land over which the new route is created together with any land held with it, taking into account the provisions as to compensation

19. No adverse effects on the land affected by the Order routes have been identified and no issues in respect of compensation have been raised in this case.

### **Conclusions**

20. Having regard to my reasons above and to all matters raised in the representation, I conclude that the Order should be confirmed.

### **Formal Decision**

21. The Order is confirmed.

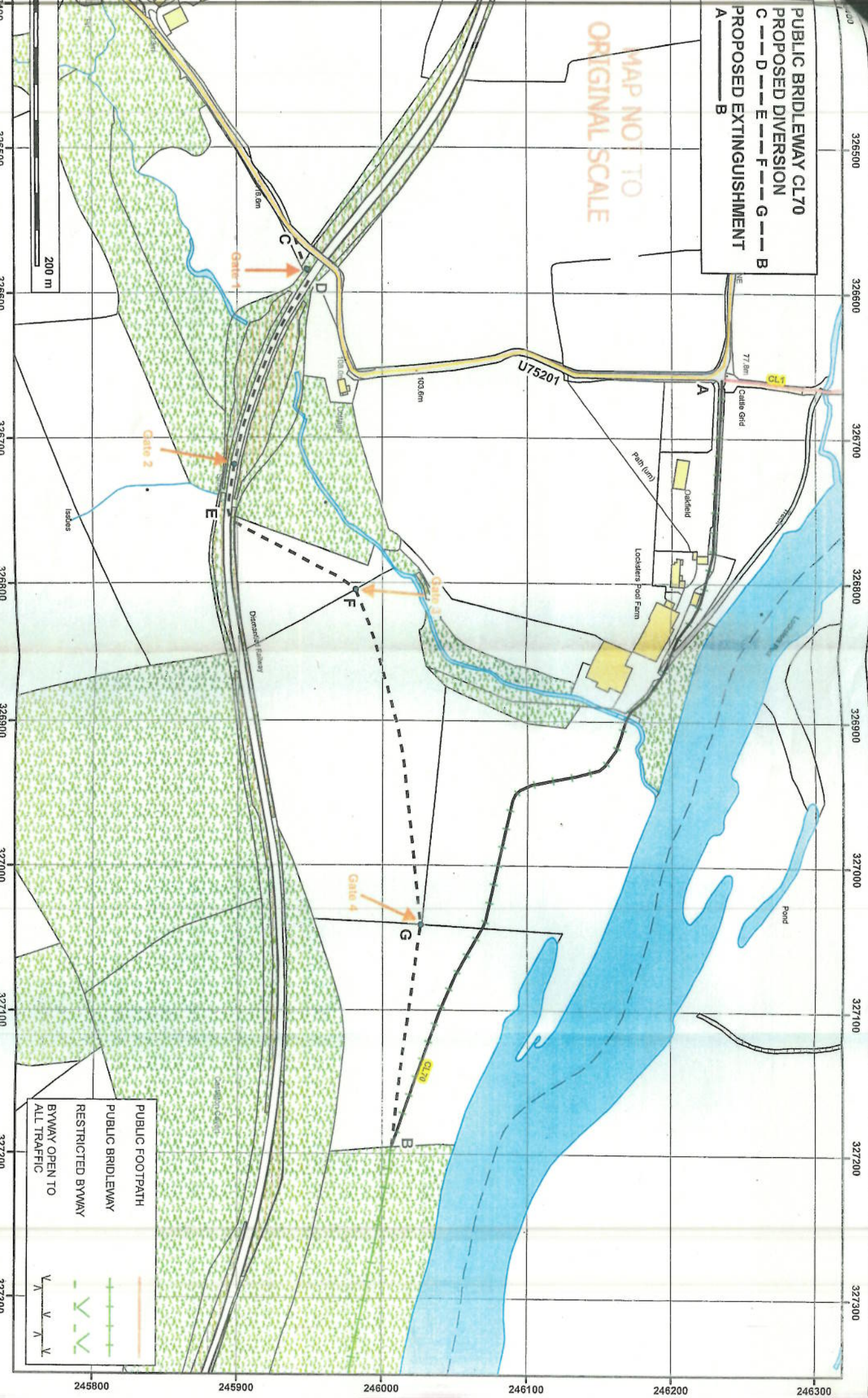
*Gareth W Thomas*

INSPECTOR



**PUBLIC BRIDLEWAY CL70**  
**PROPOSED DIVERSION**  
 C --- D --- E --- F --- G --- B  
**PROPOSED EXTINGUISHMENT**  
 A --- B

MAP NOT TO  
 ORIGINAL SCALE



PUBLIC FOOTPATH  
 PUBLIC BRIDLEWAY  
 RESTRICTED BYWAY  
 BYWAY OPEN TO ALL TRAFFIC

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HIGHWAYS ACT 1980, SECTION 119  
 HEREFORDSHIRE COUNCIL - BRIDLEWAY CL70  
 PARISH OF CLIFFORD  
 PUBLIC PATH DIVERSION ORDER 2016

Balfour Beatty Living Places  
 Unit 3, Thorn Business Park  
 Rothenwas Industrial Estate