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## Order Decision

Inquiry opened on 12 July 2016

Site visit made on 14 July 2016

**by Alan Beckett BA MSc MIPROW**

**an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs**

**Decision date: 22 August 2016**

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### **Order Ref: FPS/C3240/4/1**

- This Order is made under Section 119 of the Highways Act 1980 (the 1980 Act) and is known as the Borough of Telford and Wrekin Bali-Hi Footpath No.191 and 193 Diversion Order 2013.
- The Order is dated 17 September 2013 and proposes to divert the public right of way shown on the Order plan and described in the Order Schedule.
- There was 1 objection and 12 representations outstanding at the commencement of the inquiry.

**Summary of Decision: The Order is confirmed subject to the modifications set out in the Formal Decision.**

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### **Procedural Matters**

#### *General*

1. I held a public local inquiry into the order on Tuesday 12, Wednesday 13 and Thursday 14 July 2016 at the Ketley Community Centre. I made an unaccompanied inspection of the routes at issue on the evening before the inquiry and made a further inspection in the company of the parties to the Order following the close of the inquiry.
2. At the inquiry, the case for the confirmation of the Order was made on behalf of Telford & Wrekin Borough Council ('the Council') by Mr Ross; the joint applicants for the Order (Mr & Mrs Nicoll and Mrs Linning) were represented by Mr Brammer and Mr Blackie. The statutory objector, Mr Croft represented himself, as did those who had made representations against the Order. I am grateful to all parties for the helpful and courteous way in which they endeavoured to assist me during the course of the Inquiry.

#### *Publicity given to the inquiry*

3. The inquiry had originally been scheduled to be held on 16 January 2016 but had been cancelled prior to that date as a result of the Council's delay in placing the required statutory notice of the inquiry in the local newspaper. Rule 16 (3) (b) of the Rights of Way (Hearings and Inquiries Procedure) (England) Rules 2007 ('the Rules') requires such notice to be given not less than four weeks before the date fixed for the inquiry. As the Council's notice of the inquiry only appeared in the local newspaper on 30 December 2015, the inquiry scheduled for 16 January 2016 was cancelled and a new date set which would allow for the required notice to be given.

4. At the inquiry the objectors submitted that although notice of the inquiry had been given in the press, the Council had not fulfilled its statutory obligations regarding publicity of the re-arranged inquiry in that (a) a plan showing the routes which were the subject of the diversion order had not been posted on site; (b) a notice had not been posted at point B on the Order plan; and (c) a notice had not been posted at D although a notice had been posted on a telegraph pole on Shrubbery Road approximately 27 metres to the east of point D.
5. The objectors submitted that the Council was required to post a notice at each end of the path affected by the proposed diversion. In the objectors' view, a notice should have been posted at point B as that was the junction between footpaths 191 and 193 and at point D; it was not disputed that notices had been posted at points A, C, E and F on the Order plan.
6. Mr Ross responded that notices had not been placed at point B as the two footpaths which comprised the route proposed for diversion formed a single continuous footpath. With regard to the lack of notice at point D, there was no structure or feature at D onto which a notice could be affixed; a decision had been taken to place the notice on a nearby telegraph pole as that was the nearest available prominent structure. Notices had also been placed at points E and F on the proposed route. There was no procedural requirement to display a plan alongside the notices of the public inquiry. In the Council's view, adequate notice of the inquiry had been given and it was unlikely that the interests of any party would have been prejudiced by the absence of a notice at B or by notice having been placed on the telegraph pole on Shrubbery Road.
7. With regard to the submission that a site plan had not been posted by the Council there is no requirement to do so under Rule 16. Whereas paragraph 4C of Schedule 6 to the 1980 Act requires that a plan accompanies a notice placed on site when giving publicity to the making of a diversion order, there is no such requirement in the Rules. That the Council did not post a plan of the routes affected by the Order alongside the notice of the inquiry is not a procedural failing.
8. Rule 16 (3) (a) requires notice of the inquiry to be "*displayed in a prominent position at each end of so much of any way or proposed way as is affected by the order.....*" consequently, the failure to post a notice at points B and D might be considered a breach of these requirements. However, what I must consider is whether any person who may have had an interest in the proposed diversion is likely to have been prejudiced by the failure to post a notice at these points. With regard to the current footpath, as notice was placed at point A and point C, anyone seeking to make their way along footpath 191 and 193 would have had to pass those notices and having done so, would have been made aware of the inquiry. With regard to the proposed route, despite a notice not being placed at point D, anyone walking along the proposed route would have had to pass the notices erected at points E and F and would therefore have been made aware of the inquiry.
9. Although notices were not posted at points D and B, I do not consider that anyone with an interest in the proposed diversion would have been prejudiced by the absence of notices from these two locations.

*Publicity given to the making of the Order – September 2013*

10. The objectors also submitted that when the Order had been made, the Council had failed to post notices of the making of the Order on site. Mr Vickers did not recall having seen notices on site in September 2013, nor had a number of the witnesses he called, the one exception being Mr Preece, who in response to questions on this point put in examination-in-chief by Mr Vickers stated that he had seen a notice at point C during that time.
11. For the Council, Mr Careless' evidence was that he had placed the notices on site as soon as they had been received from the Council's legal department. His recollection was that the notices had been posted on the 17<sup>th</sup> September 2013 as that was the date specified on them. Under a Freedom of Information request, Mr Vickers had obtained details of Mr Careless' mileage records for the week commencing the 16<sup>th</sup> September and which showed there was no record of Mr Careless having made a journey to Ketley on the 17<sup>th</sup>, although such a journey had been made on the 19<sup>th</sup> September. Mr Careless stated that he did not always submit a claim for mileage incurred although it was possible that the journey to Ketley had been undertaken on the 19<sup>th</sup> and not the 17<sup>th</sup> of September.
12. I place little weight upon the mileage record as evidence that the site notices were not posted in accordance with the provisions of the 1980 Act. There was nothing in Mr Careless' evidence or his approach to the inquiry that causes me to consider that he was attempting to mislead the inquiry with regard to giving notice of the making of the Order. Whilst I accept that with the exception of Mr Preece, none of the objectors' witnesses recalled seeing notices in September 2013, the fact that Mr Preece saw a notice at C at the relevant time provides corroboration of Mr Careless' evidence.
13. When questioned, all the witnesses who appeared stated that they had not removed the notices from site; however, persons unknown must have removed them for them to have gone unnoticed by many local residents. The evidence before me is that a notice was present at C during the relevant period and I consider it more likely than not that similar notices had been erected at other points although those other notices were subsequently removed.
14. I am satisfied, on the basis of the evidence submitted that notice of the making of the Order was given as required under the 1980 Act.

*Whether the proposed alternative route is already a public highway*

15. It is not disputed that the proposed alternative route D – E – F is used by members of the public as a means of travel between Shrubbery Road and Quarry Lane. Evidence was given by a number of individuals of them either having used the path or having seen others doing so.
16. Mrs Mees-Robinson submitted that the proposed route was already a public right of way although it was currently unrecorded and unclassified. Whereas the parish survey conducted in 1951 under the National Parks and Access to the Countryside Act 1949 claimed that E – F was a public footpath (footpath 195) the only part of that claimed path which appeared on the definitive map was the section immediately to the north of E and which has now been subsumed into the adopted section of Quarry Lane. Mrs Mees-Robinson submitted that at the time the definitive map was compiled, the proposed route

must have been considered at the time to be a road and therefore not a route of a type required to be shown. However, no evidence was submitted to shed light on the process behind the compilation of the definitive map and the reason why E – F did not appear is unknown.

17. It is not disputed that D – E – F is not currently recorded as a public right of way, and no claim under Schedule 14 of the Wildlife and Countryside Act 1981 has been submitted to add the route to the definitive map. Although the route exists physically and Ordnance Survey mapping shows the route to have been in existence for some time, the depiction of the route by Ordnance Survey is not evidence of the existence of a public right of way.
18. The ability of the public to use the path 'as of right' is currently unconfirmed; the path is not recorded on the definitive map, nor it is recorded as being maintainable at public expense as it is not shown in the Council's s.36 List of Streets. Although the witnesses provided some evidence of use of the path, many regarded it as permissive although no-one provided evidence as to the identity of the owner of the land who had given such permission. Whilst I accept as a general proposition Mrs Mees-Robinson's submission that a highway cannot be diverted wholly onto another existing highway (as that would be an extinguishment), there is insufficient evidence before me from which it could be reasonably concluded that the proposed route D – E – F has been dedicated as a public right of way at some point in the past, or who made such a dedication.
19. Accordingly, I conclude that the proposed route is not currently a public right of way and there is no bar to the rights of the public to walk along the existing route being diverted on to the proposed route if the criteria set out in section 119 of the 1980 Act are satisfied.

*Works required to bring the proposed route into a fit condition for public use*

20. Section 119 (3) of the 1980 Act states that "*Where it appears to a council that work requires to be done to bring the site of the footpath or bridleway into a fit condition for use by the public, the council shall (a) specify a date under subsection (1) (a) above, and (b) provide that so much of an order as extinguishes a right of way is not to come into force until the local highway authority for the new path certify that the work has been carried out*". The joint applicants for the Order have agreed to defray the costs of bringing the proposed route into a suitable condition for public use.
21. The Order, as drafted, envisages the alternative path as being in a fit condition for public use 28 days following the confirmation of the Order. At the inquiry, Mr Ross submitted that it may not be possible to execute all the required works within the timescale set out in the Order. Mr Blackie submitted that the wording of Articles 1 and 3 could be amended in such a way that the existing route would be stopped up and the new route would come into existence from the date on which the Council certifies to the Secretary of State that the required works have been completed.
22. As the provisions of section 119 (3) are applicable in this case, if I confirm the Order, I will modify the Articles of the Order so that the diversion will only have effect from the date on which the Council certify that the required works have been completed to its satisfaction. Only on that date will the current line of the path cease to be a public right of way.

## **The Main Issues**

23. The Order is made in the interests of the owners of the land crossed by the current line of footpaths 191 and 193. Section 119 of the 1980 Act requires that, before confirming the Order, I should be satisfied that:
- (a) it is expedient, in the interests of the owners of the land, that the footpath in question should be diverted;
  - (b) the terminal points of the proposed highway are on the same highway as the path to be diverted or on a highway connected with it and are substantially as convenient to the public;
  - (c) the new footpath will not be substantially less convenient to the public;
  - (d) it is expedient to confirm the Order having regard to its effect;
    - i) on public enjoyment of the path as a whole; and
    - ii) the effect the coming into operation of the order would have with respect to the land served by the existing path and the land over which the new path is created together with any land held with it, having regard to the provisions as to compensation.
24. In addition, in determining whether or not to confirm the Order, Section 119 (6A) of the 1980 Act requires that I should give consideration to any material provision of a rights of way improvement plan ('ROWIP') prepared by any local highway authority whose area includes land over which the Order would create or extinguish a public right of way.

## **Reasons**

25. *Whether it is expedient, in the interests of the owners of the land, that the footpath in question should be diverted*
26. Although there was some debate as to whether there was a discrepancy between the line shown on the definitive map when it was first produced and the line shown on the map when it was first reviewed in the mid-1960s, it is the line shown on that review map which is the current definitive line of footpath 191. Mr Careless had scaled the line shown on the definitive map to be shown on the Order plan and that exercise showed that the current line of footpath 191 not only ran through the front garden of the property known as Bali-Hai but also through the house itself.
27. It is known that Bali-Hai was constructed in or around 1963. The house effectively obstructs the definitive line of footpath 191. To divert the public footpath away from the house is clearly in the interests of the owners of Bali-Hai.
28. The remainder of footpath 191 and the whole of footpath 193 crosses land which is part of the property known as Wyrecroft. The path runs parallel with the dwelling house and within a few metres of the main windows of the property. There is some debate as to the exact position of the footpath in relation to the driveway access to Wyrecroft; the available path runs to the west of a close board fence along what Mr Linning referred to as 'the shoot'. The fence alongside 'the shoot' offers some degree of privacy to the occupant of Wyrecroft, however if the true position of the footpath is along the driveway to the property then the intrusion caused by the footpath described in the

applicant's evidence would be greater as the path would run even closer to the windows of the property and be in full view of them.

29. The path then crosses a stable yard which the applicant said is frequently used by heavy goods vehicles when delivering supplies to the stable or when moving horses to and from the stable. The yard is small and it is said that it is necessary to cross the line of the footpath whenever a vehicle has to manoeuvre within the yard; the applicant is concerned by the risk posed to the safety of the public by vehicles operating within the confines of the yard.
30. The path then crosses a paddock in which the applicant's horses graze. The applicant stated that she keeps show jumping horses which are 'flighty' by nature and easily startled or upset. The applicant has concerns not only for the safety and well-being of her horses but also for the public who may come into unsupervised contact with them.
31. It was submitted by the objectors that the applicant knew of the existence of footpaths 191 and 193 when the property was purchased and that the use which was made of the land was no grounds to subsequently seek the diversion of the footpath. To my mind, this argument does not take account of the provisions of section 119 (1) of the 1980 Act; Mrs Linning's understanding or knowledge of the footpath at the time of purchase is irrelevant to the question of whether it would be in her interests for the footpath to be diverted.
32. I consider that the diversion of footpath 191 from Bali-Hai is undoubtedly in the interests of Mr & Mrs Nicoll; the diversion would resolve the problem of the obstruction of the footpath by the house. I also consider that the proposed diversion would be in the interests of Mrs Linning; the path would no longer run within a few metres of the windows of her house and would remove any risk of accidents arising from vehicle movements within the small stable yard, and any risk the public may be exposed to from proximity to Mrs Linning's horses.
33. For these reasons, I am satisfied that it is expedient in the interests of the landowner that the footpath should be diverted.

***Whether the terminal points of the proposed highway are on the same highway as the path to be diverted or on a highway connected with it and are substantially as convenient to the public***

34. The southerly terminal point of the current path at point A connects with Shrubbery Lane as does the southerly terminal point of the proposed route at point D. The northerly terminal point of the current path at point C connects with footpath 197 which provides a connection to the adopted section of Quarry Lane. The northerly terminal point of the proposed route also terminates on the adopted section of Quarry Lane. I conclude that the proposed diversion satisfies the first requirement of section 119 (2) (b) of the 1980 Act.
35. The second part of section 119 (2) (b) requires consideration to be given to whether the proposed terminal points will be substantially as convenient for the public. The Council provided a plan showing the distances between various points in the local highway network. For anyone travelling either north-south or east-west, the distances that would be travelled incorporating the proposed route as opposed to the definitive route are comparable given that the use of the public rights of way network appears to be for recreational as opposed to utilitarian purposes. The routes which link the current and proposed terminal

points are along publicly maintainable highways which are easily usable by pedestrians and I consider that the terminal points of the proposed route will be substantially as convenient for the public as those on the existing footpath.

***Whether the new footpath will not be substantially less convenient to the public***

36. An assessment of the proposed footpath in relation to this part of the statutory tests requires a comparison between the two routes. Although the current definitive line of the footpath crossing Bali-Hai and Wyrecroft is obstructed in five (possibly six) places, a meaningful comparison can only be made if the current route is considered as if those obstructions were not present. Although section 119 of the 1980 Act does not contain any specific provision for temporary circumstances to be disregarded (unlike section 118 (6)), paragraph 30 of Advice Note No. 9 (published by the Planning Inspectorate) advises that an equitable comparison between the current and proposed routes can only be made if the convenience of the existing route is assessed as being unobstructed and maintained to a standard suitable for pedestrian use.
37. Mrs Mees-Robinson cited the case of *R (oao Ashbrook) v East Sussex County Council* [2002] EWCA Civ 1701 as authority that a diversion could only be dealt with if “*the definitive line of rights of way affected by the proposal are open, signed and clear and safe to use*”. However, the *Ashbrook* case is not authority for this proposition. In that case the appeal was made on the basis that East Sussex County Council had not followed its own internal guidance regarding not considering the diversion of paths which were obstructed. That guidance was specific to East Sussex County Council and no such guidance has been issued by the Council in this case. Consequently, I am not persuaded that the *Ashbrook* case established a general rule that a diversion could not be considered unless the route at issue was unobstructed.
38. Very little evidence of use of the existing route by the public was submitted to the inquiry. A number of witnesses said that their lack of use was due the absence of signposts and waymarks to indicate the existence of the path; had the path not been obstructed or poorly signed then greater use would have been made of it. A number of witnesses also gave evidence to the inquiry which was in direct conflict with earlier statements they had made regarding their use or which was in conflict with the position regarding the current route which they had previously adopted.
39. For instance, in 2009 Mr Vickers had written to the Council regarding the diversion then proposed to say that he had never had cause to walk the current route and saw no reason for the path to remain open. In objecting to the diversion of the current route, Mr Vickers said that he had walked the path perhaps 12 times in around 30 years. Now whilst I acknowledge that the 2009 proposal was different to that set out in the current Order, Mr Vickers recollections as to use of the current path in 2009 is at odds with his recollection in 2016, as was his approach to the retention of the path.
40. Similarly, Mr Breeze’s position regarding the proposed diversion is entirely contrary to the position he adopted when he was the owner of Bali-Hai. During that time, Mr Breeze sought the extinguishment of the current route or its diversion, with one suggested route for a diversion being onto the route proposed by the current Order. I find Mr Breeze’s objection to the diversion order somewhat puzzling, and whilst it is perfectly possible for someone to

have a change of mind, to object to a proposal which he had himself suggested at one stage is contradictory to the extent that I can attach little weight to his evidence.

41. The limited evidence of use of the current route that I heard reflects the evidence given by Mrs Linning regarding the use she had observed over the past 10 years whilst living on the land. Mrs Linning's evidence was that use had been 'minimal' or 'non-existent'. The relative lack of use of the current route may be explained by a number of factors and the absence of suitable signage may be one of them. Although it is not possible to walk the current line due to the various obstructions on the route, a route between Shrubbery Road and Woodwell is open and available, or at least was at the time of my site visits, and from my site visits it was a relatively straightforward process to envisage the definitive line of the current footpath in order for a comparison to be made between the two routes.
42. Mr Croft argued that in terms of distance, anyone wishing to undertake a journey from A to C via the proposed route would be required to walk over twice the distance of the current route; in his view, anyone wishing to undertake such a journey would be substantially inconvenienced. The Council and the supporters submitted that a comparison in such limited terms was unrealistic and inappropriate given that very few journeys would commence and terminate at either A or C as the path would be used as part of a longer journey within the area. A more reasonable and realistic approach with regard to distances would be to view the current and proposed routes in the context of the wider highway network and the purposes for which the public might use them.
43. According to the Council's 'distances' plan a journey between points A and C via the proposed route would require a pedestrian to walk 131 metres further than if the current route was used. Whilst journey times and distances would increase as a result of the diversion, no evidence was put forward to show that the current route was used solely for utilitarian purposes and as a means of travelling between two points in the shortest possible time. Many witnesses spoke of using the local network for recreational purposes and that the current route, along with the proposed route and the path alongside Mossy Green Way provided a number of short circular walks within the area.
44. Given that the principal use of the local rights of way network appears to be for recreational purposes, anyone wishing to undertake a recreational walk between points A and C is unlikely to be inconvenienced by having to walk an additional 130 metres or by having their journey time extended. Notwithstanding this, I concur with the Council and the supporters that the approach advocated by Mr Croft ignores the fact that many journeys will not start or finish at point A or point C and will commence and finish elsewhere within the Shepherds Lane / Shrubbery Road / Quarry Lane area or even in other parts of Ketley.
45. For many journeys undertaken in the area, the proposed route is likely to be as convenient to users as the current route in terms of distance and journey times and depending on the commencement points and the ultimate destination, in some circumstances may be more convenient. For those pedestrians wishing to travel from St Mary's Church to Quarry Lane the proposed route is likely to be more convenient as footpath 190 is directly opposite the proposed footpath.



For those living at the eastern end of Shrubbery Road who wish to travel to the convenience store at the petrol station on Holyhead Road, the proposed route may be less convenient as it would involve a longer journey. Whilst this proposal would result in inconvenience to some users in terms of journey times and distances, I do not consider it to be substantially so.

46. The surface of the proposed route contrasts with the existing route in that there are no uneven grassed areas for pedestrians to negotiate. On the existing route, the grassed sections are susceptible to poaching by horses resulting in an uneven surface. Any difficulty experienced by the public in crossing this area is compounded by the steep bank which exists between the top of the paddock and the access road below to which the path descends. I heard from one witness that a previous owner of the property had to crawl up the bank '*on all fours*' in order to reach the paddock. The proposed route has none of these disadvantages.
47. It was submitted by the objectors that the gradient on the existing route had been increased by the current owners when an access track on the boundary of the property with Orchard Grove had been constructed. However, this assertion was not supported by any evidence. The aerial photographs of the area taken in 1972 and the Ordnance Survey map of the same date both show a steep slope on the northern end of the paddock and suggest that the gradient of the slope currently found on site has not altered to any significant degree.
48. In contrast to the existing route, although the proposed route slopes downhill from point E to Quarry Lane, the descent is gradual and only becomes more pronounced in the section immediately leading to Quarry Lane. Concerns were raised that in winter when the proposed route may be icy or frosty, the tarmac surface of the path may become dangerous underfoot. I accept that in adverse weather conditions, the proposed route may be more difficult to use, but in such circumstances, the proposed route may be no more difficult to travel over than other pavements on similar slopes and a reasonable person stepping out for a walk in such conditions is likely to be appropriately shod.
49. With regard to the risk to pedestrians from stepping out into Quarry Lane, at point F there is a kissing gate which would provide a degree of protection for any walker as it would prevent them from stepping (or slipping) out into the lane. Overall, in terms of ease of use I consider that the gradient on the proposed route would not be substantially less convenient for the public.
50. I note that improvement works are intended to be carried out to the surface of the section D – E if the Order is confirmed. The section is currently metalled but there are a number of places where water can gather in depressions in the surface but these features do not appear to hinder pedestrian traffic. The objectors had concerns regarding the efficacy of the proposed works given the vehicular traffic which passes over this section of the proposed route and questioned the Council's commitment to ongoing maintenance of the diverted route. If the Order is confirmed the proposed route would become a publicly maintainable highway; the nature of the works envisaged and the standard to which those works are carried out is a matter for the Council to determine as the Highway Authority.
51. The objectors submitted that the private vehicular traffic to and from the six houses that bound D – E presented a greater risk to the public than that which existed along the existing route. Mr Vickers said that there were approximately

16 vehicles belonging to members of the families who used D – E for access at all times of the day or night. Mr Croft compared this use with what was described as the “occasional” vehicular use of the current route set out by Mrs Linning in her evidence.

52. Whereas Mrs Linning’s evidence was that lorries were present at the stable around 12 times per year, there was also evidence of daily vehicular movements by her groom and regular movements of a horsebox during the week. This would be in addition to any other movement of domestic vehicles to and from Wyrecroft and Bali-Hai. The Council pointed out that vehicle movements occurred or could occur over a significant part of the current route; on the driveway to Bali-Hai, on the driveway to Wyrecroft, in the stable yard and on the access track leading from point C. In contrast, vehicle movements on the proposed route were limited to D – E and would diminish northwards from D as the number of dwellings reduced.
53. Both the current route and the proposed routes are subject to vehicular movements of one type or another. There would appear to be around the same number of regular large vehicle movements on either route; the bin lorry reverses down the proposed route 3 times per fortnight and Mrs Linning’s horsebox is on and off site twice per week with additional use during the summer. Pedestrians using the proposed route are therefore likely to be subject to a similar degree of risk from both the movement of heavy goods vehicles and domestic vehicles that exists on the current route.
54. Although I did not encounter moving vehicles on the proposed route on either of my site visits, the proposed route struck me as being sufficiently broad for pedestrians and vehicles to be able to pass one another without undue risk. The sight lines on the proposed route are also adequate to allow anyone walking along the path D – E to see oncoming vehicles. Given that both the current and the proposed route are subject to some degree of vehicular traffic, I do not consider the proposed route to be substantially less convenient for public use in this respect.
55. The objectors argued that the point at which the proposed route met Quarry Lane posed a risk to pedestrians from the vehicular traffic using the lane as Quarry Lane sloped west to east and there was a blind bend to the east of point F. It was submitted that two accidents had occurred on the lane in recent years; on one occasion a car had run into the wall immediately to the west of F and on another into the boundary wall of Orchard Grove. In the objectors’ submission there were no such inherent risks on the current route at C as the path joined RB 196 and footpaths 197 and 194.
56. I have no reason to doubt that the incidents described by the objectors were real but there is no evidence that those accidents involved pedestrians and no evidence was advanced to demonstrate that there had been any accident involving pedestrians at this point. Prior to the installation of the kissing gate, I understand that a stile had stood at point F. To my mind, both these structures serve to prevent pedestrians from stepping immediately out into Quarry Lane; the user therefore has the opportunity to pause and look at his or her surroundings before considering whether to step out into the road.
57. The public using the proposed route will undoubtedly encounter more traffic at point F than they would at point C. However, visibility along Quarry Lane to the west is good and pedestrians have a good view of any oncoming traffic

negotiating the bend to the east. Whilst some people clearly have reservations about the proposed route, I did not consider myself at risk from the limited traffic which used the lane during my site visits. I do not consider that the public would be substantially inconvenienced by the proposed diversion in this respect.

58. Overall, I do not consider that the proposed diversion would be substantially less convenient for the public.

***Whether it is expedient to confirm the Order having regard to:***

*The effect the diversion would have on public enjoyment of the path as a whole*

59. In this case, the proposal is to divert the public right of way over the current route to a new location as opposed to diverting only a section of the path. Whatever enjoyment can be derived from using the current path is therefore likely to be lost. A number of points were raised by the objectors in support of their view that public enjoyment would be adversely affected by the proposed diversion.
60. It was contended that the views of the North Shropshire Plain which are available from the flat paddock area would be lost and such views were not available from the proposed route. I would not disagree with that claim as a general statement; however the views of the North Shropshire Plain from the current route are extremely limited due to the tree and other vegetation cover which stands in the immediate vicinity of the current path. What views there are to the north through and between the surrounding trees and buildings are therefore brief and fleeting.
61. Due to the topography there are no views of the North Shropshire Plain from the proposed route; however, a limited view of the Plain not dissimilar to those available on the current route can be had from that part of Quarry Lane just to the west of footpath 197. Anyone making their way north via the proposed route, Quarry Lane and footpath 197 would enjoy similar brief views of the North Shropshire Plain. Given that similar views would be available to anyone travelling between A and C via the proposed route, I do not consider that the loss of the limited view of the surrounding countryside to the north of the current route will have a significant adverse impact upon public enjoyment of a walk within this part of Ketley.
62. The current path passes through what can be fairly described as the 'private space' of Bali-Hai in that the path crosses the front garden and lawn and passes through the house. From Bali-Hai the path crosses into Wyrecroft where it passes within a few metres of the main windows of the property. Ms Doherty (for the Ramblers' Association) said that many paths follow such courses and if properly signed and marked there was no reason why walkers could not use such paths without discomfort. However, in cross-examination, Ms Doherty conceded that given the choice a walker is likely to prefer to walk through an open area that through what was clearly part of someone's private space.
63. The proposed route would run over a track used for access to private properties but would not run through those private properties. Nor does the proposed route run in close proximity to the main windows of dwellings; the properties adjacent to the proposed route are separated from the path by garden walls or hedges or are set back from the path within their own gardens.

Beyond point D the path runs between stone walls and fences and is clearly separate from the surrounding private land and has the appearance of an access road to Shrubbery Lane. For those users who are uncomfortable at the prospect of passing through a private garden or a working stable yard, the proposed route may provide a more enjoyable experience as part of a walk in the wider area.

64. Mr Vickers argued that the proposed route was not as enjoyable as the current route as it was overhung by trees and shrubs, particularly close to point F; in contrast the current route was open to the sky throughout and was not constrained. In cross-examination, Mr Vickers acknowledged that this was his own subjective view; I recognise that Mr Vickers' view may not reflect the view of all users. I noted from my site visits that the northern end of the proposed route was overhung with vegetation, but I did not feel it was oppressive or unduly constraining. Although the proposed route is not as open to the sky as the current route, I do not consider that the enjoyment to be derived from a walk in the area in this respect would be adversely affected by the proposed diversion.
65. The proposed diversion would retain a north- south link in the local highway network. As noted above, the impact upon journey times and distances arising from the proposed diversion would depend upon the starting point of the journey and the ultimate destination; although some walkers may find journey times and distances increased, others may find them reduced. In either case the proposed diversion retains a means of travel north-south through the immediate area utilising other parts of the local highway network.
66. Overall, and for the above reasons, I do not consider that there will be an adverse effect upon the public's enjoyment of a walk within the area arising from the proposed diversion.

*The effect the coming into operation of the Order would have with respect to the land served by the existing path*

67. There is no evidence before me that the Order would have, in this respect, any effect separately identifiable from those considered above in relation to the other requirements of Section 119 of the 1980 Act. The only land directly served by the current route is land owned by the joint applicants; neither of the applicants relies upon the public right of way for access to or over their property. Other properties in Woodwell may be indirectly served by the current route but none rely upon the footpath for access and will remain connected to the rights of way network via footpaths 197, 194 and RB 196.

*The effect any new right of way created by the Order would have as respects land over which the new right is created together with any land held with it, account being taken of the provisions as to compensation*

68. There is no known owner of any part of the land over which the proposed route would run. Of those witnesses who live adjacent to the proposed route, no-one other than Mr Croft suggested that they owned the land or had any interest in it. Mr Croft submitted that he may own a portion of the proposed route at the northern end of the path near point F as this may have been part of the original entrance to the quarry site. However, Mr Croft's registered title does not include any part of the land crossed by the proposed path, nor could he provide evidence of a caution against the first registration of the land. On the

basis of the evidence presented to the inquiry, there is no known owner of the land crossed by the proposed route. The land either side of the proposed route is owned by the residents of adjacent properties but this land is not land held with the land over which the new right of way will be created.

69. The land over which the footpath would be created is currently used as a means of access to private property and a pathway over which there are no existing public rights. Diverting the existing public right over that land is unlikely to have any recognisable effect upon the land; a public right of access and the presumably private right of access to property would not be incompatible with the use to which the land is currently put. If an issue of compensation under section 28 of the 1980 Act were to arise, it would be for the owner of the land (whoever he, she or they may be) to submit a claim to the Council.
70. Mr Croft submitted that he had been advised that the diversion of the footpath onto the proposed route would have a detrimental impact upon the value of his property, but no further details of the claimed detriment were submitted to the inquiry. However, as Mr Croft's property is only adjacent to the proposed path, such considerations as devaluation or disturbance are not relevant to a consideration of whether it is expedient to confirm the order. The leading authority on this point is the case of *Allen v Bagshot Rural District Council* [QBD 1970] where Fisher J held "*Hard though it may seem for a person in the applicant's position to be told that he is not a person whose interests have to be considered when it is proposed to run a footpath right alongside his boundary, this is in accordance with the general principle of planning and compensation law. If it is a hardship to the applicant, it is a hardship he shares with many other citizens*".
71. On balance, I do not consider that the issue of section 28 compensation arises in this case.

### **Summary**

72. I conclude that it is expedient to confirm the Order having taking into account the effect the diversion would have on public enjoyment of the path as a whole, on the land served by the existing and proposed paths and on any land held with it.

### **Consideration given to the provisions of a ROWIP**

73. The Council has prepared a ROWIP; I understand that there are no provisions within that plan of particular relevance to this case.

### **Other matters**

74. The objectors considered that a minor amendment of the line of footpath 191 in relation to the property at Bali-Hai was all that was required to address the problem experienced by one of the applicants which would ensure the retention of a route between Shrubbery Road and Woodwell. An alternative solution would have been a diversion of the existing route to the western boundaries of Bali-Hai and Wyrecroft; the 'blue route' of the withdrawn 2009 Order.
75. The Council did not proceed with the 2009 Order as Mrs Linning objected to that proposal and the 'blue route' is not a proposal which has been put forward

as part of the Order which is before me. The diversion proposed by the Order therefore stands or falls on its merits.

### **Conclusions**

76. Having regard to these and all other matters raised at the inquiry and in the written representations, I conclude that the Order should be confirmed with modifications.

### **Formal decision**

77. I confirm the Order subject to the following modifications:

in Article 1 of the order, line 4 the deletion of "after 28 days from the date of confirmation of the Order" and the insertion of "from the date on which the Borough of Telford and Wrekin Council certify to the Secretary of State that the terms of Article 2 have been complied with";

in Article 3 of the Order, line 1, the deletion of "There shall be at the end of 28 days from the date of confirmation of this order" and the insertion of "From the date of the certificate referred to in Article 1 there shall be";

the deletion of the whole of article 4 and the renumbering of article 5 as article 4.

*Alan Beckett*

Inspector

## APPEARANCES

For Telford and Wrekin Borough Council

Mr I Ross                      Solicitor, Telford and Wrekin Borough Council, Darby House, Lawn Central, Telford, TF3 4JA

who called:

Mr A Careless              Senior Rights Of Way Officer

For Mr A & Mrs C J Nicoll (applicants)

Mr D Brammer              Solicitor, Lanyon Bowdler LLP, Chapter House North, Abbey Lawn, Abbey Foregate, Shrewsbury, SY2 5DE

who called:

Mrs C J Nicoll

For Mrs B Linning (applicant)

Mr N Blackie                Solicitor Advocate, FBC Manby Bowdler, Routh House Hall Court, Hall Park Way, Telford TF3 4NJ

who called:

Mr M Linning

Objector

Mr P Croft

Interested parties in objection

Mr A Vickers

Who called:

Mr L Edwards

Mr G Milne

Mr C Preece

Mr C Whittingham

Mr G Breeze

Mr S Mayon

Mr B Carter

Mr K Daniels

Other Interested Parties in objection

Cllr J Francis                      Ketley Parish Council

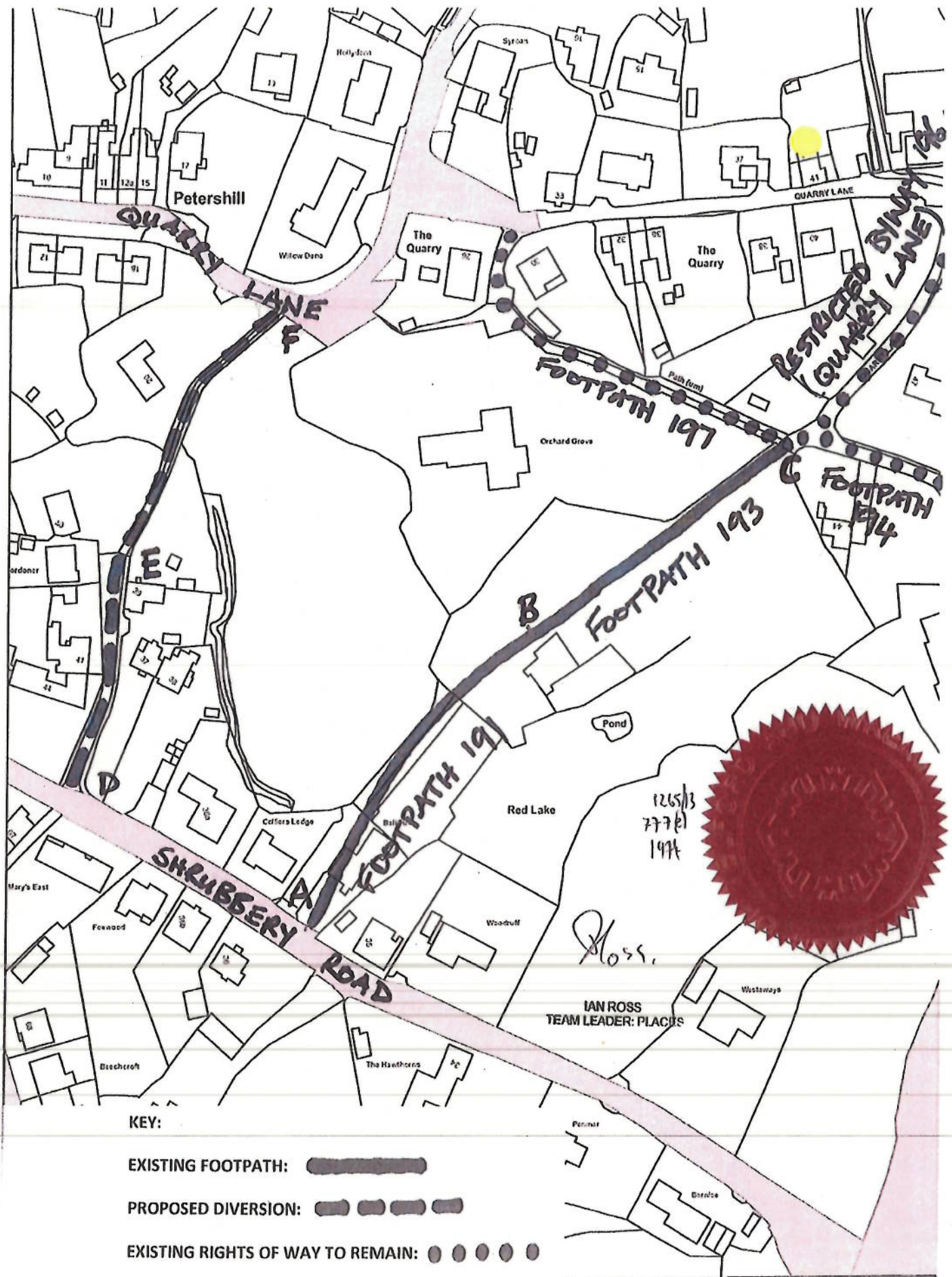
Mrs J Mees- Robinson

Ms P Doherty                      Ramblers' Association

Inquiry documents

1. Mr Croft's summary proof.
2. Details of Mr Careless' mileage claims for w/e 15 September 2013 obtained via a Freedom of Information request by Mr Vickers.
3. Emails between Cllr Francis and Mr & Mrs Nicoll dated 23 and 24 March 2011.
4. User evidence form completed by Mr Breeze in 2009.
5. Closing submissions from Mrs Mees-Robinson.
6. Closing submissions from Mr Vickers.
7. Closing submissions from Mr Croft.
8. Closing submissions on behalf of Mrs Linning.
9. Closing submissions on behalf of Mr & Mrs Nicoll.
10. Closing submissions on behalf of Telford and Wrekin Borough Council.





SCALE: 1,250

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