

DERBYSHIRE COUNTY COUNCIL

REGULATORY LICENSING AND APPEALS COMMITTEE

15 JANUARY 2018

REPORT OF THE DIRECTOR OF LEGAL SERVICES

**WILDLIFE AND COUNTRYSIDE ACT 1981 – INVESTIGATION OF STATUS
OF PUBLIC RIGHT OF WAY BETWEEN CHURCH STREET, BONSTALL
AND CHAPEL HILL, CROMFORD**

1. Purpose of the Report

To enable Members to determine whether to authorise the making of a definitive map modification order (DMMO) to record a continuous public bridleway between Church Street, Bonsall and Chapel Hill, Cromford.

2. Information and Analysis

- 2.1 There currently exists on the definitive map and statement a public bridleway running between Bonsall and Cromford which skirts the edge of Ball Eye Quarry. However the two ends of the route are currently recorded as public footpaths so in March 2012 the 'Bonsall Riders' horse riding group submitted a DMMO application to modify the recorded status of the routes concerned (Bonsall public footpath No. 1 and part of Bonsall public footpath No. 59) to public bridleway status.
- 2.2 Unfortunately, certain requirements regarding the submission of the DMMO application had not been fully complied with and the Council could not treat it as a properly made application. Nevertheless, the application referred to evidence regarding the route's status which indicated that the footpaths concerned ought to be recorded as bridleways and that other sections of right of way of bridleway status ought to be added in order to record the historic right of way to its correct status.
- 2.3 A plan showing the route under investigation is attached (Appendix 1). The route commences from the end of an adopted highway (a non-classified highway or NCH) in Bonsall village called Church Street as Bonsall public footpath No. 59. It then continues as a rough track skirting Ball Eye Quarry (currently recorded as Bonsall public bridleway No. 69 and Matlock Bath public bridleway No. 18) before connecting with Bonsall public footpath No. 1 via a short section of currently unrecorded track and continuing along footpath

1 to terminate at the end of another NCH called Chapel Hill on the outskirts of Cromford village.

- 2.4 The Bonsall Riders included with their application a number of completed user evidence forms from people who had ridden the route on horseback.

For the purposes of assessing any period of use that might be relevant in considering whether there has been an “event” to justify the making of any Order under the Wildlife and Countryside Act 1981, 2012 has been taken as a point at which public use of the route “as of right” was called into question because that was when the original application was received and was also the year that the County Council carried out a consultation process regarding the evidence that had come to light. Therefore, as regards section 31(2) of the Highways Act 1980, the period of twenty years immediately prior to 2012 has been particularly considered in assessing any user evidence.

User Evidence

- 2.5 A total of 16 completed user evidence forms were included with the original DMMO application, 13 of which were from people who said they had used the route on horseback. The use referred to covers the period from 1982 to 2012.
- 2.6 Three horse riders said they personally had used the route for in excess of 20 years. In addition, a mountain biker said he had cycled the route over a 26 year period and during that time had observed horse riders on the route. A walker who had used the route over a 21 year period also said that he had seen horse riders on the route during his knowledge of the route.
- 2.7 The majority of the users commented that they always understood the route to be a bridleway. A number also stated that the route was an important way of avoiding the dangerous main road along the Via Gellia when walking, cycling or horse riding between Bonsall and Cromford.

3. Consultation and Correspondence

- 3.1 On 9 December 2015 consultation letters were sent out to the owners of the land over which the route passes. The local member for the County Council Councillor, Irene Ratcliffe, was also consulted as were local user groups and the district and parish councils.

Several representations were received:

- 3.2 On 13 December 2015 Rhoda Barnett representing the Peak and Northern Footpaths Society emailed the County Council to say that while the Society was not aware of any evidence which might help the Council in its investigation, Case Law (notably *Eyre v New Forest Highway Board* (1892) 56/JP/517) dictated that it was highly unlikely that the current bridleway

(Bonsall public bridleway No. 69 and Matlock Bath public bridleway No. 18) would not continue at either end via a highway of the same, i.e. bridleway, status.

- 3.3 On 6 January 2016 one of the affected landowners, Albert Rockach of Deepwood Mining Company Limited, wrote to the Council suggesting that the plan included with the consultation letter, showing the current network of public rights of way, was wrong and that in fact no rights of way existed over what was shown as Bonsall public footpath No. 1.

The Council wrote back to Mr Rockach on 8 January 2016 stating that the plan provided accurately showed the public rights of way for the area and pointing out that he had mistakenly identified another part of the quarried area as being crossed by the footpath.

- 3.4 On 12 January 2016 a person with an interest in landscape and highway history wrote to the Council to state that her analysis of the historical documentary evidence was that the route in question should be recorded as a public bridleway throughout.

In support of her conclusion she referred to the setting out of most of the route in the Bonsall enclosure award of 1776 as a public bridle road; the route's treatment on the Bonsall tithe plan of 1848 as a coloured road and on the 1899 1:2500 scale OS plan as a 'B.R.' (meaning 'bridle road'); reference to the route as a bridleway in certain local authority records and the route's treatment in diversion Orders of 1970 and 1979 as a public bridleway.

4. Documentary Evidence

Bonsall Enclosure Award of 1776

- 4.1 The plan accompanying the 1776 Bonsall Enclosure Award shows a route on a pre-diversion alignment of the route under investigation. (The route appears to have been diverted in the 19th as well as the 20th Centuries – see below)

The route is named 'Ball Eye Road' on the plan, and in the Enclosure Award itself it is set out as a "private horse, carriage, drift and public bridle road" branching out of Town End Lane in Bonsall and leading into a lane called Harry Croft Lane.

Comparison of the 1776 plan with later mapping shows that the public bridle road in question ran from what is now Town End Farm in Bonsall to the boundary between Bonsall and an area identified on the earlier plan as Matlock Common, at which point the awarded route is shown leading into a pre-existing 'ancient' lane called Harry Croft Lane.

While the rest of the route heading towards Cromford is not set out in the award (because it fell outside its strict geographical scope), it is highly unlikely that the public bridle road set out in the Bonsall Enclosure Award was a cul de sac highway. Case Law (e.g. *Eyre v New Forest Highways Board* 1892 as referred to above by

one of the consultees) shows that one does not generally find cul de sac highways in rural areas except where they lead to places of public utility.

The enclosure plan shows that the awarded route must have continued along Harry Croft Lane and subsequent maps and plans show that ultimately the route probably continued generally south eastwards towards Cromford, entering the village via Chapel Hill.

George Sanderson's 1835 map of 'The Country Twenty Miles Round Mansfield'

- 4.2 This map, which for its age appears very accurate and is drawn at a reasonably large scale (about two and a quarter inches to a mile), indicates that the enclosure awarded bridle road probably formed part of a longer route between Bonsall and Cromford via Chapel Hill. However, rather than proceeding along the route identified on the enclosure plan as Harry Croft Lane, this plan shows it proceeding along a more direct line between the two villages, thereby indicating that the route must have been diverted (whether formally or informally) at some point between 1776 and 1835.

The plan shows no other possible alignment for the bridle road referred to in the enclosure award other than between the two villages of Bonsall and Cromford.

According to the key of this map the route falls into the category 'cross road': Past examinations of this map have shown that this term was a catch-all phrase to mean roads other than turnpike roads (such roads being depicted by a thickened or 'shaded' line on the south or east sides) and that it can often be shown to apply not only to minor public carriage roads but also public bridle roads and private access roads and drives.

c1840 1st edition 1" to 1 mile Ordnance Survey (OS) Map

- 4.3 Like the earlier Sanderson's map described above this map shows only one possible alignment for the bridle road described in the Bonsall enclosure award, i.e. a reasonably direct alignment via Church Street and Town End Lane, Bonsall at the north west end and Chapel Hill, Cromford at the south east end.

Tithe Plans - Cromford (1841) and Bonsall (1848)

- 4.4 The Cromford Tithe Plan (1841) doesn't extend far enough northwards to show the application route however it does show Chapel Hill branching off the main road (Via Gellia).

The Bonsall Tithe Plan (1848) clearly shows a route on the same alignment as depicted on the two earlier maps referred to above (the Sanderson's Map and the 1st ed 1" OS), and which probably corresponds to a 19th Century 'post-enclosure' alignment of the bridle road between Bonsall and Cromford.

The route is coloured brown in the same manner as other roads (including some private roads as well as acknowledged highways) in order to distinguish

it from the numbered plots dealt with in the accompanying tithe apportionment schedule.

No other plausible alignments for the bridle road set out in the Bonsall Enclosure Award of 1776 are indicated other than the route described.

First edition 1:2500 Ordnance Survey (OS) Plan (1880)

- 4.5 This plan shows a route which corresponds to that shown on all the earlier 19th Century maps and plans. It is depicted variously by means of solid and dashed lines and clearly runs between Church Street and Town End Lane at the Bonsall end and Chapel Hill, Cromford at the other end.

The route differs from that shown on the enclosure plan (see above) in that there is no indication on this plan of the route named Harry Croft Lane (along which the enclosure awarded bridle road is described as continuing). Instead, the route continues as described above, in a more direct generally south eastwards direction to Chapel Hill.

The presence of a number of 'old lead shafts' marked on the plan shows that much of the middle portion of the historic route (including the area where Harry Croft Lane would have been situated) crossed an area that had been intensively mined (for lead) so it seems probable that at some point between the date of enclosure in 1776, when the bridle road appears to have gone along Harry Croft Lane, and the publication in 1835 of Sanderson's map (see above), when the bridle road took a more direct alignment, mining activities had caused the route to be diverted to the alignment shown on this and all other 19th Century maps and plans.

Just to the north west of Chapel Hill a route marked as a footpath ('F.P.') forks off northwards in the direction of Ember Farm and Upperwood. The location of Harry Croft Lane would have been such that it would have cut the corner between the 19th Century alignment of the historic bridle road and this footpath (meaning that at the time of enclosure in 1776 the bridle road would probably have continued onwards to Chapel Hill partly via the route of the footpath) however, as stated above, there is no indication on this plan of the existence of Harry Croft Lane except for the line of a field boundary.

Second edition 1:2500 OS Plan (1899)

- 4.6 This plan shows the route in much the same way as the slightly earlier 1:2500 OS plan described above, the notable difference being that on this plan the route is clearly labelled 'B.R.' (meaning bridle road) approximately mid-way along the route, in the vicinity of the area of lead mining referred to above.

Since the labelling 'B.R.' is clearly seen to apply to the route which proceeds along the direct 19th Century alignment as opposed to the earlier one, this evidence reinforces the argument that the enclosure awarded bridleway rights continued to exist (albeit on a different alignment) into the late 19th Century.

Finance Act 1910

- 4.7 Church Street and Town End [Lane] are excluded from the taxable land holdings (hereditaments) on the relevant Finance Act (working) plan. At Town End Farm the route enters a large hereditament (No. 397) described in the accompanying valuation book as lands and buildings located at Town End Farm for which £100 was claimed for the presence of 'public rights of way or user'.

Because plot 397 is so large it is impossible to say which particular right (or rights) of way the deduction is being claimed for without examining the Finance Act field books held at the Public Record Office in Kew.

On the approach to the Cromford boundary the route enters another hereditament (No. 7) associated with the wooded hillside known as 'Ball Eye' before joining Chapel Hill, which itself is excluded from hereditaments.

Hereditament No. 7 is described as 'Ball Eye Quarry etc' and there is no deduction listed in the valuation book for the presence of public rights of way or user. The fact that no deduction was claimed for this plot may just be a reflection of the fact that, being an intensively quarried and steep wooded hillside, the presence of a minor right of way such as a bridleway would not be seen as affecting the value of the land.

Parish Survey, 1950

- 4.8 The pre-1960s diversion alignment of the route between Bonsall and Cromford was originally claimed by Bonsall parish (16th April 1952) for inclusion on the definitive map and statement as a public footpath; it came to be recorded on the map and statement as Bonsall footpath No. 1.

Diversion and Stopping-up Orders

- 4.9 In September 1968 the Matlock Urban District Council (UDC) Town Planning Committee considered an application from Pitchmastic Quarries Ltd for an extension to Ball Eye Quarry, on which Derbyshire County Council (the planning authority) had requested the UDC's observations. The committee resolved that no objection be made, "subject to the provision of adequate fencing along the public footpath (which should be constructed to bridle path width and properly surfaced) adjacent to the site, and to the curtailment of mineral workings at least 20 ft from any fence line." The clear indication here is that in 1968 the UDC considered the route to carry public bridleway rights even though it was then recorded as a public footpath.

In November 1968, the Surveyor reported to the Highways Committee that Pitchmastic Quarries had made an application to the Ministry of Transport for a length of Bonsall FP1 to be diverted. The committee was asked to decide on the standard of construction, and type of fencing, required and to confirm that the UDC would be responsible for maintenance of the new footpath on completion. With respect to the standard of construction, the committee resolved that "the path be 9-ft in width and be constructed of limestone skelpings".

Notice that the Minister of Transport had made an order under section 153 of the Town and Country Planning Act 1962, stopping up "a length of Bridle Road" and "requiring the provision of a new Bridle Road" at Ball Eye Quarries, following a local inquiry, was published in the London Gazette on 19 February 1970. The 1970 order

was entitled "The Stopping up of Highways (County of Derby) (No.2) Order 1970" and is referred to in a second notice published in the London Gazette on 8 June 1979.

The notices provides confirmation that the issue of the route's status had been considered at the local inquiry (held probably in 1969) and that the Inspector had decided that, irrespective of the route's then current definitive map status of public footpath, the new route should be a public bridle road because that's what the unrecorded historic status of the old route had been.

In September 1973, the UDC's Town Planning Committee considered an application by Deepwood Mining Co. Ltd., for fluorspar workings off Town End, Bonsall, on which Derbyshire County Council had asked for its observations. "The applicants had written indicating that access would be through the Pitchmastic Quarry and not through the village of Bonsall" and "that all necessary repairs would be carried out to the bridle path across the site". The references to Town End and the Pitchmastic Quarry indicate that the bridle path across the site of the proposed fluorspar workings is likely to have been the route under investigation.

A second notice published in the London Gazette refers to an Order ("The Derbyshire County Council (Ball Eye Quarry) Public Paths Stopping-up Order 1978) made on 2 February 1978 and confirmed by the Secretary of State for the Environment without modification on 22 May 1979. The notice explains that the 1978 order stops up sections of FP1 and FP59 in Bonsall Ward (i.e. Parish) and of FP8 in Matlock Bath Ward, and the bridleway created by the 1970 order. The 1978 order creates an alternative bridleway and an alternative footpath in lieu of the stopped up highways.

In the absence of the plans included in the orders it is not possible to work out where the stopped up and created highways went. However it seems clear that these orders led to the current situation whereby, as described above, a public footpath leads out of Church Street NCH in Bonsall, continues as a public bridleway around the edge of Ball Eye Quarry before reverting to public footpath status and leading into Chapel Hill NCH on the outskirts of Cromford village.

Published material

- 5.0 'Bonsall: A Village and its History' published by the Bonsall History Project Refers to the route as the "old route to Buxton and Manchester through Bonsall, over Chapel Hill and past Ball Eye" which it says became less important as other roads were improved – specifically the Via Gellia.

References to the claimed route on the Cromford Village website (<http://www.cromfordvillage.co.uk>) reinforce the view that the route has historically been a public bridleroad through-route between Bonsall and Cromford:

The website refers to the recollections of the Rev. Leonard Jenyns (1800-1893), a highly esteemed naturalist who was invited to join the voyage of the Beagle in 1831. He declined and in his place went another young naturalist by the name of Charles Darwin.

Rev Jenyns undertook several tours around England in the first half of the 19th Century including, in 1830, a tour of Derbyshire:

"Saturday, 14 August 1830. Rev Jenyns spent the morning inspecting the medicinal springs at Matlock Bath, collecting plants from Lovers' Walks, walking up the Heights of Abraham and visiting Rutland Cavern on the way. He went to the summit of Masson Hill once more, taking a footpath to Bonsall village and then the bridle road to Cromford. (This road, at a higher level than Via Gellia, was probably the track which comes out on Chapel Hill.) It was market day in Cromford and he noticed many of the stalls were selling nails."

5. Summary and Conclusion

It is clear from the Bonsall Enclosure Award that during the latter half of the 18th Century there existed a public bridle road (and private horse, carriage and drift road) that proceeded south eastwards out of Town End in Bonsall.

While the award itself doesn't reveal where the bridle road went beyond the scope of the enclosure process (enclosure awards generally dealt solely with the specific area subject to enclosure and only provide very scant information about the world beyond), later evidence from the 19th Century shows that it probably continued to Cromford via Chapel Hill.

The later evidence also shows that by 1835 the route had been diverted. Still later evidence shows that the route was diverted again in the 20th Century, however the evidence also demonstrates that, despite being incorrectly added to the definitive map and statement as a public footpath in the mid-20th Century, knowledge of the routes historic bridleway status remained.

The route subject to this investigation corresponds at either end with what would have been the likely 18th Century alignment of the historic bridleway while the rest of the route reflects the various diversions that have taken place over centuries.

The only problematic area lies in the area of point B on the attached plan: It is questionable whether the 'switchback' at this point represents any formal diversion of the original route. However, it is the easiest means by which bridleway users can proceed from the part of the route designated Matlock Bath bridleway 18 to re-join the historic alignment of the route which is currently designated Bonsall footpath 1.

In addition, it is the alignment that was originally claimed in 2012 and judging by the user evidence forms it is one that has been actually used by members of the public on horseback or cycle. The user evidence relates to the period 1982 to 2012 and since, as discussed above, the most recent of the major diversions that have taken place on this route was confirmed in 1979, the conclusion must be that the route has been used on this alignment by

bridleway users from around the time part of it was diverted in 1979 up till 2012.

Therefore, while documentary evidence forms the basis for the modification of the two ends of the route (part of both Bonsall public footpath No 1 and Bonsall public footpath No. 59) to bridleway status, use by the public, apparently as of right and without interruption from 1982 up till 2012, forms the basis for adding the linking route from the end of the existing Matlock Bath bridleway 18 at point B, along Matlock Bath footpath 4 for a short distance and doubling back along an unrecorded route to a junction with Bonsall footpath 1 at point X, to the definitive map and statement as a public bridleway (see inset on the attached plan).

6. Considerations

Legal and Human Rights Considerations

- 6.1 Under the Wildlife and Countryside Act 1981 the Council is obliged to make a Modification Order as soon as reasonably practicable on the occurrence of certain specified 'events'. These events include:
- 6.2 (1) the discovery by it of evidence which (when considered with all other relevant evidence available) shows that a right of way which is not shown on the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates (section 53(3)(c)(i)); and

(2) the discovery by it of evidence which (when considered with all other relevant evidence available) shows on the balance of probability that a highway shown on the map and statement as a highway of a particular description ought to be shown as a highway of a different description, (section 53(3)(c)(ii)).
- 6.3 Section 31(1) of the Highways Act 1980 provides that where a way over land is enjoyed by the public "as of right" and without interruption for a full period of 20 years the way is presumed to have been dedicated as a highway unless there is sufficient evidence that there was no intention during that period to dedicate it. Enjoyment by the public "as of right" means use by the public without force, without secrecy or permission.
- 6.4 Section 31(2) provides that the 20 year period referred to in section 31(1) is to be calculated retrospectively from the date when the public right to use the way is brought into question.

Other Considerations

- 6.5 In preparing this report the relevance of the following factors has been considered: social value, financial, prevention of crime and disorder, equality

of opportunity, human rights, personnel, environmental, health, property, and transport considerations.

- 6.6 None of these factors are considered to be relevant for the purpose of this report.

7. Background Papers

Legal Services file 62373 and documents referred to in this report.

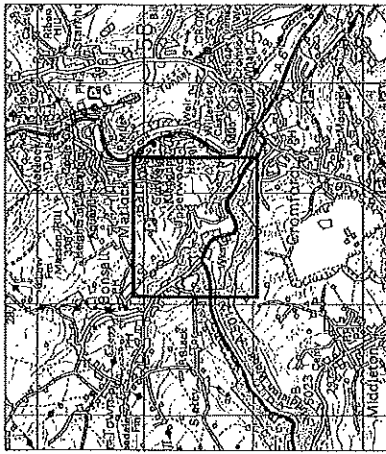
8. OFFICER'S RECOMMENDATION

That the Committee resolves:

(1) to authorise the making of an order under section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 to record Bonsall public footpath No 1 between points A and X, part of Matlock Bath public footpath No 4 at point B and Bonsall footpath No 59 between points C and D, to public bridleway status, and:

(2) to authorise the making of an order under section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 to add a public bridleway to the definitive map and statement for the area between point X and its junction with Matlock Bath public footpath No 4.

Chief Officer



Wildlife and Countryside Act 1981 Section 53

Investigation into status of
Rights of Way in Baileye Quarry,
Parishes of Bonsall and Matlock Bath

KEY

Claimed Bridleway
+ (A-B) (C-D)

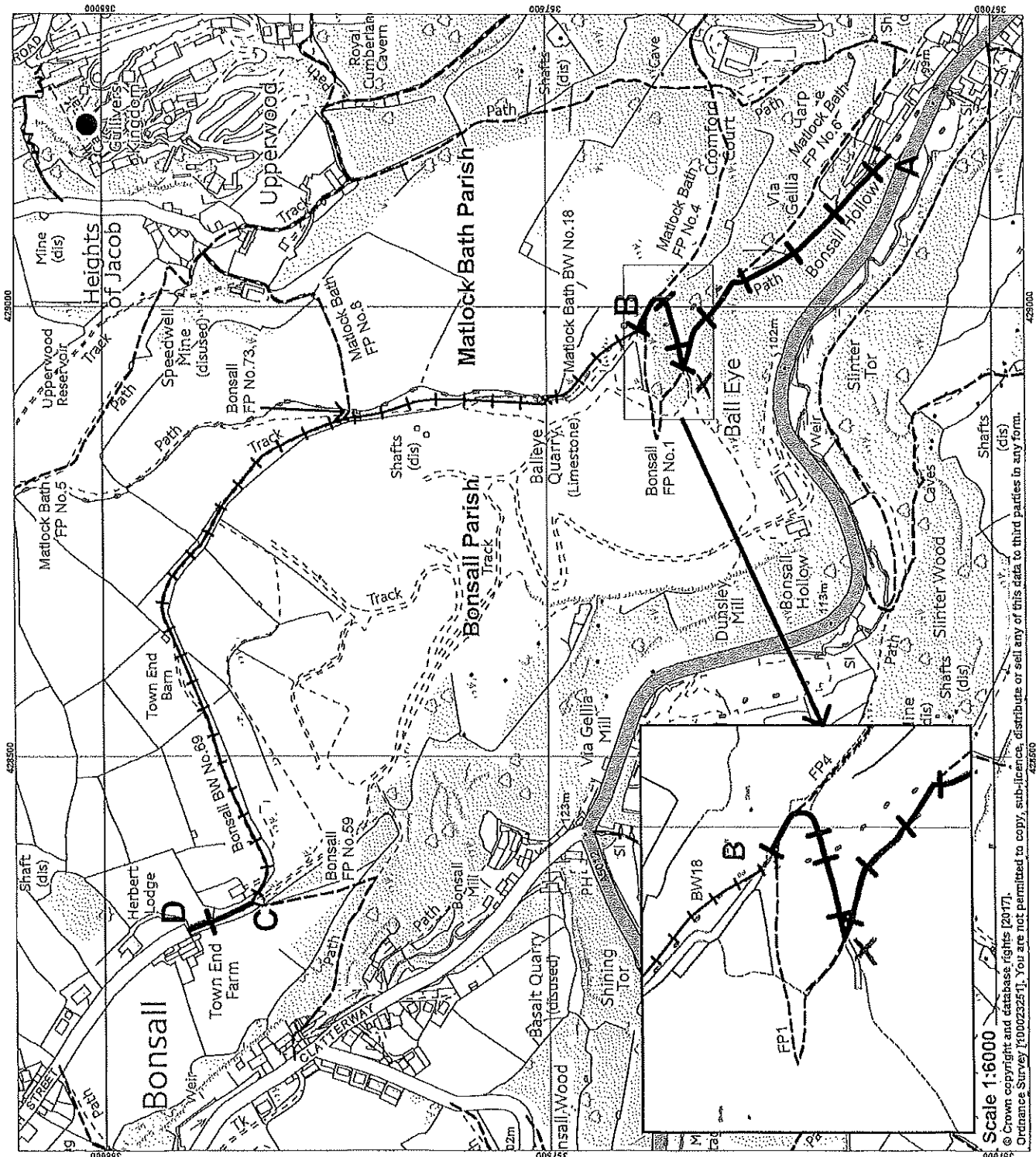
Existing Footpath

Existing Bridleway
+ +



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Produced by Public Rights of Way on 21 December 2017
Ref: TECH/03943/Chee/2018



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