

**DERBYSHIRE COUNTY COUNCIL**

**Regulatory and Licensing and Appeals Committee**

**21 May 2018**

**Report of the Deputy Director of Legal Services**

**Wildlife and Countryside Act 1981 – Claim to vary the particulars of  
Public Footpath No 60 – Parish of Charlesworth**

**1. Purpose of the Report**

To enable Members to consider the evidence relating to a Definitive Map Modification Order (DMMO) application to vary the particulars with regard to the alignment of Public Footpath No 60 in the Parish of Charlesworth.

**2. Information and Analysis**

**Background to the Claim**

- 2.1 On 01 December 2015 the applicant submitted a DMMO application to the effect that certain evidence of which they were aware showed that the current alignment of Charlesworth Public Footpath No 60 on the working copy of the Definitive Map held by Derbyshire County Council was incorrect and therefore required modification.
- 2.2 The application was specifically concerned with the section of footpath shown crossing the gardens of both Bankwood Cottage and Bankwood Mill Farmhouse and stated that this alignment was incorrect, and has never been physically accessible on the ground.
- 2.3 The application contained evidence that Derbyshire County Council had previously confirmed that the route was on the alignment suggested by the applicants by the way of search results that were carried out on the properties as part of the conveyancing process.
- 2.4 The working copy of the Definitive Map and Statement held by Derbyshire County Council had previously shown the alignment described and shown by the applicant and therefore was the alignment provided in the results of the searches, however, this was subsequently changed as after carrying out further investigation, the County Council's Rights of Way Section believed that

the working copy did not accurately reflect the alignment shown on the Definitive Map and Statement.

### **Application**

2.5 The application contains a number of documents on which the applicant intends to rely in support of their application.

2.6 A case for correction was received with the application, this states that the Definitive Map shows this footpath going through the garden of Bankwood Cottage and continuing through the garden of Bankwood Mill Farmhouse in a roughly East-West Direction. The applicant makes the case that this is incorrect because:

- The footpath has never run this way

The standard search carried out in December 1976 for Bankwood Cottage by Pricketts Solicitors Stockport shows the footpath skirting the garden on the eastern side.

Further Evidence and Witness statements are attached to show that this is the route that this footpath has taken for the past 65 years, if not the beginning of the 20<sup>th</sup> Century.

- The route shown on the Definitive Map could never have been correct as it is not physically possible. It crosses precipitous drops and a dangerous culvert which are part of the landscape and have always been there, certainly since the time when the Bankwood Mill Farmhouse Pond was built and photographs are attached to the application to show these details.
- In the time since Eve Avery purchased Bankwood Cottage in 1986 no-one has sought to use any route across the garden, and no-one from the Council or any interest group such as the Ramblers have queried the route with her.
- To the knowledge of Eve Avery, since 1986 when she moved into the area no-one attempted to walk across the garden of Bankwood Mill Farmhouse, formerly Bankwood Mill.
- Since John and Lorraine Elliot purchased Bankwood Mill Farmhouse in 2010 no-one has sought to use any route across the garden and no-one from the Council or any interest group such as the Ramblers have queried the route with her.
- The Definitive Map for Charlesworth Footpath No 60 should represent the actual route of Charlesworth Footpath 60 on the ground and as shown on the maps attached to the application.

## **Documentation included with the application**

- 2.5     *Certified copy of Search for Bankwood Cottage 1976*  
The search result by the Borough of High Peak Council shows Public Footpath No 60 to the north of the properties and not crossing through the garden on the south.
- 2.6     *Copy of search for Bankwood Mill Farmhouse 2010*  
The private search carried out shows that Public Footpath passes to the north of the property upon information obtained from High Peak Borough Council.
- 2.7     *1900 OS Map NLS sourced from the National Library of Scotland*  
The applicant has stated this shows Charlesworth Footpath 60 going along the top of the cliff above the riverside track towards Bankwood Mill, it then drops to the river side track before Bankwood Cottage garden and can be seen going up the track alongside the fence from the Bankwood Print Works. It does not cross the garden either of Bankwood Cottage or of Bankwood Mill Farmhouse.
- 2.8     *6366-1947 Aerial photograph*  
The applicant has stated that the photograph clearly shows Charlesworth Footpath 60 dropping down to the riverside track before the garden of Bankwood Cottage. At this time Bankwood Cottage has a chimney at the bottom of its garden opposite the house which is now called Bankwood Mill Farmhouse. Charlesworth Footpath 60 can be seen going up the farm track beside the fence from Bankwood Ill yard towards St Margaret's Bridge. There is no sign of Charlesworth Footpath 60 going through the garden of Bankwood Cottage or going through the garden of Bankwood Mill Farmhouse.
- 2.9     *6367-1947 Aerial photograph*  
The applicant has stated the photograph shows Charlesworth Footpath 60 dropping to the riverside track which ran at that time right through the middle of the mill.
- 2.10    *6369-1947 Aerial photograph*  
The applicant has stated that the photograph shows the view from the south of the mill. From this prospective it can be seen that there is no footpath going through the garden of Bankwood Mill Farmhouse. It can also be seen that there is a considerable drop from the mill pond down to the Mill Yard. The gully which takes the run off from the pond down to the river can be seen dropping in a spill way. The wall of the garden is continuous and there is no sign of a footpath crossing the wall, the garden or the culvert.

2.11 *Conjoined OS Map 1945*

The applicant has stated that this was purchased in 1986 and is believed to represent the OS Survey undertaken in 1945. The Bankwood Printworks are in the centre of the display and the photograph shows the 1 kilometre square SJ998 – SK400 and SK940- SK941 and surroundings shows the footpath as it was then and as it is now. It drops down from the cliff top above the riverside track, onto the track and then follows the track behind Bankwood Mill Farmhouse, sweeps around the mill yard and then sets off up the field following the fence.

2.12 *OS Map purchased September 2015*

The applicant has stated that this shows the route of the footpath to be as shown in the present day OS maps.

**User evidence included with the application**

2.13 Six user evidence forms were submitted in support of the application.

2.14 *Witness 1*

Describes the route clearly passing to the rear of Bankwood Mill House and has used the route between 1955 and 2015 when the application was submitted.

They describe 2 stiles on the route including one below the garden of Bankwood Cottage.

They were never told that the route was not the Public Footpath but were told that the Riverside Lane, which is the tarmac surfaced track was not a Public Bridleway.

They state that the route has never deviated from the alignment detailed in the application and this is the route marked attached to their user evidence form.

2.15 *Witness 2*

Describes the route as approaching Bankwood Cottage dropping down to the tarmac road leading to Bankwood Mill and has done so since they moved to the area in 1987.

The witness has stated they co-owned Bankwood Cottage during 1989 and do not recall there being any stiles on the route.

The scale of the attached plan and the width of the route marked upon it make it difficult to be precise but it appears to show the route as it is shown on Derbyshire County Council's working copy of the Definitive Map.

2.16 *Witness 3*

Describes the route as heading north west up along the track overlooking the river towards Bankwood Cottage and has used the route between 1995 and 2013.

The witness describes two stiles within the route, one approximately 150 metres from the bridge and one 200 metres from Bexhill.

They state they occupied Bankwood Cottage and the route has never gone through the garden and has always come from the stile to the road.

The plan attached to form has an alignment marked on showing the same alignment as that marked on the application.

2.17 *Witness 4*

The witness has not provided a description of the route which they have used within their description but have marked the alignment of the route they have used between 1994 and 2010 on the same alignment as that shown on the application. They have also described a stile immediately behind Bankwood Mill Cottage.

2.18 *Witness 5*

The witness has not provided a description of the route which they have used within their description but have marked the alignment of the route they have used between 1973 and 2015 on the same alignment as that shown on the application.

The witness has worked as a dry stone waller for the cottage and then later the farmhouse and has described a stile near Bankwood Farmhouse.

2.19 *Witness 6*

The witness has not provided a description of the route which they have used within their description but have marked a partial alignment of the route they have used between 2004 and 2015 on the same alignment as that shown on the application.

The witness has described a stile outside Bankwood Mill Farm.

### **Consultation**

2.20 An informal consultation was carried out 08 December 2015 in which registered landowners were notified of the proposal.

2.21 One letter was received following the consultation from a landowner who has no objection in principle to the proposed modification, however suggested that the plan needed amending as it showed the

footpath to go over his land when this is not the route that it follows on the ground.

### **Site information**

- 2.21 It is clear on the ground that the public have used the route that the applicant claims is the correct alignment of Public Footpath No 60, the route is waymarked, includes a squeeze stile and wicket gate and is the route that has been previously inspected by the County Council's Rights of Way section as is shown in evidence contained within their files.
- 2.22 A GPS survey was carried out on the route in 2018 to ensure that the plan attached to this report correctly depicts the route that has been walked. This was in response to the letter received from the adjoining landowner following consultation to ensure that the attached plan is accurate.

### **Documentary Evidence**

#### **2.25 Parish Claim and Map**

The Parish claim records the route as Footpath 60 with the starting point from railway viaduct path climbs to stile then descends down stone steps to Bankwood Print Works. The small scale of the map and the width of the line marked upon it makes it difficult to precisely determine the position of the path.

#### **2.26 Charlesworth Definitive Map and Statement**

Footpath 60 is described as Footpath from N end of Long Lane SE of Besthill Mill (997 938) in NW then NE direction under Besthill Bridge to Bankwood Print Works thence SE to Railway boundary and continuing alongside railway to the parish boundary SE of Robinwood Farm (008 941). The quality of the map, the width of the line marked upon it, and the change in surroundings makes it difficult to precisely determine the position of the path in relation to the current buildings however the alignment does appear to follow that as shown on the working copy following a more easterly direction crossing the track and skirting the northern side of the pond.

#### **2.27 Summary and conclusion**

Section 53(3)(c)(iii) provides that the Definitive Map and Statement may be modified if the order making authority discovers evidence which (when considered with all other relevant evidence available to them) shows that the particulars contained in the map and statement require modifying. The evidence required to vary the particulars must be new (i.e. not simply a re-examination of the evidence

considered when the Map was prepared); of sufficient substance to displace the presumption that the Definitive Map is correct; and must be cogent. The evidence must therefore be sufficient to show that on balance of probabilities the Definitive Map and Statement require amendment.

- 2.28 The route has been shown on the Definitive Map and Statement for Chapel-en-le-Frith Rural District since 1 June 1954 (the relevant date for Chapel-en-le-Frith Rural District Definitive Map and Statement) and map evidence. In accordance with Section 56(1) Wildlife and Countryside Act 1981 the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had therefore a right of way on foot. It is not disputed that a Public Footpath does exist however, it is questioned whether the path has been accurately and correctly recorded on the Definitive Map.
- 2.29 The application contains a number of aerial photographs and copies of Ordnance Survey maps on which the applicant intends to rely in support of their application. Ordnance Survey maps are produced carrying out a survey of features on the ground and not a definitive record of public rights of way. Although the photographs and maps submitted with the application cannot be used to determine the legal alignment of the footpath these provide clear evidence that both the mill pond and the stream have always existed in this location and that there is no evidence that a bridge or crossing has ever existed on this alignment.
- 2.30 The User Evidence Forms that were submitted with the application provide evidence of usage of the alignment upon which the applicant believes the Definitive alignment to follow. However the evidence of usage postdates the production of the Definitive Map and Statement and therefore does not offer information to conclude that the line of the path is incorrectly shown on the Definitive Map, even if they do provide evidence that the actual walked route may be different or may have altered.
- 2.31 In conclusion, sufficient evidence has been presented to the Council to show on balance of probabilities that the depiction of the route on the Definitive Map is not an accurate record of the legal line of the path as this would not have been accessible at the time when the Definitive Map was produced.

### **3. Considerations**

#### **Legal and Human Rights Considerations**

3.1 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:

(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 on 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)).

(3) that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification (section 53(3)(c)(iii)).

(4) The modifications which may be made by an order under subsection (2) shall include the addition to the statement of particulars as to

- (a) the position and width of any of any public path, restricted byway or byway open to all traffic which is or ought to be shown on the map; and
- (b) any limitations or condition affecting the public right of way thereover

3.2 (1) Section 56(1) provides that Definitive Map and Statement shall be conclusive evidence of the matters contained therein and that where the Definitive Map shows a footpath, the map shall be conclusive evidence that there was at the relevant date a highway as shown on the map, and that the public had therefore a right of way on foot.

(2) Section 56(2)(a) states that 'the relevant date' means the date specified in the statement as the relevant date for the purposes of the map.



### **Other Considerations**

- 3.11 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.
- 3.12 None of these factors are considered to be relevant for the purpose of this report.

### **4. Background Papers**

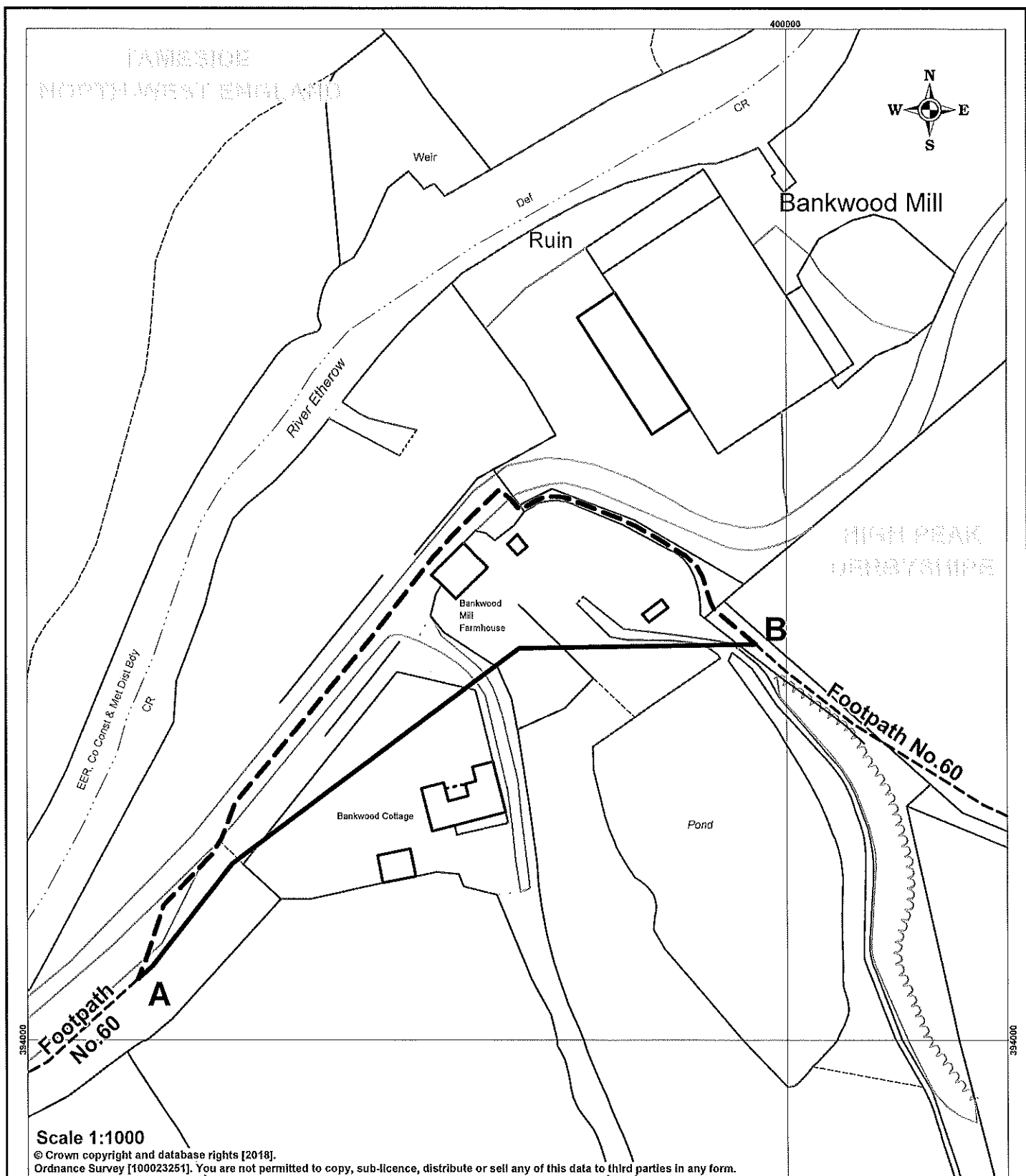
The items of evidence referred to in this report copies with Legal Services' file 67743.

### **5. OFFICER'S RECOMMENDATION**

That for the reasons set out in the report that the Committee resolves to make an Order under Section 53 Wildlife and Countryside Act 1982 to amend the Definitive Map and Statement by varying the particulars with regards to the alignment of Public Footpath No 60 in the Parish of Charlesworth.

**Simon Hobbs**  
**Deputy Director of Legal Services**





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**Mike Ashworth**  
Strategic Director  
Economy, Transport & Environment  
Derbyshire County Council  
Shand House  
Dale Road South  
Matlock  
DE4 3RY

**Wildlife & Countryside Act 1981 Section 53**

**Proposal to vary the particulars contained  
within the Definitive Map and Statement by  
amending the alignment of Public Footpath  
No.60 (Part)  
- Parish of Charlesworth**

<b>Key:</b>	Footpath to be varied	—————
	Proposed alignment of footpath	- - - - -
	Existing Footpath	—————
	County boundary	.....

