



Order Decision

Site visit on 14 August 2017

by Sue M Arnott FIPROW

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

Decision date: 18 September 2017

Order Ref: ROW/3169114

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981. It is known as the Derbyshire County Council (Footpath from Glossop Road (A626) to Public Bridleway No.109 at Bankwood Gate – Parish of Charlesworth) Modification Order 2010.
- The Order is dated 16 September 2010. It proposes to modify the definitive map and statement for the area by recording a public footpath in Charlesworth Parish, as shown on the Order map and described in the Order schedule.
- There were three objections outstanding¹ when Derbyshire County Council submitted the Order for confirmation to the Secretary of State for Environment, Food and Rural Affairs.

Summary of Decision: Confirmation of the Order is proposed, subject to the modifications set out in the Formal Decision below.

The Main Issues

1. There are two main issues here. The first is whether the evidence is sufficient to show that in the past the Order route has been used in such a way that a public footpath can be presumed to have been established. The second is whether the Order map accurately depicts the claimed route.
2. The Order was made under the Wildlife and Countryside Act 1981 on the basis of events specified in sub-section 53(3)(c)(i). Therefore if I am to confirm it I must be satisfied that, on a balance of probability, the evidence shows that a public right of way subsists along the route described in the Order.
3. The case in support is based primarily on the presumed dedication of a public right of way under statute, the requirements for which are set out in Section 31 of the Highways Act 1980 (the 1980 Act). For this to have occurred, there must have been use of the claimed route by the public on foot, as of right and without interruption, over the period of 20 years immediately prior to its status being brought into question so as to raise a presumption that the route had been dedicated as a public footpath. This may be rebutted if there is sufficient evidence that there was no intention on the part of the relevant landowner(s) during this period to dedicate the way for use by the public; if not, a public footpath will be deemed to subsist.

¹ One has since been withdrawn.

Reasons

4. Derbyshire County Council (DCC) made this Order in response to an application in April 1994 which was supported by evidence of use supplied by local people together with photographs of the route.
5. Although DCC did not identify any event that brought into question the status of the route, there appear to be two possibilities. The first is the planning proposal to develop the former railway sidings area as a tip for domestic refuse which prompted the application for the Order (although no specific date has been attached to this). A second possibility is the erection of signs in 1993 by the former landowner, British Rail Property Board (BRPB), near to points A and D stating "PRIVATE LAND: NO TRESPASSING : NO TIPPING", these being described as measures taken to respond to complaints of trespass.
6. Without more detail it is difficult to be certain but it seems the signs pre-dated the planning proposal although both events date from the period 1993/1994. Taking the earlier date, this would set a 20-year period between 1973 and 1993 during which continuous, unchallenged use by the public, as of right, needs to be established.
7. Thirteen people signed user evidence forms identifying the period of their use of the claimed footpath². Eleven of these people did so for the whole of the relevant 20 years, one for 19 years and the other from 1982 onwards. There is no evidence to suggest these people were ever challenged whilst using the path, by notice or otherwise, or used the route in secret or with express permission. Consequently it seems their use was 'as of right' and is therefore capable of establishing a right of way.
8. Leaving aside the matter of the exact route used by the claimants (which I shall address below), I am satisfied that this evidence, albeit limited in terms of numbers, would be sufficient to raise a presumption that the way in question had been dedicated as a public path.
9. No substantive evidence has been provided by or on behalf of the owner of the land affected by the Order route during the period in question to challenge the claimed use or to otherwise rebut the presumed intention to dedicate a right of way for the public on foot.
10. Although the land is now owned by DCC³, during the relevant 20 years the land was owned by BRPB although it is accepted that this was not operational land that might otherwise preclude the establishment of a public right of way.
11. In 2000 Rail Property Ltd confirmed by letter that a part of the Order route between C and D runs through land held on a tenancy since 1997. It also suggested that the letting of parts of the land show that BRPB exercised rights of ownership sufficient to defeat a claim of this nature.
12. However no evidence has been produced to satisfy me that the public were made aware that they should not walk the claimed footpath at any time during the relevant period or that they may do so with express permission. In my view, any presumption of dedication raised would not have been rebutted.

² Mr H and Mrs O Conway both individually signed the same form and I have therefore accepted the evidence of both. However I have not counted both Mr & Mrs Taylor and Mr & Mrs Burnett since each of these forms was signed only by one person.

³ The authority has chosen to remain neutral as regards confirmation of this Order.

Alignment of the claimed footpath

13. The line of the claimed footpath differed from that now shown in the Order at its eastern end, but following investigation by DCC the applicant confirmed that the route now shown on the Order map between points A-B-C-D was the route intended to be claimed.
14. Yet that is at odds with answers to question 4 of the evidence forms used by the claimants which seeks information about stiles and gates along the route. Ten of the claimants recall a stile 'at the top' at the Glossop Road end and a gate 'at the bottom' onto Long Lane. The photographs taken in 1994 submitted with the application show both. The gate is clearly at point D but the stile appears to be midway between points A and B. Indeed the application plan indicated the stile on the originally claimed route off the access road leading from Glossop Road to Higher Gamesley and Gamesley Fold Farm. This suggests to me that the claimants had walked the originally claimed route, not the Order route at this eastern end.
15. However the remainder of the claimed route as shown on the application plan does match the Order route. Yet between points C and D this is not the line currently walked. Indeed one of the objectors queries the Order route C-D since it crosses an area that was fenced in the mid-1990s and has been used for many years since then to graze ponies. But was the present path the same route used pre-1993 by the claimants?
16. Most describe the path they walked as part of a route from Higher Gamesley to Bankwood Gate, Broadbottom and Broadbottom Station but this alone does not distinguish it from the nearby definitive Footpath 1. None of the user evidence forms completed in 1994 attached maps identifying the route used by each individual and no further clarification has since been requested, leaving a degree of uncertainty.
17. However the photographs supplied by the applicant taken in 1994, along with the 1993 aerial photograph submitted by Rail Property Ltd, lead me to believe that the straight line C-D was not the route that was intended to be claimed⁴. East of point D the photographs show a vehicular track then a worn trodden path, both between trees. Although the track is now better maintained, the path muddier and the trees now more mature, this suggests to me that the applicant was seeking the recording of a public right of way along a line curving to the north of C-D which is the line presently in use.
18. This leads me to conclude that it is most likely the claimants were using a route that differs from the Order map at its eastern *and* western ends, walking the line I have marked on the (modified) Order map via points X-Y-B-C-Z-D.
19. DCC reports that a part of Footpath 1 was diverted in 1981. Although no copy of the Order was provided, I have compared the extract from the definitive map⁵ with the route of Footpath 1 included in the Order map to deduce the changes made at that time. DCC has noted a suggestion by the Ramblers' Association that the claimed route is the former alignment of Footpath 1 which continued in use after it was diverted, the implication being that the claimants cannot have used the Order route 'as of right' for the requisite 20 years.

⁴ Despite the applicant's confirmation to DCC that it was.

⁵ With a relevant date of 1 June 1954

20. I find little evidence to support this assertion. The claimed route (along the line I have concluded it was actually used) does not appear to me to match the pre-1981 footpath as recorded on the definitive map to any significant extent. Neither is there any evidence to support the Ramblers' Association's comment that the claimed route was only used after the railway sidings closed in 1981.
21. DCC concludes that, because of ambiguity over the line of the path used, the evidence is not sufficiently persuasive to demonstrate the Order route subsists on a balance of probability.
22. Had the claimants been interviewed at the time of the application, any confusion over the route they used could have been resolved quite easily⁶. Over twenty years later, getting to the truth of the matter is that much harder. Nevertheless, although I find the issue very finely balanced, I am reasonably satisfied that the evidence before me points to uninterrupted and unchallenged use by the public of a route between Glossop Road and Long Lane along a variation of the Order route (X-Y-B-C-Z-D) between 1973 and 1993 ending when signs were erected by the (then) landowner. During that period there is no substantive evidence to indicate a lack of intention to dedicate a public path. Consequently I conclude that, on a balance of probability, a public right of way on foot has been established along this line.

Other matters

23. One of the objectors is concerned that the Order route will not accommodate cyclists or horses. However an order of this type addresses only the public rights that have already been established through long usage, not those that may be needed for the future. Also, DCC referred to a comment by the charity Sustrans in relation to planning permission being granted to construct a bridleway over a route similar to the Order route but no further details of this representation were provided.
24. Although it was clear from marks on the ground that both cyclists and horses use this path at present, there is not sufficient evidence now before me to show that these activities have taken place over the requisite twenty year period, although that would not preclude further applications being made.

Conclusion

25. Having regard to the above and all other matters raised in the written representations, I propose to confirm the Order with modifications to amend the alignment of the Order route as referred to in paragraphs 18 and 22 above.

Formal Decision

26. I propose to confirm the Order subject to the following modifications:

On the Order map

- Add points X, Y and Z
- Delete the Order route A-Y and substitute X-Y
- Delete the Order route C-D and substitute C-Z-D

⁶ I note that DCC staff surveyed the route in 1997 and found the present line in use by the public; it was impossible to use the Order route because of fencing erected after the date of the application. The lack of any public outcry when the fences were put up adds further weight to my conclusion that the line C-D was not actually in use at that time.

In the Order schedule: Part I

Section as indicated on map:

- Delete "A-B-C-D" and substitute "X-Y-B-C-Z-D"

Description of Path or Way to be added:

- In line 2 delete Point A and substitute Point X;
- In lines 2 & 3 delete "SK 0090 9393 proceeding" and substitute "SK 0089 9386 proceeding first north west to Point Y (GR SK 0083 9389) then";
- In line 5 before "to Point D" insert "via Point Z (GR SK 0011 9376)";

In the Order schedule: Part II

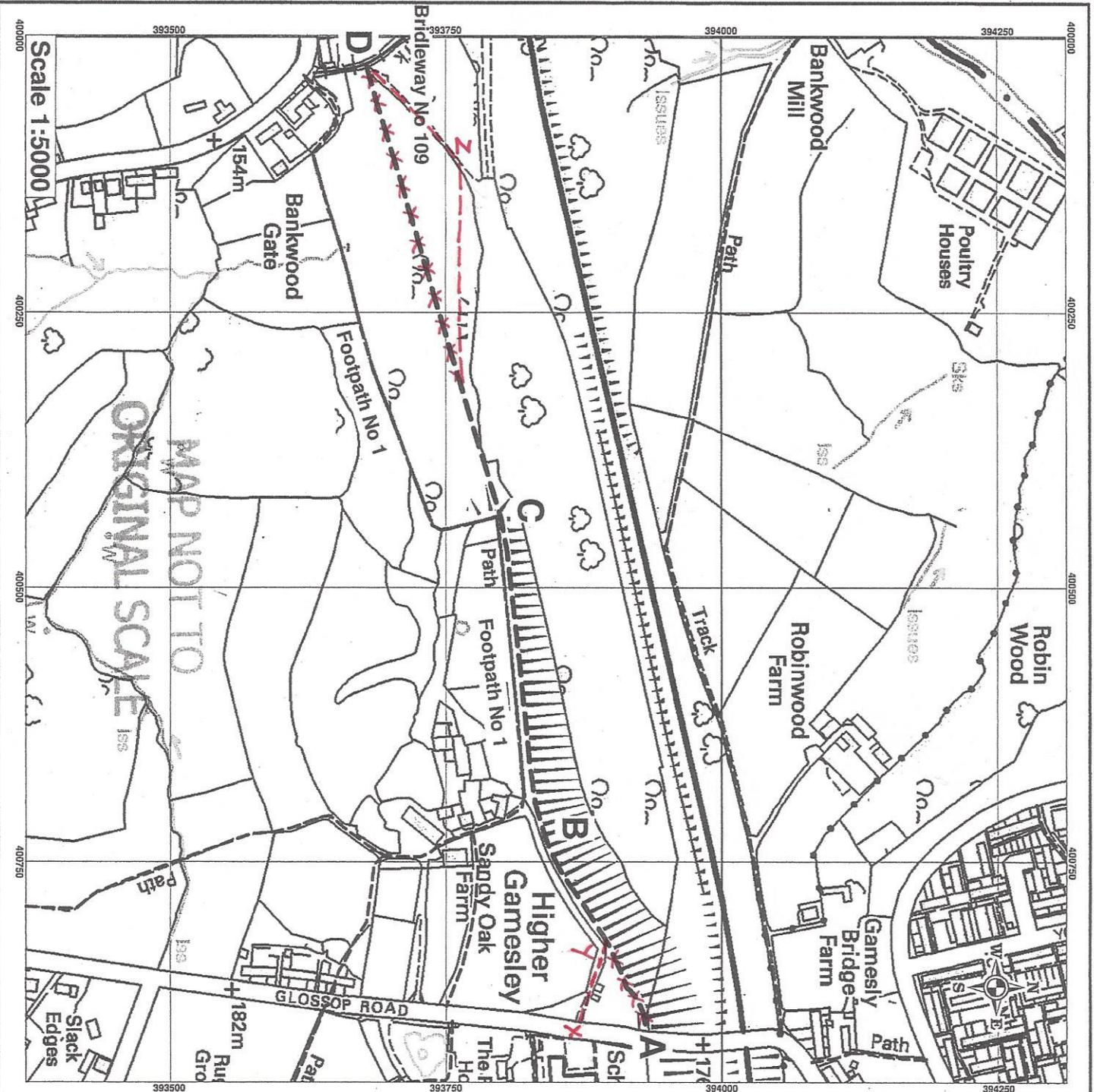
Status and Description of Route

- In line 4, delete "(SK 0090 9393) NW" and substitute "(SK 0089 9386) W";
- In line 8 delete "SW" and substitute "NW";
- In lines 16 & 17 delete "across field" and substitute "SW along track".

27. Since the confirmed Order (if modified) would affect land not affected by the Order as made, I am required by virtue of Paragraph 8(2) of Schedule 15 to the Wildlife and Countryside Act 1981 to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to interested persons about the advertisement procedure.

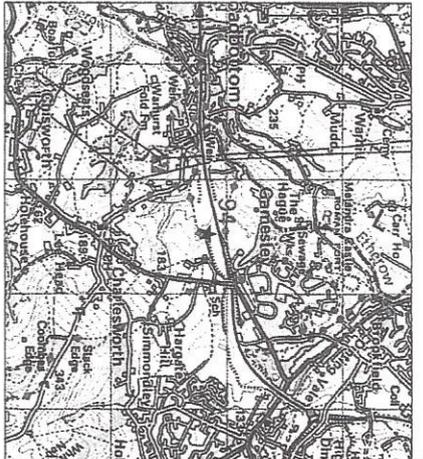
Sue Arnott

Inspector



Scale 1:5000

MAP NOT TO ORIGINAL SCALE



Wildlife and Countryside Act 1981 S.53
The Derbyshire County Council
 (Footpath from Glossop Road (A626) to Public Bridleway No. 109 at Bankwood Gate - Parish of Charlesworth)
 Modification Order 2010

KEY

Footpath to be added	---
Existing bridleways	—+—+—
Existing footpaths	----

Plan Ref: PE/GM/X2962/Order/2010

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 County Council

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