

**WILDLIFE AND COUNTRYSIDE ACT 1981 SECTION 53
DEFINITIVE MAP AND STATEMENT FOR OXFORDSHIRE**

1.

**APPLICATION FOR DEFINITIVE MAP MODIFICATION ORDER:
TO ADD A FOOTPATH
FROM BEGBROKE FOOTPATH NO.8, EAST OF THE SCIENCE PARK,
PAST PARKER'S FARM,
TO KIDLINGTON FOOTPATH NO. 33 (THE OXFORD CANAL TOWING PATH)
OCC REF 03733**

AND

2.

**DISCOVERY OF EVIDENCE:
TO ADD A FOOTPATH
FROM KIDLINGTON FOOTPATH NO. 33 (THE OXFORD CANAL TOWING PATH)
OVER THE CANAL BRIDGE
TO THE METALLED FOOTPATH RECORDED ON THE LIST OF STREETS TO
THE REAR OF 35 OSBOURNE CLOSE OX5 1TU
OCC REF 03790**

PARISHES OF BEGBROKE, YARNTON & KIDLINGTON

DETERMINATION REPORT

JULY 2024

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A PURPOSE OF REPORT

1. The purpose of this report is to consider an application to add a Footpath from Begbroke Footpath No.8, east of the Science Park, past Parker's Farm, to Kidlington Footpath No. 33 (the Oxford Canal Towing Path) on the Definitive Map and Statement (the legal record of public rights of way), and to recommend to the Corporate Director for Environment and Place how to determine the application.
2. The Council is under a statutory duty to address such applications in accordance with the provisions of the Wildlife and Countryside Act 1981 section 53 and schedule 14. It must decide about the existence of public rights based on the evidence before it and must have no regard to other matters such as whether the route is needed or has other potential implications.

B RECOMMENDATION

3. All evidence available to the Council has been considered and evaluated and it is considered that: -
 - I. **There is insufficient evidence to show that a public footpath exists over the application route A – B – C – D – E – F – G, and**
 - II. **That the application be rejected.**

- III. There is sufficient evidence to show that a public footpath exists over the adjoining canal bridge route G – H – I – J – K.
- IV. A Definitive Map Modification Order be made pursuant to the provisions of Section 53(2)(b) of the Wildlife and Countryside Act 1981, in consequence of events specified in s53(3)(c)(i) to add the route G – H – I – J – K on the plan at Appendix 1b as a public footpath.

C DETAILS OF APPLICATION

- 4. On 25 July 2023 Begbroke Parish Council submitted an application in accordance with the Wildlife and Countryside Act 1981 section 53(5) to modify the Council's Definitive Map and Statement by adding a footpath from Begbroke Footpath No. 8 at Begbroke Hill to Kidlington Footpath No.33, as shown on the plan at **Appendix 1a** running between points A – B – C – D – E – F - G.
- 5. A copy of the application and supporting evidence is at **Appendix 2a**. The application is supported by documentary evidence consisting of: -
 - i. Finance Act 1910 Valuation Maps
 - ii. Ordnance Survey maps dated 1899-1955
 - iii. Recent photograph of Canal bridge from Begbroke parish clerk
 - iv. Photograph of Kidlington Canal Bridge c.1984, Oxfordshire History Centre.
- 6. In May 2024 Begbroke Parish Council, in its response to the consultation on the draft version of this report, submitted the following additional evidence in support of its application: -
 - v. Photograph of Kidlington canal bridge published in the Oxford Mail in 1984, **Appendix 2b**.
 - vi. Plan of the Weed Research Organisation (landowners c.1960), **Appendix 2c**
 - vii. 1984 Bullers Bridge Transfer Deed, from British Waterways Board to Kidlington Parish Council, **Appendix 2d**
 - viii. Three inspection reports for Bullers Bridge dated 1992, 2004 and 2023, **Appendices 2e – 2g**.
- 7. Begbroke Parish Council stated that it erred in not including the continuation of the application route from point G eastwards over the canal bridge (Buller's Bridge).
- 8. This final version of the report therefore also considers whether a public footpath exists from the towing path eastwards over the canal bridge to the metalled footpath recorded on the county council's List of Streets, as shown on the plan at **Appendix 1b** running between points G – H – I – J – K.

9. Yarnton Parish Council wrote on 28 July 2023 to say that it fully supported the application because the footpath would connect the villages of Yarnton, Begbroke and Kidlington, **Appendix 2h**.

D THE LEGAL TEST FOR MAKING AN ORDER

10. The relevant statutory provisions which apply to adding a path to the Definitive Map and Statement are contained in the Wildlife and Countryside Act 1981 section 53(2)(b) which requires the county council, as the Surveying Authority, to modify the Definitive Map and Statement following events set out in section 53(3).
11. The events described in s53(3) include: -

(c) the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows: -

(i) that a right of way which is not in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic;" (s53(3)(c)(i))

E DESCRIPTION OF ROUTES

12. The application route is shown on the Plan at **Appendix 1a** running between points A – B – C – D – E – F – G.
13. It starts at Begbroke Footpath No. 8, near the southeastern boundary of Begbroke Science Park (**point A**). It leads east-northeast along a track to Parker's Farm to cross the Yarnton Parish Boundary at **point B**. It continues east-northeast passing to the south-east of Parker's Farm to reach the railway at **point C**. The applicant states on his application form that the path originally went under the Railway [as shown on the Ordnance Survey 1899 plan] to reach **point D**. The route then leads eastwards across an area of trees to **point E**. It then leads south eastwards along a field edge to reach the Kidlington parish boundary at **point F** and Kidlington Footpath No.33 (the towing path) and the Oxford canal at **point G**.
14. The canal bridge route is shown on the Plan at **Appendix 1b** running between points G – H – I – J - K. It continues the application route from Kidlington Footpath No. 33 (the towing path) at point G, eastwards over Oxford Canal Bridge No. 227 (Buller's Bridge) (points H – I – J). It then continues across a strip of land approximately 5-7m wide, to join the metalled footpath recorded on the county council's List of Streets at point K to the rear of 35 Osbourne Close OX5 1TU.
15. Neither route has been inspected.

F LAND OWNERSHIP

16. The applicant served formal notice of the application on: -
- University of Oxford Estates Services, Wellington Square Oxford OX1 2DH
 - Oxford University Development Ltd Suite B, 6 Worcester Street Oxford OX1 2BX
 - NITISHCHANDRA GULABCHAND LOVCHAND SHAH and MAHENDRA GULABCHAND LOVCHAND SHAH (Land Registry title no. ON123791)
 - CANAL & RIVER TRUST (Co. Regn. No. 07807276), National Waterways Museum, South Pier Road, Ellesmere Port CH65 4FW (ON304495)
 - KIDLINGTON PARISH COUNCIL, Exeter Hall, Oxford Road, Kidlington OX5 1AB (**ON322191**)
 - Network Rail – Western Area. Mr James Audley - Liability Negotiations Advisor - Wales and Western
17. A search of the Land Registry has been undertaken and a copy of the Land Registry MapSearch is at **Appendix 3a**.
18. Application Route A–B–C–D–E–F–G. Most of the route is registered under the following 2 titles. Two sections of the route are not registered – the Railway line and land near the canal towing path.

Section	Title Number	Proprietor
A – B – C and E - F	ON127551	Oxford University
C – D (Railway line)	Not Registered	Railway Line
D - E	ON123791	Shah
F – G	Not registered	-

19. Canal Bridge route G – H – I – J – K. The route is registered under the following 3 titles: -

Section	Title Number	Proprietor
G – H and I – J (Canal Bridge #227)	ON322191	Kidlington Parish Council
H – I (land at canal)	ON304495	Canal and River Trust
J - K	ON104793	Cherwell District Council (1987 covenant that the land must be used as public open space or for recreational use)

G DOCUMENTARY EVIDENCE – HOW THE EVIDENCE IS ASSESSED

20. The Highways Act 1980, section 32 sets out how any court or other tribunal, before determining whether a way has or has not been dedicated as a highway, or the date on which such dedication, if any, took place, shall take into consideration any map, plan or history of the locality or other relevant document which is tendered in evidence, and shall give such weight thereto as the court or

tribunal considers justified by the circumstances, including the antiquity of the tendered document, the status of the person by whom and the purpose for which it was compiled, and the custody in which it has been kept and from which it is produced.

Documentary Evidence Sufficient to Show that a Right of Way exists

21. The evidential 'weight' that can be applied to documents varies. A document may provide evidence of: -
 - The legal creation of a way as a highway
 - The reputation of a way as a highway
 - The physical existence of the way.
22. For documentary evidence to be sufficient to establish status as a public right of way, it must show that a way has been created either by due legal process or that it has been recorded as having the reputation of public status.
23. Documents that provide evidence of the physical existence of the way will not be sufficient to prove public status but can be supportive of other evidence.
24. **The Planning Inspectorate's former Guidance Notes (Appendix 3b part 2),** state: -

An analysis of hearing or inquiry evidence usually comprises three stages: -

- *The identification of fact*
- *The derivation of an inference from that fact*
- *An assessment of the evidential weight of the inference*

Identification of Fact

When a document is introduced at a hearing or inquiry, the facts it contains become [inquiry] evidence, whether relied upon by the witness or not. Consequently, it is necessary to consider the portion of the document on which the witness relies, not by itself, but in context. Similarly, it is necessary to study maps carefully to see whether the feature relied upon is supported by other information on the map. As Mummery L J said in O'Keefe¹ ... it is important to read all the documents ... as a whole and not to examine passages taken out of context... Section 32 of Highways Act 1980 indicates how the Inspector should evaluate a document as a whole and determine the weight to give to the facts derived from it.

Inference and Legal Presumptions

More often than not, documentary evidence will not supply a seamless array of facts leading to a confident conclusion. In such cases, gaps in evidence may be bridged by the use of one or more of a number of legal presumptions: -

- (1) One of them is contained in the maxim: "Once a highway, always a highway". This presumption must prevail unless some legal event causing the highway to cease can actually positively be shown to have occurred.
- (2) Another – what is termed the 'presumption of regularity' can be invoked where there is a lack of evidence on whether proper legal procedures were followed.

An approach to the application of an inference derived from evidence was suggested by McCullough J in 'West Yorkshire MCC v Harry Brown' (1983). The decision-maker should give.....careful consideration of what should *prima facie* be drawn from a fact and then see whether, upon consideration, this should be rebutted or whether it should ripen into an inference upon which further conclusions may in turn be based. However, any inference must be tested against other ... evidence. No matter how reasonable the inference drawn, it is generally no more than a rebuttable presumption.

Evidential Weight - Highways Act 1980 section 32

When all the material considerations have been identified, the weight attaching to the evidence as a whole must be assessed.

There is a distinct and important difference between the 'cumulative' and 'synergistic' approach to the weighing of evidence. Under the cumulative approach a number of relatively lightweight pieces of evidence (e.g. three commercial maps by different cartographers, all produced within the same decade or so) could be regarded as mere repetition. Thus, their cumulative evidential weight may not be significantly more than that accorded to a single map. If, however, there is synergy between relatively lightweight pieces of highway status evidence (e.g. an OS map, a commercial map and a Tithe map), then this synergy (co-ordination as distinct from repetition) would significantly increase the collective impact of those documents. The concept of synergism may not always apply, but it should always be borne in mind.

Section 32 is declaratory of the common law. Inspectors should follow it in how they treat documentary evidence. In assessing the value of a document, Inspectors should, for example, take into account evidence of the facts surrounding its creation and its provenance such as, in the case of a private map, the reputation of the person who produced it. The surrounding circumstances may point to a document being of some weight.

For example, the document may have been prepared by someone acting in a public capacity, the procedures for producing it may have involved external checks or public participation, or what was recorded may be the result of a person acting against his interest. A document may not on its own be conclusive of the status of a way. This may, for example, be because it was prepared merely to record the physical existence of the way or who was responsible for maintaining it. Documentary evidence will often support other such evidence or user evidence and so ought not to be considered in isolation.

Balance of Probability

Once all of the evidence has been individually assessed, the 'balance of probability' test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act, involving careful assessment of the relative values of the individual pieces of evidence and the evidence taken together."

H DOCUMENTARY EVIDENCE IN THIS CASE

25. The following table lists the documents considered in this case, in approximate chronological order, and summarises the evidence relevant to the existence of a public footpath. The documents are considered in detail below the table.

Summary of the Documentary Evidence in this Case

Document	Application Route A-B-C-D-E-F-G Provides evidence of the Legal creation as a public footpath	Application Route A-B-C-D-E-F-G Provides evidence of the reputation of the route as a public footpath	Application Route A-B-C-D-E-F-G Provides evidence of the physical existence of the route	Canal Bridge Route G - H - I - J - K Provides evidence of the Legal creation / reputation / physical existence of route
1818 Kidlington Inclosure Award	-	-	-	<u>Reputation of a private row</u> : Suggests route over the canal bridge was a private access way rather than a public right of way
Begbroke and Yarnton Inclosure Awards – NONE	-	-	-	-
c.1788 Deposited plan for the Oxford Canal – NONE at OXHIST	-	-	-	-
1844 Oxford and Rugby Railway Plan		No: any way crossing the railway in the location of C - D was private not public.		<u>Physical existence</u> : Shows a gap in the canal suggesting a bridge, but no path to or from the bridge.
1844 - 1847 Tithe	-	-	No: Yarnton Tithe Map 1847 covers section B-C-D-E-F-G but does not show the route	No tithe map covering Kidlington
1910 Finance Act	-	Evidence is inconclusive	-	<u>Reputation of a prow</u> : the valuer, on inspection of the land, considered there to be a public footpath over section J – K
1811-2023 Ordnance Survey Mapping	-	-	Yes: from at least 1899-1922	<u>Physical existence</u> : The bridge since 1876. Section J – K to the east of the bridge, since 1899
1950s-2023 Definitive Map and statement records	-	No: route was considered in 1950s when the definitive map was first produced, but the and the council decided not to record the route on the definitive map	-	<u>Reputation</u> : Route was considered in 1950s when the definitive map was first produced, and the council decided not to record the route on the definitive map
1981 aerial photograph			Yes: near F-G	
1984 Oxford Times article - restoration of the canal bridge	-	-	-	<u>Reputation of a prow</u> : Kidlington villagers campaigned to save the canal bridge and district and parish councils planned an approach way to it. It enabled access from the Grovelands Estate to the countryside
The 1992 Bridge Technical Report by British Waterways	-	-	No: records that the route was obstructed by a barbed wire fence	<u>Reputation of a prow</u> : records that the bridge carried a public footpath.

Inclosure Award 1818

Background

26. Inclosure awards are legal documents that recorded the ownership and distribution of land. They may also detail roads and rights of way. These can be extremely important documents and, in many cases, if an inclosure award has created a right of way, and there is evidence that the correct legal procedures were carried out, this can be conclusive legal evidence for the existence of the right of way.

Evidential value

27. Inclosure Acts, awards and plans may provide evidence of the legal creation of a way as highway, or the reputation of a way as highway, or the physical existence of a way.

The Kidlington and Thrupp Inclosure Award 1818

28. The original and enrolled copies of the award are held at Oxfordshire Record Office. There are two inclosure maps or plans accompanying the award: -
- Plan No.1 details the canal at point G and land to the east. (**Appendix 4**)
 - Plan No. 2 details land to the northwest of the application route (**Appendix 5**)
29. Application route A–B–C–D–E–F–G. Neither plan details the area of the application route to the west of point G but simply label the area 'Begbrook Inclosures'. Therefore, they provide no evidence either for or against the application route.
30. Canal bridge route G – H – I – J – K. Award Plan No. 1 shows the canal bridge but does not show a way leading from the bridge eastwards over the land parcels mapped. The land parcel to the east of point K is numbered 46.
31. The award lists land parcel number 46 as Old Inclosure called 'Calves Close' belonging to William Bulley. William Bulley is listed as owning four other old inclosures – numbers 43a, 47 (Mansion House and Homestead), 48 and 49, plus two new inclosures (**Appendix 6**). He was therefore a significant landowner.
32. Plan No. 1 shows William Bulley's old inclosure number 43a on the west side of the canal, approximately 100m northwest of the bridge at point G. It could be inferred that William Bulley used the bridge at G to access his old inclosure 43a. However, no route is shown between the bridge and number 43a, and it could be further inferred that William Bulley owned the land ('Begbrook Inclosure') between the bridge and number 43a.
33. In conclusion, it is considered that the route over the bridge at points G – H – I – J – K was, more likely than not, private because it did not form the continuation of a way but, rather, led into private old Inclosure to the east of the canal. The owner of the private inclosure to the east of the canal would most likely have

used the bridge to access his old inclosure approximately 100m northwest of the canal bridge.

Begbroke and Yarnton Inclosure Awards

34. There are none.

Canal and Railway Plans

35. Before compulsory purchase powers were introduced, proposed canal or railway developments had to either have the consent of all affected landowners or a private act of Parliament passed to authorise the compulsory purchase of land. Before a Private Act could be passed, the land affected would be specifically surveyed and plans produced showing the strip of land the route of proposed railway / canal would cross. Land either side of the route would be shown up to the 'limit of deviation'. All affected land was plotted, and details given in a book of reference. This included details of landownership and land use.
36. The plans were widely noticed at the time of deposit into Parliament, which meant that they ought to achieve a high level of accuracy. Although it was not the primary purpose of these plans to record rights of way, they provide good evidence of their existence and often status.

Oxford Canal 1788 Deposited Plan

37. There is no plan for this section of the Oxford Canal at the Oxford History Centre.

Railway Plans

Background

38. During the eighteenth and nineteenth centuries there was a great expansion in the railway networks. Statutory undertakers were required to deposit plans of the proposed construction, including details of such matters as bridges prior to consideration in the House of Lords and locally with the Clerk of the Peace. The fields, houses, and roads etc adjoining the proposed line of the utility are numbered and keyed to a schedule. A route might be referred to on the schedule as, for example, a public road or an occupation road. This is an indication of how the status of the track was regarded at the time that the plan was made. These documents have significance because the size of such things as bridges the undertaker would need to construct were affected by whether the route was a vehicular, horse or pedestrian route. There was no obligation to bridge footpaths. The undertaker would certainly not wish to incur the additional cost of overstating public rights. Equally the parish would be concerned to ensure the undertaker bore the costs of any works and might also wish to ensure local rights were preserved.
39. Section 10 of the Planning Inspectorate's Definitive Map Consistency Guidelines (**Appendix 3b**) relates to Railway and Canal deposited plans. This states: -

"Railway plan sections and cross-sections usually differentiate between public and private roads. Where this is not the case and the route is

described as ‘road’ in the book of reference, it is sometimes possible to establish the nature of the way by reference to the description of other roads. Unless the existing roadway was less than 25 feet (in which case section 51 of the 1845 Act set the minimum by reference to the average available width for the passage of carriages within 50 yards of the point of crossing), the minimum width for bridges laid down in the 1845 Act is 25 feet (7.62 metres) for public roads. However, caution needs to be exercised regarding the latter as some high-status estate roads had wider bridges. There were no specified widths for bridleways or footpaths.”

40. The following general information on Railway deposited plans is taken from an article in the Rights of Way Law Review Section 9.3 pages 21 – 24. Parliamentary standing orders required that the schedule of numbered properties should be sent to every owner of the property affected by the works, (parish surveyors of the highways were regarded as owners) and they were required to scrutinise the schedules and report any errors or wrong descriptions. Sections and cross sections only referred to ways actually crossed by the line of works and in general, this only related to roads – no specifications were laid down for footpaths or bridleway crossings. *Most footpaths and some bridleways were shown on the plans by a single pecked line*, whereas ways for vehicles were gradually shown by double parallel lines. With regard to somewhat ambiguous term “Public highway” this nearly always referred to a public carriage road as defined by the Railway Clauses Consolidation Act 1845 (the 1845 Act), which introduced standardised procedures and bridge dimensions for certain kinds of ways. No specifications were laid down for bridle or foot bridges. In respect of a public vehicular highway “the public” or the “parish” was sometimes named as the Occupier, but usually the space was left blank].

Oxford and Rugby Railway Plan 1844

41. Application route A–B–C–D–E–F–G. The plan covers the area of the application route, but the route is not shown as a way. The route crosses land parcels in the parish of Yarnton numbered 25, 26 ,27, 28 and 30. To the north of section B – C, a track partly crossing number 27 is shown, from a farm leading west away from the railway (**Appendix 7**).
42. The accompanying book of reference gives the following descriptions of the relevant parcels (**Appendix 8**): -
 - 25: Arable & Plantation: Thos. Robinson Esq
 - 26: Meadow & Roadway, Thos. Robinson Esq.
 - 27: Arable & Roadway, Thos. Robinson Esq
 - 28: Arable, Thos. Robinson Esq.
 - 30: Canal and towing path, Company of Proprietors of the Oxford Canal Navigation
43. The following comparison routes are shown on the plan (**Appendix 7**): -
 - to the south of the route, a single pecked footpath line, crossing the railway line, labelled number 9. No. 9 is described in the book of reference as a Public Footpath, owned by the Surveyor of highways.

- to the south of the route, Sandy Lane labelled number 24. No.24 is described in the book of references as a Parish Road, owned by the surveyor of highways.
44. Therefore, no public way was recorded in the location of the application route, but public ways were recorded in other parts of the parish. Significantly, the book of reference records a private 'Roadway' in the location of the route – in land parcels located either side of the railway line, but a roadway crossing and to the east of the railway is not shown on the map. In conclusion, any way crossing the railway in the location of C – D was private not public.
45. Canal bridge route G – H – I – J – K The plan appears to show a gap in the canal (the canal bridge) at point G but does not show a path leading to or from it.

Tithe Maps 1844-1847

Background

46. Traditionally, tithes were one tenth of a farmer's annual produce which was taken to support the Church. The enactment of the Tithe Commutation Act in 1836 reformed this system of paying tithes in kind to the Church to a monetary payment which was simpler to administer.
47. In each parish, Tithe Commissioners were appointed to oversee a survey to assess the productive value of each field and a map and schedule (or apportionment) was drawn up to record the results of the survey. Each field was given a reference number on the map which referred to an entry in the schedule.
48. The surveys were often highly accurate and this level of accuracy, and the fact that roads tend to demarcate areas of titheable land, meant that roads were generally shown on the maps. However, the Act related only to taxable land and so the maps were not created for the express purpose of showing highways or making statements about their status. A road that is shown is not necessarily public, therefore. All unproductive land would be untitheable and excluded from the process, and this included any unproductive private roads as well as public roads. The tithe award or apportionment may contain additional evidence which can be indicative of the public or private status of routes. Therefore, taken together with corroborative evidence, roads shown in tithe documents can be evidence of public rights and status.
49. Footpaths or bridleways, on the other hand, usually cross land without affecting its productivity and so these could be disregarded from the process. Accordingly, they are not generally shown on maps or referred to in the awards or apportionments.

Begbroke Tithe Map 1844 – Appendix 9

50. The map covers section A – B but does not show the route.

Yarnton Tithe Map 1847 – Appendix 10

51. The map covers section B-C-D-E-F-G but does not show the route.

Kidlington Tithe Map

52. There is no tithe map covering Kidlington.

Finance Act 1910

Background

53. The 1910 Finance Act provided for the levying of a tax upon the incremental value of land. The tax was to be paid when the land changed hands. Every piece of land was recorded and given a holding number. Information regarding ownership and occupation was also recorded. The Act provided that all land should be valued.
54. Evidence of the possible existence of a public right of way in Finance Act documentation usually arises in one of two ways: -
- i. exclusion of a route from the assessable parcels of land shown on the map record, or
 - ii. reference to it in one or more of the various documents forming part of the valuation process.
55. **The survey procedures and documents (Appendix 11a).** The survey documents were compiled with a combination of information supplied by landowners and that obtained through the work of valuers. There are four sets of documents – Valuations Books, Field books, Forms 37, and Record Plans.
56. The Valuation Book. The survey began with valuation officers copying from the Parish Rate Books details of every property in separate occupation in their area, into columns 1 to 9 of the Valuation Book: -
- Column 1: contains a unique number attributed to every relevant unit of land ownership, known as a 'hereditament'.
 - Columns 2 to 9: contains property information – the description of each property, the names of owners and occupiers, the extent of the property and its rateable value copied from the Poor Rate Book.
 - Columns 10 to 40: contains valuation and calculation figures, completed by staff in the District Valuation Offices, following valuation and the return of form 4 from the landowners. Column 25 contains a deduction for 'public rights of way or user'.
57. Alterations can often be found, and not all records were perfectly completed.
58. Forms of Return or Form 4 (destroyed). The property information was copied onto forms which the landowners were required to check before the landowners

completed a 'Form 4'. This form asked whether the hereditament was subject to any public rights of way or any public rights of user.

59. Field Books. Information from the owner's return and Valuation Book was copied into the Valuer's Field Book in which the valuation was made. Temporary Valuation Assistants went into the field, with the Field Books and Ordnance Survey maps, to inspect and assess the hereditaments. Valuations were made following inspection of the property. The steps in the assessment were to be entered into the Field Book, as a result of both the owner's own returns and those of the valuer, following his inspection.
60. The Field Books should contain more information than the other documents. The field books consist of four pages for each hereditament, containing: -
- First page: all the information from the landowner's Form of Return, copied by clerical staff in the District Valuation Office prior to an inspection by the valuer, including any deductions claimed.
 - Second page: a description of the property and notes made on inspection at the top, followed by valuation figures and calculations.
 - Third page: sketch plans of farmsteads and additional information of a descriptive kind.
 - Fourth page: figures and calculations
61. In these books, and in other forms such as Form 37, the distinct categories of 'public rights of way' or 'public rights of user' used in the owner's return, were run together into 'public rights of way or user'. It has been asserted that the term 'public right of user' refers to private rights of way, but there is little evidence of this use of the term. It would normally refer, when distinguished from a public right of way, to a non-linear public right, such as a right of recreation. A private right of way is normally a form of easement, and a deduction for such a way would be expected to be found under the heading of easements.
62. Usually, the deduction for a public right of way was made because the landowner had supplied the information in his return (Form 4) and the valuer had satisfied himself that the information was correct. However, the Instructions to Valuers included a direction that valuers were not to confine themselves to rights of way for which a deduction had been previously claimed by the owner, rather valuers should give credit for any deductions as far as they were known to them (**Appendix 11b** p.172)
63. The entries the valuers made in the field were to be in pencil, with the book being written up in ink at a later stage ('Land and Society in Edwardian Britain' by Brian Short 1997).
64. Information from the Field Books, including deductions in value for 'public rights of way or user,' was copied into the relevant columns in the Valuation Books.

65. Form 37 was the office copy of Form 36 which was sent back to landowners with the provisional valuation.
66. Working Plans were completed in the field during the valuer's inspection, and the Final Record Plans, which normally show only hereditament boundaries, were compiled from them.
67. **Evidential weight.** Evidence of the existence of a public way across a hereditament may be deduced from a Field Book entry showing a deduction under 'public rights of way or user,' with further clear hand-written details, such as use of the words 'public footpath.' The position of such a way may be shown by annotations on the working plans or written information in the Field Book. But where hereditaments were large and crossed by numerous paths it may not be possible to conclude from written information that a particular route was referred to. Even where field plans are annotated, and paths marked as 'public,' it may be unclear when and by whom annotations were made. Evidence from Field Books and plans may provide good evidence of the reputation of a way as public, but care should be exercised when drawing conclusions from material not known to be provided directly by or on the authority of the landowner.
68. In all cases the evidence needs to be considered in relation to the other available evidence to establish its value; this is particularly important where a deduction for a public right of way is shown in the Finance Act records but its line is not apparent. The weight to be given to Finance Act 1910 evidence, was considered in the Court of Appeal in *Fortune and Ors v Wiltshire Council* 2012 (**Appendix 12**). Lewison J concluded that the Finance Act records are not definitive; they are "simply one part of the jigsaw puzzle" to be considered along with other relevant material particular to each case.

The evidence in this case

69. The evidence is summarised below from the: -
- Working copy maps – 2 map sheets (**Appendix 13a**)
 - Final copy maps – 2 map sheets (**Appendix 13b**)
 - Field Book (**Appendix 14**)
 - Forms 37 (**Appendix 15**)
 - Valuation book (**Appendix 16**).

Finance Act 1910 Evidence Summary

	Section A – B – C And E-F	Section C – D – E	Section F – G – H – I – J Canal and towpath	Section J - K
Hereditament no. (Appendices 13a & 13b)	Begbroke 18	Begbroke 28	Kidlington 362 (Final copy, working copy not coloured or numbered)	Kidlington 137
Hereditament Situation, Description, Extent (Appendix 14)	Begbroke Hill Farm Land House & Buildings 276 acres	Site of Railway & Works Yarnton, Begbroke & Wolvercote	Kidlington Canal	Grove Farm House Garden & Land
Hereditament Owner (Appendix 14)	Duke of Marlborough	Great Western Railway Company	Oxford Canal Company	Duke of Marlborough
Plans (Appendices 13a & 13b) OS base map shows section as a way?	yes	C - D: no? D – E: yes	yes	yes
Plans (Appendices 13a & 13b) OS base map shows other ways in same hereditament?	Yes – there are approximately 5 other footpaths or tracks shown crossing the multiple fields of hereditament #18	?	Towing path	no
Field Book (Appendix 14) p.1: info from Landowner's return prior to valuer's inspection, including any deductions claimed	<i>"Several alleged but not admitted Public Rights of Way across this farm"</i>	No deductions claimed	No deductions claimed	<i>"Right Reserved"</i>
Field Book (Appendix 14) p.2: description of property & notes made by the valuer on inspection	<i>"footpaths & [?]"</i> <i>Footpaths £30"</i>	[page blank – not completed]	-	<i>"A public F.P. through OS map nos. 310 & 309"</i>
Field Book (Appendix 14) p.4: Deduction for public rights of way or user	£30	[page blank – not completed]	[page blank – not completed]	£10
Forms 37 & Form 3 (statutory companies) [Appendix 15] Deduction for prow?	£30	Form 3 used for Statutory companies doesn't ask the prow question	[couldn't find]	£10
Valuation book (Appendix 16) Deduction for prow?	£30	-	None	£10

Conclusion from Finance Act 1910 records.

70. The Finance Act 1910 records show that for: -
71. Application route sections A – B – C and E - F: the evidence is inconclusive. The sections cross hereditament number 18 – Begbroke Hill Farm, a large property of 276 acres. Page 1 of the field book records that there were several alleged but not admitted public rights of way across this farm. Page 2 of the field book records that the valuer, on inspection, gave a £30 deduction for footpaths across hereditament number 18, but did not specify the fields that the footpaths crossed.
72. The Ordnance survey base maps (2 sheets) for the working and final copy maps (**Appendices 13a** and **13b**) show that hereditament number 18 covers approximately 8 different fields, and the Ordnance Survey base map shows approximately 5 other footpaths or tracks crossing these fields. Therefore the £30 deduction cannot be attributed to sections A – B – C and E – F.
73. Application route section C – D – E: no deduction was recorded for public rights of way crossing the railway land.
74. Canal bridge route section G – H – I – J: no deduction was claimed for public rights of way across the canal and towpath, although the record looks incomplete.
75. Canal bridge route section J – K: the valuer, on inspection of the route, recorded a deduction for a public footpath through Ordnance Survey field nos.309 and 310. The only path shown through these fields is the route J – K.

Ordnance Survey Mapping 1811-2022

Background

76. The Ordnance Survey is the national mapping agency. Its origins lie in the need for detailed mapping of the country for military purposes; to assist with national defence and military strategy. First maps were produced at the beginning of the 19th century and the process has been revised, developed, and modified over 200 years to the detailed and accurate mapping we enjoy today.
77. Most Ordnance Survey maps contain a disclaimer to the effect that they should not be relied upon as proof of the existence of any public right of way, but roads, footpaths and bridleways have been routinely recorded as part of the surveys undertaken to map the land. Whilst they cannot be relied upon on their own to prove the existence of public rights, they can be useful in establishing that routes physically existed at the time the surveys were carried out.

Ordnance Survey Drawings 1811 – Appendix 17

78. **Background.** This was the origin of Ordnance Survey mapping, a venture that fell to the Board of Ordnance, a body that had been established in Tudor times to manage stores and armaments for the army and maintain national defences. Based in the Tower of London, its engineers and draughtsmen set out to produce military maps using a theodolite and triangulation.

79. Preliminary drawings were made at scales of between 2 inches and 6 inches to the mile depending on the military significance of the area of land being surveyed. Back at base, fair copies were then reproduced at a scale of 1 inch to the mile, engraved on to copper plates for printing.
80. Many the original drawings survive and are held by The British Library and, being at the larger scale showed greater detail and going beyond what might have been deemed significant for military purposes, providing an unparalleled accuracy of mapping of the country at that time.
81. The map shows neither the application route A–B–C–D–E–F–G nor the canal route G – H – I – J – K. It does show the ‘Oxford Canal’ and a bridge over it to the north of the route, but it does not show a bridge at G.

1 inch: 1 mile (1:63,000) or 1:50,000 scale mapping 1833 - 2023

82. The ordnance survey 1 inch mapping depict the routes as either tracks or does not show them. “– “means the route is not shown: -

Pub. Date	APPEN DIX	A - B	B - C	C-D	D-E	E-F	F-G	G-H-I-J Bridge	J-K
1833	18	-	-	-	-	-	-	-	-
1886	19	track	track (only west end to buildings)	-	-	-	-	bridge	-
1904	20	track	track (only west end to buildings)	-	-	-	-	bridge	-
1938	21	track	track	-	track	track	track	bridge	track
1943	22	track	track	-	track	track	track	bridge	track
1956	23	track	track	-	track	track	track	bridge	track
1960	24	track	track	-	track	track	track	bridge	track
1968	25	track	track	-	track	track	track	bridge	track
2023	26	track	track (only west end to buildings)	-	-	-	-	bridge	-

83. Application route A–B–C–D–E–F–G is shown as a track on the following editions:-
- 1866 and 1904 – the western end of the route only terminating at farm buildings between points B and C.
 - 1938 to 1968 – the whole of the route.
84. Canal bridge route G – H – I – J – K is shown as a track on the editions from 1938 to 1968 only.

25 inch: 1 mile (1:2500) scale mapping 1876-2023

85. The 25-inch or 1:2500 scale mapping depicts the route as either a track or does not show it (“– “): -

Published (revised)	APPEN DIX	A - B	B - C	C-D	D-E	E-F	F-G	G-H-I-J Bridge	J-K
1876 (1873-76)	27	-	-	-	-	-	-	bridge	-
1899 (c.1898)	28	track	track (W end) FP (E end)	Railway crossing FP (key)	FP	FP	FP	bridge	F.P.
1922 (1919)	29	track	track (W end) FP (E end)	Railway crossing FP (key)	FP	FP	FP	bridge	F.P.
1936 (1936-7)	30	track	track (W end) - (E end)	-	-	-	-	bridge	-
1962	31	track	track (W end) - (E end)	-	-	-	-	bridge	-
1971	32	track	track	-	-	-	-	bridge	-
1978	33	track	track	-	-	-	-	bridge	-
1988	34	track	track (W end) - (E end)	-	-	-	-	bridge	-
2023	35	track	track (W end) - (E end)	-	-	-	-	bridge	-

86. Application route A–B–C–D–E–F–G is shown as a track on the following editions:-

- 1899 and 1922 – the whole of the route.
- 1936 and 1962 – the western end of the route only terminating at Parker’s Farm between points B and C.
- 1971 and 1978 – the western end of the route only terminating at the railway at point C.
- 1998 and 2023 - the western end of the route only terminating at Parker’s Farm between points B and C.

87. Canal bridge route G – H – I – J – K is shown as a track on the editions from 1899 to 1922 only.

Ordnance Survey 6 inch: 1 mile (1:10560) or 1:10,000 scale mapping 1872 – 2023

88. The 6-inch or 1:10560, and 1:10,000 scale mapping depicts the route as either a track or does not show it (“– “): -

Pub. Date	APPEN DIX	A - B	B - C	C-D	D-E	E-F	F-G	G-H-I-J Bridge	J-K
1955	36	track	track (W end to buildings) FP (E end)	Railway crossing FP (key)	FP	FP	FP	bridge	F.P.
1992	37	track	track (W end) - (E end)	-	-	-	-	bridge	way
2023	38	track	track (W end) FP (E end)	-	-	-	-	bridge	way

89. Application route A–B–C–D–E–F–G is shown as a track on the following editions:-
- 1899 and 1922 – the whole of the route.
 - 1936 and 1962 - the western end of the route only terminating at Parker's Farm between points B and C.
 - 1971 and 1978 – the western end of the route only terminating at the railway at point C.
 - 1998 and 2023 - the western end of the route only terminating at Parker's Farm between points B and C.
90. Canal bridge route G – H – I – J – K is shown as a route on the editions from 1955 to 2023.

Conclusion from OS Mapping

91. Application route A–B–C–D–E–F–G. The whole of the route is shown on the large scale 25 inch or 1:2500 scale mapping dated 1899 and 1922 – the west end appears as an access track to Parker's Farm and the east end as a footpath. This is evidence that the route physically existed at that time, but it is not evidence of its status (public or private).
92. The eastern end of the route is not shown on any of the other large-scale mapping. However, it continues to be shown on the smaller scale (1 inch and 6 inch) up until 1968. This inconsistency may be due to the maps being republished without a complete survey.
93. Canal bridge route G – H – I – J – K. The bridge is shown since 1876. Section J – K to the east of the bridge is shown as a way, inconsistently, since 1899.

1950s Records Created when the Original Definitive Map of Public Rights of Way was Compiled

Background

94. The National Parks and Access to the Countryside Act 1949 required, for the first time, that Definitive Maps of public rights of way be compiled. Section 28(4) placed a duty on parish councils (and district councils) to: -
- 'collect and furnish to the surveying authority such information, in such manner and at such time as may be provided for by arrangements agreed or determined under this section.'*
95. In line with most authorities, Oxfordshire, consulted with and invited parish and district councils to conduct surveys of the public rights of way in their area. Typically, the submissions include a map of the parish showing all the paths that the parish considered to be public rights of way, accompanied by handwritten forms which describe each path. These documents were sent to the County Council, which then assessed whether the route should be included in the initial Draft Definitive Map.

1950s Begbroke, Yarnton and Kidlington Parish Survey – Appendix 39

96. The route is not shown on any of the parish survey maps, and there are no survey schedules for the routes.

1953 Draft Definitive Map: Notice – Appendix 40

97. In May 1953 the then Oxfordshire County Council sent the rural district councils and all the parish councils a copy of the draft map and statement for their area to be made available for public inspection. A copy of the notice advertising the draft map was also provided, which was to be displayed on the parish public notice board, and which explained the procedure for making representations or objections.
98. Neither route is not shown on the 1953 draft definitive map.

1953 Draft Definitive Map: Objections – Appendix 41

99. Mr Vernede on behalf of the Oxford & District Footpaths Bridleways and Commons Preservation Society objected to the omission of the routes on the draft map. The County Council's table of objections records the evidence the council considered in assessing the objection. The list of 'Paths to be Added' describes: -
100. Application route section A – B as Begbroke Footpath No.11: -
"From Begbroke Hill – to – the Yarnton parish boundary west of Parker's Farm."
101. Application route section B – C – D – E - F as Yarnton Footpath No. 21: -
"From the Begbroke parish boundary west of parker's Farm eastwards -to- the Kidlington parish boundary at the Oxford Canal."
102. Application route section F – G and Canal bridge route G – H – I – J – K as part of Kidlington Footpath No.30: -
"From Yarnton Road south of Yarnton Corner westwards over the Oxford Canal -to- the Yarnton parish boundary."

1953 Modified Draft Map: Notice – Appendix 42

103. There is no copy of the 1953 Draft Map modified, but a copy of the formal Notice of the map records the addition to the draft map of Begbroke FP No.11, Yarnton FP No.21 and Kidlington FP No.30.

1953 Modified Draft Map: Objections – Appendix 43

104. The Council's records show that objections were received from New College, Mr Partridge and the British Transport Commission into the inclusion of the footpaths in the modified draft map, that the Footpaths Society did not wish to oppose the objections, and the council resolved to omit the footpaths from the Provisional Map.

1953 Provisional Map and Statement – Appendix 44

105. The 1953 Provisional map does not show the route. On close inspection it shows a faint rubbed out line and labels along the routes of Begbroke Footpath No. 11, Yarnton Footpath No. 21, and Kidlington FP No.30.

Conclusion Regarding the 1950s Definitive Map Compilation Records

106. The parish councils did not claim the routes. However, the Oxford & District Footpaths Bridleways and Commons Preservation Society considered that the routes should be recorded on the 1953 definitive map. The inclusion of the routes on the 1953 modified draft map was objected to by the landowners, and the footpaths society reported that they did not wish to oppose the objections. Therefore, the inclusion of the routes was considered in the 1950s when the definitive map was first produced, and the council decided not to record the routes on the definitive map.

1953 - 2006 Definitive Map and Statement – Appendix 45

107. The routes were not recorded on the 1953 definitive map or any subsequent definitive map.

c.1984 Oxford Mail article on the canal bridge – Appendix 2b p2.

108. The text explains that the bridge was saved from proposed demolition by campaigning Kidlington villagers and states: -

“... Now the bridge has been attractively restored and the district and parish councils are going to provide a grant to build an approach way to the bridge.

.. It is a rather beautiful bridge that would have been a great loss because it does enable the people from the Grovelands Estate to have instant access to the countryside...”

c.1984 The Oxfordshire History Centre Photograph of the canal bridge Appendix 2a p9-11

109. The history centre catalogue states: -

“The 1919 revision of Ordnance Survey map ... shows this bridge carrying a footpath which ran from Yarnton Lane to Parker’s Farm and thence to Begbroke Hill (now Begbroke Science Park) via an underpass through the railway embankment. Neither footpath nor underpass are shown on the 1939 edition. Bullers Bridge provides access from the Grovelands estate across the canal to the canal towpath. This photograph was taken shortly after completion of restoration work of the 200-year old bridge.” [Emphasis added]

c.2023 photograph of Canal bridge from Begbroke parish clerk – Appendix 2a p9.

110. This shows the approach to the bridge.

111. **Conclusion to the 1984 and 2003 photographs of the canal bridge:** -

112. Application route A–B–C–D–E–F–G. The council considers that the canal bridge did provide access over the application route to Parker's Farm and Begbroke Hill, but the 1919 Ordnance Survey Map does not show the status of that route (private or public). The canal bridge would also have provided access to the field, and the bridge appears more substantial than just a pedestrian bridge, suggesting it was built for horses and possibly horse drawn vehicles to cross the canal.

113. Canal bridge route G – H – I – J – K. The council acknowledges that the canal bridge provided access for the public living to the east of the canal, over the canal to the canal towpath and that, in 1984, the district council and Kidlington parish council were going to provide a grant to build an approach way to the bridge. This suggests that the public were using the route.

1981 Aerial Photograph – Appendix 46

114. The applicant states, **Appendix 2a** p9, that photograph POX04552594 shows part of the route on the eastern side of the railway.

115. The photograph does appear to show a worn route from point F westwards towards the field boundary, but the photograph provides evidence of a physical feature – it does not provide evidence of the status of the route (private or public).

1984 Bullers Bridge Transfer Deed – Appendix 2d

116. The British Waterways Board transferred ownership of the bridge and its foundations and the rights to maintain repair and renew the bridge to Kidlington Parish Council. The deed does not refer to the footpath.

1992, 2004 and 2023 inspection reports for Bullers Bridge

117. **1992 Bridge Technical Report by British Waterways (Appendix 2e)** records:-

- Page 3: *Road Class: Public Footpath*
- Page 4: *'Historical Notes: Bridge carries public footpath adjacent to housing Estate. No access for vehicular use....*
- Page 5 Bridge Record Database:
 - *Road classification: Public Footpath..*
 - *Traffic Type: Pedestrians only*
 - *Traffic Density: Well used.*
 - *Surfacing Type: Tarmacadam*
 - *Surfacing Responsibility: Oxfordshire C.C.*

- Page 6: Public footbridge very close to housing estate
 - Page 7: Oxford Bullers Bridge is a masonry arch carrying a footpath over the Oxford Canal.
 - Page 13: “The [bridge] carries a footpath only. Access from the east is through a narrow passageway between houses and gardens and is therefore inaccessible to vehicles. The west approach is fenced with chainlink fencing and barbed wire, although the fencing has been vandalised. Access to the towpath is gained by steps to the northwest and southwest of the bridge.”
 - Page 23: Photograph of the chainlink and barbed wire fence
118. **The 2004** Bridge Inspection Report by British Waterways (**Appendix 2f**) records on page 3: -
- The bridge provides pedestrian access from the residential area in the east to the footpath and canal towpath on the west side.*
119. **The 2023** Bridge Inspection Report by the Canal and River Trust (**Appendix 2g**) states on page 2: -
- “The bridge provides pedestrian access from the residential area in the east to the footpath and canal towpath on the west side.*
120. Pages 11-12 show photographs of the steps leading from the bridge to the canal towpath.
121. **Conclusion to the Bridge Reports.** The 2023 and 2004 bridge reports state that the bridge provides pedestrian access from the residential area in the east to the footpath and canal towpath on the west side. However, they do not specify the alignment of ‘the footpath’ or it’s status (private or public). The 1992 bridge report states that the bridge carries a public footpath adjacent to the housing Estate, that the west approach to the bridge is fenced with chain-link fencing and barbed wire, which has been vandalised, and that access to the towpath is gained by steps.

I USER EVIDENCE

122. No user evidence was submitted with the application.

J LANDOWNER EVIDENCE

123. The landowners did not submit any evidence against the application prior to the consultation on the draft report in November 2023.

K CONSULTATION

124. In November 2023 a draft of this report was sent to the applicant, the local county councillor, Begbroke, Yarnton and Kidlington Parish Councils and the landowners. The draft of this report considered the evidence for the application route A – B – C – D – E – F – G, but it did not consider the adjoining canal bridge route G – H – I – J – K. Responses were received as follows: -

University of Oxford – Appendix 47

125. The University of Oxford responded by emails dated 10 and 19 December 2023 and stated that the University does not believe there to be a footpath in the location. It submitted a statement by Brian Henman dated 13 December 2023 which states: -

“I have been a tenant at Begbroke Hill Farm, Yarnton since April 1987, some 36 years. I can confirm that I have never witnessed nor been informed of any footpath across the railway to Kidlington from point A to point G on the map. Furthermore, at no time has anyone attempted to use this as a footpath. Point A has always been a locked gate. There has never been an underpass or bridge at points C to D. The railway has always had a secure fence alongside the route. Points D to F are impassable through overgrown vegetation and flooding for much of the year up point G where bridge no 227 crosses the canal.

Parkers Barn, situated between points B and C, is the main hub of activity on the farm and is in use throughout the year for the storage of machinery, drying of grain and produce. This area is also used when loading grain into trucks for export or delivery to mills for processing. There is concern under Health & Safety compliance when working large machinery with regard to the safety of the general public. We have also been subjected to vandalism and illicit activity, which could lead to an increase if the public are granted access. The University of Oxford also use an adjacent area for the processing of compost from the Parks and Colleges”.

126. OCC Comment: The county council notes that the Begbroke Hill Farm tenant claims that the application route was obstructed by a locked gate at point A and by a fence at the railway line since 1987. The council cannot consider health and safety concerns when determining the application. The Wildlife and Countryside Act 1981 is concerned solely with ascertaining the existence of rights, and the county council has no discretion to take other matters into consideration.

Network Rail – Appendix 48

127. Network Rail responded by email dated 28 November 2023 and stated that their records show that there has never been a public right of way at the location and that they would object to an order to record the route.

Cherwell District Council Planning and Development – Appendix 49

128. Cherwell District Council Planning and Development responded by letter dated 8 December 2023 and stated that they had no comment to make on the application to record the route A–B–C–D–E–F–G.

Begbroke Parish Council – Appendix 50

129. Begbroke Parish Council responded by email dated 13 May 2024 attaching: -
- i. 1984 Bullers Bridge Transfer Deed, from British Waterways Board to Kidlington Parish Council - **Appendix 2d**, considered in paragraph 116 of this report.
 - ii. Three inspection reports for Bullers Bridge dated 1992, 2004 and 2023 – **Appendices 2e - 2g**, considered in paragraphs 117 - 121 of this report.
 - iii. Begbroke Parish Council's comments on the draft report - **Appendix 50**, discussed below.
130. Begbroke Parish Council wrote their comments in red on a copy of the 2023 draft of this report. Their comments are considered below, grouped by subject: -

Inference

131. Begbroke Parish Council comment page 9: *"Inference is not evidence."*
132. OCC response: inference derived from evidence is useful when the evidence does not lead to a confident conclusion. The Planning Inspectorate Consistency Guidelines (**Appendix 3b** paragraphs 12.14 - 12.15) state: -

"The decision-maker should give ... careful consideration of what should prima facie be drawn from a fact and then see whether, upon consideration, this should be rebutted or whether it should ripen into an inference upon which further conclusions may in turn be based".

1818 Kidlington Inclosure Award: -

133. Begbroke Parish Council comment page 7: *"Where is your evidence to suggest it was private access? See response from Canal and River Trust".*
134. OCC response: The 1818 Kidlington Inclosure Award evidence (paragraphs 26-33) to suggest that the route over the canal bridge (G – H – I – J – K) was more likely than not private rather than public is: -
- the Inclosure plan (**Appendix 4**) shows the bridge and a private land parcel to the east of it but does not show a way leading from the bridge over the private land.
 - The owner of the private land to the east of the bridge also owned land to the west of the bridge.
 - The bridge is more substantial than a footbridge, so was probably originally built for private vehicular access over the canal.

135. The route over the canal bridge was more likely than not subsequently dedicated as a private footpath when it was used by the residents of the Grovelands estate.

1844 Oxford Rugby Railway Plan

136. Begbroke Parish Council comment page 7: *“No evidence given by OCC to say it was private. Have checked plans at OHC.”*
137. OCC response: The 1844 Oxford Rugby Railway Plan evidence (paragraphs 38-45) to suggest that any way crossing the railway in the location of C – D was private rather than public is: -
- The Railway plan does not show a way in the location of C -D but the book of reference records a private ‘Roadway’ in the location of the route – in land parcels located either side of the railway line.
 - Public ways were shown on the map in other parts of the parish.

1910 Finance Act documents

138. Begbroke Parish Council comments: -
- Page 7: *“Good evidence. These maps are routinely used for research. The D O M received a reduction of £30 for PRow. You cannot conclude that this was a private path as you do not have evidence of that.”*
 - Page 14: *“the OS map and Field book are better evidence than your assumptions.”*
 - Page 15: *“with the legal and other resources available to the duke, we think his £30 claim was genuine. After all, he would not wish to be guilty of a false claim. The finance Act 1910 records quite plainly show a footpath and therefore more likely than not it was a PRow despite your claim of being inconclusive.”*
139. OCC response: The county council concluded that the 1910 Finance Act evidence (paragraphs 53 – 75) was *inconclusive* for the Application Route because for sections: -
- A – B – C and E – F: although:-
 - The route is shown as a footpath on the 1899 Ordnance Survey 25-inch map used as the base mapping for the Finance Act 1910 Maps, Ordnance Survey maps should not be relied upon to provide evidence of a route’s status (private or public). See paragraph 143.
 - A £30 deduction for public right of way was recorded across the relevant hereditament, number 18, the working and final copy maps show that hereditament number 18 covers approximately 8 different fields, and the Ordnance Survey base map shows approximately 5 other footpaths or tracks crossing these 8 fields. The field book does not specify which footpaths the £30 deduction relates to. Therefore, it is not possible to conclude that the £30 deduction relates to sections A–B–C and E–F.
 - The £30 deduction recorded in the Finance Act 1910 field book for hereditament number 18 (**Appendix 14** p1-4 and report page 16) was:-

- not claimed by the landowner (a deduction recorded on the landowner's return would be recorded on page one of the field book. Page one records that the landowner did not admit to public rights of way across the farm).
 - recorded by the valuer following a site inspection (because it was recorded on page 2 of the field book).
- C – D – E: no deduction was recorded for public rights of way crossing the railway land, but the record did not appear to be complete.
140. The county council subsequently considered the 1910 Finance Act evidence for the canal bridge route and concluded that for sections: -
- G – H – I – J: no deduction was claimed for public rights of way across the canal and towpath, although the record looks incomplete.
 - J – K: the valuer, on inspection of the land, considered there to be a public footpath over the section.
141. Regarding 'assumptions' on page 14 - the text in the table is taken from the documents specified, there are no assumptions in the table.

1811-2023 Ordnance Survey Mapping

142. Begbroke Parish Council comments: -
- Page 3: *"The OS Map 1910-1923 3rd Ed. shows the path quite clearly. We understood that "Once a highway – always a highway" and this does not stop a PROW existing".*
 - Page 7: *"Good evidence and should not be discounted".*
 - Page 17: *The mapping does not disprove the existence of a public footpath.*
 - Page 20: *"The ordnance survey maps, and 1981 aerial photograph provide evidence of the physical existence of the route, but these are not sufficient to prove public status. Many footpaths exist because they are included on OS maps. However, see [paragraph 144].*
143. OCC response: The depiction of the route on old Ordnance survey maps is evidence of the physical existence of the route at the time of the survey. It is not evidence of a route's status (private or public), and therefore the evidence regarding status (private or public) is neutral. The Planning Inspectorate Consistency Guidelines (**Appendix 3b** paragraph 12.20) state: -

"The practice of annotating paths 'F.P.' on large scale maps from 1883 arose from an instruction to surveyors issued in February of that year (...) that 'the object of....'F.P. being that the public may not mistake them for roads traversable by horses or wheeled traffic'. The inclusion of "F.P." gave rise in 1885 to letters being written to The Times complaining that the public were likely to view such annotations as indicating the existence of a public footpath. On behalf of the OS, Col. Pilkington-White responded that it was the practice to show paths on the ground, irrespective of whether they were

public or private. From 1888, Ordnance Survey maps carried a disclaimer to the effect that the representation of a track or way on the map was not evidence of the existence of a public right of way.

12.21 An 1893 OS circular instructed that “all footpaths over which there is a well-known and undisputed public right of way should be shown”. This instruction appears to be at odds with the disclaimer that the post-1888 maps carried and with the 1885 response of Col. Pilkington-White in The Times. The 1893 Circular was also issued after the 1893 Dorrington Committee had concluded that no inquiry by the surveyor could determine whether a path was a public or private one.

12.22 The Instructions to Surveyors [various dates 1884 – 1961] set out the parameters under which the surveyors were to undertake their task. It was not until 1905 that surveyors were instructed that ‘OS does not concern itself with rights of way, and survey employees are not to inquire into them.’ However in the same paragraph of these Instructions, there is a note stating that ‘A clearly marked track on the ground is not in itself sufficient to justify showing a path, unless it is in obvious use by the public’. The 1905 instructions appear therefore to be somewhat ambiguous; subsequent instructions to surveyors contain equally ambiguous instructions as surveyors were given directions as to the nature of paths that should and should not be recorded whilst maintaining that public rights of way were not the concern of OS.”

The 1953 Provisional Definitive Map: Objections

144. Begbroke Parish Council comments: -

- Page 3: “.. the route was offered to be recorded but not carried out after landowner objections”
- Page 18: The 1953 Provisional Definitive Map does not show the route possibly due to objections from the landowner.
- Page 19: the Oxford & District Footpaths Bridleways and Commons Preservation Society probably would not have the financial resources to engage in a legal fight with New College, Mr Partridge and the British Transport Commission into the inclusion of the footpaths in the modified draft map.

145. OCC response: -

- The 1953 Provisional Definitive Map (**Appendix 44**) does not show the route because the landowners objected to the inclusion of the routes on the 1953 modified draft map, and the footpaths society reported that they did not wish to oppose the landowner’s objections, so the council resolved to omit the footpaths from the Provisional Map (**Appendix 43**).
- There is no evidence that the process for creating the 1953 Provisional Definitive was carried out incorrectly.

1960s Plan of the Weed Research Organisation

146. Begbroke Parish Council comments: -

- Page 4: *The plan of the Weed Research Organisation appears to show some kind of path where we consider the footpath to be.*
- Page 81: *the gate at point A has three padlocks and land was owned by The Weed Research Organisation in the 60's. The archives of the WRO are at the National Archives and have not been inspected. It may well be that access may have been prohibited for safety reasons.*

147. OCC response: -

- The plan shows ten other similarly dashed lines, but there is no key to the plan, so it is not certain whether the dashed lines represent paths, or another feature e.g. field boundaries.
- The current locked gate and possible prohibited access since the 1960s suggests that the route was not used by the public during these periods.

1981 Aerial photograph

148. Begbroke Parish Council comment page 8: -

“Good evidence is not to be discounted”.

149. OCC response: the county council concluded that the 1981 aerial photograph provided evidence of the physical existence of the route near point F because it shows a worn track approximately 30m long. The county council cannot conclude that the photograph is evidence of the public status of the way as it is not known whether the worn track was created by the public walking a *defined through* route or by the landowners accessing the field. The photograph shows that the Grovelands Estate to the east of the canal bridge was not built by 1981, so the track would not have been created by the Grovelands Estate residents.

1984-2023 Photographs of the canal bridge

150. Begbroke Parish Council comments page 8: -

“The photos show the route from Grovelands where a footpath exists between properties in the form of an alley way. Obviously like this as it was a path. Leading to the bridge.”

151. OCC response: The photographs and accompanying text record that the canal bridge provided footpath access which: -

- Was recorded on the 1919 Ordnance Survey continuing to Begbroke Hill. However, the status (public or private) of this footpath is not certain – see paragraph 143.
- In 1984 provided access from the Grovelands Estate to the canal towpath. This is evidence that the canal bridge route (G – H – I – J – K) had the reputation of a public footpath, but it is not evidence for the application route (A–B–C–D–E–F–G).

1992 – 2003 Canal Bridge Reports

152. Begbroke Parish Council comments: -

- Page 3: *"We wish that our application is considered further with additional evidence submitted such as Oxford mail image and article 1984 and the response from The Canal and River Trust whose documents say that a public footpath existed over Buller's Bridge... We consider that the information submitted shows a PROW, it was shown on documents submitted, and the route was offered to be recorded but not carried out after landowner objections".*
- Page 4: *"We should have extended the route over Buller's Bridge to Grovelands"*
- Page 9: *"Begbroke parish council have obtained further information from Canal and River Trust. See attached: Document TS207 5/93 [Appendix 2e] which states Public Footpath and Para: 2.13.1 which states that the bridge carries a public footpath adjacent to a housing estate. 2.13.1 Says west approach is fenced with Chain link and barbed wire – hardly conducive to a viable footpath access.."*
- Page 19: *"we should have included this as part of the route because it is significant in that the path continues to Grovelands. We now have information from the Canal and River Trust that states several times that a public footpath existed over the bridge. The documents contain historic information on bridge inspection and the sale to Kidlington Parish Council".*

153. OCC response: -

- The county council has added the additional evidence to this July 2024 report and is considering the evidence for the existence of a public footpath over Buller's Bridge to Grovelands (the Canal Bridge route G – H – I – J – K).
- The 1992 bridge report (**Appendix 2e**) suggests that: -
 - The canal bridge route (G – H – I – J – K) had the reputation of a public footpath
 - The application route (A–B–C–D–E–F–G) was obstructed by a chain link and barbed wire fence near point G.

Landowner evidence

154. Begbroke Parish Council comment page 20: -

"have the landowners been consulted to see what is on their deeds?"

155. OCC Response: the landowners have been consulted, but have not submitted copies of their deeds. The county council have official copies of the HM Land Registry titles for the 5 titles: -

- None of the Land Registry titles specifies a public right of way.
- Only one of the titles refers to 'footpaths' - the canal bridge route section J - K - number ON104793 owned by Cherwell District Council. The register

states “*The footpaths are subject to rights of way on foot only*”. The title plan shows dashed line tracks, but not near the section J – K.

L CONCLUSIONS

156. The evidence is solely documentary, there is no user evidence. As stated in section G, for documentary evidence to be sufficient to establish status as a public right of way, it must show that a way has been: -

- created either by due legal process or
- has been recorded as having the reputation of public status.

157. Documents that provide evidence of the physical existence of the way will not be sufficient to prove public status but can be supportive of other evidence.

Application route (A–B–C–D–E–F–G)

158. Evidence of the legal creation of the application route as a public footpath: none.

159. Evidence of the reputation of the route as a public footpath. The Oxford & District Footpaths Bridleways and Commons Preservation Society objected to the omission of both routes on the 1953 draft map and the routes were recorded on the 1953 modified draft map. However, the landowners then objected to the recording of the routes, the footpaths society submitted that they did not wish to pursue the matter, and the county council decided not to record the routes on the 1953 definitive map.

160. Evidence of the reputation of the route as *private* rather than public way: -

- The 1844 Oxford and Rugby Railway Plan, because although it does not show a way in the location of C – D, the book of reference records a private ‘Roadway’ in the location of the route – for the two land parcels located either side of the railway line. Also public ways were shown on the map in other parts of the parish.
- The tenant at Begbroke Hill Farm since April 1987, Brian Henman, claims that the application route was obstructed by a locked gate at point A and by a fence at the railway line since 1987, and that no one has attempted to use the route.
- The 1992 Bridge Technical Report by British Waterways records that the west approach to the bridge (the application route) was fenced with chainlink fencing and barbed wire, although the fencing had been vandalised.

161. Evidence of the physical existence of the way. The ordnance survey maps and 1981 aerial photograph provide evidence of the physical existence of the route but these are not sufficient to prove public status.

157. In summary, the county council consider that the route originated as a private way, and there is insufficient evidence to suggest that it was subsequently dedicated as a public footpath.

Canal Bridge route G – H – I – J – K:

158. Evidence of the legal creation of the routes as public rights of way: none.
159. Evidence of the reputation of the route as a public footpath.
- The 1910 Finance Act valuer considered there to be a public footpath over section J – K.
 - The 1984 Oxford Times article reported that Kidlington parishioners saved the canal bridge from demolition, that it provided access from the Grovelands Estate to the countryside, and that the district and parish council planned an approach way to the bridge.
 - The 1992 Bridge Technical Report by British Waterways records that the bridge carried a public footpath.
160. Evidence of the reputation of the route as private rather than public. The 1818 Kidlington Inclosure Award plan, because it shows the bridge and a private parcel of land to the east of it, but does not show a way leading from the bridge over the private land.
161. In summary: The route over the canal bridge more likely than not originated as a private way which was subsequently dedicated as a public footpath when it was used by the residents of the Grovelands estate after it was built c.1981-1984.

M WIDTH

162. It is considered that a 2 m width for section G – H – I – J – K is reasonable.

N LIMITATIONS

163. None.



.....Date ...05.07.2024.....

Alex Humphreys

On behalf of Countryside Access Research and Legal Record

I have reviewed this report and confirm that I agree with the legal analysis set out in the determination report and its appendices.



..... Date 05.08.2024

Jennifer Crouch, Solicitor

On behalf of Legal Services

O LIST OF APPENDICES

- 1a - Plan - application route_03733
- 1b - Plan_canal bridge route_03733
- 2c -Layout Weed Research Organisation.docx
- 2a - Application form plan supporting evidence
- 2b - Canal Bridge 227 Ox Times_Redacted
- 2d - 1984 Transfer Deed Bullers Bridge
- 2e - BullersBridge Inspection report 1992
- 2f - BullersBridge Inspection report 2004
- 2g - BullersBridge Inspection report 2023
- 2h - Yarnton Parish Council 28.07.23
- 3a - Land Registry MapSearch
- 3b- 2016 PINS consistency guidelines
- 4 - Kidlington Inclosure 1818 Plan No.1 1
- 5 - Kidlington Inclosure 1818 Plan No 2
- 6 - Kidlington Inclosure 1818 Award extract
- 7 -1844 Oxford and Rugby Railway Plan a4
- 8 - 1844 Oxford and Rugby Railway Book of Reference
- 9 - 1844 Begbroke Tithe Map
- 10 - 1847 Yarnton Tithe Map
- 11a - RWLR Finance Act Section 9.3 p17-20
- 11b - RWLR Finance Act Section 9.3 p171-173 2005
- 12 - Fortune & Ors v Wiltshire CC [2012].rtf
- 13a - 1910 Finance Act MAP working copy - 2 sheets
- 13b - 1910 Finance Act MAP final copy - 2 sheets
- 14 - 1910 Finance Act FIELD BOOK - 18, 28, 137, 362
- 15 - 1910 Finance Act FORMS 37 - 18, 28, 137
- 16 - 1910 Finance Act VALUATION BOOK - 18, 28, 137, 362
- 17 - 1811 Ordnance Survey Drawings OSD162
- 18 -1833 OS 1 inch scale
- 19 -1886 OS 1 inch scale
- 20 - 1904 OS 1 inch scale
- 21 - 1938 OS 1 inch scale
- 22 - 1943 OS 1 inch scale

- 23 - 1956 OS 1 inch scale
- 24 - 1960 OS 1 inch scale
- 25 - 1968 OS 1 inch scale with key
- 26 - 2023 OS 50 000 scale
- 27 - 1876 OS 25 inch 2500 scale
- 28 - 1899 OS 25 inch 2500 scale
- 29 - 1922 OS 25 inch 2500 scale
- 30 - 1936 OS 25 inch 2500 scale
- 31 - 1962 OS 25 inch 2500 scale
- 32 - 1971 OS 25 inch 2500 scale
- 33 - 1978 OS 25 inch 2500 scale
- 34 - 1988 OS 25 inch 2500 scale
- 35 - 2023 OS 2500 scale
- 36 - 1955 OS 6 inch 10560 scale
- 37 - 1992 10 000 scale
- 38 - 2023 10 000
- 39 - 1950s parish Survey Maps
- 40 - 1953 Draft Map Oxon XXVII.SW
- 41 - Objection to omission from draft map 1
- 42 - Notice Oxon Draft map MODIFIED 1953.10.14
- 43 - Objections to the 1953 Modified Draft Map_Redacted
- 44 - 1953_Provisional Map Oxon XXVII.SW 1
- 45 - 1953 1968 1999 2006 Def Maps
- 46 - 1981 Aerial Photograph
- 47 - Oxford Uni Brian Henman 20231213
- 48 - Network Rail 20231128 _Redacted
- 49 - CDC planning Letter 20231208
- 50 - Begbroke PC comments on DRAFT Report 20231113