

Wildlife and Countryside Act 1981

Definitive Map and Statement for the County of Oxfordshire

The County of Oxfordshire County Council
Addition of Restricted Byway 20 and Partial Upgrade of Footpath 9
Chalgrove
Modification Order 2019

STATEMENT OF CASE

(Including statement of grounds and comments on objections)

INTRODUCTION

1. Mr Matthew Knight submitted an application on 29 March 2017 in accordance with Section 53(5) and schedule 14 of the Wildlife and Countryside Act 1981 (the 1981 Act) to add a Restricted Byway to the Definitive Map and Statement running between High Street and St Mary's Church, Chalgrove as shown between points A and F on the Order plan. **(Appendix 1)**.
2. The applicant served Notice of the application on Chalgrove Parish Council, the only registered owner of land affected. Dispensation was provided to allow the applicant to post notices on the land to alert any other owners or occupiers.
3. The application is supported by a number of items of documentary evidence, listed and discussed in detail in the Council's determination report **(Appendix 2)**.
4. Alongside this, as it is required to do, the council also carried out further investigation of other relevant available evidence and determined to make the present Order. The council compiled the Determination Report, **Appendix 2**, detailing all the available evidence relating to the route. It also consulted adjoining landowners, South Oxfordshire District Council, Chalgrove Parish Council (in its capacity as both known landowner and local council), the Oxfordshire County Councillor and the applicant.
5. Oxfordshire County Council considered all the evidence set out in the Determination Report and any comments or other evidence received during

the consultation period, in conjunction with the relevant legislation and case law. The matter was determined by the Council in September 2019 deciding that, in consequence of the occurrence of the events specified in sections 53(3)(c)(i) and 53(3)(c)(iii) of the Wildlife and Countryside Act 1981, an Order should be made to record a restricted byway, which also has the effect of upgrading parts of existing Public Footpath No 9.

6. The Oxfordshire County Council Addition of Restricted Byway 20 and Partial Upgrade of Footpath 9 Chalgrove Modification Order 2019 (“the Order”) (**Appendix 1**) was sealed on 19 December 2019 and advertised in accordance with Schedule 15 of the Wildlife and Countryside Act 1981 on 9 January 2020. The Council received 22 objections to the Order and seven representations including one in support of the Order. Copies of objections, representations and OMA’s comments are at **Appendix 4**. Details of the objections are given at paragraphs 91-112 below.

LEGISLATIVE FRAMEWORK

The Wildlife and Countryside Act 1981

7. Oxfordshire County Council is the Surveying Authority for the purposes of Part III of the Wildlife and Countryside Act 1981.
8. The present Definitive Map and Statement, with a relevant date of 21st February 2006, was published by the Oxfordshire County Council. An extract copy of the map showing the relevant area is at **Appendix 3**.
9. Section 56 of the 1981 Act provides that the Definitive Map and Statement are conclusive evidence of the existence of public rights recorded within

them. This is without prejudice to the possible existence of other unrecorded public rights.

10. A Surveying Authority has a duty under Section 53 of the 1981 Act to maintain the Definitive Map and Statement for its area, and to modify it by way of appropriate Definitive Map Modification Orders upon the discovery of evidence which shows, when considered with all other relevant available evidence, that the Map and Statement require amendment.
11. Anyone can apply for a Definitive Map Modification Order to seek amendment of the Definitive Map and Statement using the procedure set out in section 53(5) and Schedule 14 to the 1981 Act.
12. Under section 53(3) of the 1981 Act, a surveying authority should modify its Definitive Map and Statement in consequence of an occurrence; in this case in accordance with section 53(3)(c)(i): -

“...the discovery by the authority of evidence which (when considered with all other relevant evidence available to them) shows that a right of way which is not shown 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”.

and, in accordance with section 53(3)(c)(iii): -

“that there is no public right of way over land shown in the map and statement as a highway of any description, or any other particulars contained in the map and statement require modification”

13. Evidence of the existence or non-existence of a public right of way normally takes the form of documentary evidence, i.e. evidence from historical documents and maps, and / or evidence of actual use by the public.

Highways Act 1980

14. The weight given to documentary evidence is a matter of judgement in each case but will depend upon such matters as the antiquity of the document, the status of the person by whom it was compiled, the purpose for which it was prepared and the custody in which it has been kept and from which it is produced.
15. Section 32 of the Highways Act 1980 in particular provides that: -

“A 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”*

DESCRIPTION OF THE ROUTE

16. The route is described in the determination report, **Appendix 2, section E.**

THE ORDER MAKING AUTHORITY’S CASE

17. In determining to make the order, the council’s case is that it discovered evidence which, when considered with all other relevant evidence available to it, shows that a Restricted Byway which is not shown in the Definitive Map and Statement subsists on the balance of probabilities over the route shown A – F on the Order plan at **Appendix 1.**
18. The evidence that the Council has discovered and its grounds for making the Order are summarised below and set out in detail in the Determination Report at **Appendix 2.**

THE DOCUMENTARY EVIDENCE

All documents referred to are contained within the appendices to the determination report (**Appendix 2**) and are given in the following format: “**Appendix 2;1**” etc.

The Chalgrove Inclosure Award & Map 1843

19. The Chalgrove Inclosure Map (**Appendix 2;5**) depicts the application route shown in same manner as other public roads. However, it is in an “excluded area” which means it was not included in the inclosure and was subject to a previous inclosure which cannot be located. Roads or ways in the excluded area (of which the application route is part) are not labelled but they are depicted on the map.

20. The south western spur of the application route finishes at the junctions with Footpaths 4 and 5 (as set out at the inclosure) and are described as forming junctions with “Frogmore Lane” which are now recorded on the 2006 Definitive Map as Chalgrove Footpaths 8 and 9.

21. The depiction of how what we have inferred to be the claimed route is shown on the map, suggests it was considered to be of similar status to the contemporaneous “ordinary road network”. Naming the route “Frogmore Lane” also suggests that it was well enough known at the time to provide a suitable location reference. By describing the newly set out Public Footpaths 4 and 5 (recorded on the current Definitive Map as Chalgrove Footpaths 8 and 9) as joining the route (and linking them to the village and church) strongly suggests that the claimed route pre-dated the inclosure and was already well recognised as public highway. Without that being the case, the footpaths being set out at inclosure would have had no outlet.

The Chalgrove Tithe Award 1840

22. The Tithe Map (**Appendix 2;6**) depicts the application route coloured sepia, in the same manner as other recognisable public roads in the village. It is given hereditament number 2134 and shows a crossing / bridge at the junction with Chalgrove Footpaths 8 and 9.
23. The award (**Appendix 2;6**) records hereditament No 2134 as “Frog Lane” under “Commonable Lands, Drift Ways and Wastes”. None of the hereditaments adjacent to the application route are shown bracketed to it and, as such, the route is not included in the calculations of titheable land.
24. The depiction of the application route in the same manner as other known public roads is not, of itself, evidence of public rights. However, private and public roads could affect the value of land when assessing it for tithe. If a route is shown in the same manner as other known public roads and creates a through route or a clear link to a particular destination, we may infer that the route could have been public.

Finance Act 1910

25. Extracts of the Finance Act maps (**Appendix 2;7**) are held at the Oxfordshire History Centre and National Records Office. They differ slightly in what they depict. They both show most of the application route uncoloured, in the same manner as other roads within the village. They also both show the “spur”

leading south west to the junction with Footpaths 8 and 9 coloured and part of assessment no 75.

26. The book of reference (**Appendix 2;7**) for assessment 75 lists a deduction of £25 for public rights of way. The basemap shows what is now Footpath 9 running through the northern part of assessment no 75 (now the recreation ground) and south west towards Mill Lane.
27. The Oxfordshire History Centre copy has a small section coloured to the north of the junction with footpath 9 and the spur leading south west. This is listed as “Close” but is not shown in the copy held at the National Archives.
28. These records show that the route, with the exception of the “spur”, was omitted from the taxable area as it was likely to have been considered to be public carriageway.

Commercial Mapping

Richard Davis' Map 1797

29. The map (**Appendix 2;8**) appears to show a route likely to be the application route, with properties along it and leading to the church. It is depicted in the same manner as other roads and lanes within the village. Whilst not conclusive of public rights its inference is that the route formed part of the wider settlement.

Thomas Jeffery's Map 1766-7

30. Jeffrey's map (**Appendix 2;9**) shows a route following a similar course to the application route. It follows a through route and depicts a church. The footpaths continuing south from the river are not shown but routes of that status are not usually depicted on Jeffery's maps. While not conclusive of public rights, it shows that the route physically existed, and it was shown in the same way as other roads in the area.

Bryant's Map 1823-4

31. This route appears to be shown on the map (**Appendix 2;10**) as "lane" or "bridle road" and forms part of a through route from the High Street via the church. The route's likely presence on the map infers it was for use by the public given that it is shown at all, and that it is depicted in the same manner as other lanes and bridle roads.

Bartholomew's Maps – Half-Inch to One Mile - 1902, 1920, 1941

32. Each of the maps (**Appendix 2;11**) shows the route as a minor road and forming a through route via the church. They also show the continuation south of Chalgrove Footpath No 9.

Ordnance Survey Mapping

Ordnance Survey First Edition 1881

33. This map (**Appendix 2;12**) depicts the application route leading from the High Street to the church.

Ordnance Survey Map of South Oxfordshire 1887

34. This map (**Appendix 2;13**) depicts the application route leading to the church. It is shown in the same manner as other roads and ways in the village.

Ordnance Survey Second Series 1900

35. This map (**Appendix 2;14**) shows that the physical features on the section of the route from the High Street towards the footbridge (labelled) and junction with Footpaths 8 and 9 have altered slightly and the boundaries of the route are less defined – or possibly shown in greater detail due to the scale of the map. There is a footpath shown on the alignment of Footpath 9 crossing what is now the recreation ground. The section of the route from the footbridge and the spur towards the church is shown.

Ordnance Survey Third Edition 1922

36. A northern section of the route is labelled as “ford” which appears to link a field to the west with what is now the recreation ground. The features shown on the map (**Appendix 2;15**) tally with the application route.

Ordnance Survey 1959 1:25 000

37. The section linking the High Street to the footbridge on Footpath No 9 is not shown. Other footpaths are shown (including Footpaths 8 and 9). The ford is also labelled. The section of the route leading to the church is shown with solid boundaries. (**Appendix 2;16**)
38. This suggests that the northern section of the route was either not discernible on the ground or not used at the time. However, the continuation to the church was a physical feature on the ground and shown on the map.

Other Maps, Documents, Records

Estate Maps and Surveys

Magdalen College Map 1822

39. On this map (**Appendix 2;17**) the application route is numbered 180 and shown in the same manner as other roads or lanes in the village. It is named in the book of reference as “Frog Lane”. According to the Magdalen College archivist, this was in the section “Common, Roads, Lanes”.

Magdalen College Map 1848

40. The application route is shown clearly and in the same manner as other roads and ways in the village (**Appendix 2;18**). It is not numbered or labelled.

Magdalen College Map 1908

41. This (**Appendix 2;19**) shows the route uncoloured and unlabelled in the same manner as other roads and lanes in the village.
42. Each of these college maps show that it was believed to be a road or lane, listed alongside other such routes and provides indication that the college itself, as owners of the land, believed the route to be a named local route and strongly suggesting public status.

Deed of Exchange 1950

43. The land outlined in red on the deed plan (**Appendix 2;20**) clearly excludes the application route. The deed does not mention the application route and gives no reason for any exclusion. This may have been because it was not believed to belong to the transferor, possibly because it was believed to have been public. The deed contains no information to confirm this. But this lack of confirmation might suggest that it was public highway outside of the control

of the adjoining owners who had excluded it from their estate maps as well as this Deed of Exchange .

Recreation Ground Byelaws 1955

44. The applicant provided a copy of the parish council's byelaws for use of the recreation ground (**Appendix 2;21**). Should the Order route be confirmed, its use by the public would be by right and, therefore, the byelaws would not apply to the section of the recreation ground crossed by the route.

Conveyance between Joynson Holland and Company Limited and Edward Fredrick Berkeley Monck 1957

45. The physical features and boundaries of the application route are shown uncoloured on the plan accompanying the conveyance (**Appendix 2;22**). Land to the north and south of the eastern section of the route (leading to the church) is included but the route itself is excluded. The road leading from the church back to the High Street is also excluded.

Chalgrove - An Oxfordshire Village – Chalgrove History Group, 1990

46. This local history publication (**Appendix 2;23**) refers to "Frogmore Lane" (the application route) leading from the village green (by the pub and the High Street) to the church. It mentions that the remains of houses were visible into the 20th century. It also mentions flooding due to changes in mills and water

courses. This may have contributed to changes in water levels which could have led to a change in the accessibility to and the use of parts of the application route.

47. Frogmore Lane is given its own paragraph and described as: -

“one of Chalgrove’s oldest rights of way” and “gave access for the manor house to the church and to the main street”.

48. Chalgrove Local History Group has objected to the Order.

Statutory Declaration, Edward Fredrick Berkely Monck, 1995

49. This declaration (**Appendix 2;24**) was obtained in 1995 as part of by the applicant’s father’s case to secure a private means of access. It details the Monck family and employees’ use of the north-south section of the route to access their land. Although the route is referred to as a public highway, and using it without permission, he was using it specifically to access his land. Monck does not refer to continuing his journeys either south along Footpath No 9 or toward the church.

50. Therefore, it might be more likely that he was exercising a private right rather than using it “as of right”. In any event this is of no help in determining its public status.

Statutory Declaration – Melvin Allan Knight, 2014

51. This is a declaration (**Appendix 2;25**) by the applicant's parents who were successors in title to some of the land referred to in Mr Monck's declaration. As with Mr Monck's declaration, Mr Knight details his, his families' and his employees' use of the north-south section of the route to access his land.
52. Although he also refers to the route as a public highway, and using it without permission, he was using it specifically to access his land. He does not refer to continuing his journeys either south along Footpath No 9 or toward the church.
53. Therefore, it is more likely that he was exercising a private right rather than using it "as of right". This application is about establishing whether a public right of way subsists and therefore this statutory declaration provides no further information about the route's legal status.

Oxfordshire Village Book - Oxfordshire Federation of WI, 1999

54. This provides more history about the village (**Appendix 2;26**). It mentions that flooding was a regular occurrence which, combined with part of the application route being known as "Old Ford", could be a reason the route became less used over time. However, the document makes no specific reference to the application route.

**Barentin’s Manor – Report of Archaeological Excavation, Philip Page,
Kate Atherton and Alan Hardy, 2005**

55. This is a report of the excavations of the manorial site immediately to the west of the application route and refers to it as “Frogmore Lane” (**Appendix 2;27**). It re-states the route’s location and role in the layout of the village.

Victoria County History – Chalgrove

56. This document (**Appendix 2;28**) provides more information about the history of the settlement and how the focus of the village shifted from the church to the High Street but provides no information about public rights over the application route.

**Footsteps Through Chalgrove and Chalgrove Village History Website,
2008**

57. The map, produced by the Chalgrove Local History Group, (**Appendix 2;29**) depicts the application route with a dashed line, labelled as “other tracks”, and not as a public footpath. The information from the website describes Frogmore Lane as an ancient lane but gives no additional information about the route’s legal status.

Title Register and Plans (Appendix 2;30)

58. Chalgrove Parish Council has owned the recreation ground and the section of the route referred to as “Old Ford” (the north-south section of the application route since 2013. The section of the route from the junction with footpath 9, leading towards the church, is unregistered.

Photographs of Frogmore Lane (Appendix 2;31)

59. These are contemporaneous with the application and show the northern, “Old Ford”, section of the route to the junction with Footpath No 9. Where the route leaves the existing car park area, there is a row of concrete bollards. Several large willow trees mark what appears to be the historic boundary of the lane. Moving south, other large trees follow what is likely to be the eastern boundary of the route.
60. The surface is shown as muddy and well used by pedestrians. Some tracks could have been made by bicycles or pushchairs, it is not clear if there is any evidence of use by horses. The photographs show clear lines of use toward and including Footpath No 9 and towards the church.
61. Additional photographs of the route, taken by the investigating officer are described in **section E** of the determination report (**Appendix 2**) and included at **Appendix 2;2**.

Parish Council Documents

62. A letter dated 1969 (**Appendix 2;32**) refers to rubbish being left on “The Old Ford which was the roadway to the church”. It states that area “is being reclaimed as part as an overall improvement to the recreation ground”.
63. Parish Council minutes from 1973 (**Appendix 2;32**) state that the Council had received a letter stating that a fence had been erected and requesting it be removed and the surface made up. The Council stated that the route “had never been a right of way” and that the fence was there to prevent vehicles using the recreation ground and illegal dumping.
64. These records would imply that the Parish Council at the time did not regard the route as being public.

Chalgrove – The Cartographic Evidence, Dr Colin Shepherd, 2015

79. This (**Appendix 2;33**) provides further historical information about the development of Chalgrove using old maps. It suggests that the application route (referred to as Frogmore Lane) is a very old route forming part of the earlier development of the village and which, arguably, predates the 12th century church and possibly existed in the 9th – 11 centuries.

Highway Alterations – Newspaper Notices

80. The applicant provided a copy of a Public Path Creation Order (1968) and a Stopping Up Order (1967). Both are at **Appendix 2;34** and neither affects the application route.

USER EVIDENCE

81. The application is supported by two user evidence forms claiming use of the route from 1984 to 2018 (**Appendix 2;35**).
82. One form is completed by the applicant's father, Melvin Knight. He used part of the route from the High Street to the fields at the junction with Footpath No 9 as access to and from his property where he kept a horse. He states that his friends and family also used the route in the same way (to access the field). He does not refer to using the section of the route leading to the church.
83. In 2015 a Land Tribunal found against Mr Melvin Knight having a private right to use the land. Although we cannot include Mr Knight's use of the route, there is other information of interest on the form.
84. He states that there is a gate which was rarely locked but is now locked at the access point to the recreation ground. He never had permission to use the route but was prevented from using it in 2015 following the Land Tribunal decision.

85. Miss Carly Fillis also used the section of the route described by Mr Melvin Knight and in the same capacity (to access the horse kept in the field). She refers to dog walkers and cyclists using the route to access the fields south of the stream, as well as other horse riders meeting them in the area.
86. She also notes the gates and that they are usually unlocked as well as the bollards at the car park, but that they did not cause her any obstruction. She does not recall any notices and was never turned back.
87. The User Evidence on its own is not enough to show any presumed dedication of the route as a public right of way and lends no weight to this case.

LANDOWNERSHIP

Land Registry

88. A search of the Land Registry indicates the route is partially unregistered (from junction with footpath 9 to the church) and partially owned by the Parish Council (title number ON308159).
89. Title documents for the land are at **Appendices 2;3 & 2;30**.

90. The northern section of the route (which crosses the edge of the recreation ground) crosses registered village green (VG38). A plan of the village green is at **Appendix 2;4**.

ORDER MAKING, OBJECTIONS AND RESPONSES TO OBJECTIONS

91. Oxfordshire County Council made an Order to add this route to the Definitive Map and Statement on 19 December 2019.
92. Oxfordshire County Council advertised the Order from 9 January 2020 to 21 February 2020 inclusive.

Objections

93. There were 22 objections and 7 representations made following advertising of the Order.
94. Full copies of the objections and representations, together with the OMA's comments on each are at **Appendix 4**.
95. The representations consisted of either "no comment" or "no objection" to the Order. One received was in support of the Order.

96. On examination of the individual objections, many shared similar grounds. These are summarised below.
97. A majority of the objections rely on grounds of safety, suitability and / or desirability. Within these, objections include safety concerns for users of the route, the recreation ground and those using the car parking area. They also include concerns that the route does not provide a through route for rights higher than pedestrian and is not suitable for any higher rights. Some also note that the width of the route does not allow for equestrians / carriage drivers to use the route or turn to retrace their steps. It is also clear from some of these that objectors simply do not want the route, either for perceived safety concerns or perceived detriment to the recreation ground and / or village life as a whole.
98. The OMA's view is that it has a duty to record public rights of way. Public rights of way are an amenity available to the local community and the general public. They are a part of "village life as a whole" rather than necessarily being a detriment to the local community. Any safety concerns that may arise should be addressed as necessary using other powers if the Order is confirmed.
99. The consideration as set out in the Wildlife and Countryside Act 1981 is whether a public right of way subsists and, as a consequence, this Order should be confirmed. The Order is not a proposal to create a public right of way and, as such, the law **cannot** consider matters of safety, suitability or

desirability as relevant grounds for objection. If public rights already subsist then they must be recorded correctly. Objections not related to the question of the existence of public rights are irrelevant and must be disregarded.

100. A number of the objections show a misunderstanding of the duties of the County Council and / or a misunderstanding of the content, purpose and / or provisions of the relevant legislation.

101. The Council makes every effort to ensure clear communication throughout the various stages of the process. It invites questions and queries and directs people to relevant sources of information as appropriate.

102. In making the Order, the Council is not consulting on a “proposal” or creating a new route. The Order is to record a public right which it considers already subsists. It has advertised the Order as part of its duty to amend and maintain the county’s legal record of public rights of way.

103. If there is sufficient evidence of an unrecorded public right of way, the Council must make the Modification Order. The legal test for confirming the Order is that, on the balance of probability, public rights subsist. The test is not that of “beyond reasonable doubt”, as it is with criminal cases.

104. Some of the objectors disagree with the Council’s interpretation of the evidence by looking at individual documents in isolation. In accordance with

the legislation, however, Order Making Authorities have a duty to consider the evidence as a whole.

105. Some of the objectors seek to rely on the outcome of a Land Registry tribunal. The Tribunal referred to concerned contested private rights of access by the applicant's parents over part of the Order route. This is a separate matter from public rights of way and not relevant to this case.

106. Some of the objections contain considerable detail of the history of the village. However, this has provided no evidence specific to this route to indicate that the Order should not be confirmed.

107. Some of the objections refer to the wet, boggy conditions of the route prior to the land being drained. One specifically refers to it being too wet to use during the early part of the 20th century. None of the objections which refers to the wet, unusable conditions contains a strong argument as to why it was nevertheless depicted and referred to on relevant documents examined in the determination report. A route's wet or boggy condition (which can be seasonal or weather dependent) does not preclude it having acquired public rights.

108. Some of the objectors state that they have either used the route as a footpath for many years or accept that it carries public rights. Whilst objectors may view it as, or prefer that it be recorded as, a public footpath, the Order is to record the route as a Restricted Byway on the basis of all available evidence.

109. Some of the objectors assert that the application was made for the personal gain of individuals. Anyone may apply to the Council if they have evidence that the Definitive Map and Statement needs amending. The Council has impartially examined all available evidence and does not take any account of personal gain or otherwise. The consideration for the Council and, indeed, for the Inspector, is whether public rights subsist and, therefore, should be recorded. As such, this is not a relevant ground for objection.
110. In coming to a decision the Inspector must be mindful of the Highways Act 1980 section 32, requiring a court or tribunal to take into consideration any map, plan or history of the locality, or other relevant document which is tendered in evidence, giving it such weight as appropriate, before determining whether or not a way has been dedicated as a highway.
111. In this case, documentary evidence has been examined which, in the view of the Council, supports on the balance of probabilities that those rights subsist. No documentary evidence has been brought forward by way of rebuttal to the existence of public rights
112. The arguments put forward do not persuade the Council to alter its view in relation to the evidence as a whole when considered against the legal tests set out in the Wildlife and Countryside Act 1981 and, accordingly, the Order should be confirmed.

CONCLUSIONS

113. As set out above and detailed in the determination report (**Appendix 2**), whilst each individual piece of evidence should be given due consideration, section 53(3)(c)(i) of the Wildlife and Countryside Act 1981 requires that it be considered with all other relevant evidence. It would be too simplistic, as well as inappropriate, for the Council to consider each piece individually and remark that it proves nothing. The context and provenance of the evidence as a whole builds a picture and supports an outcome. In the view of the OMA a restricted byway subsists on the balance of probability when the evidence, overall, is considered.
114. As a physical feature, the Order route is shown on relevant historical documents as researched by the OMA. On several of these documents (including Inclosure Map, Tithe Map, commercial mapping and estate maps, and being “uncoloured” on the Finance Act Map), the route is depicted in a similar manner as other known public roads.
115. The Order route is not an isolated route linking to a particular property. It links a public road, public footpaths (as set out at Inclosure) and a church. Accordingly, it is not unreasonable that it carries public rights. This is corroborated by the documentary evidence; in particular, it being uncoloured on the Finance Act maps, and its depiction in a similar manner to other highways on Enclosure, Tithe and other contemporaneous mapping.

116. Other documents and those produced by local historians as well as those held by previous landowners, refer to the route as Frog Lane. A route in the village that is locally known or named in this way is very unlikely to have been considered to be private at the time even if, in more recent times, its use has possibly not been anything more than on foot by the general public. Accordingly, the legal maxim 'once a highway, always a highway' applies here. This means that the public cannot give up its rights through lack of use (or by any means other than a legal order or event). If those higher rights have subsisted in the past they still exist today, regardless of any other potential implications or concerns.

117. The objections to the Order focus on those concerns and are matters which the Council is unable to consider as relevant for the reasons set out in legislation. Many demonstrate a misunderstanding of the law and the role of the County Council in determining the matter. There is no substantive evidence to counter the evidence that restricted byway rights subsist.

118. In the OMA's view there is no evidence necessitating modifications to or preventing confirmation of the Order.

119. Oxfordshire County Council respectfully requests that the Order be confirmed.

List of Appendices

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- 2 Determination Report and Appendices
- 3 Extract of Definitive Map
- 4 Objections and OMA Comments