



Order Decision

Inquiry opened on 8 March 2016

by Mark Yates BA(Hons) MIPROW

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

Decision date: **13 MAY 2016**

Order Ref: FPS/U3100/7/36

- This Order is made under Section 53(2)(b) of the Wildlife and Countryside Act 1981 ("the 1981 Act") and is known as the Oxfordshire County Council Cuddesdon and Denton Public Footpath No. 28 Modification Order 2013.
- The Order was made by Oxfordshire County Council ("the County Council") on 10 September 2013 and proposes to add a footpath ("the claimed route") to the definitive map and statement, as detailed in the Order Map and Schedule.
- There were two objections and five representations outstanding at the commencement of the inquiry.

Summary of Decision: The Order is not confirmed.

Procedural Matters

1. This Order was originally scheduled to be determined by way of the written representations procedure. However, in light of the nature of the evidence and the number of potential parties, I held a public inquiry into the Order on 8-10 March 2016 at Garsington Village Hall. I visited the site accompanied by the interested parties on 9 March 2016. In reaching my decision, I have considered all of the written representations and the oral evidence presented at the inquiry.
2. The County Council was directed to make the Order following a successful appeal by the applicant (Mr Crawley) to the Secretary of State in accordance with Schedule 14 to the 1981 Act¹. A previous application by Mr Johns had been turned down by the Secretary of State on appeal². At the inquiry, the County Council adopted a neutral stance and the case in support was made by Mr Lawrence on behalf of the Open Spaces Society ("OSS").
3. In light of the submissions made at the inquiry, I have read the decision of Inspector Millman and considered the points made in relation to it. Nonetheless, it is accepted that I am not bound by the appeal decision which addressed the question of whether an Order should be made. The test I need to apply, in determining whether the Order should be confirmed, is set out in paragraph 6 below. In particular, I have had the benefit of hearing the oral evidence³ and submissions of the parties at the inquiry and visiting the site.
4. In relation to the matter I raised regarding the County Council's written submissions, I accept that the appropriate course of action is to disregard any parts which express a view on the interpretation of particular documents. I also queried the nature of the Order Map. However, I am satisfied that it

¹ Following the decision of Inspector Millman of 10 January 2013

² Decision dated 28 March 1990

³ Including evidence not before Inspector Millman

complies with the notation specified in the regulations⁴ and no issue is apparent in relation to the alignment of the claimed route depicted on the Order Map.

5. Following the close of the inquiry, a typed copy of the closing submission delivered by Mr Lawrence at the inquiry was provided and circulated to the other parties. A further submission was received from Mr Simpson on behalf of the principal objectors⁵, which addressed the case of *British Transport Commission v Westmorland County Council [1958]* cited, and this has also been circulated for information. This issue relates to the first point in paragraph 8 below.

Main Issues

6. The Order is made under Section 53(2)(b) of the 1981 Act, relying on the occurrence of an event specified in Section 53(3)(c)(i) of the Act. Therefore, if I am to confirm the Order, I must be satisfied that the evidence discovered shows that a right of way, which is not shown in the map and statement, subsists. The burden of proof to be applied is the balance of probabilities. The Order also relies on Section 53(3)(c)(iii) of the Act to modify particulars in the statement for the relevant ways arising out of the addition of the claimed route to the definitive map and statement.
7. I shall consider whether the evidence provided is sufficient to raise an inference of the dedication of a public footpath. Section 32 of the Highways Act 1980 ("the 1980 Act") requires 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.
8. If the evidence is sufficient to infer the dedication of a public footpath, consideration would need to be given to the 'annihilation' argument⁶ put forward by Mr Simpson and the potential modifications to the Order in light of the closing remarks of Mr Ward for the County Council.

Reasons

9. The Order proposes to record a public footpath between Cuddesdon and Denton Footpath 19 and Little Milton Footpaths 4 and 5 on the western and eastern sides of the River Thames respectively. The evidence needs to be considered in relation to the former existence of a weir and bridge and the subsequent references to stepping stones in this location.

The weir and bridge

Consideration of the evidence

10. It is accepted that a weir formerly existed in the locality of the claimed route. The earliest map evidence is the D'Oyley Estate map of 1743, which depicts a straight feature across the River Thames annotated as a weir. Information provided from the publication known as the Victorian County History ("VCH") suggests that this feature was a fishing weir. Whilst Mr Crawley refers to the existence of a weir dating back to the sixteenth century, the location and nature of any such weir cannot be determined from the information supplied.

⁴ The Wildlife and Countryside (Definitive Maps and Statements) Regulations 1993

⁵ A single objection was submitted on behalf of Sir Victor Blank and the Societe de Developpement Agricole SA

⁶ This relates to the physical destruction of the claimed route

11. It is apparent from the VCH that by 1800 the weir had been modified pursuant to an assessment of the Court of Sewers. Whilst the weir is not shown on the 1797 Davis map, I consider it probable that a weir continued to exist between 1743 and 1800. However, it cannot be determined whether the public were able to cross the river at the weir during this period. Although Mr Crawley has provided information regarding public use of weir bridges over the River Thames, I need to consider the evidence in relation to the relevant feature across the River Thame. He believes the weir would have been used as a bridge since the date it was modified.
12. A weir in this location is annotated on the 1811 Ordnance Survey ("OS") drawing, 1830 first edition OS map, 1851 Chippenhurst⁷ tithe map and 1881 OS map. There is also support for a feature in this locality in the OS boundary remarks book of 1873. Although a weir is not depicted on other maps, Mrs Rumfitt, an expert witness called by the principal objectors for the purpose of interpreting the evidence, accepts that a weir probably existed continuously from 1800 until at least the date of the survey for the 1881 OS map⁸. I agree that the evidence as a whole supports such a conclusion. The 1898 OS map shows that the weir no longer existed by the date of the survey⁹. The 1873 boundary remarks book and 1881 map provide the clearest indication of the features present in this locality.
13. Another witness called by the principal objectors (Mr Munby) gave evidence on the likely nature of the weir structure based on his archaeological expertise and observations of the remains visible when the river level was low. Given the height of the River Thame at the time of my visit, I have had to rely on the photographs provided of the site when the river was lower. Mr Munby has produced sketches showing his interpretation of the weir structure. He believes that there would have been two dam walls either side of a weir in the locality of the former eyot¹⁰ with a sluice gate on the western side of the river to control the flow of the river. A wall in the western bank, including the vertical slot for the sluice gate, was visible during my visit but erosion has removed any sign of the former features on the eastern bank. The evidence on this issue was not challenged and I accept it is probable that the weir structure was similar in layout to the feature shown on the sketches produced by Mr Munby. Whilst Mr Simpson considers it would be useful to attach a copy of the sketches to this decision, I am not convinced this is necessary. Copies were available at the inquiry in the same way as the other documents.
14. A sketch map within the 1873 boundary remarks book shows two features crossing the river on each side of the eyot and the western one is annotated "*Foot Bridge*". It is quite possible that some form of bridge structure, whether for public or private use, continued at the time over the eastern feature and this is supported by the minutes addressed below. Further, Mr Munby accepted that it is possible that there was a bridge over the weir. There is no apparent path shown connecting with the eastern or western features. The path shown on the western side of the river stops at a boundary feature and the paths within Little Milton do not continue through to the river. This document stems from the duty given to the OS to define where boundaries were located. The boundary remarks book was unpublished but the sketch map shows features in greater detail than the 1881 OS map.

⁷ Subsequently known as Chippenhurst

⁸ 1879/80

⁹ 1897

¹⁰ A small island

15. The 1881 OS map shows two features leading out of the eyot. These are off-set and could accord with the weir structure depicted on Mr Munby's sketches. There is no annotation shown in respect of either of the features crossing the river. A spur is represented leading to the western section and this in turn connects with other paths. However, there is no apparent link shown on the eastern bank of the river through parcel 37. The failure to depict a linking path within this parcel does not necessarily mean that access was precluded or that there was a lack of use. Nonetheless, it is not suggestive of a path being readily identified by the surveyor on the ground in comparison to the other paths shown.
16. A series of minutes have been provided from the latter part of the nineteenth century. The first set relate to meetings of the Bullingdon Highway Board ("the Board"). It is recorded in the minutes of 13 April 1887 that the chairman raised the condition of a bridge over an old weir at Chippinghurst said to connect Milton to Oxford and other villages in the immediate locality. This is stated to have "*fallen in and become useless*". The reputed owner (Mr Greenwood) is believed to have repaired it as a bridge at least once. It is recorded that the clerk was directed to write to Mr Greenwood asking him to repair the bridge.
17. It is recorded in the Board minutes of 11 May 1887 that the clerk had inspected the Little Milton inclosure award. He was instructed to undertake further searches in London for the Cuddesdon award in which Chippinghurst would probably be included. The minutes of 8 June 1887 record that the clerk had made the necessary searches but had been unable to proceed further in light of the costs of obtaining a copy of the plan for the Cuddesdon award. The matter was postponed for a month with the surveyor directed to visit the site and prepare an estimate for the cost of repairing the bridge. It is recorded in the Board minutes of 13 July 1887 that the surveyor had visited the site and obtained two estimates for the repair of it as a footbridge. Further, the clerk was directed to obtain a copy of the plan for the Cuddesdon award before any decision was reached.
18. The Board minutes of 14 September 1887 record that the award plan was of no assistance as it did not include the weir. An old inhabitant of the parish of Little Milton (Mr Thomas Betts) attended and his proof was taken down by the clerk. Mr Franklin stated that the structure had been repaired on the directions of Mr Greenwood as a bridge rather than a weir. It was concluded that "*after some considerable discussion and a further inspection of the Little Milton award; it was unanimously resolved that the Clerk be directed to prepare and lay down before Counsel a case for his opinion on the whole matter*".
19. The minutes of 12 October 1887 record that the clerk had put before the Board the case and opinion of Counsel. Counsel's opinion seemed to be that the Board had no power to compel Mr Greenwood to repair the bridge. The Board agreed that the matter should stand over for the present. The minutes of 14 December 1887 record that "*Mr Thos Betts again attended before the Board to ask if the Board would commence the repair of the Chislehampton Bridge over the Thame and the Board informed Mr Betts that it was not their intention to do anything in reference to the bridge at present*".
20. A period of 10 years elapses before the crossing of the river is raised again by Little Milton Parish Council. In this regard it is worth noting that parish councils had only been established by the Local Government Act 1894 ("the 1894 Act").

It is also apparent that permission to use a private bridge to the north had been withdrawn. The matter was subsequently pursued primarily by Little Milton and Cuddesdon Parish Councils. The minutes for Garsington Parish Council indicate that its involvement was more limited.

21. The minutes for Little Milton Parish Council of 19 January 1897 record details of a discussion regarding this matter. It is stated that the clerk had been unable to inspect the paths and broken bridge due to bad weather but an examination of the award map and OS map¹¹ show that footpaths connecting six adjacent parishes were rendered useless. Further, pedestrians were deprived of a short route to Oxford which would save about 2.5 miles. It was agreed that the clerk should write to the affected parish councils or meetings to ask them to take joint action to get the bridge repaired or replaced. Clarification would also be sought from the County Council on the matter.
22. The minutes for Little Milton Parish Council of 14 March 1898 record that Mr Dick Betts¹² asked for information regarding the bridge and he stated that he had been advised by the Footpaths Preservation Society to place a petition before the County Council. The Chairman stated that the matter had been several times before the parish council. He outlined the steps taken and the correspondence involving the parish councils and meetings in the area. It is recorded in the minutes of 19 July 1898 that a petition to the County Council had been drafted and circulated within the parish for signatures and subsequently forwarded to Great Milton.
23. It is apparent from the minutes for Little Milton Parish Council of 18 October 1898 that Headington Rural District Council¹³ ("the District Council") did not accept any liability to restore the bridge. Cuddesdon and Little Milton Parish Councils pursued the matter with the County Council and this is reported in the minutes for Little Milton Parish Council of 17 January 1899. It is stated that the County Council had asked for information regarding the right of way and a committee of the County Council had considered the matter and could not see that an obstruction existed to make Section 26 of the 1894 Act applicable. The County Council recommended that an application be made to the District Council under Section 16 of the 1894 Act. The minutes of 4 March 1901 record that Mr D Betts had tried to revive the matter and this proposal was seconded by Mr F. Betts¹⁴ but it was not pursued by Little Milton Parish Council.
24. The minutes for Cuddesdon Parish Council of 14 March 1898 record that a letter was read out from Mr Betts of Milton which stated that a valuable right of way over the weir bridge had fallen into disuse due to the decay of the bridge. He asked for the assistance of Cuddesdon Parish Council regarding this matter. It is also recorded that: "*In response to the Chairman several of the older members stated that there had been an unchallenged right of way over the bridge for over 30 years*". It was resolved to take the necessary steps to have the matter investigated. The minutes for Cuddesdon Parish Council of 8 September 1898 record that the District Council did not consider itself to be liable for the condition of the bridge. It is recorded in the minutes of 23 February and 6 March 1899 that the parish council was not able to supply the District and County Councils with the information required in relation to a right

¹¹ I take this reference to relate primarily to paths shown on the OS map given that only a section of Little Milton Footpath 4 is shown on the inclosure award map.

¹² The research undertaken by Mrs Rumfitt indicates that he was the son of Thomas Betts who had passed away in 1888.

¹³ The successor to the Board for highway matters

¹⁴ He is believed to have been the cousin of Mr D. Betts in light of the research undertaken by Mrs Rumfitt.

of way by means of a bridge. The parish council decided to let the matter drop.

25. A letter of 28 January 1899 from the District Council to the County Council states that it is "*not satisfied that there is a right of way over the bridge and cannot admit liability to maintain same*". The County Council's Local Government Act Committee considered the petitions of the parish councils under Section 26 of the 1894 Act but concluded that the wrong procedure had been adopted and that complaint should have been made to the District Council under Section 16 of the Act. This decision was reported in the Oxford Journal on 11 February 1899.

Conclusions

26. The minutes are supportive of the former existence of a bridge over the weir and this is supported to some extent by the 1873 boundary remarks book. However, it cannot be determined when provision was made to cross from one side of the River Thames to the other and whether this crossing point remained constant. The earlier maps only record the existence of a weir.
27. It is not certain who instigated this matter when it first came before the Board but the relevant minute of 13 April 1887 is supportive of a former bridge over the weir which provided a means of access between Little Milton and Oxford and villages on the western side of the River Thames. This is suggestive of the bridge being a highway.
28. It is apparent that research was subsequently undertaken in relation to inclosure awards and evidence was taken from a longstanding resident of Little Milton (Mr Thomas Betts). Estimates were also obtained for the repair of the bridge. There was considerable discussion and Counsel's opinion was sought on the whole matter. These minutes indicate that the Board was unsure about the status of the bridge and any liability to maintain it. It appears that Counsel advised the Board that it could not compel Mr Greenwood to repair the bridge. This is despite there being evidence that he had previously repaired it.
29. The Board made it clear in the relevant minute of 14 December 1887 that it did not intend to do anything with reference to the bridge at the present time. This does not provide an unequivocal statement regarding the status of the former bridge. However, it does indicate that the Board was not satisfied at the time that a highway existed. It reached this decision having considered the available evidence and taken advice. From looking at the minutes, it cannot be determined that the reason for the Board's decision was the cost of repairing the bridge.
30. The later minutes reveal that there was support from three parish councils for the reinstatement of a bridge over the river, presumably because it was considered to be a right of way. In respect of Little Milton Parish Council, the matter was pursued to a certain extent by Mr Dick Betts whose father had been involved when the matter went before the Board in the 1880s. The only reference to potential use of the bridge is found in the Cuddesdon minutes of 14 March 1898. Whilst there is no evidence to suggest that any attempt was made to deter public use when a crossing was available, it cannot be determined that any such use was significant in terms of the number of users or the frequency of the use.

31. The District Council clearly concluded that it was not satisfied there was a right of way over the river. Although no reason is given for this decision, it cannot be determined that it was necessarily due to the costs involved in constructing a bridge. It is apparent that further information requested by the District Council and County Council was not supplied. I consider it significant that no right of way was acknowledged by either the Board or the District Council when they considered the evidence and the assertions by Mr Thomas Betts and the parish councils.
32. The supporters place reliance on the existence of public rights of way on both sides of the river and the depiction of these paths on the OS maps. In this respect, the case of *Eyre v New Forest Highway Board 1892* ("Eyre") may be of relevance. It was held in *Eyre* that where a short section of a route of uncertain status exists its status can be presumed to correspond to the two highways linked by it. However, in my view, there stills need to be evidence to show that public rights exist on the balance of probabilities over the claimed route. Further, *Eyre* does not preclude the existence of rural cul de sacs, for instance leading to a place of public resort.
33. The boundary remarks book does not show any paths that directly link with the claimed route. Whilst the position changes by the time of the 1881 OS map, no direct link is clearly visible on the eastern side of the river. The relevant paths within Little Milton form a continuous route in their own right. I do not doubt that there was some use of the bridge structure given the references in the minutes but the 1881 OS map is not supportive of use to such a degree to indicate a recognisable path on the ground though parcel 37. The path shown leading to the western side of the river may have been used to some extent by the public. However, it could equally have been used for other purposes such as to access the weir. I address the relevant paths with reference to the twentieth century evidence below.
34. In considering the documentary evidence outlined above, I have done so primarily in the context of common law dedication. Mr Lawrence submits that I should also have regard to statutory dedication even though the relevant statutory provision was not in force at the time¹⁵. On this issue, I have concerns about the identification of the date when the status of the claimed route was brought into question, which is the date from when the required twenty year period of use is calculated retrospectively, given the uncertainty as to when any use ceased to be possible. Further, the evidence would need to show that there was uninterrupted use by the public throughout the relevant twenty year period.
35. Having regard to my conclusions regarding the evidence, I accept that it is sufficient to demonstrate that a right of way can be reasonably alleged to subsist. However, in respect of the test that I need to apply, I am not satisfied on balance that the documentary evidence is of such weight to show that a right of way subsists. In reaching this decision I have placed significant weight on the decisions reached by the Board and the District Council. I now turn to the evidence in relation to the stepping stones.

¹⁵ Now found in Section 31 of the 1980 Act

The stepping stones

Consideration of the evidence

36. The 1898 second edition OS map shows the eyot along with black dots which are annotated as "*Stepping Stones*". There is a path leading to the stones on the western bank which continues to the north and west. On the eastern bank, Little Milton Footpaths 4 and 5 are shown but no path is again depicted through parcel 37. These features appear to be depicted in the same way on the 1921 and 1922 OS maps. The annotation "FP" also appears in relation to some of the paths shown which is indicative of pedestrian use.
37. The evidence of Mr Munby and Mr Hall¹⁶ is supportive of the stepping stones originating from the remains of the former weir structure. Mr Hall believes the stones were recycled and that they consisted of a more orderly and substantial feature in the past. In contrast, the principal objectors consider that the stones were random in nature. Mr Crawley obtained the view of the OS in 1998 in relation to the depiction of the stepping stones on the OS maps. The OS states that rather than being a random distribution of stones they were a properly surveyed topographical feature. Further, the point is made that the surveyor would not have taken into account whether the stones had any rights of way implications.
38. There is no evidence to indicate that the stones were deliberately arranged in a particular way to facilitate the crossing of the river. I find it significant that there is no mention of stepping stones providing an alternative means of access for the public in the various minutes from the latter part of the nineteenth century. The bridge is stated to have been impassable for about 15 years in a letter from Little Milton Parish Council to the County Council of 27 December 1898. Nonetheless, if it can be inferred from the evidence that the public subsequently used them to cross the river, an implication of dedication could arise from this use.
39. It is apparent that the County Council relied upon information supplied by the parish councils at the initial stage of the production of the original definitive map and statement for the area in the 1950s¹⁷. Parish survey forms and maps were compiled for the claimed rights of way in the parishes of Denton and Little Milton. The claimed Footpath 9¹⁸ in Denton is shown on the parish map on the western side of the River Thames but no continuation is shown to the stepping stones or across the river. However, Footpath 9 is described in the accompanying form as proceeding via the stepping stones. There is also a note in the form which states that the stepping stones no longer exist (see paragraph 40 below). This note is replicated in the form for the claimed Footpath 13¹⁹. No continuation is indicated on the Little Milton parish map for the relevant footpaths on the eastern side of the river. Nonetheless, Footpaths 4 and 5 are described in the survey forms as terminating at "*S.S. River Thame*".
40. The comments within the remarks section of the form for Footpath 9 states "*Not necessary to retain-Note stepping stones no longer exist and Lower Farm now demolished-*". A similar note appears in relation to Footpath 13. There is some uncertainty regarding the meaning of this note and both paths were

¹⁶ He was called by Mr Lawrence

¹⁷ In accordance with the National Parks and Access to the Countryside Act 1949

¹⁸ Now recorded as Cuddesdon and Denton Footpath No. 19

¹⁹ Now recorded as Cuddesdon and Denton Footpath No. 21

subsequently included on the definitive map. However, bearing in mind that the farm as well as the stepping stones was stated to no longer exist, I prefer the interpretation of the principal objectors that the words "*Not necessary to retain*" relate to the whole path. I note that this is also the interpretation of the County Council's Surveyor and Engineer in a memorandum of 8 December 1975. In addition, reference is made in this memorandum to the fact that they were the remarks of the owner of the land at the time (Col. Bowes). The reason why the relevant rights of way were claimed cannot be determined from the forms. This may have been due to evidence of use by the public and/or documentary evidence, including OS maps.

41. The first definitive map for Oxfordshire²⁰ shows the relevant footpaths in Denton and Little Milton in the same manner as the parish claim maps. Whilst the footpaths are not shown continuing as far as the river, there are references in the definitive statement to the stepping stones, particularly in relation to the termination points for Denton Footpath 13 and Little Milton Footpaths 4 and 5.
42. The revised definitive map and statement of 1968 appear to record no material changes in relation to the relevant rights of way. In contrast, the revised definitive map of 1999 depicts a spur leading from Cuddesdon and Denton Footpath 19 to the stepping stones. The present definitive statement²¹ records this footpath proceeding to "*its junction with FP 21 W of the stepping stones... with a spur leading SE to the stepping stones at the Stadhampton Parish*"²². Little Milton Footpaths 4 and 5 form a continuous route on the definitive map but they are described in the statement by reference to the stepping stones. There is nothing to suggest that the definitive map has been modified in respect of Cuddesdon and Denton Footpath 19 or that there has been an occurrence of a legal event affecting this path. Nonetheless, I am unable to find that the 1999 and 2006 map and statement record the same information as the earlier editions. It appears to me that the references to the parish boundary in the statement for Footpath 19 are incorrect.
43. An extract from the VCH, which was published in 1957, contains the statement in relation to Chippinghurst that "*The only communication with the outside world is by the Cuddesdon-Chislehampton road, or, when there are no floods, by the footpath and by stepping stones across the Thame to Little Milton*". Mr Hall draws attention to the examples of the present tense being used in the extract as a whole. This could indicate that there was access at that time via the stepping stones when the river was not in flood. He also says that this editor had a reputation of walking to see the places that were written about. It would not surprise him if the references in the text are based upon her personal experience. However, it cannot be determined that the editor did actually visit this site.
44. A feature corresponding to the stepping stones²³ is shown on the 1960 National Grid map. The 1974 National Grid map shows a feature labelled stepping stones but the eyot is no longer shown. I also note that the stones are not depicted as far as the eastern bank of the river, which may be representative of the erosion that has occurred in this location. The 1980 National Grid map contains the annotation in relation to the stepping stones.

²⁰ Relevant date of 1 January 1953

²¹ Relevant date of 21 February 2006

²² A note makes it clear that the path terminates at the parish boundary with Little Milton.

²³ No annotation appears in relation to this feature

45. The Oxford Fieldpaths Society raised the matter of the crossing of the River Thames with the County Council in 1963. There is then a large amount of correspondence regarding this matter involving the County Council and other parties. It seems to have been initially assumed that there was a right of way over the river. Consideration was given to the repair of the stepping stones and later the construction of a bridge. In respect of the latter, approval for a footbridge was granted by the relevant committee of the County Council, as noted in a memorandum of 29 April 1965. This bridge was not built and the provision of an alternative crossing point was subsequently pursued for financial reasons but without success. There is a reference to the stepping stones no longer existing in a memorandum of 4 July 1967.
46. A memorandum of 7 November 1972 from the clerk of the County Council mentions the papers from 1898-99, which are taken to indicate that a right of way may not exist. The County Council subsequently refused to admit that there was a highway maintainable at public expense over the river. However, a memorandum of 4 November 1975 from the County Secretary contains the statement in response to the claimed right of way over the river, "*I am not sure whether this fact has ever been doubted*". From 1992 onwards the County Council were clearly denying that there was a right of way over the river.
47. Two user evidence forms ("UEFs") have been submitted by Mrs Maund²⁴ and Mrs White²⁵. A statement was also submitted to the inquiry from Mrs Palmer. The UEFs are not particularly substantive in terms of the information provided. Mrs Maund states that she used the route several times a year between 1966 and 1978. Mrs White's frequency of use was the same and occurred between 1964 and 1976, when she says someone drowned. However, she also says that she used it occasionally between 1976 and 2015. Mrs White states that the route was only accessible when the water level was low and you had to take great care because the stones were uneven.
48. Mrs Palmer says that as a child during the war she would go down to the stepping stones with friends to play. She states that they were cautious about the stones. Although they were big and evenly placed they tended to be slippery because sometimes the river would wash over them. Mrs Palmer's evidence is only supportive of use to access the river. It does not indicate that she or the other children mentioned used the stepping stones to cross the river.

Conclusions

49. The evidence is generally supportive of the stones arising from the remains of the weir structure. They were first recorded on the 1898 OS map but could originate further back in time, possibly to the period when the crossing of the river was discussed by the Board. However, there is no mention of there being a means of crossing the river via stepping stones in the minutes. Nor is there any evidence of action being taken to deliberately place stones in a particular manner in order to facilitate the crossing of the river, whether for public or private purposes.
50. It is possible that the failure to claim the stepping stones as a public right of way was an error on the part of Denton Parish Council. There are references in

²⁴ Completed in 1985

²⁵ Completed in 2015

the survey forms to the stepping stones but they are stated to no longer exist. The fact that no right of way was claimed over the river via the stepping stones does not mean that no such right exists. Nonetheless, it cannot be determined that the parish councils believed that any right of way had originally existed over the stones. No explanation has been given for the subsequent inclusion of a spur on the western bank of the river.

51. The correspondence involving the County Council, commencing in 1963, is initially supportive of an acceptance of there being a public right of way over the stepping stones. However, this appears to be based upon nothing more than an assumption. When the matter is finally investigated to some extent the County Council changes its view. Although this is not reflected in the comment in the memorandum of 4 November 1975. The correspondence cannot be taken to be supportive of use of the claimed route.
52. There is conflicting evidence regarding the existence of the stepping stones during the twentieth century. It may be the case that they continued to exist and were only visible when the level of the river was low. The existence of the stones could raise an inference that people used them in order to proceed between recognised public rights of way. However, the documentary evidence as a whole does not generally support such a conclusion. The untested user evidence is limited in terms of its quantity and quality. It does nonetheless indicate that the stones, when available, were difficult to use.
53. In terms of statutory dedication, it is unclear when the status of the claimed route was brought into question. However, having regard to my conclusions above, I am not satisfied on balance that the evidence as a whole is sufficient to demonstrate that a public right of way subsists over the stepping stones by virtue of either statute or common law.

Other Matters

54. Whilst I understand that there is some support for the proposed rationalisation of the rights of way network in the area, this is not a matter that is relevant to my decision.
55. In light of my conclusions from the evidence, there is no need for me to address the matters set out in paragraph 8 above or invite comments in relation to the post-inquiry submissions.

Overall Conclusion

56. Having regard to these and all other matters raised at the inquiry and in the written representations I conclude that the Order should not be confirmed.

Formal Decision

57. I do not confirm the Order.

Mark Yates

Inspector

APPEARANCES

The Case in Support:

Mr G. Lawrence QC

Barrister instructed by the OSS

He called:

Mr C. Hall

For the Principal Objectors:

Mr E. Simpson

Barrister instructed on behalf of the principal objectors

He called:

Mr J. Munby

Mrs S. Rumfitt

Mr J. Hanlon

Interested Parties:

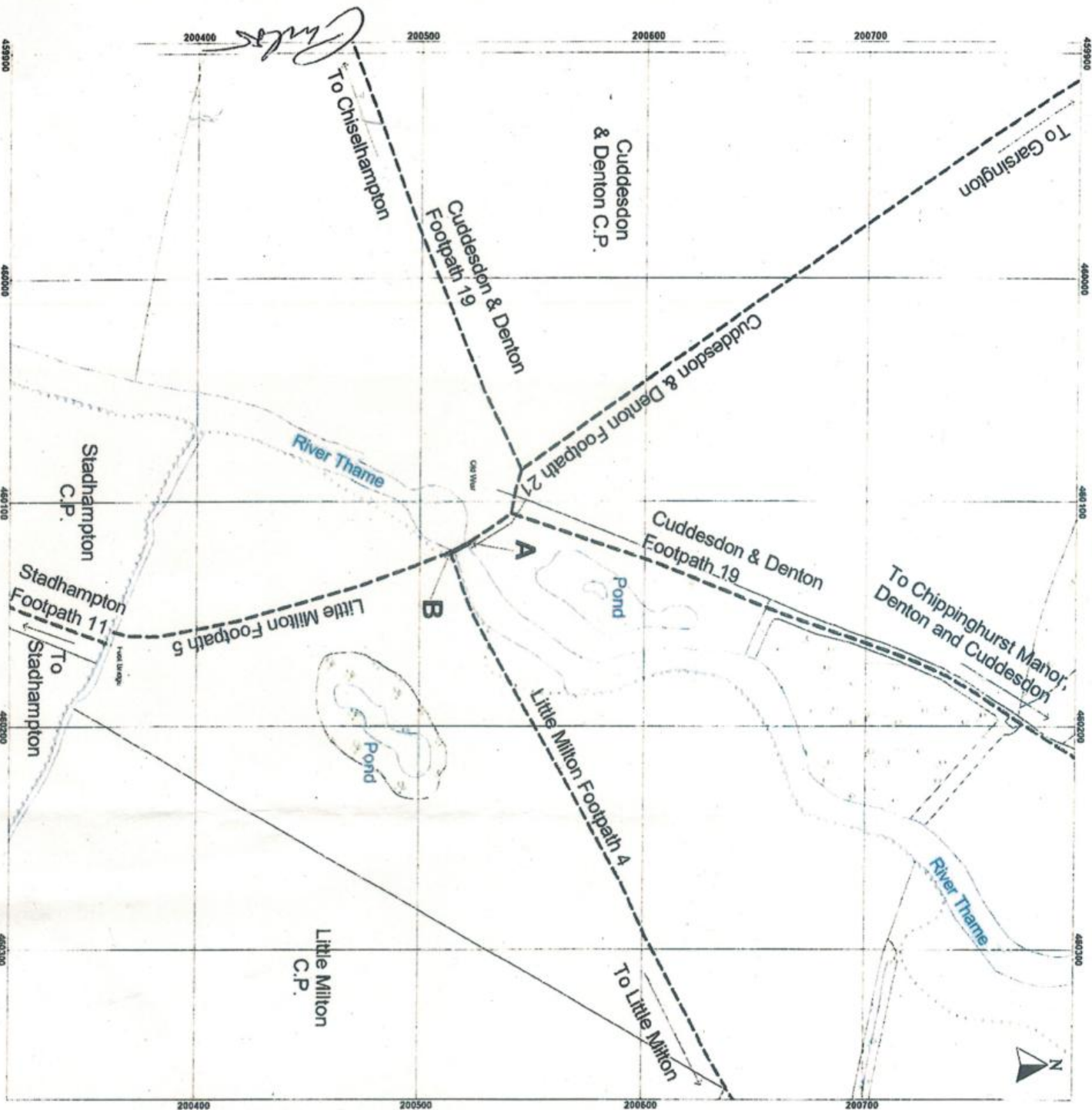
Mr T. Ward

Barrister instructed on behalf of the County Council

Mr D. Turner

DOCUMENTS

1. Proof of evidence of Mr Hall
2. Supplementary proof of evidence of Mrs Rumfitt
3. Statement of Mrs Palmer
4. Death Certificate for Thomas Betts
5. Statement of Mr Turner
6. Closing submissions on behalf of the principal objectors
7. Closing submissions on behalf of the OSS
8. Remarks on behalf of the County Council
9. Joint bundle of authorities



Wildlife and Countryside Act 1981 Sec 53
Definitive Map Modification Order

To Add Footpath No. 28 in Cuddesdon & Denton

Footpath to be added

A - B ————

Length: 9 m approx.
 Width: 1.2 m

Route of other rights of way

Parish boundary



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OS Reference: SP 6000
 Scale 1:2500
 Drawn By: DJR/AH
 Drawing No. WCA1981/423b
 Date: 5 August 2013

