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| **Interim Order Decision** |
| Site visit made on 18 April 2023 |
| **by Nigel Farthing LLB** |
| **an Inspector appointed by the Secretary of State for Environment, Food and Rural Affairs** |
| **Decision date: 28 June 2023** |

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| **Interim Order Ref: ROW/3278807** |
| * 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 Spelsbury Byway Open to All Traffic No. 44 Modification Order 2021. |
| * The Order is dated 17 March 2021 and proposes to modify the Definitive Map and Statement for the area by upgrading a Footpath to a Byway Open to All Traffic at Dean Grove, Spelsbury, as shown on the Order Map and described in the Order Schedule. |
| * There were 30 objections outstanding when Oxfordshire County Council submitted the Order to the Secretary of State for Environment, Food and Rural Affairs for confirmation |
| **Summary of Decision: The Order is proposed for confirmation subject to the modifications set out in the Formal Decision.** |
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Procedural Matters

1. I made an unaccompanied site inspection on 18 April 2023 when I was able to walk the whole of the Order route.
2. The Order has been made in compliance with a direction to Oxfordshire County Council, the Order Making Authority (OMA), by the Secretary of State in 2021 following a report made by another inspector. The OMA has taken a neutral stance in relation to confirmation of the Order.
3. In writing this decision I have found it convenient to refer to points marked on the Order Map, a copy of which is appended below.

The Main Issues

1. The requirement of Section 53(3)(c)(ii) of the Wildlife and Countryside Act 1981 (the 1981 Act) is that the evidence discovered by the surveying authority, when considered with all other relevant evidence available, should show that a right of way that is shown on the definitive map and statement as a highway of a particular description ought to be there shown as a highway of a different description.
2. For the Order route to be confirmed as a byway open to all traffic (BOAT) I will need to be satisfied on the evidence that the route has the status of a byway and that the right to use it with mechanically propelled vehicles was not extinguished by operation of Section 67 of the Natural Environment and Rural Communities Act 2006 (the 2006 Act).

**Reasons**

1. The Order route is part of an historical through route between Chadlington and Charlbury. In 1991 an application was made to record the entire route as a (BOAT). As a result of that application and subsequent procedures, different sections of the route are recorded with differing status. The northernmost section is a cul-de-sac public road known as Grove Lane. From the end of the public road to point A the track is recorded as BOAT 43. Between points A and C the Order route is recorded as a footpath. Point C is located at the bridge crossing Coldron Brook which is also the parish boundary. South of point C the remainder of the through route is recorded as Restricted Byway 30. Accordingly, the whole of the route has recognised vehicular status except for the Order route which is an isolated section of footpath lying between a BOAT to the north and a restricted byway to the south.
2. The status of the Order route was considered in 2010 in consequence of the 1991 application. I am satisfied that there is new evidence available to me which was not before the Inspector in 2010, including Bryant’s and Greenwood’s maps. These add to the totality of the evidence that I am required to assess.

*Inclosure Award*

1. The Spelsbury (Dean Hamlet) Inclosure Award 1779 (the Award) describes a route in the following terms; ‘One other public Road of breadth of forty foot branching out of the last described road near the East side of Clay Lands and extending in it’s present direction to the North end of a Lane at the North West Corner of a piece of land called Walker’s Little Sands leading into Dean Grove the same being part of the public road from Chadlington and Dean aforesaid to Charlbury in the County of Oxford’. The route described was not set out in the Award but was referred to as an existing public road. The Applicant asserts that the Order route is part of the route described in the Award but there is no surviving map to accompany the Award.

*Oriel College Map (1743)*

1. The area relevant to the route described in the Award is shown on a large-scale Map of the Residue of the Manor of Dean in the Parish of Spelsbury in the County of Oxford dated 1743. This map predates the Inclosure Award and depicts a route through Dean Grove and identifies the lands known as Clay Lands and Walker’s Little Sands referred to in the Award. The route depicted is consistent with the description of the Order route in the Award. The map depicts no other routes through Dean Grove. The map was concerned only with land in the parish of Spelsbury and thus does not show the land to the south of Coldron Brook.

*Estate Plans of Charlbury and Walcott 1761 and 1770*

1. These plans show the lands south of Coldron Brook and thus do not show any part of the Order route. The plans do however show a crossing of Coldron Brook consistent with point C, and a route continuing to Charlbury. On the 1761 plan this route is labelled ‘Chadlington Way’ and on the 1770 plan the route is annotated ‘To Chadlington’.

*Davis’s Map (1797)*

1. The relevant area is shown on two separate sheets. It depicts a through route from Chadlington to Charlbury with the relevant section of the route north of Coldron Brook shown in a manner consistent with the Oriel College map. Dean Grove is not shown as wooded although other woods are shown.

*Bryant’s Map of Oxfordshire (1824)*

1. Bryant’s Map shows a route from Chadlington to Charlbury which is consistent with the Order route but is not shown with the detail or accuracy of the Oriel College map. The Order route is shown as an almost straight line between Chadlington and Charlbury giving the impression of an indicative representation rather than an accurate plotting of the route. The feature which appears to be Dean Grove is shown as a narrow rectangle which is at odds with other representations of the wood. The Order route is shown on the outside and to the west of the wood. The key indicates that the route is depicted as a ‘Lane’.

*Greenwood’s Map (1831-32)*

1. Greenwood shows no route between Chadlington and Charlbury in the vicinity of the Order route. Dean Grove is shown.

*Kelly’s Map of Oxfordshire (1900)*

1. Kelly’s map is of small scale but does appear to show a through route from Chadlington to Charlbury consistent with the Order route.

*Tithe Records*

1. The only relevant tithe evidence is the Charlbury Tithe Award (1847) which relates to the lands south of Coldron Brook and thus provides no direct evidence of the Order route. It does however depict a route from ‘Mare Bridge’ (the crossing of Coldron Brook) consistent with it being a continuation of the Order route through to Charlbury. This is good evidence of the existence of a physical route but does not indicate the status of it.

*Ordnance Survey (OS) Maps*

1. The OS 1” map published in 1833 is of small scale but shows a route consistent with the Order route, as a double pecked line. The route is shown diagonally through Dean Grove on a similar alignment to the Oriel College map.
2. The OS County Series maps published in 1880, 1898/9 and 1919 show a route on a similar alignment to the 1833 map, but to a greater scale and thus with greater clarity. The route shown is consistent with the Order route. Much of the continuing route immediately south of Coldron Brook is not shown, but a remnant section is shown as an enclosed track.
3. Ordnance Survey maps are good evidence of the existence of the features shown but not of the existence or otherwise of public rights.

*Finance Act 1910*

1. On the Finance Act map the Order route is shown uncoloured and thus not within any hereditament for which tax was payable. BOAT 43 and Grove Lane are shown in the same fashion. The depiction of the Order route in this manner is consistent with it being a highway.
2. The route south of Coldron Brook was substantially unenclosed and is shown mostly within coloured hereditaments. The owners of two of the three hereditaments through which the route passed claimed a deduction for public rights of way, one of which was specifically for ‘cartroad from Charlbury to Chadlington’. There was one enclosed section which is shown uncoloured in the same manner as the Order route.

*List of Streets*

1. No part of the Order route or the longer through route was included on the First Definitive Map and Statement. The List of Streets maintained by OCC includes Grove Lane as an ‘unclassified metalled’ highway. From the end of Grove Lane to point B the route is recorded as an ‘unclassified’ highway. The short section B – C is not recorded on the List.

*Physical Evidence*

1. On the day of my visit there had been significant rainfall in the preceding days with the result that the route was wet, and in places very wet and muddy. Point A lies a short distance to the south of the intersection between BOAT 43 and BR16. The enclosed track runs south from this point, alongside an area of common to the west. At the point where the route approaches Dean Grove it narrows and was very wet underfoot. There was a considerable amount of rubbish on either side.
2. As the route enters the Grove it starts to slope downwards. The area is wooded and in places there are trees alongside and possibly within the route, and there were a number of fallen trees across the route. There was evidence of a reasonable amount of pedestrian use. The ground conditions and the overhanging and fallen trees would make it difficult to negotiate the route other than on foot.
3. Notwithstanding the extent of tree cover it was relatively easy to discern the course of the Order route. It is a significant feature with the appearance of a shallow hollow lane, the difference in depth against the surrounding woodland being evident in the areas of standing water and wet muddy stretches within the route. Although there was some encroachment by trees and undergrowth it was not difficult to envisage the dimensions of the original track.
4. At point B the track turns to the south for a relatively short distance leading to the narrow bridge across Coldron Brook. Beyond the bridge is a way-marker pointing out the course of RB30 and there was evidence on the ground of modest pedestrian use. South of the Brook the route is over an open meadow and then an arable field.

**Other Matters**

1. A number of matters were raised by objectors concerning the suitability or desirability of the Order route being upgraded to a BOAT. The point is made that, if confirmed, the Order will record a route which, for motor propelled vehicles, would be a cul-de-sac ending at point C. Concerns were expressed also about the environmental impact on the ancient woodland habitat. I understand the points made but, as they concern matters which lie outside the criteria set out in the relevant legislation, I have not given them any weight in reaching my decision.

Conclusions

1. The documents considered demonstrate overwhelmingly that from at least the mid-eighteenth century there existed a route between Chadlington and Charlbury which passed through, or in the vicinity of Dean Grove. Of the maps considered Greenwood’s (1831/32) is the only one not to show any part of the route, and this is at odds with the almost contemporary OS map of 1833.
2. The section of the route from Chadlington to Coldron Brook continued to be represented on all maps up to the mid-20th century. The section south of Coldron Brook ceased to be shown in full after the mid-19th century, suggesting a decline in use.
3. Although the documentary evidence is consistent in showing the existence of a physical route, most of the documents considered are not indicative of status. The exception is the Inclosure Award which describes a route as a ‘public Road of breadth of forty foot…… being part of the public road from Chadlington and Dean aforesaid to Charlbury in the County of Oxford’’. Although this route was not set out in the Award, the description of it as an existing ‘public Road’ is of considerable weight and the fact that it is said to lead from one settlement to another reinforces this.
4. The various private maps (with the exception of Greenwood) and the OS maps all depict a route consistent with the Order route, and in a manner consistent with public vehicular status.
5. Although there is no tithe evidence relating directly to the Order route, the treatment in the Charlbury Tithe Award (1847) of the continuing route south of point C is again consistent.
6. The treatment of the Order route in the Finance Act documentation is also consistent with that status, and the reference to a ‘cartroad’ provides further support.
7. The physical dimensions of the Order route, both as depicted and described in the documentary evidence, and as evident on the ground, are similarly consistent with a vehicular way.
8. I conclude that the evidence in its totality is sufficient, on a balance of probability, to prove the existence of a public vehicular route between Chadlington and Charlbury which passed through Dean Grove. There is no evidence before me which is suggestive of any different conclusion.
9. For the Order to be confirmed I must be satisfied that the Order route is the same route on the ground that is described in the Inclosure Award, as it is this which provides the substantive evidence of public vehicular status. One objector argues that the inconsistency in representation of the route between the various maps is such that no conclusion can be fairly drawn that the Order route and the Inclosure Award route are one and the same.
10. I recognise that careful scrutiny of the various maps considered reveals some minor inconsistencies in the alignment of the route shown. Davis and Bryant are of small scale and appear to make little attempt to show anything more than the general course of the route. Davis does not show Dean Grove as woodland but does show the route following a similar alignment to other maps when passing through the parcel which is Dean Grove. Bryant shows the route alongside the western boundary of a strip of woodland which presumably is intended to represent Dean Grove but the representation of the Grove is very different to any other map and this is the only representation of a route outside the Grove.
11. OS mapping is consistent in its depiction of a diagonal route through the Grove to Coldron Brook, widening significantly where it meets the brook.
12. I accept that there are minor differences in alignment of the routes depicted on the various maps. However, the post-Inclosure Award maps are consistent in representing a feature broadly similar to that shown on the Oriel College map. There is no evidence of a second, or alternative route. If a route on a different alignment had existed, it would have been of some significance as the Inclosure award establishes that it was a public road and it would have appeared on some maps and some physical evidence would possibly remain. There is however no evidence to suggest that there have ever been two routes through Dean Grove.
13. Having regard to all the evidence, I conclude, on a balance of probability, that that the Order route forms part of the road that has existed since the mid-18th century and is the same route as that shown on the Oriel College map and described in the Inclosure Award.

The 2006 Act

1. The effect of Section 67 of the 2006 Act is to extinguish rights for mechanically propelled vehicles (MPV) to use unrecorded public rights of way unless one of the exceptions set out in Section 67 applies. Where such rights are extinguished the route will have the status of a restricted byway.
2. Having concluded that the Order route is an unrecorded public vehicular right of way it is necessary to consider whether any of the exceptions to extinguishment apply.
3. Immediately before the 2006 Act came into force, section A – B of the Order route was included in the highway authority’s List of Streets. This is one of the exceptions to extinguishment and consequently the right for MPVs to use this section of the route has not been extinguished and it is appropriate for it to be recorded as a BOAT.
4. The section of the Order route B – C is not shown on the List of Streets and no other exception applies. Accordingly, MPV rights over this section have been extinguished and it is appropriate for it to be recorded as a restricted byway.
5. Having regard to these and all other matters raised, I conclude that the Order should be confirmed subject to the modification detailed in the formal decision below.

Formal Decision

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

Schedule Part I

* Delete the words: ‘and then continuing in a southerly direction for approximately 40 metres to the parish boundary at a bridge over Coldron Brook at SP 3437 2089 (point C) where it joins with Charlbury Restricted Byway No. 30’.
* Insert under ‘Proposed Status and Number’ the words ‘Restricted Byway’ and under ‘Description of Route’ the words ‘From the end of Spelsbury Byway Open to All Traffic No. 44 at grid reference SP3437 2093 (point B) in a southerly direction for approximately 40 metres to the parish boundary at a bridge over Coldron Brook at SP 3437 2089 (point Con the order plan) where it joins with Charlbury Restricted Byway No. 30’.

Schedule Part ll

* Delete the words; ‘and then continuing in a southerly direction for approximately 40 metres to the parish boundary at a bridge over Coldron Brook at SP 3437 2089 (point C) where it joins with Charlbury Restricted Byway No. 30’, and under Width, delete ‘5 metres between SP3437 2093 and SP3437 2089’
* Insert under ‘Status’ the words ‘Restricted Byway No. 44A’ and under ‘Description’ insert the words; ‘From the end of Spelsbury Byway Open to All Traffic No. 44 at grid reference SP3437 2093 (point B) in a southerly direction for approximately 40 metres to the parish boundary at a bridge over Coldron Brook at SP 3437 2089 (point C) where it joins with Charlbury Restricted Byway No. 30’.Insert under Width ‘5 metres’ and under Conditions and Limitations insert ‘None’.

Order map

* Amend the key to show B – C as a Restricted byway
* Between points B and C delete the notation for Byway Open to All Traffic and insert the notation for Restricted byway and amend the map accordingly.

1. Since the confirmed Order would show as a highway of one description a way which is shown in the Order as a highway of another description as submitted I am required by virtue of Paragraph 8(2) of Schedule 15 to the 1981 Act to give notice of the proposal to modify the Order and to give an opportunity for objections and representations to be made to the proposed modifications. A letter will be sent to

interested persons about the advertisement procedure.

Nigel Farthing

Inspector

