

The Chiltern Railway and Port Meadow

Rebuttal Note on behalf of the Freemen of Oxford and the Port Meadow Protection Group

- 1.1.1 Chiltern Railways have attempted to define the Ownership of Port Meadow in a document recently submitted to the Inquiry [CRCL/INQ/62].
- 1.1.2 In some ways this matter is a side issue, and it is not necessary for the Inspector to come to a view on one of the classic questions of English legal history, that has troubled all since Professor Maitland over a century ago, and remains essentially unresolved.¹ The ownership of common land in ancient boroughs is perhaps a matter neither for the historian nor the lawyer alone, which is why appeal to doctrine on either side may not be helpful.
- 1.1.3 We have stated the simple fact that Port Meadow is ancient urban common, and the rights of the Freemen are recorded in Domesday Book (1086 AD) “all the burgesses of Oxford have in common pasture outside the walls paying 6s 8d.” (DB I, 154b). These rights, held of the Crown, are thus recorded more than a century before the limits of legal memory in 1199.
- 1.1.4 The Burgesses and Freemen were indistinguishable in the pre-Reform boroughs, and we have stated that the rights of the Freemen were saved by the *Municipal Corporations Act* ‘as if this act had never been passed’. Their rights were recognised by the *Buckinghamshire Railways Act, 1850* [CD 5.4] with a clause devoted to the rights of the Freemen of Oxford on Port Meadow [Sect. XIV, at p.82], and compensation for the lost portion of common land was then paid to the Freemen’s Charities.
- 1.1.5 The Freemen’s rights have never been taken from them, and they remain today the beneficial owners of Port Meadow in their view and that of their legal advisors; this has not been refuted by the latest Chiltern Railways statement and, as we have stated above, it is not a matter on which the Inspector has to decide.

¹ F.W. Maitland, *Township and Borough* (1898), 195-200.

- 1.1.6 The City of Oxford is of course the Registered Owner of the Meadow, and that is indisputable. However it is not to be expected that the City would admit to the special and historic nature of that ownership with regard to the Freemen and commoners, and it is regrettable that the City Council (which has no Archivist to remind it of its history) is occasionally somewhat hazy about its recollection of the past.
- 1.1.7 We are therefore not surprised that the City, in its dealings with Chiltern Railways, may have omitted to refer to the existence of Registered Common Land on both sides of the Railway. We remain surprised that Chiltern Railways and their advisors did not discover this for themselves, which has become apparent to the Inquiry.
- 1.1.8 But in practice, these arcane discussions of the nature of rights and ownership do not have much of a practical bearing on the matters before the Inquiry. The City has, and does, and will, consult with the Freemen and commoners on matters relating to Port Meadow. As recently as December 2010 one of us [AC] was present, as a representative of the Freemen, at a meeting with the City Council and Natural England to discuss the vexed question of flooding and drainage on the meadow.
- 1.1.9 We therefore do not expect that the City will enter into a ‘one-sided’ agreement with Chiltern Railways without consultation, and trust that it will fulfil its historic responsibilities with regard to its ‘ownership’ of the Registered Common Land of Port Meadow.

Alison Cobb, Stephen Cobb,

Binsey, Oxford, 18.01.11