



## **STATEMENT OF CASE**

Definitive Map Modification Order

Parish of Wolfhampcote

R352

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## 1. Introduction

1.1 No application to modify the Warwickshire Definitive Map and Statement has been received by Warwickshire County Council regarding the Order route but the status of the route has been in dispute for many years. One side of the dispute thinks it should be a road or Byway Open to All Traffic and recorded as such on the Definitive Map, and the opposing side alleges it should be a Footpath or Bridleway

1.2 A meeting was held on 23<sup>rd</sup> April 2018 between Warwickshire County Council and Warwickshire Police to discuss the ongoing dispute between various parties concerning the highway between Wolfhampcote and Sawbridge. Warwickshire Police were concerned that the lack of clarity of the status of the route was hampering their ability to respond to the numerous reports they received in an appropriate manner. As a result, it was agreed that the process to determine the legal public status of this route would be started.

1.3 The route is recorded on the Warwickshire List of Streets appendix (63). (the s36 Highways Act list) as Wolfhampcote Lane. The List of Streets is a record of routes which are maintainable at public expense and gives no indication of the status of the route. The title page states that it does not provide information on the length, lateral extent, or level of public rights of highway.

1.4 Under section 53(2)(b) of the Wildlife and Countryside Act 1981 the County Council, as Surveying Authority, is under a duty to keep the Definitive Map under continuous review (Appendix 1) and as there was an allegation that the route should be recorded on the Definitive Map, the process under the Wildlife and Countryside Act was the appropriate route to take.

1.5 The definitive map process allows for all parties to present evidence supporting their case and then should an order be made that they disagree with to present their case at public inquiry for an independent decision to be made.

1.6 Following extensive research into historical documentary sources and analysis of the evidence that came to light, in conjunction with evidence put forward by witnesses on both sides of the dispute, the County Council concluded that the section 53(3)(c)(i) test was met, and an Order (Appendix 2) was made on 18 March 2020 to modify the Definitive Map and Statement by adding a byway open to all traffic ("the Order"). The Order attracted objections and has had to be submitted to the Secretary of State for confirmation.

## 2. Location

2.1 The Order route lies within the parish of Wolfhampcote in the district of Rugby (Appendix 3)

2.2 The route can be found to the west of St Peters Church at Wolfhampcote and runs in an approximately north-westerly direction to Sawbridge.

2.3 It starts from its junction with D2291 Nethercote Road to junction D2289 Wolfhampcote Lane.

2.4 The route is hedged for the most part to the north side from which the width of 12.192 metres (40 foot) is measured. It runs through agricultural land and new fencing to the south may impede on the width

2.5 The Order route intersects with footpaths R250, R251a and R252.

### 3. Documentary Evidence and Interpretation

#### 3.1 ***John Speed Map – 1610***

No route is not shown between Wolfhampcote and Sawbridge (Appendix 4)

#### 3.2 ***Henry Beighton Map 1725 -CR1316***

The map is detailed, showing the location of windmills, churches etc. and the routes that are depicted are those Henry Beighton regarded as being significant at that time.

Henry Beighton surveyed the county before drawing the map and thus it can be regarded as an accurate map. Henry Beighton was a respected surveyor and map producer. No route is shown between Wolfhampcote and Sawbridge (Appendix 5)

#### 3.3 ***John Haywood Map 1788 – MA1788***

No route is not shown between Wolfhampcote and Sawbridge (Appendix 6)

#### 3.4 ***John Cary Map 1787 – MA1787***

No route is not shown (Appendix 7)

#### 3.5 ***Weller Railway Map – 1808***

A route is shown on the map between Wolfhampcote and Sawbridge and is indicated with a solid line. Other routes shown on the map have a thicker black line on one side, which could suggest a difference in status to the route shown, but there is no map key to verify this. (Appendix 8)

#### 3.6 ***Smith Map 1808- MA1808***

The scale and cartography mean that the accuracy of the alignment is not clear, but a route is shown on the map between Wolfhampcote and Sawbridge and is described by the map key as a cross road. This could suggest that the cartographer regarded the route as public. It is shown in a manner similar to roads that are currently minor roads and bridleways and others that are not currently public routes of any description. (Appendix 9)

### 3.7 **A New Map of Warwickshire by John Cary (Engraver) 1811**

The scale and cartography mean that the accuracy of the alignment is not clear, but a route is shown on the map between Wolfhampcote and Sawbridge. There is no map key to reference what status the routes are, but the map is called “New Map of Warwickshire, divided into Hundreds, Exhibiting Its Roads, Rivers, Parks &c, which could suggest that it is a road. (Appendix 10)

### 3.8 **Dix Map 1820- MA1820**

The scale and cartography mean that the accuracy of the alignment is not clear, but a route is shown on the map between Wolfhampcote and Sawbridge and is described by the map key as a cross road. This could suggest that the cartographer regarded the route as public. It is shown in a manner similar to roads that are currently minor roads and bridleways and others that are not currently public routes of any description. (Appendix 11)

### 3.9 **Greenwood Map 1820/21 (IMG6442JPG)**

A route is shown running from Wolfhampcote and Sawbridge and as a cross road. This could suggest that the cartographer regarded the route as public. It is shown in a manner similar to roads that are currently minor roads and bridleways and others that are not currently public routes of any description. (Appendix 12)

### 3.10 **Pigot Map – 1828**

A route is shown on the map between Wolfhampcote and Sawbridge and is described by the map key as a cross road. This could suggest that the cartographer regarded the route as public. It is shown in a manner similar to roads that are currently minor roads and bridleways and others that are not currently public routes of any description. (Appendix 13)

### 3.11 **Lieutenant – Colonel Colby’s Map 1834/35 JPG5**

Only part of the map is available in the approximate area of where the route should be. A route is shown on the map heading from Wolfhampcote approximately west, and then north west in the direction of Sawbridge. It is shown in a manner similar to other current public roads, and bridleways. (Appendix 14)

### 3.12 ***Cruchley Map (circa 1836)***

The map is called “The Railways and Names of Stations, also Turnpike Roads, Gentlemens Seats &c &c, Imported from the Ordnance Survey Maps. A route is shown between Wolfhampcote and Sawbridge, but the map does not have a key as to the status of the route. (Appendix 15)

## **Ordnance Survey**

### 3.13 ***CS2500 1<sup>st</sup> Ed 1881-1890***

At the south-eastern end of the route towards Wolfhampcote, a route is shown on the map, heading approximately westwards. It is indicated with double pecked lines. There is no indication of status.

The route continues approximately northwest where it crosses the Oxford canal. Trees are drawn in line with the field boundaries. Midway along the route it joins another route approximately from the west. This route is indicated with double pecked lines and labelled FP.

Closer to Sawbridge, another route is indicated with double pecked lines and labelled FP, joining the route. The map shows lines across the route which could be interpreted as gates

The route continues approximately north east towards a cluster of buildings at Sawbridge. There is a solid line at this point possibly indicating a gate, where it joins Wolfhampcote Lane. Where there is a route that appears to be going through fields, hook marks are connecting the elements of the plots together. (Appendix 16)

### 3.14 ***CS2500 2<sup>nd</sup> Ed 1900-1905***

At the south-eastern end of the route towards Wolfhampcote, a route is shown on the map, heading approximately westwards. It is indicated with double pecked lines. There is no indication of status.



The route continues approximately northwest where it crosses the Oxford canal. Trees are drawn in line with the field boundaries. Midway along the route it joins another route approximately from the west. This route is indicated with double pecked lines and labelled FP.

Closer to Sawbridge, another route is indicated with double pecked lines and labelled FP, joining the route. The map shows lines across the route which could be interpreted as gates. (Appendix 17)

3.14 ***The British online website*** (Appendix 18) refers to some documentation and the information is below:

***Wolfhampcote Enclosure, Bill.***

*The Earl of Warwick reported from the Lords Committees to whom the Bill, intituled, "An Act for dividing and enclosing certain Common Fields, Common Pastures, Common Meadows, Common Grounds, and Waste Grounds, within the Parish of **Wolfhampcote**, in the County of Warwick," was committed: "That they had considered the said Bill, and examined the Allegations thereof, which were found to be true; that the Parties concerned had given their Consents, to the Satisfaction of the Committee; and that the Committee had gone through the Bill, and directed him to report the same to the House, without any Amendment."*

***Wolshampcote Enclosure, Bill:***

*Hodie 3<sup>a</sup> vice lecta est Billa, intituled, "An Act for dividing and enclosing certain Common Fields, Common Pastures, Common Meadows, Common Grounds, and Waste Grounds, within the Parish of Wolfhampcote, in the County of Warwick."*

*The Question was put, "Whether this Bill shall pass?"*

*It was Resolved in the Affirmative.*

This shows the Wolfhampcote Inclosure Award Bill was passed through Parliament and that it had been enacted.

**3.15 Inclosure Award WOLFHAMPCOTE 1757 (manor of Wolfhampcote, Nethercote and Sawbridge) – QS0075/131**

The Inclosure Award details the division of the land in Wolfhampcote and surrounding areas to the landholders. Once the plots were set out and the rent charges determined, the highways are set out. Some routes are easy to identify because they are existing routes – current roads or public rights of way.

The inclosure award describes a “Publick” road already in existence which the Act stated should remain a road, open to all “persons horses beasts’ cattle and carriages and shall be deemed as part of the publick highway or road from Wolfhampcote to Sawbridge” (Appendix 19)

As described in the extract of the award below:

(Appendix 20)

and out of the allotment of the said Justinian raynsford along the west side thereof into over land and out of part of the said Robert clerke’s allotment on the southside thereof leading into a certain lane in wolfhampcote aforesaid called church lane shall (Appendix 21) Remain from time to time and at all times for ever hereafter as a publick road and common highway to all intents and purposes for the passage and Conveyance of persons horses beasts cattle and carriages and shall be deemed as part of the publick highway or road leading from Fflecknoe to Wolfhampcote aforesaid

and also that the ground now admeasured marked and set out being of the breadth of fforty feet leading from wolfhampcote Aforesaid into over thro’ and out of the several allotments of the said Robert clerke and Thomas goode into over thro’ and out of the lower end of the allotment of the Said elizabeth green Eleanor green and sarah green into over thro’ and out of the bottom part of the allotment of the said Elizabeth walker up to the town or Hamlet of sawbridge aforesaid shall be and remain from time to time and at all times for ever hereafter as a publick road and common highway to all intents And purposes for the passage and conveyance of

persons horses beasts cattle and carriages and shall be deemed as part of the publick highway or road from Wolfhampcote to sawbridge

There are numbers circled in pencil where there is a description of a route in the award, and occasionally written in the margin, there are words such as “public highway” “foot road” “bridle road.” with an arrow that could indicate which route description the pencilled notes could refer to. The number 9 is indicated where the description of a route heading from Wolfhampcote to Sawbridge is written in the award.

### 3.16 ***Copy of Inclosure Award for Wolfhampcote 09/09/1758 – CR0524B***

(Appendix 22)

This is a copy of the original inclosure award.

### 3.17 ***County Reference Oxford Canal 1770 - Z463L*** (Appendix 23)

These are carbon copies of an original plan. The routes are colour coded, making it hard to identify the status. There is a route indicated by a solid line heading from Wolfhampcote church approximately northwest.

### 3.18 ***Plan of the proposed turnpike road from the Southam Turnpike Road in the parish of Leamington Hastings to the London turnpike Road in the Parish of Braunston 1809 – QS111/15*** (Appendix 24)

The proposed plan shows that there is a route already in existence, in a similar position to the order route. It is shown as a continuous brown line heading from Wolfhampcote church, appearing to cross the Oxford canal twice before heading past Grandborough. It then continues approximately westwards before joining a cross road near Leamington Hastings. The route is depicted as Road. The route marks the field boundaries south of the road with the names the field owners/tenants. Sawbridge is not named on the plan but is clearly shown as a collective of buildings there and shown as narrower than the current width.

**3.19 *Manuscript Book Plan of Intended Improvements of the Oxford Canal between Longford and Wolfhampcote 1829 - CR1365/1*** (Appendix 25)

The route is shown from Wolfhampcote running northwest, same as the road to the south.

**3.20 *Finance Act 1910 – CR1978/2/82*** (Appendix 26)

The 1910 Act provided for the levying of tax upon the incremental value of the land. A survey of the whole of the United Kingdom was carried out by the Board of the Inland Revenue under the Act. The purpose of the survey was to provide a complete record of the value of all land as of 30th April 1909. This record was then to be used to apply a tax on the increase in the land value every time the land was sold ('increment value duty'). Since public roads were untaxed they were not coloured on the Finance Act maps and are often referred to as being excluded.

It was an offence to knowingly make any false statement or representation for the purpose of obtaining any reduction in respect of any duty under the 1910 Act. This would have included falsely claiming a public right of way, for which there was a deduction. The offence was punishable by up to six months imprisonment. This threat of criminal sanction and the fact that the survey was carried out by a public body under statutory powers make the Finance Act records reliable in what they show. Further explanation of the process of Finance Act recording and its relevance to public rights of way cases can be found in the High Court Case of *Robinson Webster (Holdings) Limited v Agombar 2001* (extract at Appendix 27).

The so-called Domesday Book (Appendix 28) gives the valuations associated with each hereditament shown on the map. The existence of public rights of way over land had the effect of reducing the value of the land and hence liability for the tax.

The route is shown as passing through hereditaments (plots 97, 36, 68, 5). It is not excluded from the plots as other roads such as D2289 are. There are deductions in the Domesday Book under For Public Rights of Way or user, but that could be in relation to the footpaths on the plots: Plot 97 Gross annual value 2,10 rateable value 2,0. Plot 36 gross annual value 12,0 rateable value 9,10. Plot 68 gross annual value

19,0. Plot 107 rateable value 15,10. Plot 5 gross annual value 6,0 rateable value 5,0. Which looks as though they only relate to the footpaths.

### 3.21 ***Grand Union Canal Plans for Widening 1930 – QS0111/636*** (Appendix 29)

There is a route indicated heading from Wolfhampcote church and is shown heading approximately towards the Willoughby area, but there is no indication as to the status of the route or where the route goes to.

### 3.22 ***The London Gazette Bridges over Railways 1 June 1926. 3583*** (Appendix 30)

The Gazette records under the heading of “Parish of Wolfhampcote – Bridges carrying roads from Wolfhampcote to Sawbridge, Sawbridge to Nethercote and Flecknoe station to Flecknoe over the Oxford Canal”

It also records “ Bridge carrying road from Wolfhampcote to Sawbridge over the London and North Eastern Railway.” This could suggest that an established road between Wolfhampcote and Sawbridge is on the ground.

### 3.23 ***Interpretation of Inclosure Award 1988 – Z719(SM)*** (Appendix 31)

The interpretation is based on the Wolfhampcote Inclosure Award 1758 and the Flecknoe Inclosure Award 1744, it is supported by the Oxford Canal plan circa 1770 (Z463L) and the plan of the proposed turnpike road from the Southam Turnpike Road in the parish of Leamington Hastings to the London turnpike Road in the Parish of Braunston, 1809 (QS111/15)

The map shown has the Wolfhampcote to Sawbridge route as the 9<sup>th</sup> awarded road in a continuous solid red line, as are all the awarded roads shown in this interpretation. The route is shown as starting from Wolfhampcote and heading approximately north-west, where it ends at a cluster of buildings in Sawbridge. The written interpretation that accompanies the map, records the width of the route from Churchway to Wolfhampcote as twenty feet, but the width of the route from

Wolfhampcote to Sawbridge as forty feet, which supports both the original and copy of the 1757 Inclosure award for Wolfhampcote to Sawbridge.

### 3.24 ***Reconstructed Inclosure Plan 2013 - Z1114/11/2*** (Appendix 32)

The plan is based on the original inclosure award (QS75/131). The route is shown heading from Wolfhampcote to Sawbridge, and it is depicted by double pecked lines. The route number and the width and type of the route are noted along one side of the depicted route. The route from Wolfhampcote to Sawbridge has “10<sup>th</sup> Road (40ft)” written alongside it.

### 3.25 ***Handover Map and Schedule 1929s*** (Appendix 33)

The 1929 Handover Maps record those highways maintainable at public expense for which the maintenance liability was transferred to the County Council under the provisions of the Local Government Act 1929. It was not mandatory to produce these documents and they were internal to the Council, i.e., they were not open to public scrutiny. They had no formal legal standing and could be changed at any time.

A route is shown on the map between Wolfhampcote and Sawbridge in pencil the wording “40 ft parish award” is written along the line of the route.

The Handover Schedule shows the route listed under “other roads including bridle roads” under the heading titled Waterbound and under that, the two titles sub headed as “Granite”, “Gravel or Flint etc.” The mileage is recorded as 1.75 and the Total Mileage box records 1.75 and is ticked.

### 3.26 **1932 Parish Survey Map** (Appendix 34)

The Parish would have recorded routes that they believed were Public Rights of Way within their Parish.

There is a route marked on the map from Sawbridge to Wolfhampcote, which is marked by brown dashed lines. The key on the map indicates that routes with brown dashed lines are "other roads"

### 3.27 **1950's Parish Survey Map** (Appendix 35)

The Parish would have recorded routes that they believed were Public Rights of Way within their Parish.

The map shows the route from Sawbridge to Wolfhampcote, it is identified as an "unclassified County Road.

### 3.28 **1950's Parish Survey Statement** (Appendix 36)

In the title line of route, the initial BR is crossed out and unclassified county road written. The standard form is used to record the information required, which suggests that is used as a carriageway.

Footpaths R251a and R252 were marked as routes 15 and 17, respectively. The R252 entry is incomplete/illegible. R251a states that that route terminates at the "Sawbridge to Wolfhampcote Road"

### 3.29 **1960's Draft Definitive Map**

The map does not survive in Warwickshire County Council's archive.

### 3.30 **Modified Draft Definitive Map 1959** (Appendix 37)

The route is shown but not marked as a Right of Way. It is not on the statement

### 3.31 **Definitive Map and Statement 1966** (Appendix 38)

The route is shown but not marked as a Right of Way.

In the statement it describes footpath R250 from the Sawbridge to Wolfhampcote Road, 495 yards northeast of Manor House Sawbridge, footpath R251 from the Sawbridge to Wolfhampcote Road 410 yards north-northeast of Manor House Sawbridge. R251a south of its junction of Sawbridge to Wolfhampcote Road, R251b , from R251 - 180 yards south of its junctions with Sawbridge to Wolfhampcote Road and describing R252 turning eastwards to the Sawbridge to Wolfhampcote Road, 940 yards northwest of the canal bridge.

3.32 **1991 Definitive Map** (Appendix 39)

No route is not shown between Wolfhampcote and Sawbridge on the map. It is not on the statement.

3.33 **1998 Definitive Map and Statement** (Appendix 40)

No route is not shown between Wolfhampcote and Sawbridge on the map.

The statement describes footpath R251a from E2289 Wolfhampcote Lane, and R252 from E2289 Sawbridge Lane.



#### 4. Consultation

An Informal Consultation was carried out in 2018. (Appendix 41) Many members of the public rang, emailed, or wrote, stating that they consistently use the route either by foot, bicycle, horse, or vehicle and that it should be available for all users.

##### User Evidence

User evidence forms were sent to the members of the public who requested one with 52 user evidence forms being completed and returned. (Appendix 42)

The earliest date of first use from the forms, was 1936. The end date from the majority was the date the form was submitted. The forms show use with mechanically propelled vehicles was from 1936 – the earliest date of first use and the forms shows that 23 users think that the route should be recorded as a Byway Open to all Traffic, and 9 users think it should be a Bridleway.

The table below shows the results of the forms:

How do you think the application route should be recorded	
Byway Open to All Traffic	23
Restricted Byway	13
Bridleway	9
Up to council to decide	1
Carriageway	5

How Did You Use the Application Route?	
Car	18
Bicycle	28
Horse	14
Foot	38
Motor Vehicle	14

4.1 The user evidence forms show that 15 users have been told that route is not public/stopped or turned back. The user evidence forms also shows that 27 out of 52 users have used the route in some form for more than 20 years. More usage of route has been made by foot (38), a reasonable number of users by horse (14) and the collective usage by vehicle and car combined (32). This could suggest that the route has been used “By Right” as Byway Open to All Public.

Some documentation received as part of the consultation supported the Order. This information is as below:

- ***Extract of Braunston Conservation Appraisal Map 1794*** (Appendix 43)

The map shows a route heading from Wolfhampcote westwards.

- ***Extract of C Smith New Map of GB & Ireland*** (Appendix 44)

A route is shown between Wolfhampcote to Sawbridge.

- ***Extract of OS Map 1834*** (Appendix 45)

The extract is not clear enough to show a route between Wolfhampcote to Sawbridge.

- ***Extract of OS Map 1898*** (Appendix 46)

A route is shown between Wolfhampcote to Sawbridge.

- ***Extract of OS Map 1901 (colour)*** (Appendix 47)

A route is shown between Wolfhampcote to Sawbridge but is not coloured.

- ***Extract of OS Map 1919 (colour)*** (Appendix 48)

A route is shown between Wolfhampcote to Sawbridge, and it looks as though it is shown as a yellow dashed line.

- ***Extract of OS Map 1946 (colour)*** (Appendix 49)

A route is shown between Wolfhampcote to Sawbridge.

- ***League of Veteran Racing Cyclists*** (Appendix 50)

A letter was sent from a user, stating that every year for the last 6 years the League of Veteran Racing Cyclists have organised a restricted cycle event based upon a circuit at Flecknoe which uses the Wolfhampcote Lane as part of its route.

- They have used the lane for both pedal cycles and support vehicles providing for their H&S requirements. They usually have two following motor vehicles and one motor bike for this requirement and this event is usually run between the hours of 10.00 to 13.00 on one day of the year only causing minimum inconvenience to locals. I received a poster advertising the Course details.

- ***News Cutting of Motor Rally (1971)*** (Appendix 51)

This included part of the route between Wolfhampcote and Sawbridge. Sawbridge is misspelled (Thorbridge)

- ***Copy of Published Walk (18) Sawbridge – Nethercote*** (Appendix 52)

This describes a route going through the farmyard directly ahead of the tarmac road signposted to Wolfhampcote, to the “unsurfaced road leading away from the farm to the canal bridge”

- ***Written Blogs*** (Appendix 53)

An email was sent to me by a user, providing two links to blogs where the same writer appears to be reminiscing about their youth and a route in Wolfhampcote is mentioned.

## Section 5 other Information

5.1 Warwickshire County Council sent a letter to Ms Marwood, who owns a Gate Farm, dated 05/02/2008 with regards to works that needed to be done on the route,; i.e., gates and the width of the road. A recommendation was made that a width of 5 metres was provided for the road, and it was made clear should the evidence showed the highway to have a greater width, then the fences would be removed. Within the letter, a proposed set of wording for any deposit under section 31(6) of the Highways Act 1980 was provided. Appendix 54)

### **5.2 S31(6) Deposits** (Appendix 55)

In 2008, Ms Marwood and Mr Frisby submitted S31(6) Highways Act 1980 deposit, which acknowledged the disputed route on their land. In the 2008 deposit, they confirmed that the route is an unclassified public road and stated “We have provided a permissive width of 5 metres between enclosing fences, between gate 1 and gate 2 on the plan. This is without prejudice to any future investigation that may establish that the public highway has a greater or lesser legal width” In 2019 the owners submitted another S31(6) deposit. This form differed from the previous in that they withdrew the permissive width of 5 metres and did not acknowledge the route as a public highway. This deposit was not registered at the landowner’s request and is therefore not valid.

## Section 6 Order

6.1 After the Order was made on 18 March 2020, Warwickshire County Council undertook a formal consultation.

This involved signed notices being displayed on the route and an advert being published in the Rugby Advertiser on 19/03/2020 (appendix 56) and all interested parties contacted. The consultation period was 6 weeks. During this period 11 objections and 18 letters and emails of support were received. All correspondence was acknowledged.

6.2 A list of objectors and supporters, and their letters of objections can be found at (Appendix 57)

6.3 Objections were made to the Order on the grounds of the width of the route and the number of gates included. P. Cleaver said that they had used the route with a mechanically propelled vehicle and wished to carry on doing so, and/or that the route was recorded on the List of Streets and/or signposted as an unclassified road UCR. One objector stated that it was discriminatory against disabled people to classify the route as a Byway Open to All Traffic (BOAT) as they believe it is a step away from it being re-graded as a Restricted Byway in the future.

6.4 R. Hickin and the Trail Riders Fellowship objected to the status being anything other than a carriageway with the width of 40 feet, as stated in the Inclosure Award and as it is on the list of streets.

6.5 Warwickshire County Council received a collection of correspondence from Ms Marwood and Mr Frisby regarding the order making process, subsequent objections to the Order being made and the process as to how the decision was made to determine the status of the route in the Order.

6.6 The Canal and River Trust raised concerns as there are weight restrictions on the canal bridge should the status be determined as a BOAT.

6.7 J Buswell submitted an objection which he has subsequently withdrawn.

## **7. Relevant Legislation and Case Law**

7.1 The status of the route is being considered under the Wildlife and Countryside Act 1981.

7.2 Section 53(2)(b) of the Wildlife and Countryside Act 1981 places a duty on the County Council to keep the Definitive Map and Statement under continuous review and to make such modifications to the Map and Statement as appear to them to be requisite in consequence of the occurrence of certain events.

7.3 Section 53(3)(i) of the 1981 Act states that one of the events is 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.”

7.4 Supported by evidence, the route should be recorded on the Definitive Map and Statement as a BOAT. The County Council carried out a thorough investigation and determined that the totality of the available evidence did support this. It accordingly made the Order. After reviewing the formal objections, the County Council considers that, on the balance of probabilities, the true legal status of the Order route is BOAT, and the Order should be confirmed (see further below).

7.5 The Natural Environment and Rural Communities Act 2006 (NERC 2006) (Appendix 58) and explanatory notes (Appendices 59 & 60) has an effect on this case.

7.6 The route is not recorded on the Definitive Map and Statement but is recorded on the List of Streets. Although s67(1) of NERC 2006 states that an existing public right of way for mechanically propelled vehicles is extinguished if it is not shown on a definitive map and statement as of 2 May 2006, this is subject to the provisions of s67(2) which states that s67(1) does not apply if any of the tests in (a)-(e) is met.

7.7 s67(2)(b) of NERC 2006 is applicable – the route was shown on a list of highways maintainable at public expense.

7.8 No application made under s53 Wildlife and Countryside Act 1981 was received and therefore s67(3) of NERC 2006 is not applicable.

7.9 If s67 of NERC 2006 is considered in isolation then there is the possibility that the mere recording on the List of Streets may preserve the rights for mechanically propelled vehicles. The explanatory notes (Appendix 61) explain that this provision was to ensure that unclassified and other minor roads are not bought within the scope of the extinguishment. However, the List of Streets is merely a list of routes that are maintainable at public expense. It still needs to be shown that the route has a vehicular status and mere listing does not provide that. Section 67 does not expressly state that the routes on the List of Streets are for mechanically propelled vehicles, the section preserves the vehicular rights that may exist, but these rights have to be proven.

7.10 Section 66 of NERC 2006 needs to be considered. This states that no public right of way for mechanically propelled vehicles is created after commencement unless it is expressly done. Section 66(2) of NERC 2006 states that for the purposes of the creation after commencement of a public right of way, use (whenever occurring) of a way by mechanically propelled vehicles is to be disregarded. The explanatory notes for s66 provide more information (Appendix 62).

## 8. Assessment of Evidence

8.1 Historical maps are drawn in such a way that the precise alignment of any route is not clear. A route from Wolfhampcote to Sawbridge appears on some of the historical maps, if a status is given, it is of a cross road, which could suggest that the cartographer regarded the route as being public. Other routes drawn in the same definition are current minor roads and bridleways and others are not current public routes of any description. Most of the historical maps appear to show a route from Wolfhampcote to Sawbridge as a route of some sort, not all of the maps have a map key to confirm the status.

8.2 The Ordnance Survey mapping shows that a route was evident on the ground, but there is no clear indication as to the status. It is described on at least three maps as “Track” or “Tk,” but it cannot be assumed that the route was public because there was no status given, it could equally be a private route. There is mention of the presence of possibly of a gate at the western end. The lack of indication of status could be regarded that higher rights than bridleway exists.

8.3 The Wolfhampcote Inclosure Award was written in approximately April 1757. It describes a route between Wolfhampcote to Sawbridge as a public road and common highway, open to carriages as well as beasts and people, with the width of the route described as forty feet between Wolfhampcote and Sawbridge, and twenty feet from Wolfhampcote to Church Lane. The award indicates that the route from Wolfhampcote to Sawbridge was already in existence and was already being used by the public as a highway. It further describes the route as a cart road, it could be



suggested that the status of the route is a public road used by all modes of transport available at the time.

8.4 The British History Online website has information in their database with reference to Wolfhampcote and the inclosure award under the Wolfhampcote Enclosure Bill. The Bill infers that consent had been given for the Bill to go through without any amendments made to the Wolfhampcote award, which could suggest that it has been accepted by parliament as an Act and there is a public road between Wolfhampcote and Sawbridge, used by all modes of transport available at the time.

8.5 The interpretation plan is based on the Wolfhampcote and Flecknoe awards. The written interpretation by Mr Menzler shows the status and position of the routes that are described in the Wolfhampcote award and the route from Wolfhampcote to Sawbridge is described as the 9<sup>th</sup> awarded public road. The same number has been written in pencil in the original award where the description of the route is described, which could suggest that the plan was interpreted from the original award. Other documents that were used to interpret the plan are the County Reference Oxford Canal 1770 - Z463L and the Plan of the proposed turnpike road. QS111/15. These show that there may have been a route from Wolfhampcote to Sawbridge, but there is not enough evidence in these plans to interpret the status. However, based on other evidence used to draw the plan (the Wolfhampcote and Flecknoe Awards), it can be suggested that the route is a public road used by all modes of transport available at the time.

8.6 The reconstructed inclosure plan 2013 is based on the 1757 Wolfhampcote award. It shows the route heading from Wolfhampcote to Sawbridge and it is depicted by double pecked lines and has 10<sup>th</sup> Road (40ft) written alongside it. In comparing other routes shown in the plan, it appears that they are depicted in accordance to the description in the inclosure award it is based on, in comparison the route from Wolfhampcote heading out to Daventry is shown in a continuous line with cross bars in the interval with the words 12<sup>th</sup> Road (20 ft) Bridleway as it is described in the award. This could suggest that the route from Wolfhampcote to Sawbridge is depicted as a public road used by all modes of transport available at the time.

8.7 The Finance Act 1910 does not exclude the route from the hereditaments that it appears to go through. The Domesday book has 5 hereditaments record deductions in the section called: Public Rights of Way or user, but the value of the deductions could also indicate the footpaths which are excluded on the same hereditaments.

8.8 The London and North East Railway plan does indicate that there is a route heading through Braunston and Willoughby, but it does not give status or depicts where the route begins and ends.

8.9 The Grand Union Canal Plans for Widening does indicate a route heading from Wolfhampcote church towards the Willoughby area, but there is no indication to the status of the route.

8.10 The Handover map shows the route, with 40 ft parish award written along the route, which could suggest that the route is 40 ft wide. The Handover record records the route as a Bridle Road, and it indicates that at least 1.75 miles of the route is granite. This could suggest that the route was used frequently and part of it needed reinforcing for horse riders, and other types of transport.

8.11 The 1932 and 1950's Parish Survey Map show the route and the 1950 Parish Survey statement recorded the route as a bridleway initially. This was crossed out and recorded as an unclassified county road.

This change may be because the route was recorded on the handover record. Where a route is recorded on the handover record and the parish survey, the route generally does not get recorded on the Definitive Map. This could be because it was recorded on the handover record. It appears that if a route was on the handover record, then it would not be put on the Definitive Map. The crossing out of BR, and the description of the "metalled" surface of the route, could suggest that the route was regarded as a road.

8.12 The route is not shown on the Definitive Maps.

8.13 The London Gazette article on Bridges over Railways (1 June 1926) records that the bridges do carry a road from Wolfhampcote to Sawbridge over the canal and the railway. The Grand Union Canal plan and the London and North East Railway plan indicates that there is a route heading across the general area, in question, and the article in the London Gazette could be interpreted that there is a road from Wolfhampcote heading towards Sawbridge, which is used by the public.

8.14 The initial S31(6) Deposit that Ms Marwood and Mr Frisby submitted, acknowledges the route between Wolfhampcote and Sawbridge as a Public Right of Way, although there is no status to the route, however, they have since contacted Warwickshire County Council regarding their intention to submit another S31 (6) deposit, but they seemed to withdraw the permissive width of 5 metres on the route and any intention to dedicate the route as having vehicular rights. As the route is on the list of streets as a public highway and the status of the route is in dispute, should the owners submit another S31 (6) deposit and refer to the status of vehicular rights to the existing route, the Statement cannot affect the status of pre-existing vehicular ways and can be disregarded. This could suggest that the route has been used by vehicles regularly and with the owner's knowledge.

8.15 The user evidence forms show that 15 users have been told that route is not public/stopped or turned back. It has been stated from the beginning, that the route is in dispute and the clarity of the status of the route is hampering the police in their ability to respond to the numerous reports they receive in an appropriate manner. The user evidence form also shows that 27 out of 52 users have used the route in some form for more than 20 years. More usage of route has been made by foot (38), a reasonable number of users by horse (14) and the collective usage by vehicle and car combined(32). This could suggest that the route has been used "By Right" as Byway Open to All Public.

## 9. Department of the Environment, Transport, and the Regions (**DETR**) Letters

9.1 Two letters were received from the DETR, one in August 1998 (Appendix 64) and one in May 2001 (Appendix 65). Both of these letters were concerned with the treatment of Unclassified County Roads. The first letter (the Carter letter) stated that the term “unclassified road” was made redundant by the Local Government Act 1972. It goes on to say that inclusion of a highway described as a UCR on the Highways Act list of highways maintained at public expense may provide evidence of vehicular rights, but this must be considered with all other relevant evidence to determine the nature and extent of those rights. It would therefore be possible for such a way to be added to the Definitive Map and Statement if it fulfilled the criteria of the Wildlife and Countryside Act. The status of such routes and the rights over them will need to be resolved on a case-by-case basis by the appropriate authorities.

9.2 The second letter states that the List of Streets is a record of highways maintainable at public expense and that “it is not, in any way, proof of vehicular rights” and should include footpaths and bridleways which are publicly maintainable. Other evidence would need to be provided to establish the existence of vehicular rights.

9.3 These letters confirm that each route has to be treated on a case-by-case basis and that the appearance of a route on the List of Streets is not conclusive evidence that the route carries mechanically propelled vehicular rights.

## 10. Conclusion

10.1 The County Council is satisfied that it has discovered evidence which (when considered with all other relevant available evidence) is sufficient to meet the test set out in section 53(3)(c)(i) of the Wildlife and Countryside Act 1981, namely, to show (on the balance of probabilities) that the Order route should be shown as a Byway Open to All Traffic in its Definitive Map and Statement with a width of 40 feet. The route is bounded from the North and is measured at 40 feet from that point.

10.2 The County Council confirms that it has complied with all the procedures required by the relevant legislation.

10.3 Warwickshire County Council would respectfully ask the Secretary of State for the Environment, Food and Rural Affairs to confirm the Warwickshire County Council Definitive Map Modification Order titled The Warwickshire County Council Definitive Map Modification Order, Parish of Wolfhampcote, Sheet SP56NW16SW, SP16SE, SP15NE, Order No. 2 2020, Path No. R352.