

Cheshire West and Chester Borough Council

Officer Delegated Report

Application Number 4/48

Description Wildlife and Countryside Act 1981 – Section 53
Application for a Definitive Map Modification Order to add a Byway Open to All Traffic between Whitegate and Winsford and known as “Grange Lane”

Location Between Mill Lane, Whitegate and Grange Lane, Winsford and shown between points A & B on Drawing No MO562.

Applicant Name Mr D Worthington, Nixon Drive, Winsford

Ward Winsford Over and Verdin

Ward Members Councillors Michael Baynham, Don Beckett and Tom Blackmore

Case Officer Adele Mayer, Public Rights of Way Officer
01606 271822

Date 9 October 2017

Recommendation:-

(1) That the application to modify the Definitive Map and Statement with the addition of Byway Open to All Traffic be refused but that an Order be made under section 53(2) of the Wildlife and Countryside Act 1981 to modify the Definitive Map and Statement by the addition of a Restricted Byway as shown between Points A-B on drawing No. MO/562 and that the requisite notice of the making of an Order be given.

(2) That the Highways Commissioner be authorised to take any action considered necessary in respect of the confirmation of the Order hereby authorised to be made.

Background

1. On 17 November 2011 an application was registered that had been submitted by Mr D Worthington under section 53(5) of the Wildlife and Countryside Act 1981 (the "1981 Act"). The application requested that the Council as Surveying Authority make an Order, a Definitive Map Modification Order (DMMO) to add a Byway Open to All Traffic ("BOAT") to the Definitive Map and Statement of Public Rights of Way (the "DM") shown on Plan MO/562 ("the plan") by a brown line between points A and B. Eight User Evidence Forms ("UEF") were submitted in support of the application and a further 8 names put forward. User claims were of use of the route on foot, cycle and in a vehicle from a period spanning 1951 to 2011 with variable frequency. Use claimed was in part for leisure, recreation such as running and as a functional direct route to school in Winsford and to fishing lakes near to Knights Grange, Winsford or New Pool, Whitegate.
2. The claim route runs between Mill Lane at OSGR SJ 6318 6898 then runs in a south easterly direction for approximately 1396 metres to a point where Grange Lane (UY93) is recorded on the List of Streets at OSGR SJ 63978 67955 adjacent to Bradford Wood Cottages. The list of highways maintainable under public expense is held by the Council under section 36 (6) Highways Act 1980 and is commonly referred to as the "List of Streets". On the plan points A and B indicate the points at which the public maintenance stops. For the avoidance of doubt, the lengths of Grange Lane shown on the List of Streets already have a status, namely that of all-purpose highway, which confers a public right of way for motorised vehicles, and these lengths are therefore excluded from consideration of this application.
3. The land over which the track runs is unregistered and the land either side is registered. Notice of the application was served on the land for not less than 28 days from 5 May 2017. The owners of adjacent land and possible occupiers and users of the lane have been consulted. From point B on the plan the cottage on the west side of the unadopted section of Grange Lane is registered to J Tomlin of White Cottage, Winsford. Further north, land either side is registered to J and J E Gerrard of Brook House Farm, Winsford and the neighbouring property to the north is owned by A Thorley of Bark House Farm, Whitegate except for a section on the east side of Petty Pool Brook which is in the registered ownership of C W

Patch, Bradford Wood Farm, Winsford. Finally, at point A on the plan on the south side of the lane lies a small plot of land used by a water utility company.

4. Historically, as discussed below, all the land affected was included in the Right Honourable Lord Delamere estate. Some of the investigated documents show that the land which had been developed for the salt industry as the Knights Grange works, had been held on lease from the Delamere estate and it was not until the early-twentieth century that the estate was sold with the freehold.

The Legal Tests

5. Section 53(2)(b) of the 1981 Act imposes a duty on the Council to keep the Definitive Map and Statement (DM) under continuous review and by order make any modifications to it that are requisite in consequence of the occurrence of certain events.
6. The application was made on the basis provided for in Section 53(3). Section 53(3)(c)(i) provides that a route should be added to the DM on the discovery of evidence which (when considered with all other relevant evidence available to them) shows:-

“that a right of way which is not shown in the map and statement subsists or is reasonably alleged to subsist over land in the area to which the map relates, being a right of way such that the land over which the right subsists is a public path, a restricted byway or, subject to section 54A, a byway open to all traffic”
7. The application is for the status of a BOAT which is defined in Section 66(1) of the Wildlife and Countryside Act 1981 as a highway “over which the public have a right of way for vehicular and all other kinds of traffic but which is used by the public mainly for the purposes for which footpaths and bridleways are so used”. In 2000, *Masters v Secretary of State for the Environment and Somerset County Council*, which went to the Court of Appeal has confirmed that “what was being defined was the concept or character of such a way”. Parliament did not intend

that highways over which the public have rights for vehicular and other types of traffic, should be omitted from definitive maps and statements because they had fallen into disuse if their character made them more likely to be used by walkers and horseriders than by vehicles.”

8. Restrictions on the recording in the DM for mechanically propelled vehicles (motorised vehicles) have been made by the enactment of section 66 and 67 of the Natural Environment and Rural Communities Act 2006 (NERC). Section 67 (1) provides “an existing public right of way for mechanically propelled vehicles is extinguished if it is over a way which immediately before commencement (a) was not shown on a definitive map and statement or (b) was shown in a definitive map and statement only as a footpath, bridleway or restricted byway”
9. As the claim route was not shown in the DM in 2006 any existing public rights to use a mechanically propelled vehicle were extinguished. The current application made in 2011 which seeks to add the use of mechanically propelled vehicles can be considered and determined on its merits but the highest level of status that could be conferred is Restricted Byway which includes public rights that permit non mechanically propelled vehicles, together with a right to use the route on foot, on a horse or leading a horse and by cycle.
10. The available evidence must be evaluated and weighed and a conclusion reached as to whether on the balance of the probabilities public rights subsist or are reasonably alleged to subsist. Any other issues such as safety, suitability, desirability or the effects on property or the environment are not relevant to the decision.

The Investigation

11. The user evidence and the standard reference documents comprising historical maps and records have been consulted in connection with this application. Details of all evidence taken into consideration is summarised in Appendix I

12. County commercial maps were published, having laid claim to the use of accurate trigonometrical surveying. They were produced for a variety of reasons; in part there was a contemporary interest in cartography and a commercial need for travelers and landowners. There is not much information regarding the research that was made by the cartographers about the status of routes that were shown on the maps. Burdetts map of Cheshire published in 1777, Greenwood's county map published in 1819, Siwre and Hutchings' map of 1829 and Bryants county map of 1831 do not show a route which could be identified with the claim route and it is concluded that none of the county commercial maps show any evidence of the claim route.

13. Ordnance Survey maps are good evidence of the physical existence of routes, but not necessarily of status (unless there is a clear description in the Book of Reference). Since the second edition, 1889, the Ordnance Survey has included a disclaimer on all of its maps to the effect that the depiction of a road or way is not evidence of the existence of a right of way. This is generally understood to refer also to first edition maps.

14. The 1" first edition sheet 80SE dated 1842, doesn't show a through route on the alignment of the claim route. The area between Cats Clough and Bark House is labelled Bradford Wood, with tracks or lanes running between the two properties. The OS map evidence is good evidence the claim route was not at that date a physical feature.

15. On the 1st edition OS map 25" 1872, the claim route is not shown. The West Cheshire Rail line is drawn and is shown with the bridge, shown by a narrowing of the rail line and a widened embankment, under which Grange Lane runs. It seems likely that the rail line construction and updating of the OS map had not coincided.

16. The 2nd and 3rd edition OS maps 25" (1898 and 1910) defines the line of Grange Lane running under the rail bridge and continuing as a bold double line in a northerly direction following the line of the claim route. Cottages on the east side of the lane close to a crossing of "Pettypool Brook" are shown, which cottages

have now been demolished. The lane further north is the full width between boundaries. There are no limitations shown across the claim route.

17. The Ordnance Survey issued a “popular series” of maps intended for the “man in the street”. Published in 1912-1923 there was a popular, revised edition of the new publication of the 1” series. It was produced in 7 colours and with a devised road classification for the aid of motorists and cyclists and tourists. The OS “Road Map of Liverpool, Manchester and Chester” sheet 12 was published at half inch to a mile in 1913. However there is a caveat on all the maps “the representation on this map of a road, track or footpath is no evidence of the existence of a right of way”. The key to the map lists roads coloured in yellow with narrow parallel lines as “other motor roads narrow” “Good”. Grange Lane and the claim route is shown as a “narrow motor road”, rated “good” between Cats Clough and Whitegate.
18. The popular edition map suggest that the lane may have had a reputation of use by motor vehicles but the caveat on the maps means that these maps may be supportive to other stronger evidence but not strong evidence on their own.
19. Bartholomew half inch to one mile series of maps was published and for some years annotated with the aid of members of the Cycling Tourist Club. Ordnance Survey base maps were a source of reference and they were quite popular maps for tourists and cyclists. Sheet 12 covers Cheshire and the map looked at was published in 1902. The map shows the route between Catsclough and Whitegate and is referenced in the key for the map as a broken red line described as “Secondary road (good)”. The caveat “N.B. the representation of a road or footpath is no evidence of the existence of a right of way” is also included in the key, although where a route which is described by annotation it is assumed that there was local information supporting the designation.
20. The map is good evidence that the claim route was considered to be suitable for vehicular traffic to use although not evidence of the public status of the route.
21. The earliest map consulted is a 1616 Survey of the Vale Royal Manor House and Estate. A catalogue note of the archive states that the estate was purchased by Lady Mary Cholmondeley from Sir Thomas Holcroft in 1615 and by implication the survey was the record of the purchase of the estate; “ A survey of the manor house and demesne of Vale Royal with lands tenements etc now appertaining to the R Worshipful Lady Mary Cholmeley of Holford widow” 20 May 1616.

22. The survey is presented in folios with a cross referenced list of field names and measurements in acres, perch and poles. The surveyor is annotated as "FB", geographic northings are indicated and the scale is listed as [1] inch to 3 chains. Bradford Wood is shown as mainly woodland with tracks shown as double pecked lines. The tracks lead from a point east of Knights Grange and adjacent to a building and plot of land labelled "the [withens or wallers] house or lyving." It is also bordering a parcel of land labelled "the lane". The folio shows the land is sectioned by double lined boundaries for which there is no key to say if these are ditches or walls or hedges. Further east of Knights Grange and "the lane" transforms to a parcel labelled "catts' clough pt of br wood" [Cats clough part of Bradford Wood]. Very approximately the 1616 survey shows a double line track leading through Bradford Wood from the vicinity of Catts Clough Lodge in a northerly direction towards the manor at Vale Royal Abbey (out of scope of the plan). This survey establishes a principle for a route connection between Knights Grange/Catts Clough and Vale Royal Abbey/Whitegate. It also establishes that the land over which the claim route runs was originally in the ownership of the Delamere Estate

23. Tithe maps were prepared to commute the payment of tithe taxes to a monetary payment. The purpose of the mapping was not to record public highways, but since the process was part of a statutory process under the Tithe Commutation Act of 1836, the evidence of public rights they contain must be given appropriate weight. The parish map for Over includes the township of Over, Whitegate and Marton covering the area of interest. The dates of the township awards are different such that for Marton it is 1847 and for Whitegate and Over it is 1846.

24. The claim route is not shown in any form on the Tithe Maps or within the vicinity of the claim route. There is, however a double pecked track shown on the Over award running between Catts Clough in a north westerly direction towards Bradford Wood Cottages, turning north towards where Brook Farm is now situated and the track continues north to cottages at the brook which have been demolished.

25. A route continues on the line of the track on the Whitegate township plan. It is coloured yellow, along the north side of the brook, south of "Bowk House" (Bark House) and continues to the township boundary with Marton. There is a line

across this route before the edge of the boundary which could indicate an existing gate and also one adjacent to Bowk House. The book of reference refers to this track as “road” (plot 745a) and “road and Waste” (plot 775). The occupier is John Acton (living at Bowk House) and the owner is the Rt Hon Thomas Baron Delamere. The plot of land adjacent to the boundary for Whitegate is listed as “part of smithy field” (plots 783) but does show a continuation of a track through the field.

26. The field names indicate that there had been the principle of a through route. This includes two fields “near coach road” and “top coach road” and the plots listed “Road” and “road and waste”. The use of the coach road name suggests there was a vehicular track between Whitegate and Over (Winsford), taking into account the date of the document this would be non motorised vehicular traffic. The section of the claim route running between Whitegate and the demolished cottages is shown on the same alignment as the claim route. The status of the route is not defined in the Tithe Maps and whether this was a public thoroughfare or was a private estate road could not be adduced.

27. The Finance Act (1909-1910) 1910, repealed in 1920, required the valuation of all land at 30 April 1909. Landowners would be taxed on the incremental value on the future sale (or other conveyance) of land. The valuation was also to be used as a basis for inheritance tax. Landowners were able to apply for a deduction for public rights of way crossing their land. Even where a public right of way was not claimed, Valuers were supposed to allow for rights that they considered to exist when valuing the land. Where linear routes are shown on the maps prepared for the valuation excluded from the assessable parcels of land this has been regarded as evidence that the route was a public highway, normally but not always vehicular.

28. The locally available Inland Revenue working sheet base map is the 1909 Ordnance Survey 1:2500 and shows the route of Grange Lane and part of the claim route which is excluded from hereditaments. Adjacent plots include number 36 which lies to the west of Bradford Wood Cottages and the east of the excluded area of Grange Lane. Number 36 was listed in the occupancy of Mary A Ellis and in the ownership of Lord Delamere and is described as Brook house and land. Plot 39 was occupied by William Hauton in the ownership of Lord Delamere estate. The map evidence has value together with other evidence that

there was an open route which was contemporaneously considered to be for vehicular traffic (Definitive Map Orders: consistency guidelines, 2003, Planning Inspectorate)

29. Construction of a new rail line required an Act of Parliament and in itself that granted certain powers for compensation or compulsory purchase of land and lawful interference with the highway. Therefore, the plans that were submitted had to show the proposed line of the railway and a width of land either side called the "limit of deviation" and also list the ownership and the effect on the highways.

30. Notice of application for an Act to enable the West Cheshire Railway Company to make a railway to Birkenhead of which one proposal was to construct a rail line linking Over to Oakmere was deposited 13 November 1861-62, with relevant plans and copy of the intended Bill. A rail line from west of Cuddington to Winsford was subsequently authorised and opened to traffic in 1870.

31. The rail survey plan shows that the line of Grange Lane and the claim route was not a feature in the landscape at that date. The fields where Grange Lane and the claim route will run are listed as plots 106 ("pasture field and footpath", 107 (pasture field and pit) and 108 (pasture field and footpaths") and are all in the ownership of Lord Delamere. To the west of the claim route and the field numbers listed above, the plan shows a double pecked line indicating a track which runs through hereditament 103 which is north of Bradford Wood Cottages and is listed as "pasture field and road". The track links to plots 100, 101 and 102 (last hereditament is listed as garden and stack yard). Ownership is listed as Lord Delamere. The horizontal profile of the route lists the "road" at plot 103 as "occupation road" and the footpath at plot 106 as "footpath".

32. There is nothing in the rail plans to show where bridges were planned to be constructed. There is an indication on the rail plans that there had been a road running between Cats Clough and Whitegate west of the claim route and the principle of this road is assumed to have been preserved by the construction of the new line for Grange Lane and the bridge which is of a size to facilitate vehicular traffic.

33. The Delamere estate was sold in parts at auctions carried out in 1912 and in 1928. The earlier sale included the sale of Knights Grange and other properties along Grange Lane and the High street, Winsford. The sales pamphlet and map lists a few details regarding the properties, some with photographs. The public roads are coloured yellow on the map, but there is no key and the map doesn't extend further north than Knights Grange.
34. The sale catalogue of 1928 included Bradford wood and cottages, Bark House and Brook Farm. The document at the record office does not have the second and third plans of the sale lots which would show the claim route, although it states in the catalogue that the plans are based on the OS 1909 – 1910 edition and it is possible to match the lots with the parcel number on the map. There is no reference in the sale catalogue to the status of Grange Lane or the claim route other than a description to the sale of Lot 108, Bark House Farm, “A productive dairy farm and sporting holding, well served by two roads”. The only roads serving the lot are Mill Lane and the claim route, suggesting that the claim route was considered to be a “road”.
35. In contrast, an “occupation road” is identified in the catalogue which is described for OS parcel 289b which on the map runs opposite the access drive to Bark House. Another Lot, number 148 for the sale of Hillside Cottages at Martonsands states the property is served by a “lane” (currently a public footpath) from the Winsford Road and a footpath from Beautybank. It is possible that when drawing up the sales catalogue presumptions were made about the status of lanes and roads. The general preamble to the catalogue includes a “catch all” section 7 stating each lot is sold and will be conveyed subject to all rights of way etc;
- “each lot is sold and will be conveyed subject to...rights of common and feeding rights and all other rights privileges easements and quasi easements. And in particular a right for the owner for the time being of any lot ...and to all liabilities in respect of the construction maintenance and repair of roads sewers drains party walls and fences and other liabilities of a like nature ... and without any obligation on the part of the Vendor to define or apportion the benefit or burden of such rights privileges easements and quasi easements or liabilities.”

36. Other documents investigated relating to the Delamere Estate and the Falk Salt Works (Knights Grange) have been looked at but none have been relevant to the creation of the lane concurrent with the rail line, however, negotiations over the lease for the land on which the salt works were sited showed that the Delamere Estate retained the freehold title until the earlier part of the twentieth century.

The Definitive Map and Statement

37. The National Parks and Access to the Countryside Act 1949 required Surveying Authorities to draw up a Definitive Map and Statement of Public Rights of Way. In Cheshire the County Council (CCC) was the surveying authority and asked all parishes to provide a map and schedule showing all public right of way (the parish survey). These maps were checked by CCC officers and district Draft Maps were published. Representations and objections to the Draft Map were dealt with by CCC and then a Provisional Map was published. Representations and objections to the Provisional Map were dealt with by the Courts, following which Hearings the Definitive Map and Statement was finalised and published. The Surveying Authority had to keep the map and statement reviewed, the responsibility being commuted by the Wildlife and Countryside Act 1981 to a continuous review. Various anomalies had been found to exist, one of which was that there was no clear guidance in the 1949 Act about how some public rights of way were to be designated. The County Surveyor for Cheshire drew up notes for the footpath inspectors relating to the process of preparing the maps, in which definitions of rights are restricted to footpath and bridleway

38. The parish survey was carried out by Winsford Urban District Council in 1952. Five footpaths were recorded leading off the claim route and on the schedule for these paths

Footpath 68 Whitegate and Marton was initially labelled FP 4 Winsford Urban. The termination of the footpath is described on the schedule as terminating on “a point just 1100 yards SE from Whitegate church on Whitegate to Winsford road ...” Mr G H Brown of the council offices, Over Hall, was the surveyor. The description for FP12 has the path terminating “350 yards SE of entrance to Bark House on the Whitegate to Winsford (via Grange lane) road.” FP13 terminates in the description at “a point on Grange Lane 350 yards south east of Bark House.” FP17 is described as commencing at “a point on Grange Lane 250 yards north of Bradford

Wood Cottage...” Finally, FP 24 is described as commencing at “a point 300 yards beyond Bradfordwood Cottage on Grange Lane.”

39. There is no distinction in the consideration of the description of footpaths connecting with the unadopted section of Grange Lane (ie the claim route) and the adopted section of Grange Lane and it appears that the surveyors for the DM assumed that the length of Grange Lane was vehicular highway and not of the character to be added to the DM.

40. The internal record indicates no query over the status of the unmaintained section of Grange Lane.

User Evidence

41. The application included 8 User Evidence Forms (“UEF”) submitted in support of the application and a further 8 names were put forward, 7 of whom have been interviewed, one of whom was an employee of the previous council, Winsford Urban District and attests to maintenance of the route . A graph of use can be found at Appendix B. The users claim mixed use of the route on foot, cycle and in a vehicle from a period spanning 1951 to 2011, with variable frequency. Use was in part for leisure, recreation such as running and as a functional direct route to school in Winsford and to fishing lakes near to Knights Grange, Winsford or New Pool, Whitegate.

42. A few users claimed that either as the parent or as children they were taken to New Pool, Whitegate near to St Mary’s church for fishing and they were taken there by car along the lane. The dates of use by car included the 1960’s- 1990’s.

43. Transport included travel by cycle, users who had been children using the route had walked, cycled and for a couple of users had been taken by car to Whitegate for recreational fishing.

44. A number of witnesses said that when they had attended the Verdin High School, Grange Lane formed the cross country run and one of the witnesses described the supervision by the teacher who would follow the pupils down the lane in his car.
45. One witness stated he had owned a taxi business in the period 1980 to 1990 and the lane was used as a short cut. The business was based at Winsford and the lane was used once or twice a week. The route, it was said, would probably have been avoided in winter.
46. One of the witnesses was a former council employee, the Direct Works Manager for Winsford Urban District Council (WUDC) from 1961 and transferred to Vale Royal Borough Council (VRBC) in 1974. The WUDC was the local district authority for the area and acted as the agent for the Highway Authority. He recalled that Grange Lane was maintained as highway from the A54 to the railway bridge as an adopted highway and from the bridge to Mill Lane the service knew the lane was “unadopted” but that there was a county council Act that unadopted streets could be maintained. The lane was maintained because refuse collections were made at farm cottages at “Wilsons brook” [Pettypool Brook], these have now been pulled down. The pot holes were filled in and at least once there was a surface dressing. The witness claimed that under the WUDC all the public rights of way were walked and any blockages were served with notice to clear. Under the VRBC there was not so much maintenance carried out on Grange Lane. There are no discovered maintenance records that could corroborate the user testimony.
47. The user evidence suggests that the claim route had been unlimited, use had included pedestrians, cyclists and horse riders and motorists and the dates spanned use in a car from 1960’s to 1990’s and variable use by other means from 1950’s to the application submission date of 2011. The use by car had been limited from when barriers were installed in 2011 but other use had been possible by by-passing the barriers.

Consultation

48. Whitegate Parish council have responded to the consultation and object on a number of grounds listed; because the route “would be used as a rat run”; the junction of Grange Lane at Whitegate is opposite a primary school and the council has “road safety concerns”; there is a “history of fly tipping along the route; the council also query who would be responsible for the upkeep and maintenance; and have concern over the impact on the Whitegate Way users.
49. Winsford Town Council responded to the original notification of the application in 2011 and at the meeting on 19 December 2011 the decision was to support the application. There has been no further response.
50. Ward Councillor Michael Baynham is against the route being opened to motorised and non motorised traffic.
51. The Peak and Northern Footpath Society have made a representation that to allow an “upgrade” for motorised vehicle use would be “entirely inappropriate”. The society objects to the creation of BOAT they would prefer that the route was recorded as bridleway, but failing that Restricted Byway status.
52. Representations from neighbouring landowners have been made as follows;
53. Mr and Mrs Gerrard of Brookhouse Farm have responded highlighting the problems that have existed over the lane including fly tipping of domestic and commercial waste which the council accept responsibility to clear; traffic using the route as a short cut would regularly get stuck and would need towing; drug users; stolen and abandoned cars; some sat nav systems direct traffic including vehicles too large for the lane. They are content to allow use of the lane by walkers but put forward the view that the problems that had existed and largely gone since barriers were put in place would probably cause problems again if the lane were to become a through vehicular route.

54. Mr Thorley and his daughter Mrs Thorley-Morse of Bark House Farm have viewed the supporting documents for making the application and have submitted their own comments. They explain that a number of people had made comments on the barriers that they were instrumental in installing to prevent traffic at either end of the claim route. The reasons behind the use of the barriers included, they explain, a worsening instance of fly tipping both commercial and domestic which had to be removed by the landowner; drug users; badger baiting; cars that used the route often needed assistance to get out of the mud. Their concern is that should the barriers be removed the lane would become a “rat run” for motorbikes and it would be used by quad bikes and the anti social behavior would recur if the status were to allow motor vehicles. The observations made are that the route is more overgrown than in 2011 when the application was made; use by walkers, cyclists and orienteering routes has increased and many now enjoy the safety unworried by traffic. In addition, it is stated that the route has never been used as a carriage way for non motorised vehicles such as horse and cart and are not aware that anyone does want to use it with non motorised four wheel vehicles. A supporting statement is submitted from an employee of 17 years who confirms that he has had to remove fly tipped rubbish and witnessed anti-social behavior.
55. From R Horswill and L Waterhouse of Honey Pot Cottage on Grange Lane, the comments have been made that the route is currently used “extensively” by “cyclists, dog walkers, horse riders, walker in general and even mobility scooters” who would be at risk if a BOAT was created. The observation is made that the current adopted length of Grange lane is a single track lane and cars park near to “broken Bridge “[the redundant rail bridge now used for Whitegate Way country park]. The lane is also used as a crossing point for the movement of cattle.
56. Mr Holt, of the Bungalow, Grange Lane has objected to the possibility that the route would be open to motor vehicles. He says that the area had “now matured into an area of natural beauty where wildlife can flourish and people can pursue activities such as walking, riding and cycling without worrying about vehicle access.” They have lived on Grange Lane for 20 years and are concerned that reopening the route would encourage anti social behavior. The issues remarked upon include use of the lane as a cut through and there would need to be considerable funding to make the road accessible; HGVs are directed down the lane by sat navs and they would need assistance if they went further down the lane; the lane had previously been used as a scramble track and as there is no speed limit this would create a race track.

57. Mr and Mrs Booth of the Old Smithy, Grange Lane, Whitegate have lived at the property since 1985 and object to the addition of a BOAT. The grounds put forward include the existing track is very narrow and unsuitable for motor vehicles; there had been anti social behavior; cars would run off the road in the dark and get stuck in the mud requiring assistance; the sat nav systems direct traffic down the lane past the “no through road” sign. They would like the route to be left in the state it is currently used by hikers, joggers, cyclists and family groups.
58. Mr Tomlin of The White Cottage, Grange Lane has responded stating that he has occupied the house for more than 37 years. He and his wife have used the lane in both directions and it was convenient but also dangerous as the lane is only wide enough for one car. He makes the observation that since barriers were introduced there has been a reduction in fly tipping and no dumped cars down the lane and requests that the lane is left in its current state.
59. Mr Gunton of Bradford Wood Cottages recalled that when he bought his property in 1989 the lane was open to all traffic “that could negotiate it” but it had not been maintained for many years”. The lane was deeply and frequently potholed. The installation of gates at the waterboard pumping station and White Cottage closed the lane off to all except foot, bicycle and horses. The understanding is that the closure was carried out after frequent and substantial fly tipping on the lane. However, the closure has apparently served to “rid or reduce various nuisances and criminalities from the lane.” Details of incidents was included in his response. Support is given for the status of a Restricted Byway providing the access to the lane was secure.
60. Residents, Mr and Mrs Heath of Brookhouse Cottage have responded and state that they moved into their cottage in 1986. They say that the lane at that time was not suitable for cars. They recall that around 1990 the lane “in the wooded area” was improved slightly with a tarmac surfacing. There were difficulties using the lane because they could get stuck in the soft verges or were forced to reverse. From 1995 they decided to stop using the lane with their car. They also say that the lane is now safer for the users.

61. Complaints were made regarding the previous installation of barriers. Consultation response from Mr Mears who claims to cycle the route at least 4 times a week, recalls around 20 years ago the route was tarmacked “from Grange Lane Whitegate to just past the farm drive”. He attests that the road has been used by many people over the years for example Verdin cross-country; to access the “myriad of public rights of way that criss-cross Grange Lane”. He notes that historically, Grange Lane was not shown on “1770” map but was on later OS maps and he notes dwellings were located at Paper Mill Wood, demolished about 1900, two on the hill after Pettypool Brook were demolished about 1970. The lane was used extensively in the 1950/60’s for ICI workers.
62. CWAC officers were consulted over the matter of the installation of barriers. One officer working from 2011 in this area of work, recalled an attempt of surveillance of the lane against fly tipping, however, was not aware of any documented reports or incidents.

Conclusion

63. The documentary evidence shows that Grange Lane and the claim route were not physically on the ground prior to the construction of the West Cheshire Railway Cuddington to Winsford branch, that is approximately between 1862 to 1870.
64. The 1616 estate survey, the tithe map and the 1st edition OS map indicate that that there was a route between Whitegate and Catsclough which had the reputation of a road. In order to build the rail branch line there was a land agreement with the Delamere estate and it seems likely that this road link between Whitegate and Catsclough was retained and was realigned to the route that we see after the rail line was constructed.
65. The date of the route, after rail line construction, establishes that Grange Lane is not an ancient highway (that is, a highway in existence prior to 1835 which would be maintainable at the public expense). The evidence of users is that the route

had been used by pedestrians, cyclists and motorists. The consultation response from local homeowners corroborates a view that the route had been used with motor vehicles as well as being used as a good walking and cycling route. The use by motorists was stopped in 2011 when barriers were erected but other use continued. The barriers were erected after there had been significant anti social behavior along Grange Lane and the claim route. For management purposes, anti social behavior along the route would have to be taken into consideration if an order for the addition of public rights is confirmed.

66. The evidence of the Direct Works Manager of the former Winsford Urban District Council is that the council carried out some maintenance on the claim route to facilitate the council vehicles using the route. The maintenance had not been to the same level as the adopted section of Grange Lane. Subsequently there had been little or no council maintenance and the adjacent current landowner at Bark House Farm have said that they have carried out maintenance.

67. The application requesting that an order be made to add a BOAT to the DM as shown on plan between points A and B to succeed has to show sufficient evidence on the balance of probabilities that the public rights for a BOAT existed.

68. The application has to also pass the test of whether the route had the character of a BOAT as described in paragraph 7 above, and finally, if a BOAT could be recorded, or if the rights for mechanically propelled vehicles had been extinguished by NERCA. It is considered that the route had been shown to have the general character of a path used mainly on foot or with a horse and could be recorded as BOAT. The application, however, does not pass any exemptions of NERCA, failing which it is concluded that the application does not reach the requirements of section 53 (c)(i) of the 1981 Act and must be refused although see paragraph 70 below.

69. The right of appeal against a refusal to make an order is provided by Schedule 14 para 4 of the 1981 Act and notice of appeal against the decision should be served on the Secretary of State within 28 days of notice of the authority's decision.

70. Although the application to record a BOAT is refused, it is concluded that when all the available evidence is considered and on the balance of probabilities of the evidence the requirements of section 53 (c)(i) of the 1981 Act are satisfied and that public rights have been proven to subsist or are reasonably alleged to subsist but in consequence of section 67 of the NERCA the council is unable to make an order to record a BOAT but can record the route as a Restricted Byway.

APPENDIX I

Associated documents

Application No. 4/68 Mr D Worthington

Communications Received

Whitegate Parish Council email 23.12.2011, email 10.5.2017; Winsford Town Council letter 20.12.2011; Cllr Baynham email 4.5.2017; J Tomlin letter 7.6.2-17; J & P Booth letter 25.5.2017, 8.6.2017; A Thorley letter 20.5.2017; B Holt email 30.5.2017; J Thorley email 7.06.2017; J Arton 31.05.2017; M & G Heath 10.05.2017, 01.06.2017; J Mears email 9.5.2017; D Gunton email 08.06.2017; L Waterhouse email 25.06.2017; A Hooley email 26.06.2017;

Witness notes; S Bailey 30.5.2017; J Lambert 30.5.2017; D Lennon 30.5.2017;

Highway asset email 21.08.2011

Other Evidence taken into consideration

Notes and photographs of site visit made by A Mayer, 23.03.2017

Documentary Evidence

CRO= Cheshire Record Office

CWAC= internal records

NLS=National Library of Scotland

Date	Ref	Des
1777	CRO PM12	Burdetts map
1819	CRO PM 13/10	Greenwoods Map
1829	CRO PM 13/8	Swire and Hutchings map

1831	CRO M 5 2	Bryants Map
1846	CRO EDT 162/2 & 1	Tithe Award Over
1616	CRO D 4460/1	Survey of Vale Royal Manor House Estate
1912	CRO 218343 and DDX 246	Sale Particulars outlying portions Vale Royal Estate
1912	CRO DDX 246	VR Estate sales catalogue
1928	DBC 2309 3	VR estate sale plan
1861-2	QDP 388	West Cheshire Railway Line
1845	QDP 246	Proposed Birkenhead Lancashire & Cheshire Junction Railway
1910	NVB 2/37-38 NVB 41.9, 41.5, 40.8	Finance Act, Whitegate & Marton, Winsford
c1840	CWAC 1" series	Ordnance Survey
1872, 1898, 1910	CRO OS XXII.14 (25")	Ordnance Survey
1913	CWAC YES	Ordnance Survey popular touring maps
1945-1947	CWAC	Ordnance Survey Popular Editions
1948/1902	CWAC & NLS	Bartholomew map 2:1" Tourists & Cyclists Sheet 12
1850's to 1970's	CRO D 6917	Delamere Estate salt works correspondence
	Land Registry	CH128404/CH117332/CH570733/CH438566/CH368499
1950-2012	CWAC internal records	Definitive Map and Statement Parish and maintenance records
2009	CRO 222631	Hartford, Whitegate and Vale Royal by RM Bevan
2003	Planning Inspectorate	Definitive Map Orders: consistency guidelines





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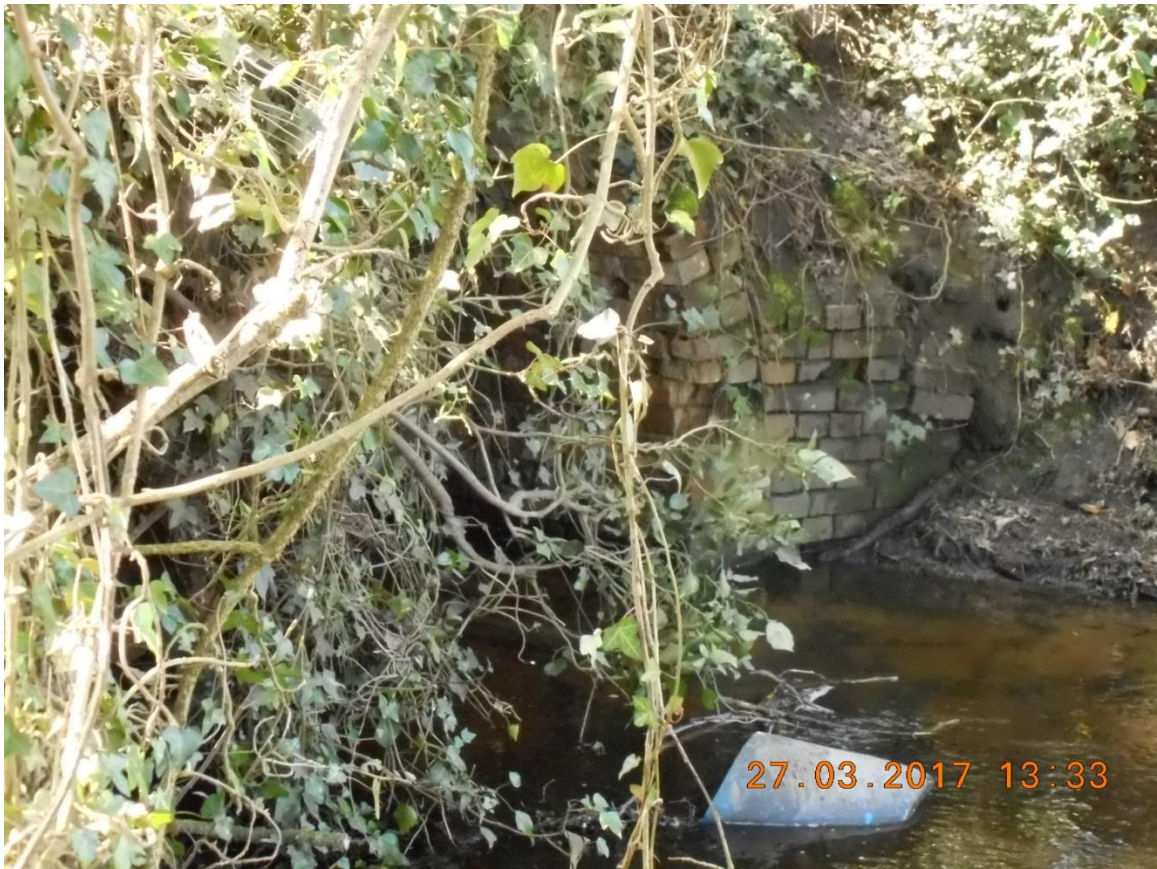


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APPENDIX B

name	use	frequency	2010	2005	2000	1995	1990	1985	1980	1975	1970	1965	1960	1955	1950	1945
			shading indicative of frequency of use													
Des Worthington	foot	1 to 3 times month					1990									
	vehicle	ditto										1967				
	cycle	ditto														
Colin Walsh	foot	weekly	2011										1960			
	vehicle	ditto	2011										1960			
	cycle	ditto	2011										1960			
Barry Cottrell	foot	weekly	2011/2007												1953	
	vehicle	ditto		2009											1953?	
	cycle	ditto	2011/2007												1953	
Thomas Ratcliffe	foot	3-4 weekly							1980		1970					
	vehicle	ditto	2011									1968				
Stephen Worthington	foot	frequently until 1989				1998				1975						
	cycle							1989		1975						
van del 1995	vehicle	ditto				1998				1975						
	cycle	ditto				1998				1975						
J G Herd	foot	weekly		2009			1985									
	vehicle	ditto		2009			1985									
	cycle	ditto		2009												
Raymond Barron	foot	10 + year	2011												1951	
	vehicle	ditto	2011												1951	
	cycle	ditto	2011												1951	
J Mears	foot	150 x year	2011				1990									
	cycle	ditto	2011										1960			
E Brown	car	once											1960's			
Parkinson	car	once/2 weekly					1990		1980							