

# Warburton Bridge

Transport And Works Act 1992 (TWA): Application For The Proposed Rixton & Warburton  
Bridge Order

Statement of Case

Submitted by Cllr Graham Gowland

Lymm Parish Council

## Summary of Objection

The Warburton & Rixton crossing was tolled in 1863 to provide a low level bridge over the Mersey, with linking roads between Warburton & Rixton.

In 1890 a new cut was created for the Manchester Ship Canal, and an additional high level Cantilever bridge and roadways to access this were constructed. The original toll does not cover maintenance of this new bridge, along with the maintenance of the other 'new' bridges – the Latchford Cantilever and Swing bridges as well as the Walton Swing Bridge amongst others. The responsibility to maintain these bridges sits with the operating profits of the Manchester Ship Canal Company core activities.

This toll order seeks a 733% increase, mainly to cover the repair costs for a bridge that only exists to allow the Ship Canal to operate – a private business that produces millions of pounds profit each year, and should be maintaining the 'new' bridge, but this order seeks to put what is a canal operating cost onto the tolls – something never intended.

The order also seeks to apply a raft of new laws to the crossing – laws simply not needed, and which will be enforced by a private police force. The bylaws will remove rights of way along a public highway for a range of users who currently can use the crossing, and will apply potential charges and penalties that are either new, or hugely increase existing penalties.

The current management of the crossing does raise concerns – the poor maintenance of the 'new' Cantilever bridge has resulted in a drop of the bridge capacity and has seen the footpath paving removed, and the toll collection practices are so badly managed they often result in traffic jams of over an hour, but the operating company does not seek to fix these from their own resources, but to use tolls from users, rather than existing revenue and reserves – which are considerable.

## Point 1

Usual regulation of tolls comes under the [Transport Charges &c. \(Miscellaneous Provisions\) Act 1954](#). The applicant has instead used the [Transport and Works Act 1992 S3 & S5](#). This act allows "The Secretary of State may make an order relating to, or to matters ancillary to— (a) the construction or operation of an inland waterway in England and Wales." It is first worth

noting that the order applied for goes far beyond matters directly relating to the operation of the Manchester Ship Canal (MSC). In addition the measures it attempts to apply (So for example prohibiting smoking while transiting the bridge) are not in place on any other crossing of the MSC, and so would seem to be questionable that this legislation should be used to seek such changes.

#### **Point 2**

One specific matter issue arises under the [Transport and Works Act 1992 S6](#). “An order under section 1 or 3 above shall not extinguish any public right of way over land.....”. The order specifically removes the existing right of way for horse riders, horse drawn vehicles and livestock transporters not approved by the company. This step would result in these users having to divert over 12 miles to make the same crossing. There are further restrictions that would also remove the right of way from others, including slow vehicles and steam driven vehicles.

#### **Point 3**

The Order and ‘business case’ includes matters relating to the costs of maintaining and remedial works to the Cantilever bridge and associated ramps. These features were built long after the incorporation of the tolled crossing and the responsibility for the maintenance of these structures does not form part of the undertaking maintained by the tolls. These structures have fallen into disrepair due to the lack of maintenance, and it should be noted that over the last 5 years alone, the MSCc delivered a gross profit of £128.4 million. The burden of this part of the crossing sits with the profits of the Ship Canal Company, and should not be sought from the tolls. For an explanation of the legislation behind this, please see Appendix 2

#### **Point 4**

The crossing is by statute a public road, and as such already falls under existing statutory and common law for a highway. The bylaws being sought apply severe penalties (Fines of £1,000) for ‘offences’ that either are not enforceable under reasonable legislation, or which would be dealt with informally, or at most with a much smaller penalty. In addition the bylaws seek to apply very different standards to those already in place - where ‘offences’ such as smoking in your own car, playing your car radio at a level high enough to annoy someone on the canal, could result in a fine of £1,000, without the existing, balanced protections given by wider statute. In just one example, a “sound system being played excessively loudly” is already controllable under section 59 of the Police Reform Act 2002, and yet the bylaws seek a penalty of Level 3, £1,000 for an ill-defined ‘nuisance’

#### **Point 5**

The order discussed a ‘clean slate’ approach to the undertaking. This attempts to move all existing liabilities to a new company, while retaining all the profits of the last 130 years. This is simply not acceptable.

#### **Point 6**

The current toll charge is capped at 12p, with a maximum charge of 24p a day. The order seeks to raise this to £1, capped at £2 a day. This is a 733% increase. This is simply unacceptable to anyone, and will see a regular user facing an annual increase in costs from £87.60 to £730. It should be noted that in the Consultation; [“Simplifying the process for revising tolls at local tolled crossings”](#) a mechanism to increase the tolls via a formula of “rate of inflation -1%” was proposed – which this year (Highest for a long time) would be 3.2%, not 733%.

#### **Point 7**

The legislation used requires publication of notices in newspapers local to the undertaking. In the case of this application the only 2 newspapers that could be relevant are the Manchester Evening News (To cover the Warburton side) and the Warrington Guardian (To cover the Rixton side). While notices could be found in the [London Gazette](#), no such notices could be found in these papers, and so it must be questioned if the requirements of the Act have been followed.

#### **Point 8**

There is an outstanding Highways Act 1980 S.56 notice served on the company in relation to the Cantilever bridge and associated ramps. The company have responded with an admittance of responsibility to maintain the road & Cantilever bridge, but a denial that there is any works needed. This seems at odds with the extensive level of works they are claiming as identified in the 2016 inspection report.

#### **Point 9**

At a meeting with Lymm Parish Council, the company indicated the cost of the free-flow tolling system was £200,000. In the business case document, the staffing and other operating costs associated with the toll (Which is not 24/7, or even usually in both directions) is £107K PA. Simply replacing the staffed booth with an automated system would cover the capital cost in less than 2 years, from staff savings alone. It is to be noted that the current costs are guesses by the company at best, as the toll does not operate as a specific cost centre in the accounts.

No quotes or estimates for any of the works stated as being required are included in the pack provided in relation to the business case – before setting the capital costs on which the toll is to be based, it is suggested these should be provided.

#### **Point 10**

It is stated the last bridge inspection was in 2016, and this was of the Cantilever bridge. **This is not the bridge maintained by the tolls.** The £6.5m costs of repairing (Not upgrading, simply bringing the bridge up to its required capacity) pale alongside the £128.4M gross profit made by the company responsible for its maintenance in the 5 years since 2016, let alone since they acquired the MSCC in 1983. It is noted no bridge inspection report is disclosed for the actual bridge covered by the tolls, which is the old low-level bridge. This must call into question if

this still exists as a bridge. It is also noted that there is a 2 yearly cycle of bridge inspections – why the 2016 report is the one referred to, and not the 2018 or 2020 reports?

### Point 11

It is stated there is no reserve fund currently in existence to pay for the works identified in 2016 (Although there is also no separate operating account for the operation). We refer again to the level of profits delivered by the MSCc over this period, and note that the [2021 accounts](#) had cash balances declared of £8.9M.

### Point 12

Had the [Transport Charges &c. \(Miscellaneous Provisions\) Act 1954](#) been used to increase the tolls, [S 6\(3\)](#) states:

“...have regard to the financial position and future prospects of the undertaking and shall not make any revisions of charges which in his opinion would be likely to result in the undertaking receiving an annual revenue either substantially less or substantially more than adequate to meet such expenditure on the working management and maintenance of the undertaking and such other costs, charges and expenses of the undertaking as are properly chargeable to revenue, including reasonable contributions to any reserve, contingency or other fund and, where appropriate, a reasonable return upon the paid up share capital of the undertaking.”

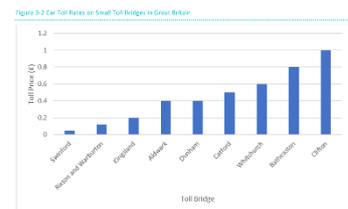
It's to be noted that the tolled undertaking does not include the maintenance of the Cantilever bridge and approach ramps, and the paid up share capital applicable to the undertaking is £7,000.

### Point 12

The paid up share capital of the toll undertaking was £7,000 on acquisition with a further mortgage of £1,500. A 2 year gilt currently returns 0.13%

### Point 13

From the applicants own figures, the proposed increase would move the toll from the second lowest to the joint highest of small toll bridges – although it should be noted the Clifton bridge (the only toll of £1) is a 158 year old 414 meter long high-level suspension bridge, not a 128 year old 40 meter Cantilever bridge.



Source: VWR Comments (October 2021)

### Point 14

No environmental impact assessment has been supplied. At present the management of the toll can cause huge traffic jams, which have a detrimental impact on the environment. An environmental impact assessment would show if making the tolls free-flowing would improve the environmental impact, and given half of the crossing falls inside the Greater Manchester Clean Air Zone, this would seem an important point. With a significant shareholder, [AustralianSuper](#) stating they believe investing in companies with good Environmental, Social & Governance (ESG) management provides better long-term returns for members, it is curious why this assessment has not been carried out.

### **Point 15**

The new bylaws seek to prevent self-recovery by motorists, or even recovery by a service such as the AA. Instead a company appointed contractor will be used – at the expense of the motorist. Looking at a tolled crossing, the Mersey Gateway Byelaws set a minimum fee of £150 - £650+ VAT for an authorised person to tow a vehicle. While the scale of charges is not set out in the bylaws, it is clear that motorists could face a hefty charge if they break down on the crossing roadway – a public highway, compared to breaking down at any other point on the B5159 that is not tolled.

### **Point 16**

Before the pandemic the crossing carried on average 9,500 vehicles each weekday, and 6,500 each day on the weekend, which at 12p per crossing is £6,050 ex VAT a week turnover, or £314,600 pa. Given the current staffing costs of £107K PA, this leaves a residual gross profit of £207,600 pa – which properly managed should have been sufficient to maintain the parts of the crossing maintained by the Toll. To repeat – the Cantilever bridge is the responsibility of revenue from the operation of the Ship Canal, not the tolls.

### **Point 17**

The draft Order sets out periods of notice for closure (except in the case of emergency) to the Council and general public. We do not believe this notice period is sufficient – as a minimum this should be 21 days.

An additional clause is also considered necessary to ensure the swift reopening of the bridge in the event of any closure. This reflects the strategic importance of the bridge in the local road network.

### **Point 18**

The Proposed Order powers to amend Tolls in Part 1.5 (2): "*Whenever MSCC proposes to exercise its power pursuant to sub-paragraph (1) MSCC must publish in at least one local newspaper circulating in the area in which the Rixton and Warburton Bridge is situated, a notice substantially in the form set out in Part 2 of this Schedule.*"

This is insufficient: any notice must be sent to all customers that have registered for electronic communications (on the assumption that the cost of this is very close to zero). Furthermore any toll change must state the reasons for the toll change, and the calculations used. Any pre-paid 'crossings' of the Undertaking must be considered (and should be redeemable at their original purchase priced). Notwithstanding, this whole section should be unnecessary due to the existing legislation being sufficient to fund the current undertaking (with the Cantilever bridge being maintained by MSCC under the 1885 & 1890 Acts).

### **Point 19**

Proportionate - the proposed method of Toll collection is not defined - such a Free Flow Toll collection system has not as far as it is possible to tell ever been implemented on a comparable road (with traffic flow limited by entry and exit junctions); the costs that are suggested in the

Business Case and the Proposed Order are not backed up with any detail that can be used to evaluate value for money, or even allow implementation to be measured and accountable. MSCC have a fiduciary duty to the users that they intend to fund the proposed system (including the cost of finance) to keep costs reasonably low. The proposals are for a Rolls Royce revenue collection system on a minor road between townships (Warburton Bridge Road is an unclassified road which ends at a B road - the B5159 Townfield Road and another unclassified road - Paddock Lane).

**Point 20**

Whilst the Business Case suggests that the proposed Toll of £1 per crossing of the Undertaking includes VAT, the Proposed Order does not mention this. It is believed that only the Proposed Order would be enforceable, and without explicitly stating that VAT is included in the proposed (initial) £1 Toll, MSCC have the option to set the initial Toll at £1+VAT, e.g. £1.20 to the consumer.

**Point 21**

In the business case, a cap of 2 crossing charges a day is stated, however this is not replicated in the toll order. Given the community centred around the bridge, any toll must be capped to 2 crossings.

## Appendix 1 - Definitions and references

(These definitions differ from those used by the Manchester Ship Canal Company [MSCC] as these follow the statutory terms used in the various Acts of Parliament that apply)

- The 1863 Act - [Rixton and Warburton Bridge Act 1863](#)
- The 1867 Act - [Rixton and Warburton Bridge Amendment Act 1867](#)
- The 1885 Act - [Manchester Ship Canal Act 1885](#)
- The 1890 Act - [Manchester Ship Canal \(Various Powers\) Act 1890](#)
- [The Transport and Works \(Applications and Objections Procedure\) \(England and Wales\) Rules 2006 \(legislation.gov.uk\)](#)
- Rixton and Warburton Bridge - the Bridge over the river Mersey, specified in the 1863 and 1867 Acts, including the approach Roads between the A57 Manchester road, and Warburton Cross at the junction of Townfield Lane and Paddock Lane (this definition pre-dates and so excludes the Cantilever bridge).
- The Cantilever bridge - the High level Cantilever bridge over the Manchester Ship Canal, specified as works number 35 in the 1885 Act and 1890 Act
- The Undertaking - the combined Road and bridges, e.g. the combination of the Rixton and Warburton Bridge and the Cantilever bridge.
- MSC - Manchester Ship Canal
- MSCc - Manchester Ship Canal Company
- The Port of Liverpool Police - a non-Home Office ports police force with responsibility for Liverpool, Bootle, Birkenhead, Ellesmere Port and Eastham Dock Estates and Freeports, as well as the Manchester Ship Canal areas in the north-west of England.
- The Toll - the current Toll authorised under the 1863 Act
- The Proposed Order - The RIXTON AND WARBURTON BRIDGE DRAFT TRANSPORT AND WORKS ORDER dated November 2021
- ANPR - "Automatic Number Plate Recognition", a technology that 'reads' vehicle registration plates using a digital camera, recording the registration string as a data file.

## Appendix 2 – Legislation relating to the high level Cantilever bridge

The Rixton and Warburton Bridge Act 1863 is still the act of parliament under which the tolls are charged.

### [Rixton and Warburton Bridge Act, 1863](#)

This act:

Creates the Company, the "Rixton and Warburton Bridge Company".

Allows for capital to be raised via share issues, and borrowing against the new bridge, via mortgage. The Act specifies share issue and borrowing limits.

The location of the new bridge over the river Mersey, and the location of the north and south approach roads between what is now the A57 Manchester road to the north, and Townfield lane next to Warburton Cross to the south is stipulated in the Act.

Certain engineering requirements are specified - the span of the Rixton and Warburton Bridge, its clearance above the river Mersey, and that the abutments or piers must be applicable to a bridge able to be opened - there was clearly a recognition that larger vessels may need to pass in the future, Parliament specified that the Warburton and Rixton Bridge was to be capable of being converted to an opening bridge in the future.

In s.29, the Act specifies that the Rixton and Warburton Bridge Company would need to complete the conversion of the **existing** Rixton and Warburton Bridge into an opening bridge, at their own cost, should the owners of the existing Mersey & Irwell Navigation widen / deepen the river to allow the passage of sea going (e.g. larger) vessels. This section of the Act was never invoked.

This Act specifies a number of obligations and rights:

s. 38 make and maintain on each side of the bridge a good and sufficient fence of height not less than four feet

s. 46 the approach roads (so at this point in time, the road between what is now the A57 Manchester road and Townfield lane, at Warburton Cross - a route slightly west of the current route that now traverses the Cantilever MSC crossing), and the Warburton and Rixton Bridge shall be maintained by the Warburton and Rixton Bridge Company – the Act intended that this Bridge and the approach roads should be 'privately maintained', but other than the toll gates & charges should be accessible as public highway.

s. 48 states the charges - effectively a maximum of "Two Shillings and Sixpence" for "every Carriage drawn or propelled by Steam or any Means other than Animal Power". This would convert to approximately £7.30 at 2020 prices. Pedestrians can be charged (but are currently not). The charges are optional, as the act states the tolls 'may' be charged, or reduced. Using a conversion of 12d to a shilling, and 20 shillings to a pound, the maximum that can be charged would per trip would be 12.5p, and 25p for the maximum permitted two trips in any day, hence the modern single toll is rounded down to 12p.

s.50 states: The Tolls by the Act granted are by this Act vested in the Company for the Purposes of this Act. - This is a key section, the tolls must only be used for the purposes of the Act.

s.51 allows the tolls to be reduced, but "never" exceed the Amount by this Act limited - Parliament set fixed toll limits, with no option to increase tolls or allow for inflation.

s.55 the Toll gate must display current Toll charges via a "Table painted in distinct and legible Black Letters on a Board with White Ground, containing a List, distinguishing the several Tolls to be paid by virtue of this Act"

s.57 allows for animals with reins & saddles etc. to be seized, in order to obtain payment for monies (e.g. tolls) owned - the term used is 'distrain'; but there's no allowance for motor vehicles, or powers over motor vehicle drivers.

s.58 allows for seized animals etc. to be sold to cover charges after a defined number of days, but again no powers are granted over motor vehicles.

s.62 Toll Collectors shall display their first and last (Christian and surname) "on the Front or some other conspicuous Part of the Toll House or Toll Gate immediately on this coming on Duty (each of the Letters of the Name or Names to be at least Two Inches in Length, and of a Breadth in Proportion, and painted in Black Letters on a Board with a White Ground), and shall continue the same so placed during the whole Time he is upon Duty" (No such boards are displayed)

s.67 "If any Person fraudulently or forcibly pass over the Bridge or through any Toll Gate without having paid the Tolls, or assault, obstruct, or interrupt any Person employed in the Collection of the Tolls, every Person so offending shall for every such Offence forfeit not exceeding Forty Shillings." - Note the definition - this does not cover e.g. driving a car through a barrier left open.

There are allowances in this Act for the Rixton and Warburton Bridge Company to buy up & close all ferries over the Mersey for a mile in each direction, giving a local monopoly on crossings over the Mersey.

Parliament permitted the current toll to be charged in return for the financial risk of building a crossing over the river Mersey.

### [The Rixton and Warburton Bridge Amendment Act, 1867](#)

Around 4 years after the first Rixton and Warburton Bridge Act, this legislation was passed as "An Act to enable the Rixton and Warburton Bridge Company to raise further Money, and to create Preference Shares; and for other Purposes"

In 1867, the Rixton and Warburton Bridge is built, and is in use - it's now the 'Warburton Toll Bridge', crossing the river Mersey.

This Act

“Permits the Rixton and Warburton Bridge Company to issue further shares, and borrow more funds against mortgage, within defined limits.”

The 'Monies' raised under this Act are to be applied only to the purposes of the undertaking of the 1863 Act (e.g. building & maintaining the Rixton and Warburton Bridge)

Strengthens the provisions for preventing any 'competitors' such as ferries or similar, from operating within the distance of a mile in either direction from the Rixton & Warburton Bridge.

### [The Manchester Ship Canal Act 1885](#)

This Act was passed 22 years after the Rixton and Warburton Bridge Act 1863, and 18 years after the The Rixton and Warburton Bridge Amendment Act of 1867.

This Act:

Creates the "Manchester Ship Canal Company" (called "The Company" in this Act).

Specifies the building of the Manchester Ship Canal in sections, or 'Works', e.g.

"Number 35. - An opening bridge wholly in the township of Rixton-cum-Glazebrook in the said parish of Warrington with all necessary machinery and apparatus to carry the Rixton and Warburton Road over Work Number 3 commencing in the said road and terminating in that road at a point about two chains north-west of the point of commencement;

Number 36. - An opening bridge wholly in the said township of Latchford with all necessary machinery and apparatus to carry the road leading from Knutsford to Warrington over Work Number 2 commencing in that road and terminating in that road at a point about two chains north of the said point of commencement ..."

Specifies that the Manchester Ship Canal Company may "...alter vary and reconstruct all or any of the bridge over the Rivers Mersey and Irwell or either of them and substitute opening for fixed bridges and remove all bridges rendered unnecessary by reason of the construction of substituted bridges..."

Note the use of "MAY alter vary..." - not shall - this is optional.

This specifies an opening bridge at the point where the northern approach road to the Rixton and Warburton Bridge crosses the new Ship Canal. The new bridge is to be 'about two chains' - approx. 40m, so similar to the Latchford swing bridge.

Works no. 23 to 32 inclusive define new roads (& widening of one road) required due to the Ship Canal.

Works no. 33 to 39 inclusive specify new bridges over the Ship Canal, with detail shown for #35 & #36 above.

Roads are clearly defined as roads, bridges are clearly defined as bridges. At no point does the term road appear to include "road + bridge", understandable as each bridge crossing the

Ship Canal would have been a significant expense, likely far more costly than providing or diverting a road.

Further Act's followed:

### [The Manchester Ship Canal \(Various Powers\) Act 1890](#)

This Act:

Permits the substitution of a 'fixed' bridge instead of the 'opening' bridge specified in the Manchester Ship Canal Act of 1885 ("abandon the construction of the opening bridge authorized by the Act of 1885 as Work Number 35)

States that the Rixton and Warburton Bridge Company raised seven thousand pounds (£7,000) in shares, and borrowed a further one thousand five hundred pounds (£1,500)

States that "the (Rixton and Warburton) Bridge Company for some time past have not paid any interest on their mortgage debt"

Arranges for the transfer of the Rixton and Warburton Bridge 'undertaking' to the Manchester Ship Canal Company; the Manchester Ship Canal Company is to buy the Rixton and Warburton Bridge Company shares, pay off the mortgage and take control of the assets (the approach roads, the existing Rixton and Warburton Bridge, and the Toll charges)

There are some specific sections that are particularly relevant:

s. 9 "The said diversion of the Rixton and Warburton Road shall for all purposes (including the levying of tolls rates and charges) be substituted for the portion of the existing road so diverted)"

Interpretation here matters. Parliament states "Road", not "Road and Bridge". The intention here is to ensure that travellers on any part of the diverted road are still liable to pay the Toll charge specified in the Rixton and Warburton Bridge Act of 1863.

**s. 15 specifies maintenance responsibilities for new bridges over the Manchester Ship Canal in that "Provided that unless otherwise agreed the structure of every bridge and the immediate approaches thereto and all other necessary works connected therewith shall be repaired and maintained by the (Manchester Ship Canal) Company."**

s. 35 "the Directors of the (Warburton and Rixton) Bridge Company may exercise all necessary power for winding up the affairs of the (Warburton and Rixton) Bridge Company and as soon as their affairs have been wound up and all their debts and liabilities paid or satisfied the (Warburton and Rixton) Bridge Company shall be by virtue of this Act dissolved."

The Warburton and Rixton Bridge Company is dissolved.

The Toll is still valid, but is now collected by the Manchester Ship Canal Company, under the original terms of the Rixton and Warburton Bridge Act 1863 – no new powers are conferred by the new Acts.

The Ship Canal and the Rixton and Warburton Bridge Crossing are now owned by the Manchester Ship Canal Company, and the company is responsible for maintaining both the undertakings specified in the **1863 Rixton and Warburton Bridge Act** - e.g. the old bridge over the now defunct Mersey channel and the approach roads (now diverted), but also the new Cantilever bridge over the Manchester Ship Canal with the approach ramps – however the provisions of the Rixton and Warburton Bridge Company still stand:

s.50 of the Rixton and Warburton Bridge Act, 1863 states "The Tolls by the Act granted are by this Act vested in the (Rixton and Warburton Bridge) Company **for the Purposes of this Act.**"

Under the existing stature, the Toll can **only** be used for the original scope of the 1863 Act, to maintain the old Bridge over the river Mersey, maintain the original approach roads, service the borrowings and pay dividends.

Parliament could have specified that the new Cantilever bridge (works no. 35) was to be maintained by the Toll, but did not.