

Extent of Highway Maintainable at Public Expense at Seagry Road, Lower Stanton St Quintin

Purpose of Investigation

- i) To investigate the extent of highway maintainable at public expense north of no. [REDACTED] [REDACTED] Seagry Road, Lower Stanton St Quintin.

1. Background

- 1.1 The extent of highway recorded as being maintainable at public expense north of no [REDACTED] [REDACTED] Seagry Road, Stanton St Quintin has been questioned by Mr Malcolm Reeves.
- 1.2 In 2018 Mr Reeves made representations to the Highway Records team disputing the extent of highway maintainable at public expense (HMPE). The land has also been subject to a planning application which has been refused and is the subject of an application to record the land as a town or village green.
- 1.3 In May 2018 detailed correspondence was exchanged with Mr Reeves in which officers upheld the representation of the land in the highway record as not being public or highway or being an HMPE. Officers invited Mr Reeves to submit further evidence to support his case if he wished to challenge the record further. See **Appendix A**
- 1.4 The current 'working copy' of the highway record shows the extent of HMPE coloured sienna as below:



Area of land being investigated

- 1.5 The Council's 'working copy' record of HMPEs is known as "the highway record" and also forms part of the List of Streets held pursuant to s.36(6) of the Highways Act 1980. In the case of this area the document is derived from Wiltshire County Council's original Highway Record. This is a series of Ordnance Survey maps of the scale 1:10560 coloured to show the extent of HMPEs that are roads. The area of land being investigated is not shown coloured in this record:



Area of land being investigated

- 1.6 This record was drawn up in 1929 as a result of the Local Government Act 1929 which transferred the maintenance liability for rural roads from the Rural District Councils to the County Council. It is known that in 1929 surveyors the Rural District Councils (in this case Calne and Chippenham Rural District Council) came into the offices of the County Council and completed plans showing the extent of HMPEs. These maps are known as 'Takeover Maps' and the area of land being investigated is not shown coloured as an HMPE in this record:



Area of land being investigated

2. Considerations for the Council

- 2.1 It is clear that from at least 1929 the area of land being queried has not been recorded as HMPE by the highway authority.
- 2.2 Neither the Highway Record nor the List of Streets is conclusive in law as to the information it contains (unlike the definitive map and statement) and whilst it is reasonable for the Council to rely upon these records, where reasonable query or evidence is raised it is considered reasonable for officers to investigate the matter. However, the Council is under no duty to 'prove' the Highway Record and the burden of proof rests with the person questioning its validity.
- 2.3 Mr Reeves has carried out some historical research and has adduced a paper entitled "Land in Lower Stanton St Quintin – Historical Arguments". See **APPENDIX B**
- 2.4 The common law principle of "once a highway, always a highway" permits the Council to look beyond its records and to consider historical documents relating to the creation of the highway in order to verify whether the current records are correct. This is further supported by section 32 of the Highways Act 1980 which enables any court or tribunal to do the same. It is noted however that whilst public highway rights may exist over land the maintenance liability is a separate matter. In other words, public highways are not necessarily maintainable at public expense even though the majority are.

3. Officers comments on Appendix B

- 3.1 **i) 1834 Survey** This document appears to relate to the Tithe Commissioners survey arising from the 1836 Tithe Apportionment Act but it is not clear how the physical similarity and apparent purpose of the document came to precede the Act by 2 years. The purpose and provenance of the document is not clear but it appears to be a detailed land survey in the form of a map and register. As later tithe award documents do, parcels of land are numbered and listed in the register (or apportionment). The style of the map suggests that inhabited buildings are coloured red, outbuildings grey, roads coloured sienna and unnumbered and water features coloured blue, though there does not appear to be a key.
- 3.2 The land in question is shown coloured blue as a water feature or pond. The highway is shown coloured sienna as per the current and historic highway records. No ownership is recorded for the highway, the pond or for say, the plot to the east of the highway.
- 3.3 Whatever the purpose of the map (which is considered likely to be tithe related) it is highly unlikely to have been to determine the extent of HMPEs as tithes related to land capable of agricultural production and not to public rights or maintenance liability.
- 3.4 **ii) Inland Revenue 1910 Survey** Comments on this document are contained within Appendix A.
- 3.5 **iii) Parish Council Minutes** The parish council suggested to Wiltshire County Council that the pond be filled in and road drainage diverted in 1949. The pond had not been filled in by 1955 and the parish council recognised that the Calne and Chippenham RDC had no powers to deal with the matter but could assist with surplus material from a nearby housing development. The pond appears to have been filled in by 1965 and the Divisional Surveyor from the RDC agreed to cover the site with soil 'as and when it became available' and to sow it with seed. This had still not happened in 1966.
- 3.6 Although Mr Reeves considers the actions of the RDC to be an admission that it was highway maintainable at public expense it appears to have been carried out as a gesture of

goodwill to the Council “thus assisting the Parish Council in dealing with the nuisance”. It must also be borne in mind that the RDC was not the highway authority at that time.

- 3.7 Contrary to Mr Reeves’ contention that the Council owned the land or took over its ownership in the 1950s there is no evidence to support this and records relating to enclosure of the parish in 1783 (see additional research below) demonstrate that it is unlikely that either the RDC or the County Council in their capacity of highway authority would ever have owned the land. Infact, to the contrary, research demonstrates that the land has been attached to a nearby property.

4. Additional research

- 4.1 **Stanton St Quintin Inclosure Award 1783** This is held at the Wiltshire and Swindon History Centre as document EA24 and map 490/1072.
- 4.2 The award arises out of an Act of Parliament (An Act for Dividing and Inclosing the Open Common Fields and Commonable Places within the Parish of Stanton Saint Quintin in the County of Wilts). The Act gives commissioners the power to create new roads and private and public paths across the parish and in so doing to cause the division of the former commons into allotments or parcels of land better suited to modern agriculture. These boundaries form the basis for modern day registered titles. Arising from Acts of Parliament inclosure awards are viewed as legal events and carry high evidential weight (where due process has been followed) and are usually only re-butted by another legal event. Amongst other powers Commissioners had the power to extinguish rights over existing highways and to create new ones, both private and public.
- 4.3 The accompanying map shows the effect of the division of the parish. Roads are laid out and numbered and allotments are also laid out and numbered. The road in Stanton St Quintin bordering the land in question is shown numbered 128 and is described in the award as:

“One public Road of the breadth of forty feet beginning at the west end of a lane in the village of Stanton St Quintin and extending from thence westward in the usual course to a small tenement in the possession of Isaac Fry and after passing to the south side of the said tenement and two other small tenements and the gardens therof of its usual breadth thence continuing in the like course to the East side of the turnpike road”

- 4.4 The award map shows the area as below:

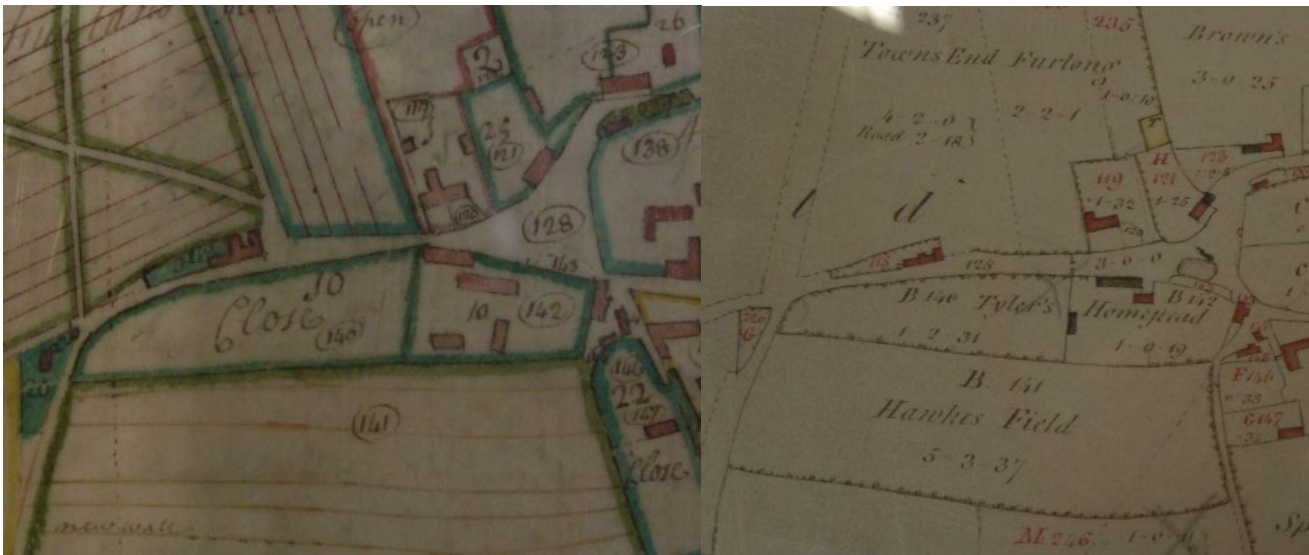


- 4.5 It is noted that an area possibly representing the pond is shown and part of the land in question is numbered 143 in the same way as the nearby red coloured property (a dwelling) is also numbered 143. On the balance of probability this land forms part of property 143, probably its garden.
- 4.6 Officers consider that on the balance of probability the shaded area (that may be a pond) forms part of property 143 and this is supported by modern day records which show this area of land combined now the pond has been filled in.
- 4.7 The relationship of this area of land is clearly with property 143 and not the highway (128) or the property to the south, number B142.
- 4.8 **Map of the Manor of Stanton St Quintin 1719** This is held at the Wiltshire and Swindon History Centre as document 490/1071.
- 4.9 The map is entitled "The Manor of Stanton St Quintin in the County of Wilts Survey for Sir Edward D'es Bouverie Barr by John Edgar 1719". It is a well drawn coloured map drawn at the scale of 24 perches to one inch. The map has two schemes of numbering and one scheme accords with the inclosure award. The red coloured property (dwelling) to the south east is not numbered 143 as per the inclosure map and may or may not relate to it. However, other small roadside dwellings are numbered (i.e. number 144 and 145 nearby) and it would seem that on the balance of probability the un-numbered one is number 143 and hence related to the area of land south of the highway. The map does not distinguish a pond or other clear feature within this land and shows it roughly defined by pecked lines.



- 4.10 The map of 1719 shows the landscape of Stanton St Quintin before inclosure but has a number of proposed changes marked upon it in pecked lines. In one instance a pecked line is annotated "new wall" and further pecked lines are consistent with changes later made at inclosure. The pecked lines surrounding parcel no. 143 would therefore appear to be a proposed addition to the adjoining property, in effect, taking a part of the former highway and allotting it to a nearby dwelling. It is useful to compare the two maps side by side. See 4.12.
- 4.11 Further examples can be seen whereby 'Close' number 10 is also labelled no. 140 in accord with the later inclosure map and 'Close' number 22 is subdivided into a number of properties numbered 146 and 147 and 149 in the inclosure map.

- 4.12 There can be no doubt that the map of 1719 shows both the landscape before inclosure and the effect of inclosure. It is certainly possible that in preparing for the process of inclosure part of the 'planning' process was drawn onto this earlier map which probably was the most accurate survey of the manor that was available at that time. Certainly no others have survived in the county archive. The effect of inclosure is clearly shown below with old roads extinguished and new field and property boundaries created.



5 Conclusions

- 5.1 The plot of land numbered 143 and the pond (i.e. the land excluded from the highway record) were clearly created at Inclosure and related to the nearby dwelling house (which may or may not still exist). The area of land was created out of what was possibly historic highway but the effect of the inclosure award (as enabled by the Act of Parliament) was to extinguish existing highways and to create new ones. We can see good examples of this in the top left hand corner of the extracts above. Here, old highways have ceased to exist and new ones have been formed to allow for the new division of the land. The road in the village is no different to this and the new highway, no 128, was created as the new road. The inclosure award did not specifically include the pond or the parcel of land numbered 143, which, on the balance of probability, also included the pond area.
- 5.2 Village ponds are not uncommon features in villages and have historically been used to produce fish, house ducks, soak cartwheels, wash clothes and provide water for animals. The purpose and use of Lower Stanton St Quintin's pond is not known. If it was formed in the highway it would have formed an obstruction to the highway and although it remains lawful to drain the highway onto adjoining land it is not lawful to drain adjoining land onto the highway.
- 5.3 Whatever the history of ownership of this land since 1783 it is irrelevant to the matter of whether highway rights were subsequently acquired. It is not possible to acquire highway rights through a pond and since the pond has been filled in (the mid 1960s) the Council has no evidence to suggest that a highway right to pass and re-pass has ever been acquired by any member of the public either on foot, horseback, cycle or with a mechanically propelled vehicle. Even in the event that they had been acquired in this way it is even less likely that the way would be maintainable at public expense.

- 5.4 Officers consider that the extent of highway maintainable at public expense is correctly recorded at this location. Even if the extent of highway had included the pond area the area directly south of the pond, parcel number 143, was clearly allotted to a property distinct from the road.

Sally Madgwick
Team Leader Definitive Map and Highway Records

01 February 2019

01 May 2018

APPENDIX A

Mr Malcolm Reeves

██████████
Sutton Bengier
Chippenham
SN15 ████████

Rights of Way and Countryside
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Your ref:

Our ref: SM/SSQ

Dear Mr Reeves

Land at Lower Stanton St Quinton

Thank you for your letter and e.mail dated 23 April 2018 regarding land at Lower Stanton St Quinton that you would like to see added to Wiltshire Council's record of highways maintainable at public expense ("the highway record"). I understand that you have been in correspondence with my colleague Jane Hughes on the matter and that you seek to demonstrate to the Council that the land, a former pond, forms part of the highway maintainable at public expense and should be recorded as such.

I have looked at the Council's records and can find no evidence to support that this land has ever been viewed as public highway by Wiltshire Council. I accept that the area of land is shown by the Ordnance Survey with a brace causing it to be measured with the adjacent highway and that the area is uncoloured on the working copy of the Finance Act 1909/1910 map, however, neither of these facts on their own form a sufficiency of evidence to suggest that on the balance of probability the public have acquired a right to pass and re-pass over the land or that the land forms part of the highway maintainable at public expense.

You state that the land has been "walked over by the public for over 50 years". Even if evidence of this was adduced by you (rather than just as a statement) it could not cause the land to be recorded as public highway maintainable at public expense, the highest right that could be recorded would be as a footpath and, if the walking over was more of a wandering over the land, it could not even be recorded as that. Use such as that may support registration of land as a town or village green (subject to a number of legal tests) but not as a highway.

As the Highway Record is an internal document (albeit required by law under s.36(6) Highways Act 1980) there is no formal process for application to amend it and no prescribed process for appeal. You may apply to register the land as a town or village green under s.15 of the Commons Act 2006 or to record a highway that is a byway open to all traffic, restricted byway, bridleway or footpath under s.53 of the Wildlife and Countryside Act 1981 (which has a prescribed appeal process contained within Schedule 14). A guidance booklet is enclosed.

If you wish to maintain your claim that the area is part of the publicly maintainable road and has been omitted from the highway record by mistake I can only suggest that you present all of your evidence along with a statement explaining the case to me at the above address. However, I have not yet seen anything substantive that would cause the Council to consider changing its records.

Yours sincerely

Sally Madgwick
Acting Team Leader Rights of Way and Highway Records
Direct Line: 01225 713392
Sally.madgwick@wiltshire.gov.uk

11 May 2018

Mr Malcolm Reeves
[REDACTED]
Sutton Bengier
Chippenham
SN15 [REDACTED]

Rights of Way and Countryside
Waste and Environment
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Your ref:
Our ref: SM/SSQ

[REDACTED] Mr Reeves

Land at Lower Stanton St Quinton

Thank you for your e-mails of the 4th and 8th May. I must make it clear to you that the Council maintains two types of records in respect of public rights of way and of public maintenance liability. Public rights of access are recorded in the definitive map and statement, details of how to apply to have this modified have already been forwarded to you. Public maintenance liability is recorded in the Council's highway record or List of Streets. To be recorded in this record the way must either be an ancient highway (pre 1835) or the subject of formal adoption at some point thereafter. It is the officer's view that nothing in your recent e-mails or previous correspondence adduces any evidence to support that this applies to the pond area at Stanton St Quintin.

However, you ask for some explanation of the interpretation of historic documents. The following may assist:

- 1) The 'hedge to hedge' presumption is rebuttable by other evidence (Have v Norfolk County Council [2000] EWCA Civ 290).
- 2) The evidence of the Ordnance Survey rebuts with regard to a number of factors:
 - i) Parcels and bracing : There are minimum thresholds. See page 57 JB Harley Ordnance Survey Maps a descriptive manual.
"...for example where a lake, pond, reservoir....is less than one tenth of an acre it will be braced..." "...the selection of parcels and the use of braces is governed by practical convenience in measuring: the parcels have no significance whatsoever in regard to property ownership."
 - ii) Shading. See Rights of Way Law Review pages 107 – 118 "Roads on OS 1:2500 plans 1884 – 1912" by Yolande Hodson. Ordnance Survey instructions to surveyors required them to 'shade' (that is use a thickened line) to the south and east of the highway boundary to indicate road categories. Accordingly the Second Edition of the OS 1:2500 (and 1:10560) maps show the highway boundary as being a thickened line along the northern edge of the pond. The pond is not included in the highway. This is entirely consistent with the RDC and WCC records of the extent of maintainable highway. These maps are available for public viewing at the Wiltshire and Swindon History Centre.
- 3) There are a number of reasons why land was excluded from taxation in the 1909/1910 Finance Act. These include minimum sizes for land, association with a dwelling house and so forth. Although s.35 is probably the reason why most public highway land was excluded there is no supporting evince here that the pond area was highway land in the first place. Even the RDC confirmed that the existing road was wide enough when the parish council wanted to make it wider by filling in the pond and including that.

Owing to resources it is no longer possible to look any further into these records unless to address a statutory duty in line with Schedule 15 of the Wildlife and Countryside Act 1981 or in response to substantive evidence that has not previously been adduced.

Yours sincerely

Sally Madgwick
Acting Team Leader Rights of Way and Highway Records Direct Line: 01225 713392

Land in Lower Stanton St. Quintin – Historical Arguments

The land in question is a grassed area in front of [REDACTED] Lower Stanton St. Quintin. The Highways Records map of 9 March 2018 is shown below in figure 1 and on this map the land is the white area P.

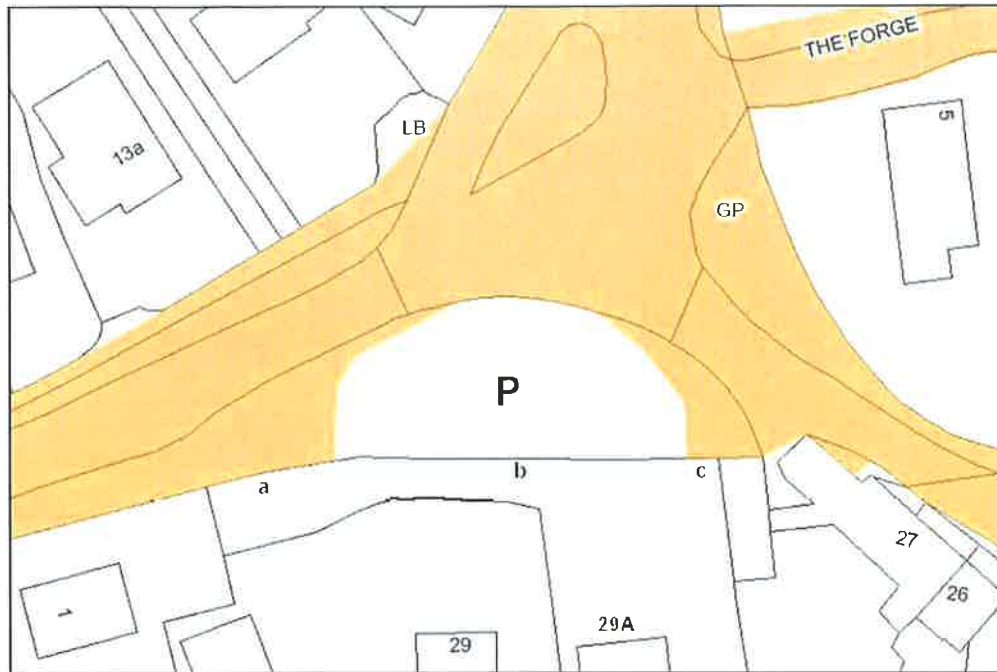


Figure 1 - Highways Map 9 March 2018

Also for convenience, the relevant extracts of the documents referred to in the discussion below are included in this document. The original, full page copies are available on request.

1834 Survey

The Wiltshire and Swindon Historical Centre has an 1834 survey of this parish with tenants' names, field names, cultivation and acreage. Even the roads are included in this survey. The survey comprises a map where each plot is numbered and a book listing tenants and acreages. A section of this map is reproduced below in figure 2 which shows the plot of 29/29A was numbered 125. The pond is not numbered so there are only 2 possibilities for the pond, either it is part of the road land or it is part of plot 125.

Shown in figure 3 is the top of page 1 of the survey book, with the date, and below an extract of the page with the entry for plot 125. Plot 125 is described as "Cottage Garden & Buildings". No mention of including a pond. The size of this land is given as 0, 2, 23 (acres, roods, perches). As there are 4 roods to the acre and 40 perches to a rood this works out as 0.64 acre $((2+23/40)/4)$.

In figure 4 is a screenshot of online Wiltshire Planner Explorer tool measuring the area of the land of [REDACTED]. In other words the area of plot 125 of the 1834 survey. As can be seen from figure 4 the result is also 0.64 acre. This is conclusive proof that the pond is not part of plot 125 and therefore must be part of the road parcel as the pond does not have its own number.

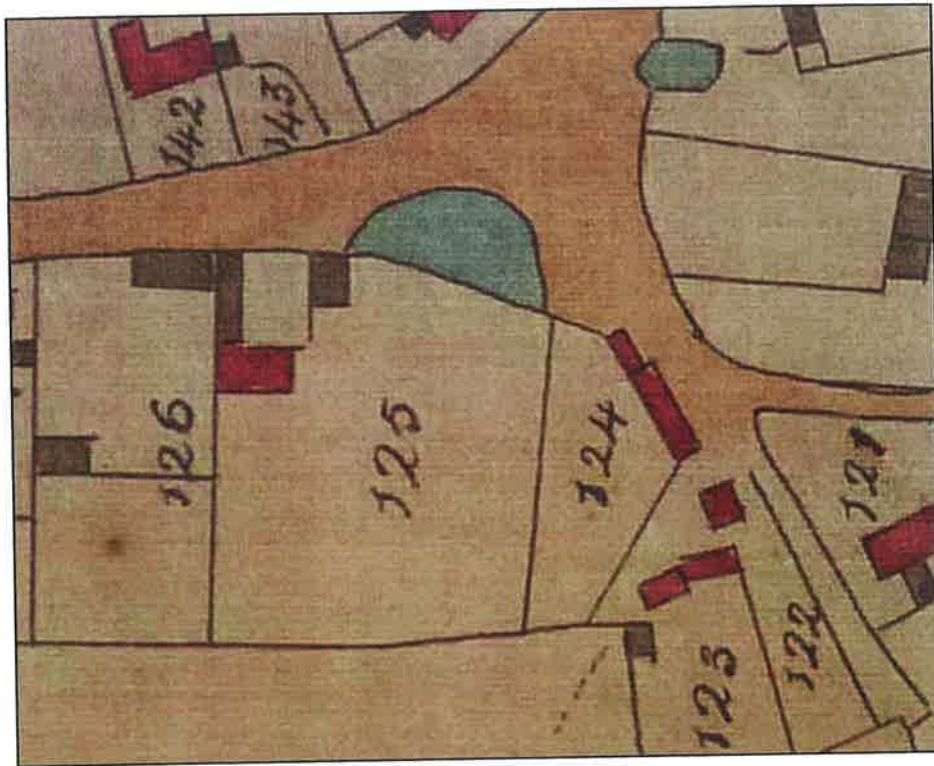


Figure 2 – Extract of 1834 Survey Map

*Survey of the Parish of Stanton St Quinton
in the County of Wilts 1834*

No.	Tenants Names	Names of Fields	Culture	Measure		
				r	f	l
<i>The Earl of Radnor</i>						
1	In hand	Stanton Wood	Wood	258	1	57
2	James Munday	Wood Lane	Meadow	10	1	8
121	John Miles one Cottage	Two Cottages and Garden		0	0	31
122	Joseph Allrop (Lifehold)	Cottage and Garden		0	0	16
123	Sarah M ^{rs} Miles (Lifehold)	Two Cottages & Garden		0	0	20
124	James Woodman (Lifehold)	Three Cottages & Garden		0	0	28
125	Robert Jones	Cottage Garden & Buildings		0	2	25
126	John Miles	Garden & Buildings		0	1	19
127	Robert Jones Copyhold	Cottage & Garden		0	0	24
128	John Miles	Cook's Close	Arable	0	0	0
129	"	"	"	"	"	"

Figure 3 – Extracts from page 1 and Entry 125 page of 1834 Survey Book

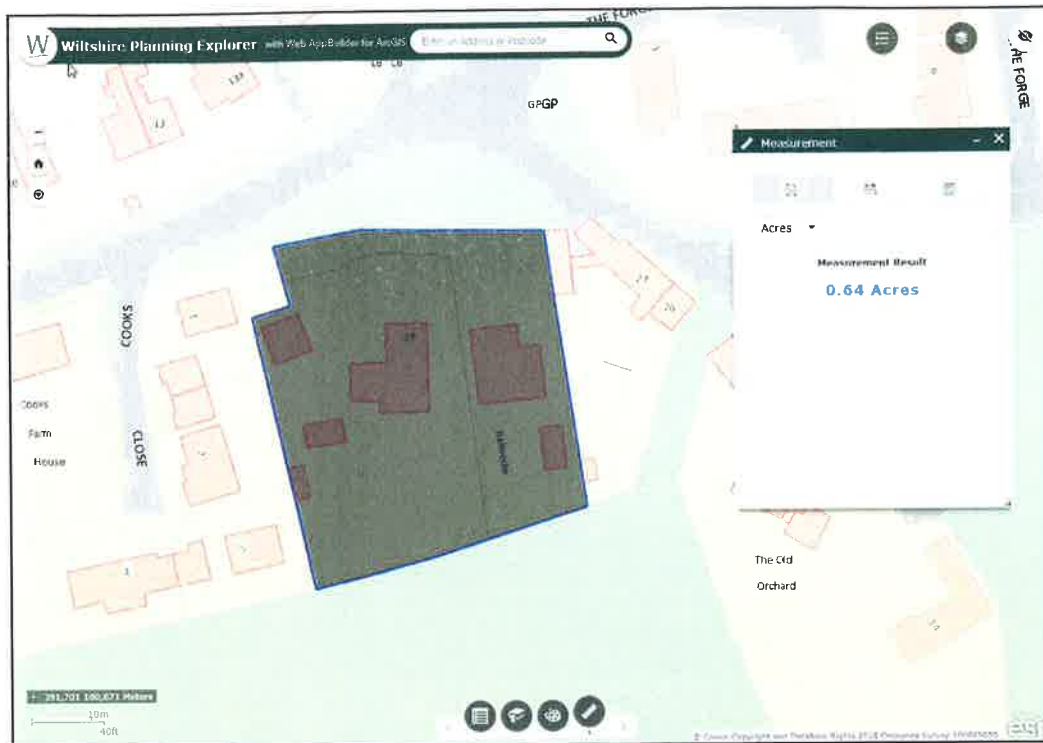


Figure 4 – Screenshot of Wiltshire Planning Explorer Measuring the Area of 29/29A

Inland Revenue 1910 Survey

This survey was conducted by the Inland Revenue for the 1910 Land Duty Valuations. These registers or Record of Valuations were made by the Commissioners of Inland Revenue under the Finance Act, 1910, for the levy of duties on land values. Accompanying the record book is a map, 1900 OS 25in, which has been coloured for the parcels of taxable land. An extract of this map is shown in figure 5 below. Parcel 241 (i.e. 29/29A today, 125 on the 1834 survey) is coloured but the pond has been left white. White areas indicate non-taxable land, usually local authority land which is why the road is also white. A smaller pond in what is now called The Forge is coloured showing that ponds are taxable land so this survey confirms that the pond was not part of the adjacent field, i.e. parcel 125, 29/29A today.

Highway Records have suggested that the thickened line around the pond shows that the pond was not part of the road. This suggestion is flawed in that Ordinance Survey record only what is on the ground and not ownership boundaries. If this thickened line is indicating a metalled road in good repair then it would be on the edge of what the surveyor considered the road, even if the pond was legally highway. The surveyor would have no means of telling from the features on the ground that the pond was Highways.

Also many of the lines have a similar thickening, the houses being an obvious example where some sides are thicker than others. Also the thickening is on the small pond in what will be The Forge, just NE of the main pond. This thickening looks more like an artefact of the printing or map production rather than something meant to impart information. Plus I read that the thickened line for road boundary should be accompanied by shading too. Thickening was a feature that was alternately added and not added to maps so it cannot be said for certain that this map should or would have used it.

The brace symbol shows the OS survey lumped the pond with the road for their figure of the area which contradicts the thickened line too so you can prove either point by picking a symbol. The facts of the matter are that neither thickening nor braces are conclusive since the OS only record ground features, not ownership.



Figure 5 – Inland Revenue 1910 Land Survey Map

Parish Council

The Parish Council has claimed this land to be village green until recently, including the parts that are registered as highway land as well as the area of the former pond, P. This claim seems to have started in 1982 and persisted until 2016. In 2016 the parish council were asked to prove their claim of ownership land since the land was not listed as an asset in the parish council accounts nor shown as generating wayleave income. The parish council replied:

After extensive research into the ownership of the village green in Lower SSQ, Malcolm, it would appear that, although the Parish Council over decades has taken responsibility for its upkeep & paid for trees to be planted there & the grass to be cut, the land itself is regarded as manorial waste or common ground & as such has no body or person claiming ownership.

From this statement, all that can reliably be taken is that the land is not owned by the parish council and never has been. The parish council clearly has not done the research I have so are not qualified to comment on whether the land is manorial waste or common. They do not even seem to know that when the parish council was asked about common land in the parish back in 1966 the parish council then replied there was no common land I have included the relevant extract of the minutes for the meeting 31 October 1966 in figure 6 below. This land is not on the current register of common land, naturally given the reply in 1966. And this fact was reported to the parish council in 1982 by the county solicitor. The current register of common land is available online now so the parish council could at least have checked that before sending the inaccurate email I have quoted above.

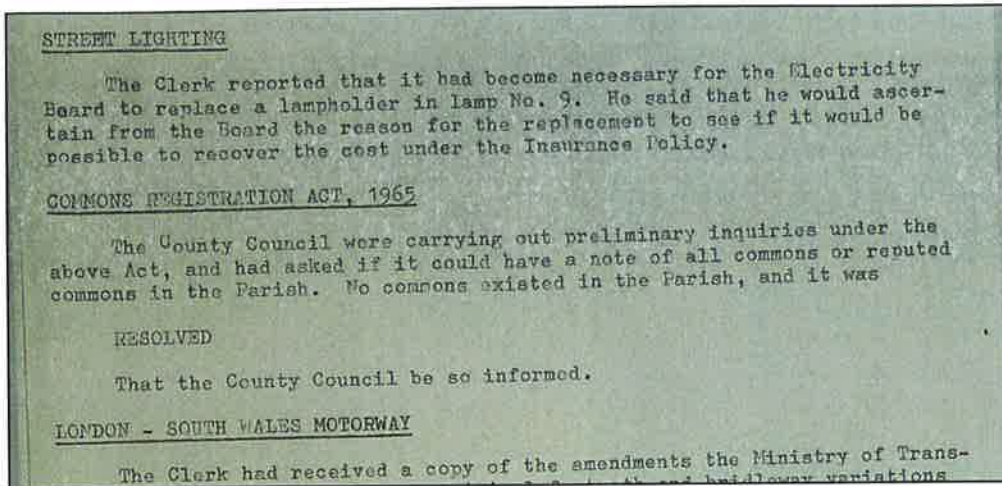


Figure 6 – Extract of Parish Council Minutes for 31 October 1966

In fact the Parish Council in the past seems to have considered the pond to be highway land. They wrote to the Roads and Bridges Committee suggesting that the pond be filled in as shown in the extract from the minutes of Wiltshire County Council Roads and Bridges committee meeting, 4 November 1949, reproduced below in figure 7.

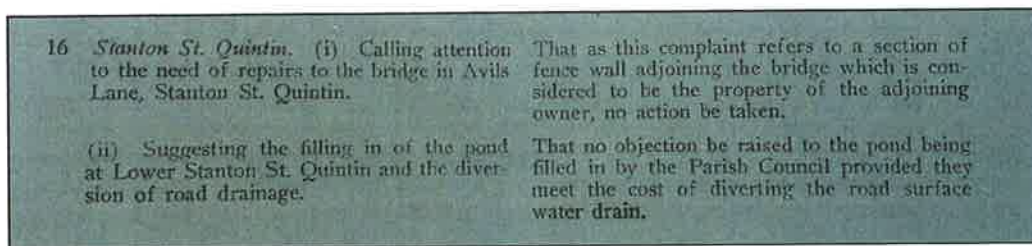


Figure 7 – Extract of Roads and Bridges Committee Minutes for 4 November 1949

The extract in figure 7 also makes it apparent that the pond was at the end of a drain (drainage ditch) for the road. In other words it was more a soakaway in its function. This is also supported by other documents and maps.

The wording of the Parish Council's request in figure 7 is consistent with the pond being part of the road and thus "owned" by the Roads and Bridges committee. Had the land been "owned" by the Parish Council they would have said something more like the Parish Council proposed filling in the pond, did the Roads and Bridges committee have any objection? And in any case previous documents have shown that the Parish Council stated the (former) pond was not common land (figure 6) and other documents (figure 2, figure 3, figure 5) have shown the land has never had any private owner, as the parish council admitted in 2016, reversing what they had claimed for the past 34 years since 1982.

The reason for the Parish Council wanting to fill in the pond in the 50s is that the Public Health Act 1936 section 260 had made Parish Councils responsible for ponds and ditches prejudicial to health. This meant that the Parish Council was responsible for all sanitation issues. The pond was a problem then since at this time cows regularly used the road, depositing their dung, which then washed into the pond via the ditch.

The minutes for 22 March 1950 record that in 1950 the precept was £34 as shown in the extract in figure 8 below. Later minutes on 6 November 1950 show the estimate for cleansing the pond was £70 as shown in figure 9 below (70hrs @ £1/hr). Given that cow dung would be washed in daily the Parish Council could not afford the repeated cleansing costs needed to keep the pond sanitary.

CHEQUES.

Resolved that cheques be drawn and signed in respect of:

(a) Hire of Church Hall	...	£1: 0: 0d.	
(b) Clerk's salary	...	£4: 14: 10d.	

PRECEPT FOR YEAR COMMENCING 1st APRIL 1950.

Resolved that a precept be served on the Calne and Chippenham R.D.C. for £34-0-0d.

Figure 8 – Extract of Parish Council Minutes for 22 March 1950

STANTON ST. QUINTIN POND.

It was reported that following a meeting between the Chairman of the Council and the Divisional Highway Surveyor and the Senior Sanitary Inspector of the Calne and Chippenham R.D.C. the County Surveyor had written stating the Roads and Bridges committee were of the opinion that the matter of cleaning the pond was largely a sanitary one and not the responsibility of the highway authority. The committee were therefore unable to recommend the County Council to contribute towards the cost of the works suggested.

The Clerk reported that tenders for cleaning the pond had been received as follows:-

G. W. Harrison (Contractors) Ltd.
New High Street,
Headington,
OXFORD.

£1 per machine hour (estimated 70 hours required to complete, assuming depth to be 3 feet at deepest point)

Hygienic Conservancy Ltd.
16 Ingram Street,
Malmesbury.

15/- per 750 gallons of liquid sludge. Solids to be manhandled on a cubic yard basis, which would depend on the depth required.

Resolved that no tender be accepted at present and that the matter be considered at a later meeting.

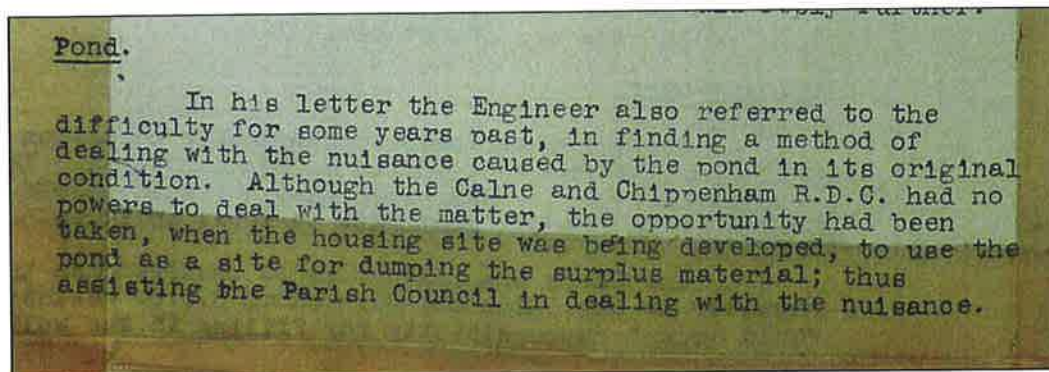
LORD MAYORS THANKSGIVING FUND.

Resolved that no action be taken to organise events to provide money for this fund.

Figure 9 – Extract of Parish Council Minutes for 6 November 1950

However sensible it would have been to fill in the pond this was an expensive undertaking (and shown in other minute pages) and the Parish Council could not afford that either. The Roads and Bridges committee refused to help stating the road was adequate for the traffic, hence they could not justify widening it (also suggested by the parish council to the committee), and since it was a sanitation issue it wasn't legally their responsibility which meant they could not legally pay for the pond to be filled in, even if they had wanted to.

This status quo continued for a few years with the parish council repeatedly requesting that the Roads and Bridges committee consider filling the pond, widening the road, or paying for the cleansing, and the committee repeatedly replying that they consider it a sanitation issue and thus not their responsibility. The building of council houses in Lower Stanton St. Quintin led to a way out of the impasse as the waste material from the build was used to fill in the pond as reported in the parish council AGM minutes for 1 June 1955 the relevant extract from which is in figure 10 below.



Pond.

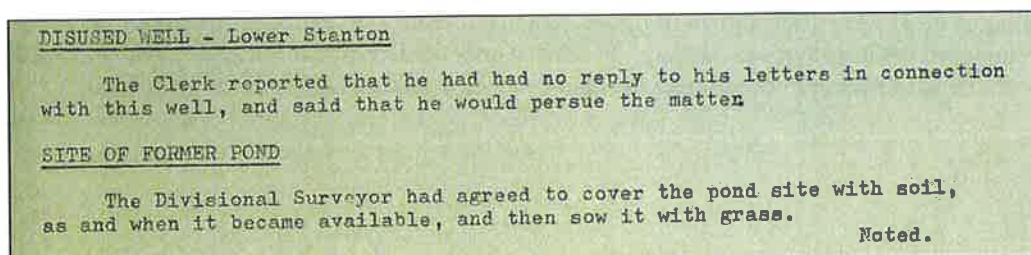
In his letter the Engineer also referred to the difficulty for some years past, in finding a method of dealing with the nuisance caused by the pond in its original condition. Although the Calne and Chippenham R.D.C. had no powers to deal with the matter, the opportunity had been taken, when the housing site was being developed, to use the pond as a site for dumping the surplus material; thus assisting the Parish Council in dealing with the nuisance.

Figure 10 – Extract of Parish Council AGM Minutes for 1 June 1955

This scheme would have saved the Rural District Council money as they would not have needed to pay for the waste material to be disposed at a tip. Hence it was a win all round. The RDC could legally do this as it was cheaper and the parish council got the pond filled in removing the sanitation issue and costs.

Using the pond as a tip establishes that the pond was council land, or at the very least that the RDC claimed it as council land in 1955. If it was not council land what was the RDC doing fly-tipping on someone else land? Either the land is highway or the RDC committed an offense.

Following the pond being filled and then levelled the minutes for meeting after the AGM on 17 March 1965 report that the Divisional Surveyor had agreed to cover the land with soil and seed it. This is shown in the extract of the minutes of 17 March 1965 shown in figure 11 below.



DISUSED WELL - Lower Stanton

The Clerk reported that he had had no reply to his letters in connection with this well, and said that he would pursue the matter

SITE OF FORMER POND

The Divisional Surveyor had agreed to cover the pond site with soil, as and when it became available, and then sow it with grass. Noted.

Figure 11 – Extract of Parish Council Minutes for 17 March 1965

In the parish council meeting on 28 March 1966 the clerk was instructed to chase the seeding as shown in the extract in figure 12 below. Also included in the extract in figure 12 is a report of holes in the road. Note the report is directed to the Divisional Surveyor so it is clear this is what we would today call the Highways department.

FORMER POND SITE

The seeding of this site promised by the Divisional Surveyor had never been carried out and the Clerk was instructed to inquire as to the present position in this matter.

5 LOWER STANTON

It was reported that the occupier of the above property had had trouble with his drainage since the laying of the water main through the village. It appeared that the drain had been fractured or had become silted up, the drainage water now seeped up in the garden. The Clerk was instructed to inform the North Wilts Water Board of the foregoing and request that the matter be investigated.

HOLES IN ROADWAY

It was reported that the patching of holes in the roadway opposite Newbourne Gardens was quickly displaced and the Clerk was instructed to inform the Divisional Surveyor and ask if a repair of a more permanent nature could be carried out at this spot.

Figure 12 – Extract of Parish Council Minutes for 28 March 1966

MATTERS ARISING FROM PARISH MEETING

(i) Former pond site

The Divisional Surveyor had informed the Clerk that re-seeding of this site would be carried out when conditions were more suitable. In addition he had pointed out that it was being used for unauthorised parking by visitors to the chapel.

(ii) Holes in Roadway

The Divisional Surveyor had informed the Clerk that these had now been repaired.

Figure 13 – Extract of Parish Council Minutes for 31 May 1966

The reply from the Divisional Surveyor (aka Highways) is recorded in the parish council minutes of 31 May 1966 shown in figure 13 above. Note that his reply also states the land is being used for unauthorised parking. In other words the Divisional Surveyor (aka Highways) is claiming to exercise control over the land by saying parking has not been authorised.

Conclusions

The 1834 survey and the Inland revenue survey are both primary documents and both show that the pond had no private owner. The 1834 survey also included roads in its breakdown of the land parcels so if the pond was not private then it clearly has to have been part of the road. Land that later became legally highway under various acts. The parish council's claim to own this land only started in 1982 as part of their objection to a planning application. They dropped their claim in 2016 when asked for proof. And in 1966 the then parish council stated the land was not common land.

The evidence from the 1950s is also compelling in its own right. The Divisional Surveyor, what would be Highways department today, agreed to spread topsoil and seed the land. They would not and indeed legally could not, have done this had the land not been highway. Likewise there is the evidence of control in the Divisional Surveyor's letter. Plus they could not have legally used the land as a tip for the council house build had not the pond been owned by the council. At the very least the council took ownership of the land when they used it as a tip in the 50s.