Appendix 6 - Objections

Mrs Jennifer Cowley
[redacted] North Meadow Road
Cricklade
Wiltshire
SN6 6[redacted]

22 September '20

Janice Green
Senior Definitive Map Officer

Ref: JG/PC/212 2018/01

I am writing to officially oppose the application of a village green in Lower Stanton St Quinton, as per the reference above.

The application makes claim that the land has been used "as a village green for the past 50 years by local residents." It is my knowledge that this claim is entirely false.

I have personal knowledge of this land. My grandmother, Ivy Dargie, resided at [redacted] Lower Stanton St Quinton until she died 31 Dec 2014, at which point my parents, Malcolm and Julie (Kathryn) Reeves owned it. I was born in 1991 and have visited that house all through my childhood, at various times over the year - New Year's Day, Easter Sunday, birthdays, weekends, and very regularly during the summer as she had a swimming pool that we would use. I also remember often playing in the front driveway area, which directly looked onto this area of land. I would visit at various times of day - lunchtimes on the weekend, after school.

evenings, etc. I also sometimes had sleepovers there. I continued to visit the house after my nana died, and my parents began renovated it, up to 2018 (date of TVG application) and beyond. I still regularly visit.

At no point since 1991 (or, as early as I can realistically remember!) has that land ever been used to host village green events - no fetes, no fayres, no recreational events, nothing. As a child, I used to love going to village fetes and often my nana would be the one to take me. If there had been fetes held directly outside her front garden, I would have known and attended.

I used to enjoy talking to my nana about her social life - her involvement with bowles, or her whist drives. If there had been any events held on this land, she absolutely would have mentioned it.

At no point, throughout my childhood and up to point of TVG application, do I recall seeing any events or recreational activities advertised.

All I have ever seen happen on that land is the odd person walk over it on a dog walk or gentle stroll.

My knowledge of this land and the way it has (and has not) been used is both first hand, from direct experience, and second hand, from conversations with the primary owner of [redacted]

Therefore, I am objecting to the application it become a village green on the basis the application has made false claims about its past usage.

I believe that the facts stated in this letter are true.

Additionally, ~~I am~~ ~~considered~~ ~~a~~ I was employed by South Western Ambulance Service NHS Foundation Trust as a paramedic, from July 2015 to August 2020 (have just resigned due to having children to take care of). I therefore am expected, as a professional, to act with integrity and honesty, values which I have upheld during the account laid out in this letter. (My registration number is [redacted] and can be checked at www.hcpc-uk.org).

Sincerely,

Jennifer Cowley

[redacted]

22.09.20

DATE 21 September, 2020

[redacted] Siskin Road
Offerton
Stockport
Cheshire
SK2 5[redacted]

Janice Green
Senior Definitive Map Officer
Rights of Way & Countryside Team
Communities & Neighbourhood Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

OBJECTION

Your Refs: 2018/01, 2019/01

Dear Ms Green,

It has come to our attention that Stanton St. Quintin Parish Council are claiming that the land in front of [redacted] Lower Stanton St. Quintin has been used as a village green for years. To our knowledge this claim in not true and it would be wrong to let this application go on based on this false statement.

My husband, my children and I regularly stayed with the owner of [redacted] Lower Stanton St. Quintin at various times of the year during the period 1987 to 2010. My mother and father also visited at other times as did two of my brothers. At no time during these visits, which were often for a week at a time, did any of us ever witness anyone using this area of land for 'sports or pastimes'. In the earlier years the grass was always long and overgrown, so that the one bench which was there at the time could not be used and this was something I remember us commenting on.

As we enjoyed visiting other village fetes in the area we would certainly have been aware of any events happening directly in front of the house. It was a rough area of long grass with many trees which grew thickly over the years and never an open space which invited anyone to use it for 'sports or pastimes'.

Yours sincerely

[redacted]

Olwyn, and John Kelly

Received 23/09/2020

OBJECTION

Ref: 2018/01, 2019/01 (TVG applications)

20 September 2020

[redacted] Trewarden Avenue
Iver
SL0 [redacted]

This letter regards the proposal to register the verge in front of 29A Lower Stanton St. Quinton as a village green.

It is my understanding that the parish council have asserted that this land has been used as a green for the past 50 years. According to the Commons Act 15(2), this means:

> *a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land*

My late grandmother moved into [redacted] in 1987 when I was very young. Until 2006, when I moved away from the area, I visited her often; for Sunday roasts, barbecues, birthdays, and to swim in her pool during the summer. My brother and I would sometimes bike over and stay the weekend.

In all that time, I have not one recollection of the verge in front of her house ever being used for sports, pastimes or events of any sort. Nor did my grandmother ever mention to me any activity taking place on the verge outside her house, even in passing.

Moreover, it makes no sense to me that anyone could use the land for this purpose; it is far too narrow for athletic activities, it is cluttered with trees, and the land slopes toward the road, making ball games impractical even if there were space for them. At least while I was growing up, the grass was often left to grow long and unkempt.

The claim that this space has been a vibrant village green for years is not credible.

I believe that the facts stated in this letter are true.

Sincerely,

[redacted]

James Reeves

Jonathan Reeves
[redacted] Trewarden Avenue
Iver, SL0 0[redacted]
[redacted]

20th September 2020

Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside Team
Communities and Neighbourhood Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Dear Ms. Green,

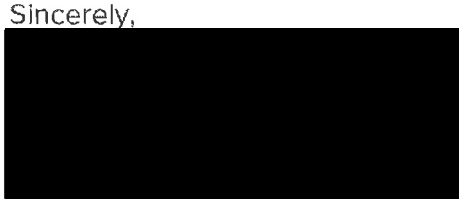
It has come to my attention that there is a motion to register a section of land in the village of Stanton St. Quintin as a village green. I feel that I must object due to the claim being made that for the past twenty years it has been used for recreation and sports, a claim I know to be false.

The adjacent property was, since my very early childhood, the home of my paternal grandmother (whom we called Nana) and since it was a short distance from our home, we made many trips to visit her by car and, when I was older, by bicycle. During my youth she had a swimming pool on the property, and frequently during the summer months we would spend hours there to cool off and have fun. There were also regular visits at other times of the year, such as a regular Easter egg hunt, birthday parties, and more.

At no point during any of these trips and visits did I ever notice the area of land being used for sports or recreation. In fact I was more aware of how empty it always was whenever I was visiting. If the land had been in regular use, some sort of event or gathering would have surely attracted my attention during one of these occasions. I even had several overnight stays in a room with a window facing the ground, and cannot recall ever seeing anything happening.

These regular visits lasted from before 1990 to 2010, when I moved away from the area. But even after that time I kept in contact with Nana and she never once remarked about the land in question being used for any sort of group activity, which would have been a noteworthy event. My family who stayed in the area also continued making regular visits, and none of them ever mentioned it either.

Sincerely,



Jonathan Reeves

[redacted]Cowley Way
Sutton Benger
Chippenham
Wiltshire
SN15 4[redacted]

21 September 2020

Janice Green
Senior Definitive Map Officer
Rights of Way & Countryside Team
Communities and Neighbourhood Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

Dear Ms Green,

I am writing to object to the application to register the land adjacent to Seagry Road, Lower Stanton St Quintin as a Town or Village Green (Reference no. 2018/01), as the claims made in the application relating to the Commons Act 2006 Section 15(2) are false.

My grandmother lived at [redacted]Lower Stanton St Quintin, the property adjacent to the land in question, and I visited regularly throughout my childhood for Sunday lunch, sleepovers, and to use her pool. As an adult, I continued to visit her frequently, covering a total period of time 1988-2014. During this time, and in the years since then, I have never seen this land used for any events, sports, or activities. Given that I visited so frequently on weekends and during the school holidays, when events are most likely to have taken place, it would be impossible not to have noticed anything going on.

Furthermore, my grandmother never mentioned any events or activities that took place on this land. I went to many fêtes and social events in my own village (and several of the surrounding villages) when I was younger, some of which my grandmother drove me to, so if there had been anything going on right outside her house it seems odd that she would never have even mentioned it.

In thirty years I have never seen a single board or poster advertising events held on this land, and yet I see these frequently for events held in my own village, as well as in the villages I drive through on my way to work, as they are always placed somewhere obvious to draw attention.

As a child I used to walk along the wall at the front of my grandmother's property, and I remember it was impossible to do this without jumping down several times along the way as the trees on the land were so low and overgrown that their branches stuck out over the wall. This also made it impossible to play on that patch of land, as the trees prevented any sports or games that involved running around. Additionally, the grass was weedy and overgrown. My grandmother's garden was

full of flower beds and only had a small lawn, so if the land in question had been suitable for games then I would definitely have made use of such a convenient space to play with my friends, siblings, or children from the village. However, that area of land was always deserted, with no one making use of the space.

Google Street View provides two snapshots of the land in question, one dated May 2009, and the other dated October 2011. In it one can clearly see the abundance of trees on such a small patch of land, with their low branches. The May 2009 view of this grass verge also shows that there was only one bench and a notice board at that time, and the grass is so long that it would prevent ball games, for example.

I believe that the facts stated in this letter are true.

Yours sincerely,

21 September 2020

Josephine Reeves

[redacted]
[redacted] *Lower Stanton St. Quintin*
Chippenham
Wiltshire
SN14 6[redacted]

23 September, 2020

Janice Green
Senior Definitive Map Officer
Rights of Way & Countryside Team
Communities & Neighbourhood Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

OPEN LETTER

Application to Register Town or Village Green in Lower Stanton

OBJECTION

Your Refs: 2018/01, 2019/01

Dear Ms Green,

Having read the application to make the grass verge which fronts my property into a village green on the basis that it is in constant use by the whole of Stanton Parish for sports and pastimes I wish to object in the strongest terms.

I have known this piece of land for over 34 years since my mother-in-law purchased the building plot which is now [redacted] Lower Stanton St. Quintin. It has not been used for regular sports and pastimes and anyone claiming this is not telling the truth. Up until fairly recently the grass was not even mown regularly and looked very neglected. When we took possession of [redacted] in 2015, no one was able to use the older bench because of the state it was in and the other one was also very neglected (I have photos). A memorial carton of flowers stood rotting for the best part of a year, on one bench, before I tidied it away.

There may have been the odd time when a village gathering has occurred but given my extensive knowledge of this land they would be very rare for me to have not seen or heard about them. Support of the Queen's 90th gathering witnessed by me in June 2016 was sparse. This was attended by no more than a dozen people, 2 of whom were myself and my husband as we happened to be passing. It was no more than a few people standing around and chatting for an hour or 2 before drifting off. By contrast, just opposite on the Forge at least one private party was in full swing. Significantly none of the main people now pushing this application bothered to attend.

No other event was held until 19 May 2018, after this application was submitted. What appears to be a protest event was held, directly in front of our house and only in front of our house where certain members of the village (who are now pushing for this "Village Green" congregated near our front wall after we arrived at our house that day, and then sat on our wall and even encouraged children to climb all over it. After we had finished what we had called in for and left, these people stopped sitting on our wall and drifted back to centre of party, away from our wall. All of this behaviour was captured by my CCTV and I retain these files as evidence.

The behaviour I describe above raises questions as to what might happen if the application is approved which will encourage those with a personal agenda for further harassment. The parish council is proposing to put in posts (and it may not stop at posts), without consultation with the Fire Service even though they know that the Fire Service say that their access route to my property is via this verge. And since the Fire Service's visit the parish council have already "allowed" the installation of a picnic bench in the Fire Service's route.

The grass verge has, as you well know, been claimed by the parish council who continue to allow people to think that this is true by 'giving permission' for things to happen on this land – planting of trees, installation of benches etc. This has led some people in the village to be very proprietorial about this land. However, as you are also well aware of, this area consists of highway land and waste land (or as we claim also highway) and has services running under it and above it – services which are for my property. Your failure to have even consulted with the service providers suggests you are being negligent in the least, and your failure to have rejected this application which clearly goes against the Planning Inspectorate's findings must raise the question why?

In conclusion, I think that the verge should stay as a verge and that Wiltshire Council should start to take full responsibility for the areas of highway, which includes the maintenance of those very large trees which are currently overhanging my front drive, and the removal of the concrete step at the entrance to my driveway which was unlawfully installed on highway land and restricts my access. Again both of these are issues Wiltshire Council have been repeatedly told about.

The real current usage of this land is not under threat. People will continue to use this land for walking across, walking their dogs, small gatherings and sitting on the benches, as they have done for many years. We are not disputing this and planning laws have been proven to protect this. The issue is the threat of a change to a Village Green which affects us and only us to the greatest degree and no other person in this village.

I believe the facts stated in this letter of objection are true.

Signed:

[redacted]

Kathryn Reeves Dated: 23rd September 2020

[redacted]
[redacted] *Lower Stanton St. Quintin*
Chippenham
Wiltshire
SN14 6[redacted]

23 September, 2020

Janice Green
Senior Definitive Map Officer
Rights of Way & Countryside Team
Communities & Neighbourhood Services
County Hall
Bythesea Road
Trowbridge
Wiltshire
BA14 8JN

[By recorded delivery]

OPEN LETTER

Application to Register Town or Village Green in Lower Stanton

OBJECTION

Your Refs: 2018/01, 2019/01

Dear Ms Green,

Please find below my objections to this application and the facts underpinning these objections, each listed below under separate headings.

However, first I want to point out that the rights and freedom of others are not affected by whether this land is TVG or not. It is my opinion that all the land is legally highway verge as I have stated previously and as I will show in this objection. There is nothing to prevent people gathering on highway verge, nor would I wish there to be.

The right to use the highway for any use is enshrined in the Highway Act 1980 where s130 (1) says

> *It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.*

There is no restriction on the type of use or enjoyment, so on highway verge you can picnic or hold fetes or hold book sales. The only limitation imposed by the Highway Act is that you cannot obstruct the rights of others. The law takes a common sense approach to this and if you can go around then it is not an obstruction. If the fete or book sale is on the verge then clearly this restriction would not apply.

Gathering on this land is therefore lawful and already protected by legislation. Thus there is no reason for this TVG application.

Summary

As this objection is long and detailed I will start with a summary of the subsequent sections, what they prove and what that means.

Vexatious : details the bias in the parish council's application, how it does not claim all the grass but just the land under which my services run.

Highway Land : details how part of the claimed land is admitted highway and why this automatically means a claim based on Commons Act 15(2) must legally fail.

Central Area (All) : gives the documented history of the central area, the only part not admitted to be highway, and shows how all the long history repeatedly and strongly shows that the central area is also highway and therefore 15(2) also legally fails for this part too.

Highway Act : shows how the central area falls in to the category of waste land which forms part of the highway and that thus the Highway Act also applies to the central area, even ignoring the history and that therefore again 15(2) legally fails.

Evidence : covers the meagre evidence provided with the application and shows that this in no way supports a claim based on 15(2) but instead supports the claim that central area is highway. Facts which directly contradict this evidence are also presented. Additionally the author's personal 34yrs knowledge of this land is presented which again does not support a claim via 15(2).

Royal Wootton Bassett : covers the similarities and difference between this application and the one for Royal Wootton Bassett which was ultimately disallowed by the court and this confirmed by the appeal court. Discusses how this precedent applies to this application.

Planning Inspectorate Reply : covers Defra guidance including the requirement for confirmation from the Planning Inspectorate that a Commons Act 15C exclusion does not apply. Covers the Planning Inspectorate statement that a 15C exclusion does apply in fact and what Defra guidance says should have then happened.

Commons Acts and Services : covers the Planning Inspectorate guidance for works on town and village greens, what the law says and why this makes utility services using this land, drains, water, electric, etc. criminal if TVG is granted.

Human Rights Act : covers how the HRA interacts with services becoming criminal. Covers how the HRA interacts with the Commons Act and the duties of councils.

1. Vexatious

Stanton St. Quintin parish council claimed to own the whole of this land, including all the highway grass verge to the west and to the east, right up until 2016 when they finally had to admit that this claim was false. The claim seems to originate in 1982 following the first, outline planning application for [redacted] by an ex parish councillor, 82.1461.OL. A previous planning application in 1972, 72QW68, put an access right across the middle of this land and there is no record of any objections to this, either before or after this application was passed. It is strange then that just 10yrs later that, as recorded in the planning meeting minutes, the parish council claimed that they owned the land and said they wouldn't allow access across it. Similarly it is strange that no councillor noticed that the accounts didn't list the land as an asset nor did they notice that the accounts showed no wayleave income from the telephone poles on the land.

My late mother who bought this plot in 1986 and the Heredges who sold it both suffered significant losses due to the documented false claim of 1982 which the parish council repeated in 1986. All the criteria necessary for a case of fraud in 1986 are present, false representation of the facts and a loss to the victim(s).

Even as late as 2016 the parish council was still claiming all the land as theirs and a parish councillor even claimed that my boundary wall was a "village" wall. When the parish council informed me that I would need to apply for a wayleave to bring gas across "their" land, no councillor asked why there were no wayleaves for my existing services. It was these two obvious discrepancies, assets and income, that made me to ask the parish council for some proof of ownership. This led to their admission that their claim was false, some 30yrs too late. Given this history this TVG application is clearly vexatious. The parish council having lied about owning the land for over 30yrs now seems to believe that this has given a moral right to the land. The TVG application is discriminatory, a clear breach of the Human Rights Act, and thus an unlawful action by the parish council.

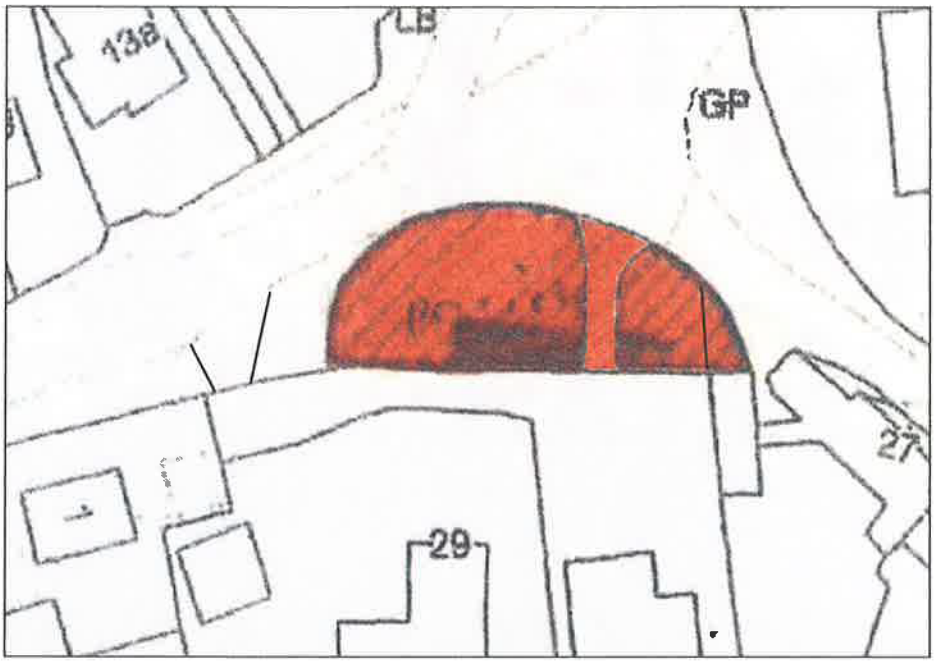


Figure 1 – TVG combined claimed land

The total land claimed for village green is shown in the figure above with the edges of the driveways marked with black lines. From this picture it can be seen that the claim is strangely not for all of the grassed area. The parish council has restricted their claim to just all the land directly in front of my property, [redacted] plus extended this to the west to as far as the drains which serve [redacted] plus extended this to the east to claim part of the driveway of 27 (Pond Cottage). In other words all the land with services for [redacted] or the potential to route services to [redacted] while conveniently leaving a green space for new or rerouted services for 29. This is clear evidence of bias and thus a breach of the code of conduct for councillors.

2. Highway Land

The land claimed in application 2018/01 includes land admitted to be highway by Wiltshire Council as the Highway Authority.

Figure 2 - Highway Map 9/3/2018

The basis of the application 2018/01 (and 2019/01) is Commons Act 15(2) which says:

> *(2) This subsection applies where -*
>
> > *(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
> >
> > *(b) they continue to do so at the time of the application.*

The "*as of right*" fails for highway since any use is "as a right", given by the Highway Act ("*as of right*" means using land as though you had a right to do so but in fact didn't).

The far east side of the claimed land is currently the driveway of 27, Pond Cottage, and has been that for as long as I can remember and I know this land from 1986/7. The small rectangular building marked G is the garage and workshop of 27, Pond Cottage.

From my recollection there is usually always a car parked in front of the garage of 27 so I struggle with the concept that this driveway has been used for sports and pastime for the 20yrs up to 2018, the date the TVG claim was made, and also that this activity continues. I have not seen any evidence of such activity either in recent years when I have been regularly working on the remodelling of [redacted] or at any time in the 34 yrs I have regularly visited [redacted] Nor did I hear any mention of such activity from my late mother who resided at [redacted] overlooking this land from 1987 to 2014. I'm sure that events in front of her house would have warranted a mention, especially sports or pastimes on someone's driveway which is hardly the usual run of the mill activity you see.

The Highway Act 1980 s130 (1) says:

> *It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.*

Hence it is Wiltshire Council's duty to protect the public right to use the highway for all the uses of a highway. The public rights for a Village Green are more restrictive than a highway. Therefore Wiltshire Council would be failing in its duty to allow highway to become green as it would not be protecting all the highway rights.

3. Central Area (1719 to 1834)

Wiltshire Council do not admit that the central part of the land, a former pond is highway. One reason given is that this is because a pond is a barrier to traffic. However, with the TVG application and presented as evidence is an oral history of this pond by a long term resident of Lower Stanton St. Quintin. This oral history states that carts used to go through the pond to swell the spokes of their wheels (see evidence section, Ms Creasey's statement). This contradicts Wiltshire Council's claim that the pond was a barrier to traffic. Clearly it wasn't. Legally a submerged road is still a road, an obvious example of which would be a ford.

I am informed by a fellow of the Institute of Public Rights of Way and Access Management of over 30 years experience and a former president of IPROW that it is common for ponds to be dug in roads, to provide water for animals and for swelling the spokes of wagon wheels, in fact, exactly as the oral history describes.

Wiltshire Council's other argument is that the former pond was land gifted to a property in the village from the highway before Inclosure. Sections of old maps explaining why this argument is invalid too are shown below with the area under discussion bracketed by A and B, the same 2 points on all 3 maps.

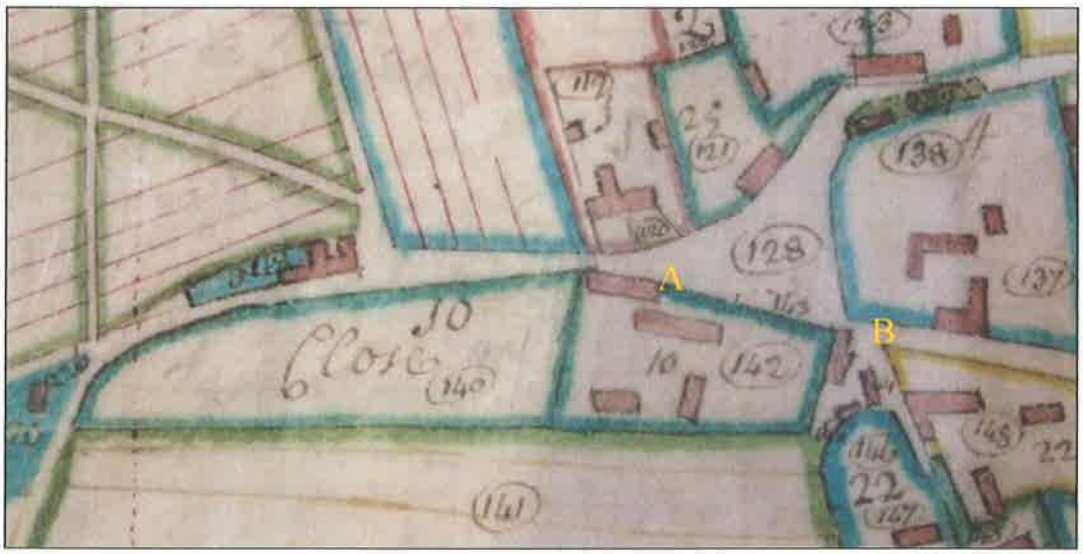


Figure 3 – Lower Stanton St. Quintin Map 1719

Figure 4 – Lower Stanton St. Quintin Map 1783

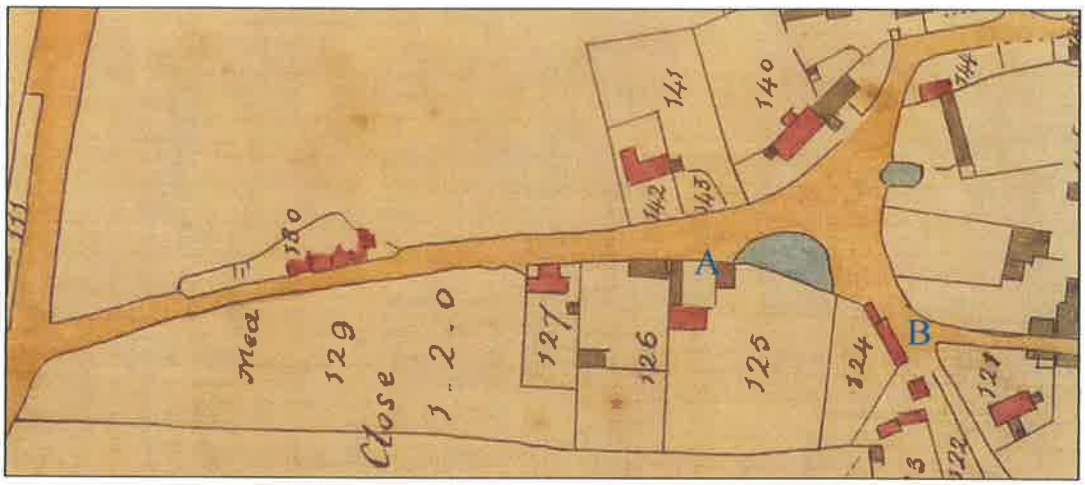


Figure 5 – Lower Stanton St. Quintin Map 1834

The 1783 map is part of the inclosure award map. This map shows an area of land numbered 143 which is linked to building numbered 143 (near B). This area seems to have been sketched in with dashed lines on the 1719 map too. Wiltshire Council claim 143 also includes the pond but there is no evidence to support that, the numbering 143 is only next to the building and in the area of land. There is no 143 next to the pond or in the pond, nor has the 143 of the land been marked over both the land and the pond which also would have allowed a larger text size too. Nor is the dashed area on the 1719 big enough to include the pond.

In addition if one compares the Seagry Road on the 1834 map to the 1783 map the 1834 looks narrower with the south edge moved north. Plus in the map of 1719 the house at B has no rear garden, then in the 1783 map it acquires a small rear garden and plot 143, and then in the map of 1834 it has a very large rear garden. I believe the logical explanation is that 143 was gifted to the house at B so it could be swapped for land to the rear taken from plot 142, and plot 142 acquired most of the 143 land. This suggestion is shown on the map below and is a better fit to the changed boundaries.

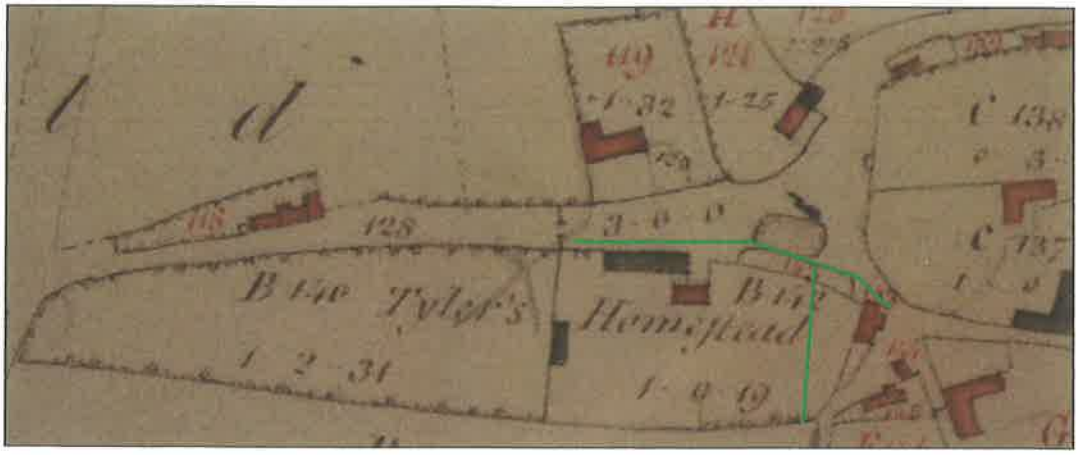


Figure 6 – Lower Stanton St. Quintin Map 1783 with land swap

4. Central Area (1834)

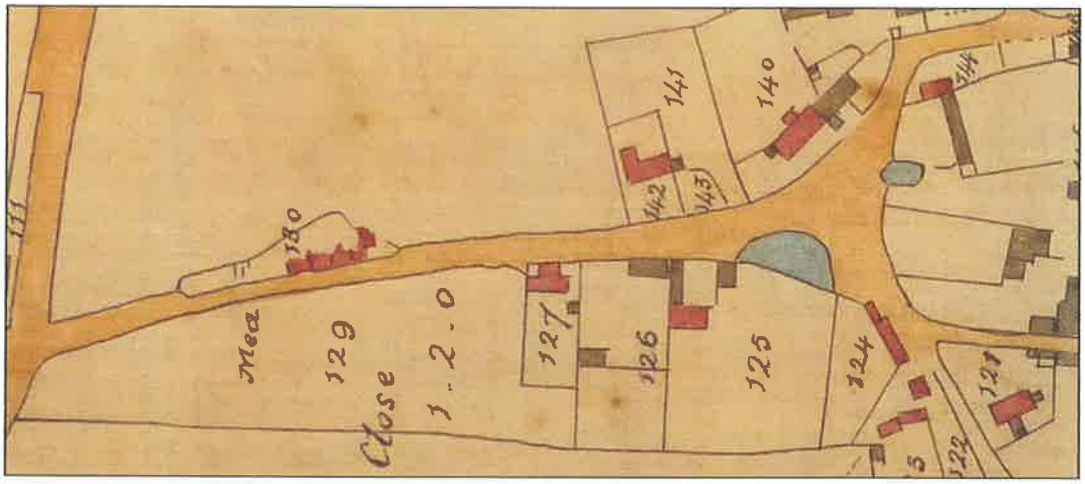
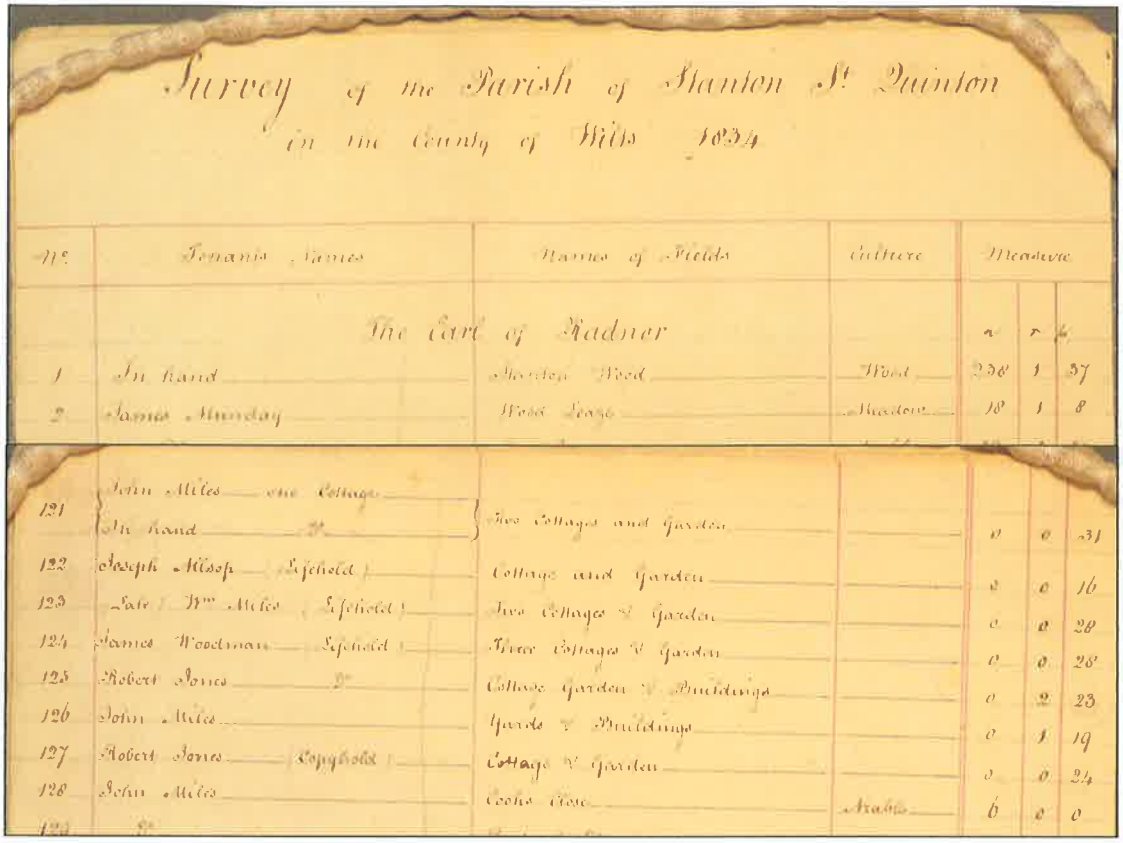


Figure 7 – Lower Stanton St. Quintin Map 1834

Together with the 1834 map is a survey which listed the measured area of all the plots and also of the road. The 1834 map has all areas numbered, even the road although since the map reproduced above is just a small part then not all of the plot numbers are visible.



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

No.	Tenants Names	Names of Fields	Culture	Measure		
	The Earl of Radnor			a	r	p
1	Jn Rand	Norton Wood	Wood	236	1	37
2	James Munday	Wood Leaze	Meadow	18	1	8
121	John Miles one Cottage Jn Rand	Two Cottages and Garden		0	0	31
122	Joseph Allsop Lifehold	Cottage and Garden		0	0	16
123	Late Wm Miles Lifehold	Two Cottages & Garden		0	0	28
124	James Woodman Lifehold	Three Cottages & Garden		0	0	28
125	Robert Jones	Cottage Garden & Buildings		0	2	23
126	John Miles	Yards & Buildings		0	1	19
127	Robert Jones Copyhold	Cottage & Garden		0	0	24
128	John Miles	Cooks Close	Arable	6	0	0

Figure 8 – Stanton St. Quintin 1834 Survey Extracts

Since the pond has no number of its own, then logically the pond must belong to either the road or plot 125 as these are the only areas which adjoin it. Calculating the area of the road today is too difficult, however it is possible to test the theory that the pond is part of 125. The screenshot below shows the result of this measurement on Wiltshire Council's online tool.

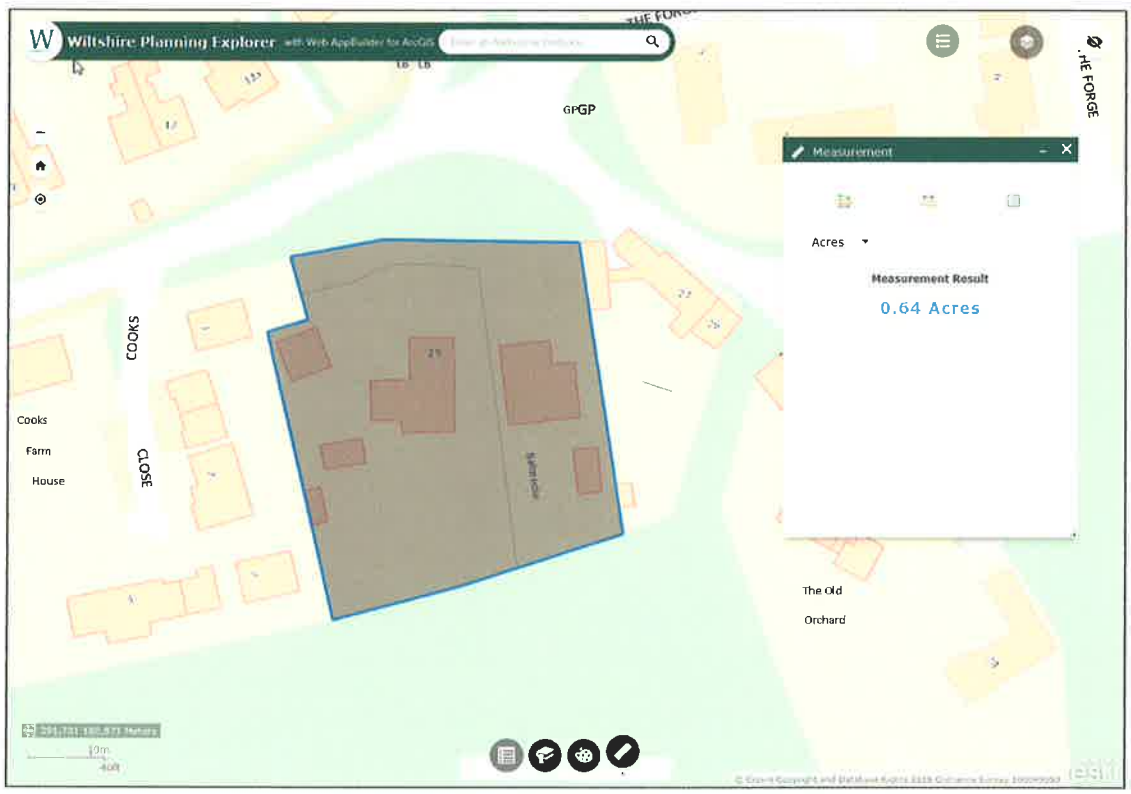


Figure 9 – Modern Measurement of Plot 125 Area

The modern measured area is 0.64 acres. The 1834 recorded size is given as 0, 2, 23 (acres, roods, perches) (see survey extracts above). 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), exactly the same as today. Therefore in 1834 the pond is not part of plot 125.

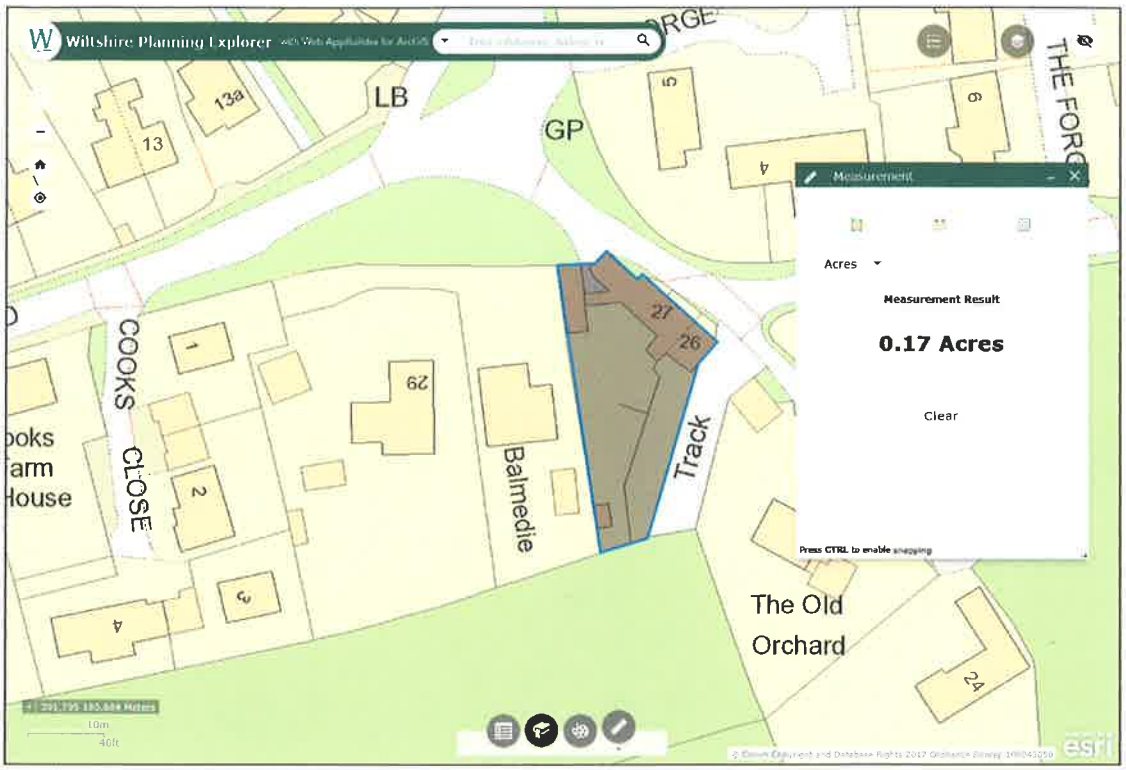


Figure 10 – Modern Measurement of Plot 124 Area

Wiltshire Council have claimed that the pond was part of the gift of land 143 in 1783 which would be plot 124 in the 1834 survey. Since plot 124 does not share a boundary with the pond then this does not seem likely as surely the 1834 map would have marked 124 on the pond to make ownership clear, however it is easy enough to check the area of 124 too. The modern result is shown above. The 1834 survey size is 0 ,0, 28 (acres, roods, perches) (see survey extracts above) and there are 160 perches in an acre so this would be 0.175 acre (28/160), the same as the modern result.

Therefore by 1834 the pond was not part of plot 124. Either the owners of plot 124 managed to somehow lose this asset in just 51 years, i.e. within a single lifetime, or the pond was never part of 124 and Wiltshire Council's claim it was gifted as part of plot 143 in 1783 is wrong. The only remaining theory is that the pond was part of the road.

5. Central Area (1910)

The Finance (109-1910) Act 1910 was made law on 29 April 1910. Section 26 of this act required the Inland Revenue Commissioners to *"cause a valuation to be made of all land in the United Kingdom"*. The Inland Revenue produced maps to this end where colour was used to distinguish areas of land under different ownership. However, although tasked with valuing all land the coloured maps usually left the roads white, i.e. uncoloured. The extract of the map for Lower Stanton St. Quintin is shown below and the roads are uncoloured.

Figure 11 – Inland Revenue Finance Act 1910 Map for Lower Stanton St. Quintin

David Braham Q.C. explains the relevance of these omissions in his article "Uncoloured road on 1910 Finance Act Maps" published in "Rights of Way Law Review" May 2002, page 153 on. The reason for the roads being uncoloured is to be found in "Instruction to Valuers (No.560)" issued by the Chief Valuer on 28 Feb 1911, "By order of the Board". This direction states:

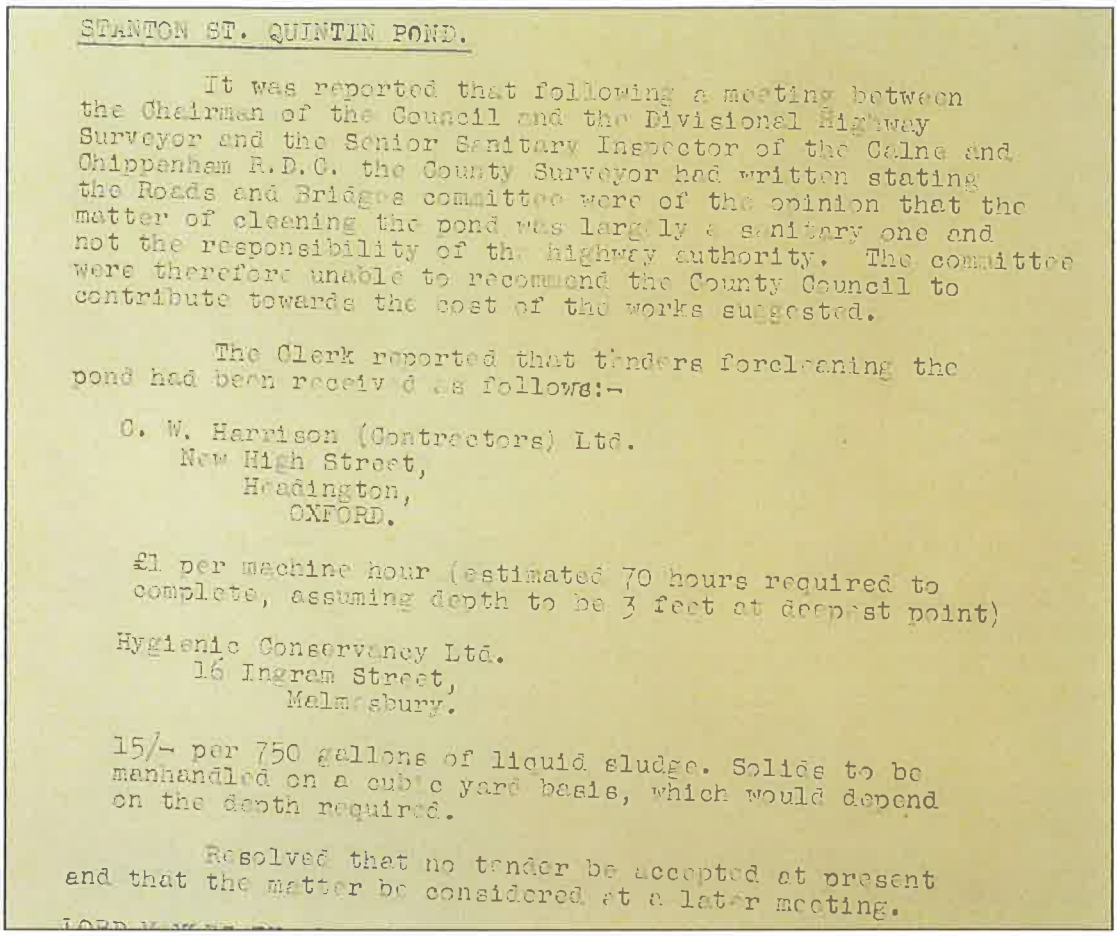
> *"Although the unit of valuation includes half the site of the adjoining roadway the area recorded on the record plan should continue to be exclusive of the site of external roadways and the area included in the Valuation Book should be computed accordingly".*

Hence where possible roadways were excluded and thus left white. Where it wasn't convenient, e.g. the area had been calculated including the roadway, then the gross area was used and a deduction made for the roadway area. Mr Braham QC also explains that wording in No.560 shows that by roadway the Inland Revenue were referring to highways and not other sorts of roads.

The areas bordering the road in the map above are all coloured showing the survey was completed and thus the uncoloured area is demarking the highway. Except for the central area the rest of the uncoloured roadway is admitted to be highway. The Inland Revenue were tasked with recording all land. This task they simplified by removing roads since these would never be taxable, but they still recorded land that might one day be developed even if it currently had nil value. The only logical conclusion is that the central area pond was also highway. It has been treated the same as the rest of the roadway and left uncoloured. If was different then it would have coloured to show that it was different from the roadway and an explanation included in the survey book, even if the land value was currently nil.

6. Central Area (1950s)

The Public Health Act 1936 section 260 had made Parish Councils responsible for ponds and ditches prejudicial to health. The central area pond was a problem for Stanton St. Quintin Parish Council since at this time cows regularly used the road, depositing their dung, which then washed into the pond via the ditch on the south side of Seagry Rd (as marked on the 1910 Finance Act map above). The minutes for 6 Nov 1950 give a cost estimate of £70 for cleaning the pond.



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:-

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

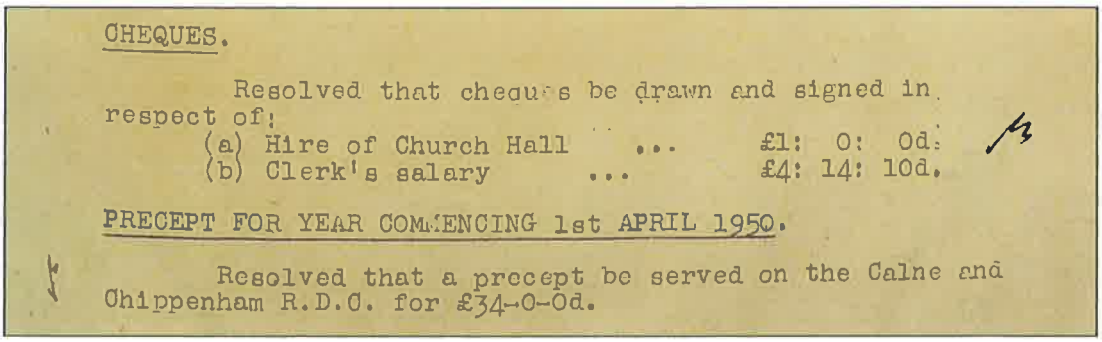
£1 per machine hour (estimated 70 hours required to complete, assuming depth to be 3 feet at deepest point)

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.

Figure 12 – Extract of Parish Council Minutes for 6 November 1950



CHEQUES.

Resolved that cheques be drawn and signed in respect of:

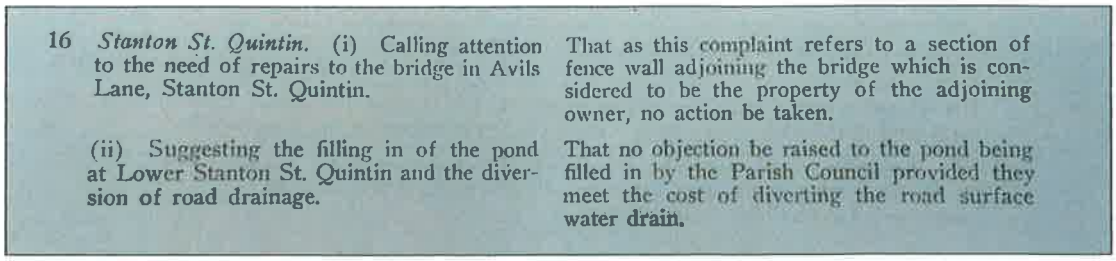
(a) Hire of Church Hall ... £1: 0: 0d.
(b) Clerk's salary ... £4: 14: 10d.

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 13 – Extract of Parish Council Minutes for 22 March 1950

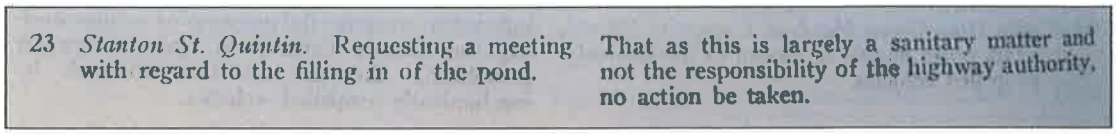
Compare this cost with precept which the minutes for 22 Mar 1950 show as £34 per year. Clearly the parish council could not afford this cleaning hence the reason they had approached Wiltshire County Council Roads and Bridges committee on 4 Nov 1949 to request the pond was filled in.



16	*Stanton St. Quintin.* (i) Calling attention to the need of repairs to the bridge in Avils Lane, Stanton St. Quintin.	That as this complaint refers to a section of fence wall adjoining the bridge which is considered to be the property of the adjoining owner, no action be taken.
	(ii) Suggesting the filling in of the pond at Lower Stanton St. Quintin and the diversion of road drainage.	That no objection be raised to the pond being filled in by the Parish Council provided they meet the cost of diverting the road surface water drain.

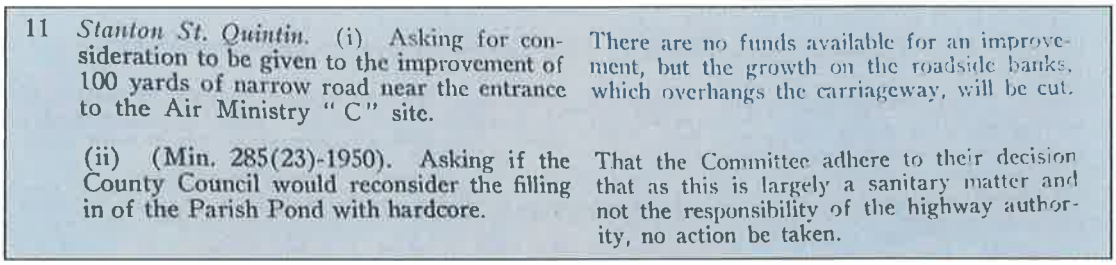
Figure 14 – Extract of Roads and Bridges Committee Minutes for 4 November 1949

And again and again on 1 Sept 1950, 5 Oct 1951, and 7 Mar 1952.



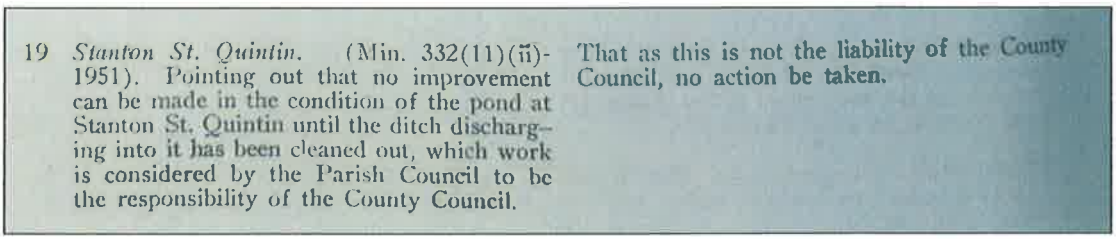
23	*Stanton St. Quintin.* Requesting a meeting with regard to the filling in of the pond.	That as this is largely a sanitary matter and not the responsibility of the highway authority, no action be taken.

Figure 15 – Extract of Roads and Bridges Committee Minutes for 1 September 1950



11	*Stanton St. Quintin.* (i) Asking for consideration to be given to the improvement of 100 yards of narrow road near the entrance to the Air Ministry "C" site.	There are no funds available for an improvement, but the growth on the roadside banks, which overhangs the carriageway, will be cut.
	(ii) (Min. 285(23)-1950). Asking if the County Council would reconsider the filling in of the Parish Pond with hardcore.	That the Committee adhere to their decision that as this is largely a sanitary matter and not the responsibility of the highway authority, no action be taken.

Figure 16 – Extract of Roads and Bridges Committee Minutes for 5 October 1951



19	*Stanton St. Quintin.* (Min. 332(11)(ii)-1951). Pointing out that no improvement can be made in the condition of the pond at Stanton St. Quintin until the ditch discharging into it has been cleaned out, which work is considered by the Parish Council to be the responsibility of the County Council.	That as this is not the liability of the County Council, no action be taken.

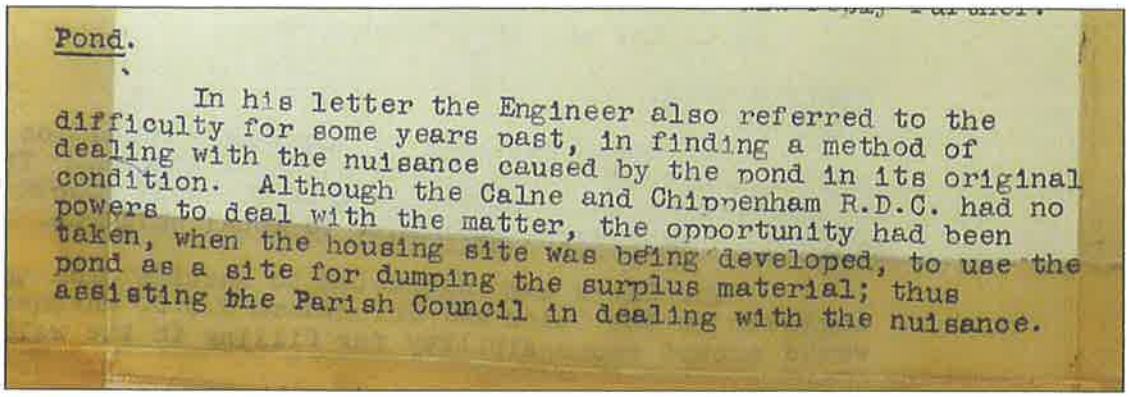
Figure 17 – Extract of Roads and Bridges Committee Minutes for 7 March 1952

Each time the parish council got the same answer. The Roads and Bridges committee could not legally spend their roads budget on what was legally the responsibility of the parish council due to the wording of the Public Health Act 1936.

These requests are strong evidence that the pond was highway. Firstly the parish council clearly believed the pond to be highway otherwise why ask the Roads and Bridges committee to fill it in? These request also clearly show that there was no belief in 1950 that the pond was owned by the parish council as they latter claimed from 1982 to 2016. I wouldn't ask highways to fill in my garden pond nor would anybody else. Highways department would only be approached about highway matters not filling in a pond on land owned by someone else.

Secondly, in all the replies from Roads and Bridges committee they never once say the land is not highway. The parish council keeps bothering the Roads and Bridges committee with requests and the easiest way to stop that, if the pond was not highway, would have been to tell the parish council, "the land isn't highway, contact the land owner which isn't us".

Then a way around the problem was found as reported in the parish council AGM minutes of 1 June 1955. Waste material from the new council house build in the village was used to fill in the pond. Win-Win all round. The parish got the pond filled in for free. The council house build got rid of some waste for just the cost of transporting it a few hundred yards down the road. All with no cost to the roads budget.



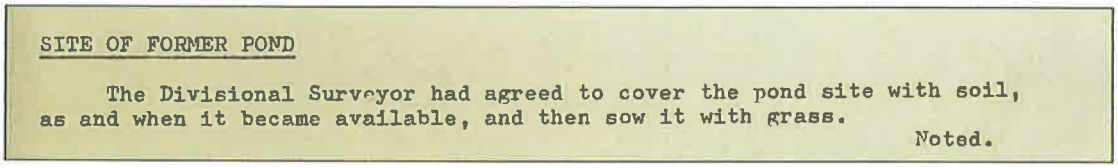
Pond.

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 18 – Extract of Parish Council AGM Minutes for 1 June 1955

This is also strong proof that the pond was highway. Highway can legally be repaired or changed as the highways department sees fit, using any materials as they see fit. Hence with the pond as highway the actions were all legal. If instead the pond is taken not to be highway then it must be somebody else's land. The council house build waste was therefore illegally fly-tipped and the land used as waste dump without the appropriate planning permission. The only logical deduction is that the council acted legally because the land was highway.

More evidence that the land is highway comes in 1965 when the minutes report that the Divisional Surveyor had agreed to cover the land with soil and seed it. This is something that would only be done for highway land otherwise it would be spending highway funds unlawfully. Highways would not come and reseed my lawn, they only repair highway land.



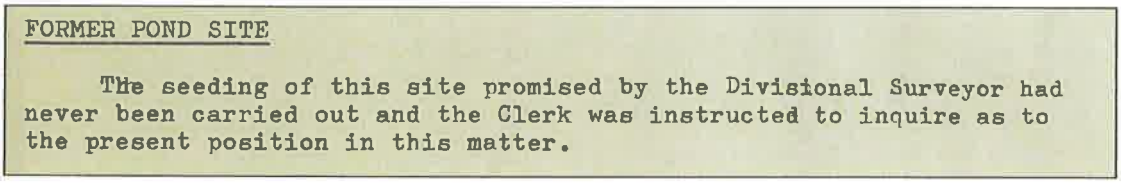
SITE OF FORMER POND

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 19 – Extract of Parish Council Minutes for 17 March 1965

On 28 March 1966 the clerk was instructed to chase the seeding and the Divisional Surveyor's reply recorded in the minutes of 31 May 1966.



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.

Figure 20 – 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.

Figure 21 – Extract of Parish Council Minutes for 31 May 1966

Note that the Divisional Surveyor's reply also states the land is being used for unauthorised parking. This is claiming control of the land, i.e. that it is highway. If the land was waste land or in private ownership then the Divisional Surveyor would have no say whether parking was allowed or not, that would be up to the owner.

COMMONS REGISTRATION ACT, 1965

The County Council were carrying out preliminary inquiries under the above Act, and had asked if it could have a note of all commons or reputed commons in the Parish. No commons existed in the Parish, and it was

RESOLVED

That the County Council be so informed.

Figure 22 – Extract of Parish Council Minutes for 31 October 1966

And finally, as reported in the minutes for 31 Oct 1966 the parish council reported to the County Council for the Common registration Act 1965 that no commons or reputed commons existed in the parish, which includes the land now claimed by the current parish council to have been used as village green since 1968 (see Evidence, Parish Council's Statement).

7. Highway Act

It is a legal presumption that highway runs from boundary to boundary which would make it a presumption that the central area was highway. A legal presumption stands until there is solid evidence to disprove it. Wiltshire Council's only evidence besides that already shown to be false in the previous sections is the 1929 Takeover map which is shown below.

Figure 23 – 1929 Takeover Map

The 1929 Takeover map is claimed to be authoritative but it clearly has errors. It has missing areas, marked by the red arrows, which are now admitted to be highway (see figure 2). Why then should it therefore be authoritative on the pond not being highway if it has made mistakes either side?

If the central pond is not highway then it can only be waste land given that it has no registered owner nor was one listed in the 1834 survey, or in the 1910 Finance Act survey. No owner is after all the definition of waste land.

As mentioned earlier, the Highway Act 1980 s130 (1) says:

> *It is the duty of the highway authority to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it.*

The Highway Act then applies to both land admitted to be highway and *any roadside waste which forms part of* the highway. The waste land of the former pond fits the definition of being part of the highway. It is surrounded on 3 sides by land admitted to be highway and on the 4th side the private land boundary follows the same line as for the land admitted to be highway. The waste land is also indistinguishable from the land admitted to be highway. A pedestrian walking on this grass verge would notice no change as he walked from highway verge to waste land and back to highway verge.

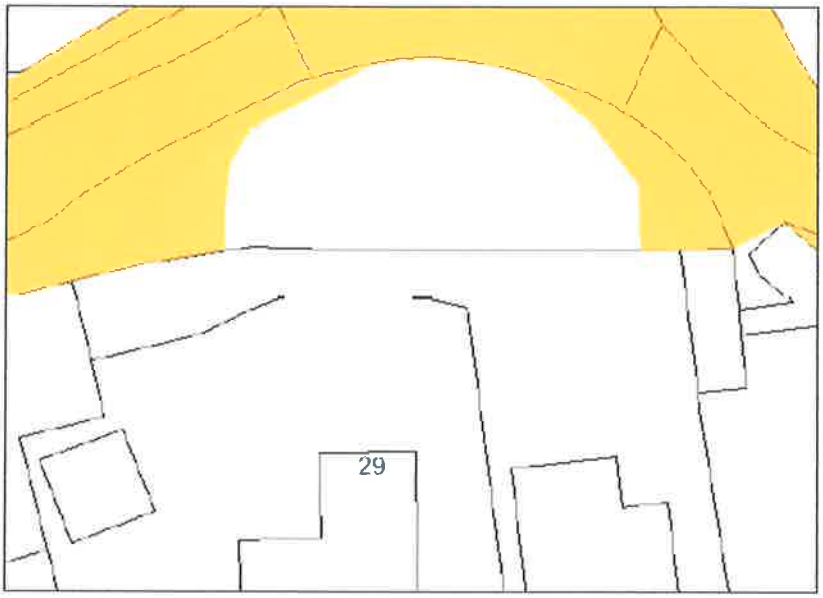


Figure 24 - Highway Map 9/3/2018

Since, whatever its status, the central waste land comes under the highway act then it is therefore the Highway Authority's duty to protect the use of this waste land as highway. This is incompatible with allowing it to become a village green which has more restricted public rights. Hence the Highway Authority would be failing in its duty to allow that.

In addition, since the central land has the same rights as the highway land, whatever the status of this section, then it follows that all use of the central land is as a right, given by the highway act, and therefore that the "*as of right*" legal test of Commons Act 2006 15(2) (a) fails.

8. Evidence

Wiltshire comes under The Commons (Registration of Town or Village Greens) (Interim Arrangements) (England) Regulations 2007. Section 3 (d) (ii) says that the TVG application must be supported :

> *(ii) by such further evidence as, at any time before finally disposing of the application, the registration authority may reasonably require.*

The Commons Registration (England) Regulations 2014 which are currently being trialled is more specific and section 9 (a) says

> *(a) include evidence that section 15(2), (3) or (4) of that Act applies to the land in respect of which registration is sought;*

Clearly it is only reasonable that evidence for 15(2) is provided so a court would consider that 2007 3(ii) in effect is the same as 2014 9(a), in other words that the application provide evidence to prove the claim of 15(2). The Commons Act 2006 15(2) requires that:

> *(a) a significant number of the inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and*
>
> *(b) they continue to do so at the time of the application.*

Hence since the application is dated 30 April 2018 then the evidence needs to prove:

- Sports or pastimes took place on this land
- Over the period 30 April 1998 to 30 April 2018
- By a significant number of inhabitants of Stanton St. Quintin parish
- And that these continue.

In addition, legal precedent has established that such use cannot be trivial so the use has to be fairly regular.

The application has stated that the land is Stanton St. Quintin green rather than just Lower Stanton St. Quintin hence there must be a significant number out of the whole Stanton St. Quintin parish.

All the evidence is within application 2018/01. Application 2019/01 just adds some more land to that claimed by 2018/01 and refers the reader back to 2018/01. The evidence within 2018/01 is in two parts, statements by the parish council and a letter from villager Ms Hilary Creasey. These will be dealt with in the sections below and finally I will include my evidence.

Parish Council's Statement

The parish council's first claim is that this land has been used as village green for the past 50 years but it does not say how it has been used as a green and it presents no evidence of this use. Given the parish council's history with making false statements about this land then they, more than most, need to prove their statements are the truth.

The 50yrs of claimed use would be from 1968 – 2018 yet planning application 72QW68 in 1972 puts an access road right across the middle of this land and there is no record of any objections to this, either before or after this application was passed. And the specification for this road in the plans for 72QW68 was a road over 14ft wide with 20ft splays each side at the junction with Seagry road. A total of over 54ft, so longer than a full sized removals van (45ft). Why were there no objections if the land was in use as a village green?

Also, as mentioned in the section on the Central Area (1950s), at the end of Oct 1966 the parish council reported to the County Council, for the Common registration Act 1965, that there were no commons or reputed commons in the parish. This is at odds with the current parish council's claim that in 1968 the former pond was an established village green.

A significant part of the parish council's statement is about how they maintain the grass and the trees. Again, no evidence is provided to support this claim and I would dispute the claim that they maintained the trees to any standard. I filed a report (#1168579) in 2017 on the dangerous state of the trees on the land which were overhanging the highway at eyelevel to both cyclists and horse riders. I also frequently saw the workers employed to mow the grass ducking under low hanging branches. It was only after I lodged a report with Wiltshire Council in 2017 that there was any pruning of the trees. I also know that the parish council ignored my late mother's requests that the trees overhanging her front garden be pruned. But in any case mowing grass is not sport or pastime, particularly when it is paid work.

Another part of the parish council's statement is about the benches and notice board which again is nothing to do with sports or pastimes so is irrelevant. It is claimed that villagers use these benches but the most frequent use I have observed before Covid was by walkers passing through, utility workers taking their lunch and cyclists taking a break. Again there is no evidence to support this claim to show the frequency of use by villagers. And this is also not a sport or pastime. Also, as the pictures below show, at the end of 2017 these benches were in a very poor state, covered in mould and lichen. You would only use these benches if you had something to sit on or were already in dirty working clothes. These pictures belie the claim that these benches were regularly used in the years leading up to 2018. If they were then the mould and lichen would not have got established.

Figure 25 – Bench 1 - 21 Nov 2017

Figure 26 – Bench 2 - 21 Nov 2017

In fact in the whole page and a half of the parish council's statement there are only two sentences which even address 15(2). I would presume this lack of focus is due to the parish council dismissing the solicitor from whom they took advice initially. The first of these two sentences is that "the land has been used for as a village green for the past 50 years", which is discussed above. The second is the claim at the bottom of the page that the land "has been the site of many community events and celebrations" but again no proof is provided to support this claim, not even a list of these events and celebrations and when they occurred and the number of attendees.

It is also fact that the annual Stanton Village Fete and Novelty Dog Show has never been held on this land, which again belies the parish council's claim, especially as in the application they call this land Stanton St. Quintin Village Green.

Ms Hilary Creasey's Statement

Ms Creasy titles her statement "The Pond Not The Village Green" and states the land claimed for the TVG was never the village green so there is no historic right to this land which is supported by the parish council not claiming the land as common land in 1966.

Ms Creasey's profile on the NextDoor forum states she was born in Stanton in [redacted] and has lived there all her life. And from her mentioning in her statement that her parents and grandparents played cards etc. in the reading room (which was near 29's entrance but was demolished well before 1986) then it can be taken that at least 3 generations of her family lived in Stanton too. Ms Creasey's statement is thus in part an oral history of the pond which from the previous section, Central Area (1719 to 1834) certainly exists on the 1834 map and also looks to be on the 1783 map. Hence the pond was dug out at least 186 yrs ago if not 237 yrs ago.

Ms Creasy goes on to say that the pond was dug to provide water for animals and also for carts to regularly drive though in order to swell the spokes of their wooden wheels to stop the metal bands coming off. As mentioned in the section on Central Area (1719 to 1834) an expert has confirmed to me that it is well known among experts in this field that this was a common occurrence. And it was common that these ponds were dug out of the road. They were for the use of everybody so a wide section of the road would be the logical place to take some of the communal land for a communal pond.

Ms Creasy says that carts used drive through the pond for regular preventative maintenance of their wooden wheels. This shows the pond started life as a ford and was therefore part of the highway. This supports the claim in this objection that the central land is legally highway.

Ms Creasey says that when she was a child, after the pond had been filled in, the land was used for fetes etc.. Since Ms Creasey was born in [redacted] then this would be in the 1960s, well before the period 1998-2018 required by Commons Act 2006 s15(2).

Ms Creasey says that there were church services and other celebrations but again does not specify what or when. There used to be a chapel opposite this land so it is likely the church services were associated with that. The planning application to demolish this chapel is N/99/03062/OUT which was made in 1999 so it seems unlikely that any church service even falls within the range 1998-2018.

Ms Creasey's penultimate paragraph repeats the statement that this land has benches on it as though there was some threat to remove these benches. It is allowed to have benches on highway verge so where is the threat to these benches?

Ms Creasey's final paragraph is a statement of her opinion that an access from my house, [redacted] to the road it would be dangerous. This letter then would seem to be written as an objection to a planning application I made rather than in support of this TVG application.

Mr Malcolm Reeves' Statement

This would seem the logical section to include my statement of the facts but to avoid any doubt my statement is being made as a statement of truth, as is the whole of this letter of objection. The appropriate wording to make this a legal statement of truth will be found at the end just before where the letter is signed.

My late mother bought the building plot next to [redacted] and had [redacted] built in 1986/87. At the time I had 2 children and my mother was living with us having sold her business in Chepstow after the sudden death of her husband. After my mother moved to her new house she was constant visitor, calling in on her way to or from the shops or from seeing friends she made in cruse (bereavement care) or bowls in Chippenham. Just as one would expect with a grandmother living in near to her grandchildren in Sutton Benger. As a family we would also visit her for Sunday lunch, Easter egg hunts, etc.. We would see my mother at least 3 or 4 times a week, some weeks almost every day with her often staying or coming over for dinner rather than have her needing to cook for one and eat alone.

By Apr 1998 I had 4 children, 6, 9, 12 and 14 and mother's house, [redacted] had a swimming pool so as you can imagine we were regular visitors during good weather in order to use the pool. This was during the week after the end of school as well as at weekends. This continued for many years up until the 9 yr old was 18 and went away to university so the 6 year old, now 15, was the only child left. Even then we still used her pool in the school holidays.

At no time when visiting my mother at [redacted] have I ever seen anybody using this land for sports or pastimes, nor have I ever seen any events taking place. Nor have I ever seen any boards or flyers or posters advertising events on this land and it is common practice to advertise events. I always see the board set out for Sutton Benger Village Fete, Firework Night, Beer and Sausage Night, etc.. Had there been regular events held on the land, even from 1987, it is impossible that I would not have seen a advert for at least one of these and I should have seen all or nearly all of them.

At no time did my mother tell me about any sports taking place on this land. At no time did my mother tell me about any events taking place on this land which was directly in front of her house. Nor did my mother ever tell me about events planned for this land and yet she did tell me about fetes held in other villages as suggestions for a family outing. We visited all the local fetes. It is inconceivable that she would not have mentioned events taking place or planned to take place in front of her house.

My mother passed away at the end of 2014. In 2015 we regularly visited [redacted] for all the usual tasks when someone passes. Then we considered adapting her house for our needs as it had bigger garden, so again we visited to make measurements and consider plans on site, as well as stripping walls and other work. During 2015 we again saw no sign of anyone using the land in front for sports or pastimes, nor did we see any events held on this land, nor did we see any flyers for any events.

In 2016 we started work on remodelling of the house with builders starting work at the end of Feb 2016. The roof and gables were dismantled, new walls built and a new roof installed. This took until middle of Aug 2016. The builders were on site every day, other than some holiday, and I was on site too acting as labourer and project manager. All the work took place on scaffolding with an aerial view of the land claimed for TVG. The scaffolding stayed in place once the builders had finished for the top half to be rendered which took until the end of Aug 2016. It remained up while I and my wife completed the fascias, guttering and while my wife and my daughter painted the top half. The scaffolding came down middle of Sept 2016. Myself and my wife and daughter frequently worked weekends as well as week days.

In the whole of 2016, when for the majority of the time I had an aerial view, I saw nobody undertaking sports or pastimes and just one candidate event on this land at the occasion of the Queen's 90th birthday. This was a very small gathering of people who were not attending one of the numerous garden parties taking place. A group of perhaps a dozen people stood around trying to avoid being poked in the eye by the tree branches which at that time were at eye height (they were pruned in 2017 following my report). Nobody sat on the benches as they were covered in lichen etc. as the pictures above attest. One person had brought their own garden chair and another had a shooting stick. Most had brought their own bottle to toast the Queen. There was nothing formally arranged, no cake stalls or beer tent or games of chance, music, etc. as one would find at the typical fete. Nor were there tables and chairs set out as one would expect at a formal get together. The majority of the village was attending private parties and we could hear the music from one of those drifting over. I therefore do not think this meets the requirements for 15(2) and this is the only candidate event I have ever seen or heard about in the whole period up to 2018.

It is also a fact that there is a regular Stanton St. Quintin fete (and dog show) which is held every year (except this year of course, due to Covid). This fete has never been held on this land which also belies the parish council's claim that this land has been used a village green for 50 yrs by the parish of Stanton St. Quintin.

9. Royal Wootton Bassett

The application has some similarities to the 2016 TVG application for land adjacent to Vowley View and Highfold in Royal Wootton Bassett. Wiltshire Council granted the TVG and the case went to court where Wiltshire Council lost. Wiltshire Council appealed and lost again and had to pay out £43k in costs (so a cost to the ratepayer of around double that).

The case was brought by the owners of the land, Cooper Estates Strategic Land Ltd, and at the appeal on 8 May 2019 they were represented by Mr Gregory Jones QC and Mr Philip Petchey (instructed by Blake Morgan LLP) [2019 EWCA Civ 840] and the judgement is available at:

https://www.bailii.org/ew/cases/EWCA/Civ/2019/840.html

The case hinged on "whether the land had been identified for potential development". Wiltshire Council's QC sought to argue that the judge had a balance to achieve. The appeal judges disagreed and supported the judge's decision in the first case:

> *"I do not consider that there is a concept of "balance" to be implied into paragraph 4 or s.15C. These provisions have been overlaid on the scheme of the 2006 Act by the amendments made by the 2013 Act. Parliament undoubtedly intended to make a change in the law. The only balance, if such it is, is the one struck by Parliament through the provisions and seeking to protect future development opportunities against the effect of s.15 applications. If those provisions apply, according to their language and purpose, then the right to apply is excluded. Their extent is defined primarily by the language used, supported by the mischief they sought to address. As a matter of language paragraph 4 applies and in my judgment this is reinforced by the purpose, namely to prevent a s.15 application from hindering potential development of the land."*

My understanding on reading this case on bailii.org is that the judges decided that the provisions in Schedule 1A of the Commons Act were intended by Parliament to be interpreted literally. That the aim of Parliament was to prevent the mischief of s15 and leave the issue of green spaces vs development to the planning process.

The land for this claim is within a draft plan so comes under paragraph 3 of Schedule 1A the same as Royal Wootton Bassett came under paragraph 4 for a full plan. Hence the right to apply is excluded, if you take the words added by Parliament literally which the judges ruled should be the case as that was the intention of Parliament. And I wonder when Parliament ever writes an act that they don't intend to be interpreted literally.

However, it worth highlighting that there are significant differences that make the case for this TVG far weaker. These are:

- Evidence – the Royal Wootton Bassett application actually included evidence intended to satisfy 15(2). The claim was that the land was used yearly, almost without fail, for a picnic for the local residents and this was supported by entries in a diary giving dates. No evidence of use has been supplied with this application.

- Land Status – the Royal Wootton Bassett application was for private land. This application is for waste land and highway land which more problematic for a TVG than private land. Highway land cannot be given away and as has already been mentioned the highway act actually covers waste land next to the road meaning it is all highway land.

- Development Status - the Royal Wootton Bassett application was for land with a potential to be developed. The land claimed for this TVG actually has been developed when you consider development of land is more that just putting a house up. Development includes making roads and laying services. This land has services under it which date back to 1986 and before. The potential for development of this land is a proven fact so there is no doubt that it falls with paragraph 3 of Schedule 1A.

10. Planning Inspectorate Reply

Defra has issued "Guidance to Commons Registration Authorities in England on Sections 15A to 15C of the Commons Act 2006", the latest is dated Dec 2016. This can be found at:

https://www.gov.uk/government/publications/guidance-to-commons-registration-authorities-in-england-sections-15a-to-15c-of-the-commons-act-2006

Paragraph 79 of this guidance says:

> ***How will I (the commons registration officer) know if the right to apply is excluded?***
>
> *79. On receipt of an application, you will need to write to:*
>
> - *each local planning authority for the land to which the application relates; and*
> - *the Planning Inspectorate,*
>
> *for written confirmation of whether any trigger or terminating events have occurred in relation to the land, and the details of any such events. They will need to know what land is affected so you will need to provide them with a copy of a map of the land. Those confirmations will enable you to decide whether the right to apply under section 15(1) of the 2006 Act has been excluded.*

The Planning Inspectorate was contacted, as per the guidance, and their response in May 2019 was to say that the right to apply had been excluded. In other words the Planning Inspectorate did not confirm that it was in order to proceed with the application but the reverse.

Paragraphs 87 and 88 of the guidance say:

> ***Don't I need to formally accept an application before checking whether the right to apply is excluded?***
>
> *87. No, you are advised to seek confirmation on whether the right to apply is excluded in relation to the land prior to formally accepting or acknowledging receipt of an application. This is because if the right is excluded then the application should not be accepted, and this extends to written confirmation of receipt of the application.*
>
> *88. The rationale for this approach is to avoid time and money being spent advertising and making representations in relation to an application where it subsequently turns out there was no right to apply.*

Paragraph 79 of the guidance clearly states that the reason for contacting the Planning Inspectorate is for confirmation that it is ok to proceed and accept the application. The Planning Inspectorate did not provide such confirmation, and instead told Wiltshire Council that TVG applications were excluded. Paragraph 87, as I have underlined, states that excluded applications must be rejected immediately. Wiltshire Council is acting in contravention to these guidelines and exceeding its authority in ignoring the Planning Inspectorate's response.

To see how common or not such behaviour was I have made FOI requests to all similar authorities in England, that is to all the Unitary Councils and to all County Councils as Wiltshire Council used to be, but excluding the pioneer authorities and the 2014 Act authorities who operate under different rules and of course Wiltshire since I know Wiltshire Council has ignored the Planning Inspectorate without the need for an FOI request. This was a total of 72 requests. So far 60 (83%) have replied with data on 544 TVG applications. Exactly **zero** of these authorities have ignored a Planning Inspectorate response that an exclusion applies and continued to process an application. Wiltshire Council is clearly acting outside of its lawful authority and its actions are without precedent or any justification.

The raw data behind the above summary can be found on the What Do They Know site at:

https://www.whatdotheyknow.com/

Just search for "TVGs processed against Planning Inspectorate opinion" which will return 73 hits as it includes a request to Defra who unfortunately do not collect centralised data on this.

11. Commons Acts and Services

The Planning Inspectorate have issued guidance for works on greens. This document is titled "Common Land Guidance Sheet 2b, Works on Town & Village Greens" and can be found here:

https://www.gov.uk/government/publications/common-land-guidance-sheet-2b-special-consent-provisions-other-than-national-trust

I also made an FOI request to the Planning Inspectorate about this guidance. This too can be viewed on What Do They Know site here:

https://www.whatdotheyknow.com/request/validity_of_common_land_guidance

The FOI response included the original 2015 version, published in January 2015, and the 2018 version. Comparison of the two shows that the text is identical and the only changes are to make more of the text hyperlinks to the various acts mentioned in the text. The Planning Inspectorate reply to this FOI is that they have no record of any challenges to their guidance and they make the point that this *"is longstanding guidance"* which is a valid observation given the guidance is nearly 6 yrs old and unquestioned.

In this guidance the first paragraph lists the Acts that apply, section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876. The second paragraph explains how works on a green can be authorised via section 38 of the Commons Act 2006 but ends with the statement:

> *"consent under section 38 does not authorise works which constitute an offence under sections 12 or 29."*

And it then goes on to say that the only way around this is a land swap to remove TVG status from the land needing the works.

Section 29 of the Commons Act 1876 says:

> *"any erection thereon or disturbance or interference with or occupation of the soil thereof which is made otherwise than with a view to the better enjoyment of such town or village green or recreation ground, shall be deemed to be a public nuisance"*

Public Nuisance is a criminal offence and it is legally impossible to give permission to commit a criminal offence which is why the Planning Inspectorate guidance says s38 cannot authorise such works.

Hence it is legally impossible occupy or disturb the soil unless this is for the benefit of the green. The existing services to my house are clearly of no benefit to a green and installing new services would clearly harm the green until the grass recovered. The granting of TVG would thus make my existing services criminal, cutting off my property from the services it has used since 1987. It would also make criminal the installation of any new services such as fibre, or indeed any replacement services for failed cables or pipes.

It is not possible to pick and choose which laws to obey and which to ignore. All laws have to be obeyed which is the point made by the Planning Inspectorate guidance.

Section 29 also excludes "*"any erection thereon"* so the telephone poles on this land will become criminal too. This will affect the provision of telephone and internet services to the east end of the village. I would presume that Openreach would need to install another couple of poles at either end of The Forge and reroute the cables around, then rewire all the houses that come directly off these poles.

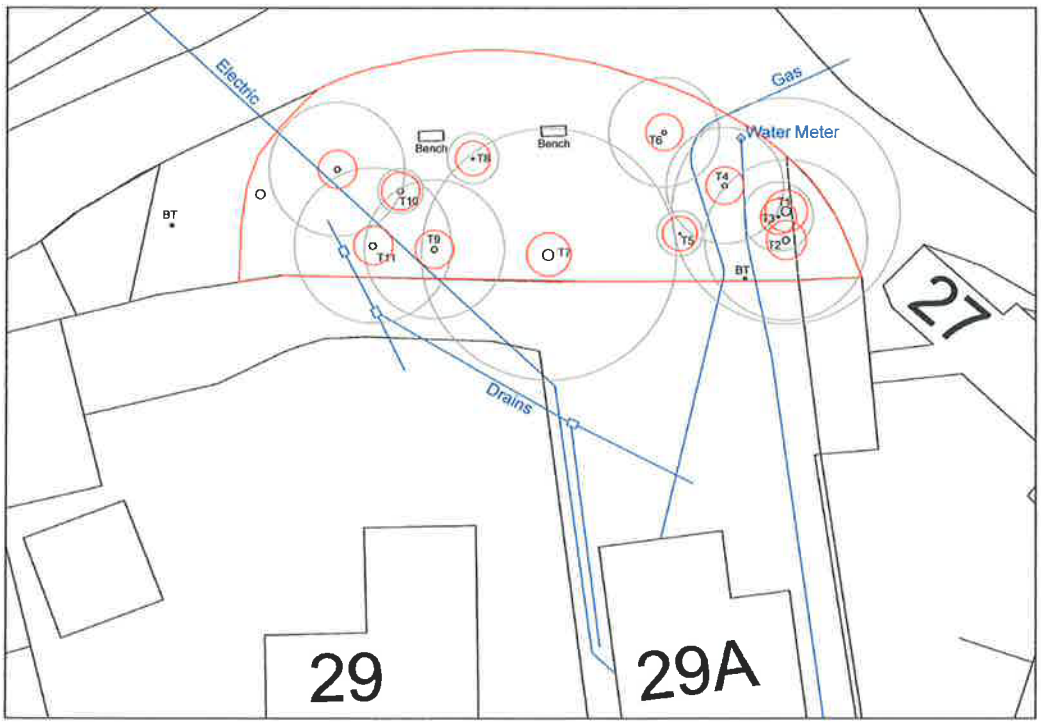


Figure 27 – Services to [redacted] Trees with RPA and TVG Claimed Area

The service routes to [redacted] are shown in the figure above in blue. All the services under this land were installed in 1986/7 or earlier with exception of gas which was installed in 2017. The trees were planted after the older services and without consultation with the utility companies as should have happened. This is why, as the plan above shows, the older services run in straight lines and even under trees.

The results of the survey by SSE on 27 Aug 2020 are shown in the photos below. The feed cable to 29 (not on the plan above) is in the left photo and the feed to [redacted] in the right. These photos show these cables are running almost directly under these trees so there can be no doubt that the utilities were not consulted about the positioning of these trees otherwise they would have objected to them blocking the access to their cables or pipes.

The guidance for works around trees defines 2 zones, a Prohibited Zone 1m from the trunk shown in red on the above plan and a Precautionary Zone at 12 x trunk diameter shown in grey. These regions explain the reason for the S shape of the gas pipe run (installed 2017).

The area claimed by the TVG application is outlined in red too. As already mentioned this is not the whole of the grass area but leaves a section unclaimed in front of 29 where pipes and cables could still be able to be run without being criminal. But as the plan shows all the current pipes and cables to [redacted] would become criminal and there are no possible areas to left to reroute these or install new services.

And of course the other question the above plan raises is "if the parish council really believed it was their land back in 1986 why didn't they ask for wayleaves for the water pipe and electricity cable?".

Figure 28 – SSE Survey 27 Aug 2020 (29 cable / [redacted] Cable)

12. Human Rights Act

It doesn't take a judge to realise that attempting to cut off the services to someone's house is an improper action for a council. In fact it is a breach of the Human Rights Act and an obvious one at that.

The First Protocol, Article 1 of the Human Rights Act is about the protection of rights for property. It states that every *"person is entitled to the peaceful enjoyment of his possessions"* which includes property. In addition, HRA Article 14, prohibits discrimination, including discrimination due to association with a particularly property. Article 8 of the HRA is also applicable. Article 8 includes *"respect"* for *"his home"* and *"family life"*. It forbids interference except in extreme circumstances, such as national security, public safety or the for the protection of the rights and freedoms of others. And as has already been mentioned the Highway Act s130 already guarantees the public right of use and enjoyment of this verge so there is no need for this TVG application unless the aim is to cut off my services.

HRA in section 6 (1) says:

> 6 (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

Section 6 (2) excuses 6 (1) if the law is such that the public authority has no choice in how to act, but this is the only excuse. Wherever possible any public authority **must** act in accordance with the HRA otherwise it is acting unlawfully as 6 (1) says.

To assist in meeting 6 (1) the HRA in section 3 (1) says:

> 3 (1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

In other words, given a choice of interpretations of any act then the public authority must chose the interpretation that is compatible with the HRA rights.

The parish council clearly had the option not to make this TVG application or even to withdraw it when the potential to breach HRA was pointed out to all councillors on 9 Aug 2020. That they chose not to do this makes this a wilful attempt to breach HRA and wilful breach of their code conduct and the 7 Nolan Principles. This TVG application's aim is to disadvantage myself and my family as shown by the land claimed and not claimed and the parish council's previous history of slandering me in their minutes.

Similarly Wiltshire Council had the option to follow the Defra guidance and immediately reject this application. Out of the 60 (83%) of similar councils which replied with details on 544 TVG applications not one council has ignored the Planning Inspectorate saying that TVG applications were excluded. Only Wiltshire Council has done that.

And of course Wiltshire Council was told in court, by 4 judges in total, that the Commons Act 2006, particularly s15C and Schedule 1A, were to be read literally, meaning that this TVG application would be excluded by paragraph 3 of Schedule 1A.

These are not the only reasons as the HRA requires paragraph 1 of Schedule 1A be a valid reason too. Paragraph 1 of Schedule 1A says a trigger event is:

> *1. An application for planning permission, or permission in principle, in relation to the land which would be determined under section 70 of the 1990 Act is first publicised in accordance with requirements imposed by a development order by virtue of section 65(1) of that Act.*

The key words here are "*in relation to the land*". This is not the same as "for the land" which is how the Wales version words this section. In relation to implies a looser link, direct and indirect relationships. The planning permission for the remodelling of [redacted] was granted in 2015 and is currently under way so meets all the rest of paragraph 1. There is clearly a relationship between my house and this land since my services come across it. Hence there is clearly a relationship between my planning permission and this land as my development needs this land for the services. As pointed out in a previous section development is more than just building the house, there are roads and services needed too. The land used for those is part of the development even if it is not part of the householder's property.

The whole reason for Parliament to word the act with "*in relation to the land*" rather than a simple "for the land" was to allow this to cover the cases of indirect relationships between planning permissions and other land the development needed to be viable. Plus HRA 3(1) requires that "*in relation to the land*" be interpreted to be compatible with the HRA in other words that that all TVG applications are excluded from this land and the services to my house are not made criminal.

This HRA case has been put previously to Wiltshire Council but never addressed or denied.

I believe the facts stated in this letter of objection are true.

Signed:

[redacted]

Malcolm Reeves Dated: 23/9/2020

Green, Janice

From: Carole Poletti <Carole.Poletti@wessexwater.co.uk>
Sent: 28 September 2020 08:51
To: Green, Janice
Subject: RE: TVG application Stanton St Quintin
Attachments: 22.9.20 Applications No 2018 01 and 2019 01 WWSL.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Janice,

Applications to register land as town or village green – land off Seagry Road, Lower Stanton St Quintin
Applications no. 2018/01 and 2019/01

I hope this finds you well.

Further to your e-mail of 12 August to my colleague, Alison Creighton, and your subsequent telephone call in relation to the above applications, please see attached our response which has gone in the post early last week.

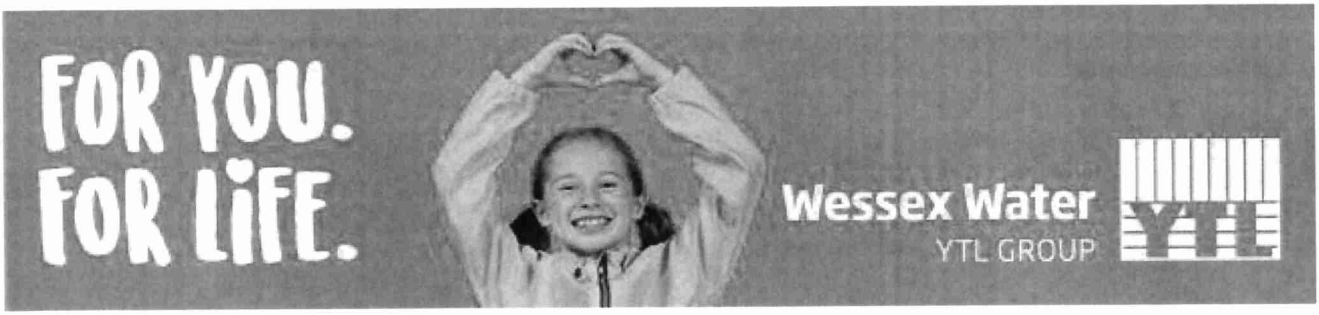
I would be grateful if you could acknowledge receipt.

Many thanks

Kind regards

Carole Poletti
Senior Solicitor

Wessex Water
Claverton Down Bath BA2 7WW
01225 526 387
07919 881330
wessexwater.co.uk



From: Green, Janice <janice.green@wiltshire.gov.uk>
Sent: 12 August 2020 11:45
To: Alison Creighton (nee Wyatt) <Alison.Creighton@wessexwater.co.uk>
Subject: RE: TVG application Stanton St Quintin

Dear Alison,

Commons Act 2006 – Sections 15(1) and (2)
Applications to Register Land as Town or Village Green – Land off Seagry Road, Lower Stanton St Quintin
Application no's 2018/01 and 2019/01

Thank you for your enquiries regarding the above-mentioned applications to register land as Town or Village Green, off Seagry Road, Lower Stanton St Quintin. I am sorry I missed your call last week, but I see that my colleague Sally has very kindly provided you with the correct information. Just to clarify that there are now two applications, but the overall effect is that the whole of the semi-circular green area is now subject to an application to register the land as a town or village green.

Please find attached formal notice of the applications, in the form of Form 45 notices with plans attached. I would be very grateful if you could confirm whether or not Wessex Water plant is affected and the location of any plant. Please also feel free to make any representations regarding the applications, in writing (e-mail is acceptable), to myself, on or before Monday 28th September 2020, as per the attached notices.

Kind regards,

Janice Green
Senior Definitive Map Officer
Rights of Way and Countryside
Wiltshire Council
County Hall
Trowbridge
BA14 8JN

Wiltshire Council

Telephone: Internal 13345 External: +44 (0)1225 713345
Email: janice.green@wiltshire.gov.uk

Information relating to the way Wiltshire Council will manage your data can be found at:
http://www.wiltshire.gov.uk/recreation-rights-of-way

Web: www.wiltshire.gov.uk

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Wessex Water
YTL GROUP

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Tel: 07919 881330
Email: carole.poletti@wessexwater.co.uk
Our Ref: CM3648/CP
Your ref: JG/PC/212 2018/01 & 2019/01

Date: 22 September 2020

Dear Ms Green,

Land Adjacent to Seagry Road, Lower Stanton St Quintin ("the Land") – Applications to Register Land as Town or Village Green Ref No. 2018/01 & 2019/01 ("the Applications")

I refer to the above and to your recent telephone conversation with Alison Creighton of Wessex Water about the Applications.

Wessex Water would like to register its concerns as to the effect of registration of the Land as a town or village green on Wessex Water's ability to meet its statutory duties as the appointed sewerage and water undertaker for its region, which includes this area of Wiltshire.

Our records show an existing foul sewer as well as water meters indicative of the presence of water supply pipes running beneath the Land. A plan showing the approximate location of the sewer and water meters is attached (note that communication pipes and public lateral drains from the Wessex Water mains would not be shown on the plan).

Wessex Water enjoys powers conferred by sections 159 and 168 of the Water Industry Act 1991 to enter and carry out works in land other than a street, subject to the service of prescribed periods of notice on the owner and occupier of that land. Such works relate to the laying of new pipes and accessories and to inspection, maintenance, adjustment, repair and alteration of existing pipes and accessories.

We understand that certain Victorian legislation - namely section 12 of the Inclosure Act 1857 and section 29 of the Commons Act 1876 - is brought into play by virtue of land being registered as a town or village green. These provisions create criminal offences as regards causing injury, interruption of use as a place of recreation or disturbance of soil of town or village greens.

Any designation of the Land as a town or village green has the potential to frustrate Wessex Water's ability to maintain, extend and improve its assets. As I understand the legislation, there is no provision comparable to that applying to Common land, whereby the

authorisation of the Secretary of State can be sought for the carrying out of new works on a town or village green.

If future maintenance and repair of Wessex Water's underground pipes was in any way restricted (e.g. a blockage in a sewer beneath the Land which could not be accessed and cleared), there could be a significant impact on the immediate locality.

Consequently, Wessex Water is concerned that registration of the Land as a town or village green could have adverse impacts both on its ability to carry out its statutory duties and potentially on the residents of Lower Stanton St Quintin, on visitors to the area and to the wider environment.

Whilst Wessex Water is not the owner of the Land, it does have assets beneath its surface with associated rights of access through the surface of the land. These rights are akin to easements and have, as a result of the exercise of statutory powers, been described as a "statutory easement". As such, the condition contained within section 15(1) of the Commons Act 2006 as to indulgence "as of right" for the period of time set out may not be met. At any time, the indulgence could have been halted by service of the requisite notice under sections 159 and 168 of the Water Industry Act 1991. Furthermore, the designation, going forward, as a town or village green seems to be at odds with the notion that Wessex Water enjoys rights of easement over the Land.

In submitting these observations, we would like to make it clear that Wessex Water does not object to use of the Land for sports and pastimes. Wessex Water simply wishes to record the need for careful consideration of Wessex Water's statutory obligations in deciding how to approach the future designation of the Land.

Please accept this letter as a formal submission setting out Wessex Water's position in this matter.

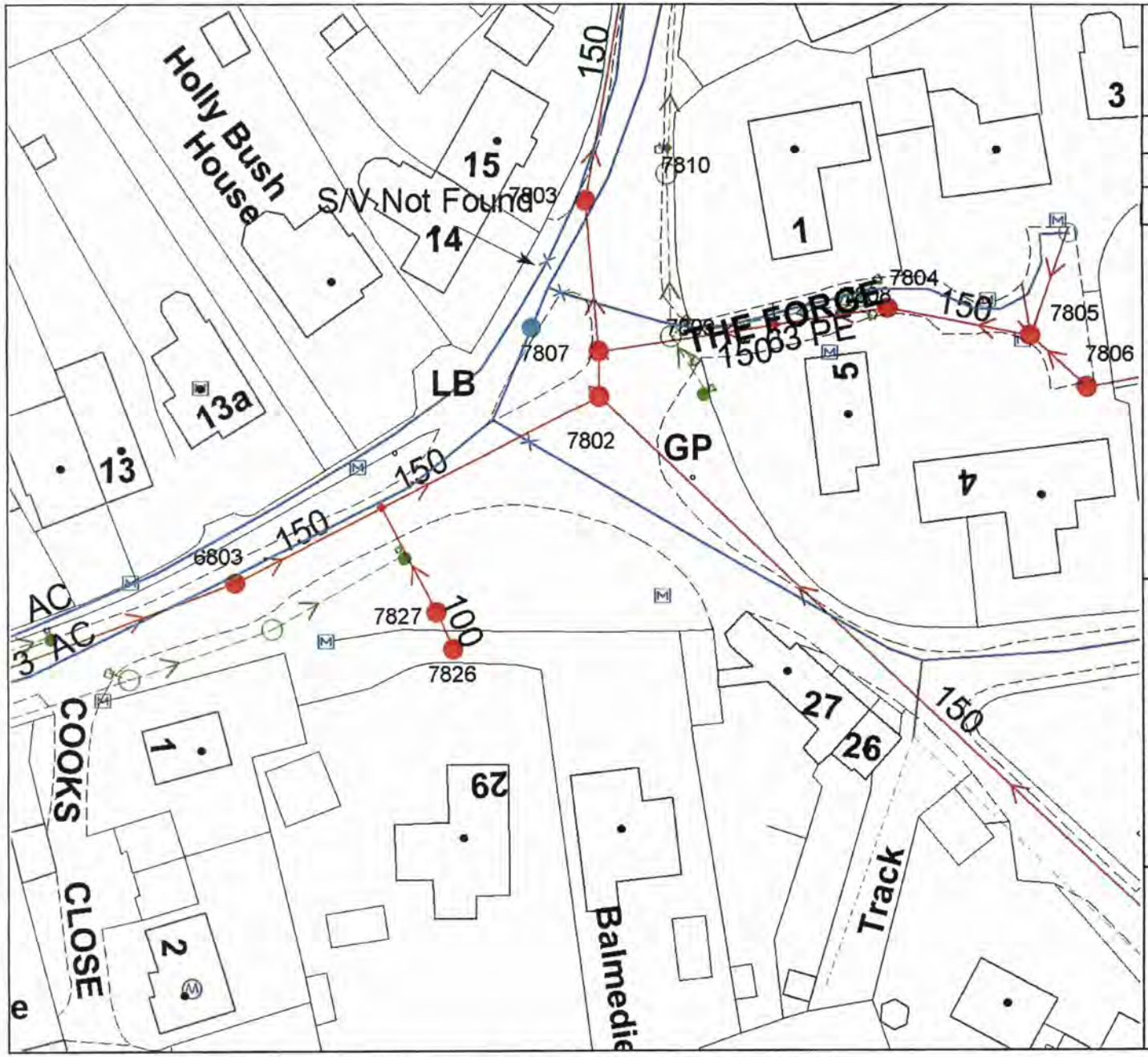
Yours sincerely

[redacted]

Carole Poletti
Senior Solicitor
for and on behalf of
Wessex Water Services Limited

Enc.

Wessex Water
Claverton Down
Bath BA2 7WW
Tel 01225 526 000
Web wessexwater.co.uk



Wessex Water
YTL GROUP

Stanton St Quintin

WATER MAINS Public Private
Public
Raw Water
Abandoned
Valve Hydrant PRV Meter

SEWERS Public - Section 104 - Private
Foul
Combined
Surface
Abandoned sewers

OTHER WESSEX PIPES
Rising Mains
Effluent Disposal Main
Overflow

NON-WESSEX PIPES
Private Rising Mains
Culverted Water Course
Highway Drain

Information in this plan is provided for identification purposes only. No warranty as to accuracy is given or implied. The precise route of pipe work may not exactly match that shown. Wessex Water does not accept liability for inaccuracies. Sewers and lateral drains adopted by Wessex Water under the Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011 are to be plotted over time and may not yet be shown. In carrying out any works, you accept liability for the cost of any repairs to Wessex Water apparatus damaged as a result of your works. You are advised to commence excavations using hand tools only. Mechanical digging equipment should not be used until pipe work has been precisely located.If you are considering any form of building works and pipe work is shown within the boundary of your property or a property to be purchased (or very close by) a surveyor should plot its exact position prior to commencing works or purchase. If you are proposing to build over or near Wessex Water s apparatus you should contact the Developer Services Team, tel: 01225 526333 or e -mail: developer.enquiries@wessexwater.co.uk to discuss your proposals.

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