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GCC Consultation on Stonehouse Footpath 28 (MST28) and DMMO applications (573/11/212(6) to (11)

9 September 2024

Jaci Harris
Assets Data Officer (PROW Definitive Map)
By email

Dear Ms Harris,

Thankyou for inviting the Open Spaces Society to comment on your proposed investigation into Stonehouse Footpath 28 (MST28) and DMMO applications (573/11/212(6) to (11)

Firstly, given the pressure on the County Council's resources it is unclear why the County Council has decided to initiate its own review on MST28 route rather than deal with this matter in response to a formal application from an interested party (which has become the normal expectation for reviewing rights of way).

Historic Background
Verney Fields is a problematic area which is currently burning up considerable public resources, due to the contested issues that have arisen on this site since a new owner took possession in early 2023. It is important to emphasise this has arisen because multiple statutory authorities have failed to act to protect public interests in a number of ways over a considerable period of years including:-
Stroud Rural District Council – Originally as Highway Authority, failure to protect and assert Public Rights of Way from post 1894 (on transfer of highways from the Stroud Highways Board) to 1930 and subsequently as a Rural District Council, with duties to protect and assert rights of way until 1974. Similarly, failure to exercise its statutory duties under Quarrying Fencing Act 1887 and subsequent legislation including the Public Health Act 1936 to enforce the fencing of footpaths from the Quarrying operations.
Gloucestershire County Council – As Highway Authority - failure to Protect and Assert Public Rights of Way from 1974 to date as well as significant failures as local planning authority from 1947 to 1974. As a landowner a failure to balance the interests of the neighbourhood in deciding to sell Verney Fields in 1943 without identifying the extent of public access at that time, despite the protests of the then Stonehouse Parish Council and ignoring subsequent appeals for action.
Stroud District Council – Lack of effective intervention as part of development control of the conversion former brickworks and quarry to residential development to resolve the problems which existed in the area prior to and during the re-development process, including securing future management of the open space included in the housing development.

Recommendation: There are important lessons to be learnt and an action plan to ensure that problems that have occurred on this site are avoided in the future would be an important learning

The Open Spaces Society has staff with exhaustive experience in handling matters related to our charitable purposes. While every endeavour has been made to give our considered opinion, the law in these matters is complex and subject to differing interpretations. Such opinion is offered to help members, but does not constitute formal legal advice.

exercise for both the County Council and the District Council. It is recommended that Stroud District Council and Gloucestershire County Council jointly undertakes a comprehensive and thorough review of their actions and inactions in respect of this location (including the functions they have inherited from predecessor authorities) to identify failings in how the authorities have approached public safety, assertion of highway duties and planning control in respect of rights of way.

GCC Initiated Review to "Extinguish" MST28

I think it is important to say at the beginning that evidence supporting the existence of MST 28 includes the fact that the route is clearly shown on the Stonehouse Tithe Map and also the 1st edition of the OS 25" to the mile mapping. However, several news reports refer to discussions to amend routes in 1904 to 1909 including the provision of a new footbridge across the railway line.

- Stroud News and Gloucestershire Advertiser - Friday 27 May 1904 Brick Company discussions with Stonehouse PC
- Stroud News and Gloucestershire Advertiser - Friday 27 March 1908 p2 Brick Company discussions with Stonehouse PC
- Railway News - Saturday 27 November 1909 p27 – GWR Bill discontinue a path at Stonehouse and replacement.
- Stroud News and Gloucestershire Advertiser - Friday 26 November 1909 see letter p4

Looking at the 1921 OS map, the inference could be drawn that the path may have been diverted to the east of the quarry. Extracts are shown in Appendix A, The Finance Act 1910 land valuation information ("Lloyd George Survey") information for the Brickworks Hereditaments does not record any reference to a Right of Way within the brickworks (reference 998) but does include a £15 allowance in respect of the field to the east (reference 1047).[1] Consequently, these will need to be investigated alongside other records to clarify whether there are any orders to vary the footpath route. Clearly in the absence of such Magistrates Court records this route should be determined as legally still a highway.

It is notable that by the time of the 1938 edition the quarry had expanded to the east with the path having moved to just within the boundary of field number 185 (Finance Act field ref 1047).

Whether or not there is a statutory diversion of either the route shown on the 1921 or 1938 maps there is a longstanding common law right to deviate when a route has been obstructed. Riddell and Trevellyn draw attention to this stating "If the obstruction is by the holder of the land crossed by the way, there is an undoubted right onto other land belonging to the same landowner in order to get round the obstruction".[2] The authors draw attention to two cases Stacey and Sherrin(1913) and Dawes and Hawkins (1860) to support this position noting in respect of Dawes that the obstruction is "more than temporary". The authorities are silent on what happens when land is sub-divided, but it is submitted that as the land was at all material times from 1943 (when the brickworks purchased additional land) to 1972 and the land not sold to Melbourne Investments remained with Halls-Keck company and family interests from then until the land was sold in 2023, that those rights of way have been dedicated for public use and enjoyment, in addition to any previous routes.

It is therefore contended that in addition to the original route which has been added to the definitive route as MST28, there are two other routes that should be added to the definitive map – the 1921 diversion route and the 1938 route. They are not in any stretch of the imagination "permissive" paths – they are paths which were accepted by the then owner (Stonehouse Brick and Tile Works Limited and their successors) as public rights of way because of their criminal and illegal actions as landowner to obstruct rights of way.

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[1] Hereditament 1047 https://glos1909survey.org.uk/code/data.php?id=84219 ; Hereditament 998 https://glos1909survey.org.uk/code/data.php?id=84170

[2] Rights of Way – A guide to law and practice 4th Edition 2007 J Riddell and J Trevelyan pp 17

The other point I would made is that the Bruton Knowles file for the proposed auction by the liquidators of the Stonehouse Brick and Tile Works company in 1963 includes a plan of the site showing the boundary of the land to be sold and within it includes a diverted route for a path east of the quarry workings. As you will note this curves round the quarry workings and re-joins MST28 to the north of the quarry, on its original route. It is therefore submitted that whatever happens to the route across the Quarry, the council should work to preserve this section of MS28 AND maintain a connection from MST28 close to the top of the quarry edge to MST62, which would require an additional route to those the subject of DMMO claims to also be added to the Definitive Map. A copy of this map is included in appendix D.

In addition, the County Council should be considering whether there should be restored in some way to be used. This could, for instance, including creating a safe usable route on all three of these lost routes. For example, this could be achieved by creating a long set of steps up the Quarry face. Alongside this Gloucestershire County Council and Stroud District Council needs to work with the owners of the Quarry face and the land below on a long term management plan to protect the public use of this area for the long term benefit of users and local residents alike. This should include the provision of additional routes for public use within the quarry bottom.

DMMO Applications 6 July 2024 (573/11/212(6) to (11)

These applications are very welcome applications to add unrecorded routes which appear to have been well used "as of right" by residents for well in excess of 20 years as well as evidence of dedication by previous landowners. They also include routes in a number of landownerships. I have not examined the individual detail of the evidence submitted but it is apparent that each route claimed has significant number of evidence forms submitted for each route (with a minimum of 34 evidence forms up to 111). In the event that this matter is not resolved by Gloucestershire County Council I will happily provide supporting evidence to any inquiry on this evidence.

A possible concern with the evidence is the extent to which it will enable the council to determine, in each case, that the route existed before 1 January 1960. This is the commencement date of the Highway Act 1959, which without any genuine or proper consultation repealed Section 47 of the National Parks and Access to the Countryside Act 1949 which would have enabled all such routes to be "maintainable at public expense". I would therefore urge that the County Council considers making a Section 25 Order, on the basis that this would not only require the county council to maintain the route but also place a statutory duty to protect and assert the public rights to use the route.

I appreciate this bears a risk of possible compensation claims. Nevertheless, there is significant public interest in the rights to use these paths being statutorily protected rather than relying on ambiguous discretionary powers.

In the absence of the making of a Section 25 Creation order the Open Spaces Society supports the making of a DMMO, but would expect that the County Council would also apply its mind to setting out clear policy of how it would use its discretionary powers to protect public rights in such circumstances where it determines that a route has come into existence after 1 January 1960. I would urge that the Commons and Rights of Way Committee is appraised of the complexity of this issue and is asked to determine future policy.

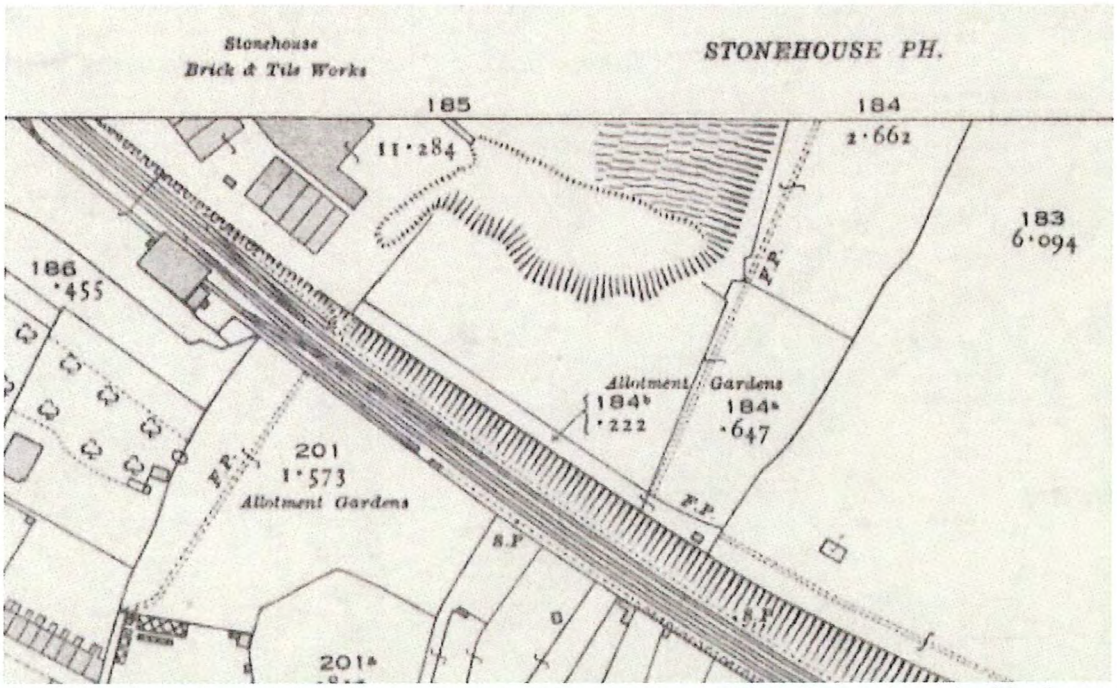
I trust this will assist you in your bringing these matters before decision makers

[redacted]

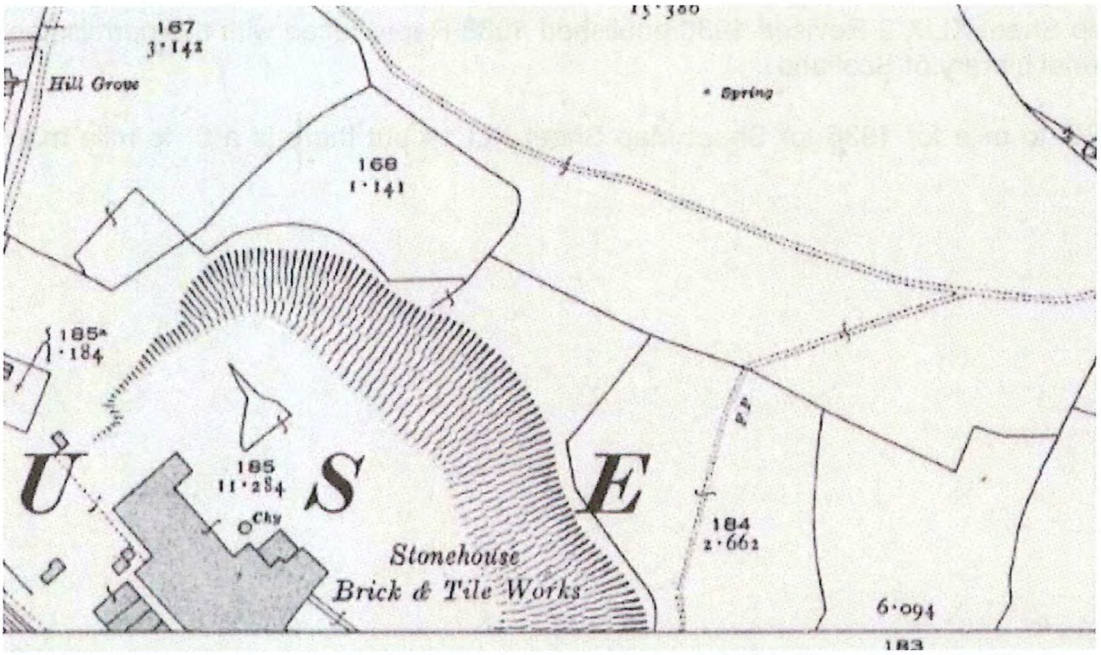
Chas Townley
Open Spaces Society Local Correspondent for Stroud and Gloucester Districts

Appendix A

1921 25" to Mile Map Extracts



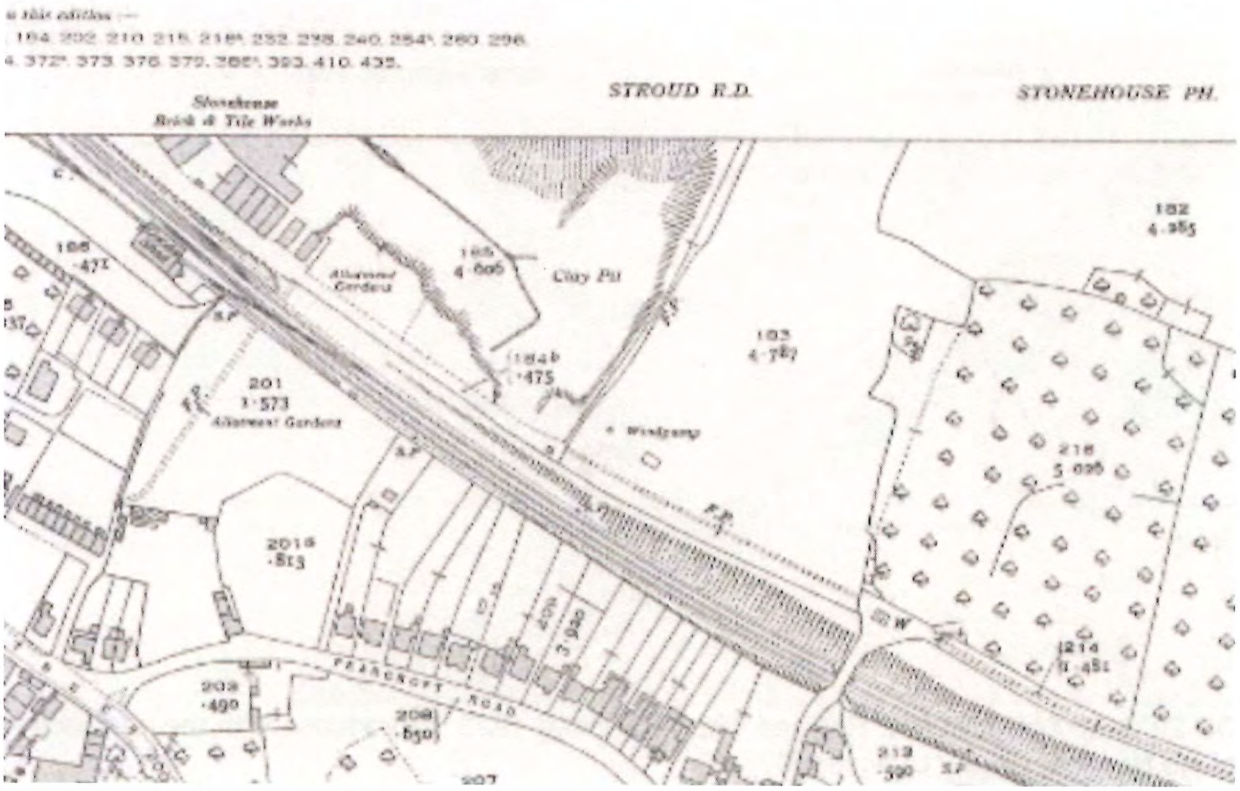
OS 25" Map Sheet XLIX 2 Revised 1921 published 1923 Reproduced with the permission of the National Library of Scotland



OS 25" Map Sheet XLI 14 Revised 1920 published 1923 Reproduced with the permission of the National Library of Scotland

Appendix B

25" to Mile OS Map Revised 1936 published 1938



OS 25" Map Sheet XLIX 2 Revised 1936 published 1938 Reproduced with the permission of the National Library of Scotland

Note: No 25" to mile for 1936 for Sheet Map Sheet XLI 14 but there is a 6" to mile map available

Appendix C

Air Photo Mosaic Sheet

Air Photo Mosaic Sheet (1:10,560 scale): 32/80 N.W. / SO 80 N.W.
Prepared from Air Photos taken: May, 1950, Publication date: no date
Size: sheet ca. 62 x 53 cm (ca. 25 x 21 inches)

Appendix D

1963 Map of Land to be sold following liquidation of Stonehouse Brick and Tile Works

This is believed to be from original 1963 Conveyance from Stonehouse brick and Tile Works sale to Halls Keck Investments