

PLANNING & REGULATION COMMITTEE – 22 JUNE 2015

COMMONS ACT 2006: IN THE MATTER OF AN APPLICATION TO REGISTER THE POND, MAIN STREET, SIBFORD GOWER, OXFORDSHIRE AS A TOWN OR VILLAGE GREEN

Report by the County Solicitor & Head of Law & Culture (Legal Services)

Introduction

1. By an application dated 14 November 2013, Mr Peter Brian Hardman on behalf of the Sibford Gower Parish Council (“the Applicant”) applied to the County Council as Commons Registration Authority under Section 15(2) of the Commons Act 2006 to register land known as The Pond, Main Street, Sibford Gower in Oxfordshire (“the Application Land”) as a Town or Village Green. This application, a copy of which is attached at Annex 1, was submitted formally in pursuance of the Act and has now to be determined by the County Council.
2. The Planning & Regulation Committee have delegated powers to determine such applications, provided they are ‘duly made’.
3. The application was considered objectively by Rights of Way & Commons and Legal Services as to whether the application was ‘duly made’. The application was accepted as ‘duly made’ on 2 June 2014 and was subsequently publicised in accordance with the statutory requirements. No objections were received during the statutory 6-week objection period.
4. The registration authority then proceeded to further consideration of the application and requested further evidence from the Applicant. No further evidence was submitted.

The Application Site: Land at The Pond, Main Street, Sibford Gower, Oxfordshire

5. The application form describes the Application Land as Sibford Gower Village Pond. The Application Land is shown edged red on the Application Map included as part of Annex 1.
6. The area surrounding the Application Land is recorded by the Council (as highways authority) as public highway, either as highway verge or as part of Main Street itself. The Applicant has therefore limited the application only to the pond itself and does not seek to register any of the highway land as a village green.

7. The locality relevant to the application is the Parish of Sibford Gower.

The Town Green Application

8. The application form was duly signed by Mr Hardman on behalf of the Applicant and supported by the prescribed Statutory Declaration. The Applicant submitted several additional pieces of information in support of its application, including a supporting statement and several copy photographs and illustrations.

The Determination of the Application

9. Having been received by the Commons Registration Authority and accepted as 'duly made', the application was duly published in accordance with Regulation 5 of the Commons Registration (Registration of Town and Village Greens) (Interim Arrangements) (England) Regulations 2007 by publication in a local newspaper, posting notices on site, and placing copies on public deposit.
10. The statutory objection period expired on 14 November 2014. No objections were received.
11. The registration subsequently considered the application further. There was concern that the application did not meet all of the parts of the legal test for registration set out at s15(2) Commons Act 2006.
12. S15(2) 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.”
13. In this case, there was little evidence showing use of the pond itself (as opposed to the land surrounding it), although clearly the existence of the pond provided a focal point for the use of the adjoining land.
14. Such use of the pond itself was apparently mostly maintenance of the pond and the plants and animals living in it. This does not appear to be a type of informal recreation or 'lawful sports and pastimes' as required by s15(2). In the case of *R v Oxfordshire County Council and Another, Ex parte Sunningwell Parish Council* [2000] 1 A.C. 335, Lord Hoffmann said this about the statutory predecessor to s15:-

“As a matter of language, I think that "sports and pastimes" is not two classes of activities but a single composite class which uses two words in order to avoid arguments over whether an activity is a sport or a pastime. The law

constantly uses pairs of words in this way. As long as the activity can properly be called a sport or a pastime, it falls within the composite class.”

15. In this case, maintenance is certainly not a sport and it is doubtful as to whether it is a pastime as accepted by Sunningwell and later cases. There is also some mention of pond dipping, sailing toy boats and skating by children in winter, but no more detail about these activities is given.
16. The only evidence actually submitted was a single statement by the Applicant, there were no statements or evidence questionnaires by individual users of the Pond.
17. The registration authority subsequently wrote to the Applicant on 11 July 2014, 15 April 2015 and 1 May 2015 to seek further evidence from it. It was suggested that the Applicant ask individual users of the land to complete evidence questionnaires in the format recommended by the Open Spaces Society. On each occasion the Applicant wrote letters in response however did not provide any further material evidence as to the use of the Pond. No evidence statements from users of the Pond were provided.
18. The registration authority therefore considers that the Applicant has not provided sufficient evidence that the Pond has been used for lawful sports and pastimes and therefore recommends that the application should be refused. The County Solicitor supports this conclusion.

RECOMMENDATION

19. **The Committee is therefore RECOMMENDED to REJECT the application for registration as a new Town or Village Green that plot of land known as The Pond, Main Street, Sibford Gower, Oxfordshire that site being identified edged red on the map appended to this report.**

PETER CLARK
County Solicitor & Head of Legal Services

Background papers: Copy correspondence with Applicant

Contact Officer: Richard Goodlad, Principal Solicitor (Tel: 01865 323917)

June 2015

Commons Act 2006: Section 15

Application for the registration of land as a Town or Village Green

Official stamp of registration authority indicating valid date of receipt:

Application number:

Register unit No(s):

VG number allocated at registration:

(CRA to complete only if application is successful)

Applicants are advised to read the 'Guidance Notes for the completion of an Application for the Registration of land as a Town or Village Green' and to note the following:

- All applicants should complete questions 1-6 and 10-11.
- Applicants applying for registration under section 15(1) of the 2006 Act should, in addition, complete questions 7-8. Section 15(1) enables any person to apply to register land as a green where the criteria for registration in section 15(2), (3) or (4) apply.
- Applicants applying for voluntary registration under section 15(8) should, in addition, complete question 9.

Note 1
Insert name of registration authority.

1. Registration Authority

To the

OXFORDSHIRE COUNTY COUNCIL
SIGNAL COURT, OLD STATION WAY
EYNSHAM OX29 4TL

Note 2

If there is more than one applicant, list all names. Please use a separate sheet if necessary. State the full title of the organisation if a body corporate or unincorporate.

If question 3 is not completed all correspondence and notices will be sent to the first named applicant.

Note 3

This question should be completed if a solicitor is instructed for the purposes of the application. If so all correspondence and notices will be sent to the person or firm named here.

2. Name and address of the applicant

Name:

Full postal address:

Postcode

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

3. Name and address of solicitor, if any

Name:

Firm:

Full postal address:

Post code

Telephone number: (incl. national dialling code)

Fax number: (incl. national dialling code)

E-mail address:

Note 5

The accompanying map must be at a scale of at least 1:2,500 and show the land by distinctive colouring to enable to it to be clearly identified.

* Only complete if the land is already registered as common land.

Note 6

It may be possible to indicate the locality of the green by reference to an administrative area, such as a parish or electoral ward, or other area sufficiently defined by name (such as a village or street). If this is not possible a map should be provided on which a locality or neighbourhood is marked clearly.

5. Description and particulars of the area of land in respect of which application for registration is made

Name by which usually known:

SIBFORD GOWER VILLAGE POND

Location:

MAIN STREET
SIBFORD GOWER, BANBURY
OXON OX15 5RT

Shown in colour on the map which is marked and attached to the statutory declaration.

Common land register unit number (if relevant) *

6. Locality or neighbourhood within a locality in respect of which the application is made

Please show the locality or neighbourhood within the locality to which the claimed green relates, either by writing the administrative area or geographical area by name below, or by attaching a map on which the area is clearly marked:

SIBFORD GOWER PARISH

Tick here if map attached:

Note 4

For further advice on the criteria and qualifying dates for registration please see section 4 of the Guidance Notes.

** Section 15(6) enables any period of statutory closure where access to the land is denied to be disregarded in determining the 20 year period.*

4. Basis of application for registration and qualifying criteria

If you are the landowner and are seeking voluntarily to register your land please tick this box and move to question 5.

Application made under **section 15(8)**:

If the application is made under **section 15(1)** of the Act, please **tick one** of the following boxes to indicate which particular subsection and qualifying criterion applies to the case.

Section 15(2) applies:

Section 15(3) applies:

Section 15(4) applies:

If **section 15(3) or (4)** applies please indicate the date on which you consider that use as of right ended.

If **section 15(6)*** applies please indicate the period of statutory closure (if any) which needs to be disregarded.

7. Justification for application to register the land as a town or village green

Note 7

Applicants should provide a summary of the case for registration here and enclose a separate full statement and all other evidence including any witness statements in support of the application.

This information is not needed if a landowner is applying to register the land as a green under section 15(B).

SIBFORD GOWER PC SEEKS TO CLAIM TITLE TO THE VILLAGIC POND, HAVING ESTABLISHED THAT THERE IS NO REGISTERED OWNER, DESPITE THE SURROUNDING LAND BEING OWNED BY OR FORTHSHIRE COUNTY COUNCIL. THE REASON FOR SO DOING IS THAT IT REQUIRES TO HAVE CONTROL FOR THE BENEFIT OF THE LOCAL COMMUNITY, AND TO ENSURE THAT THE POND IS PROPERLY MAINTAINED NOW AND IN THE FUTURE

Note 8

Please use a separate sheet if necessary.

Where relevant include reference to title numbers in the register of title held by the Land Registry.

If no one has been identified in this section you should write "none"

This information is not needed if a landowner is applying to register the land as a green under section 15(8).

Note 9

List all such declarations that accompany the application. If none is required, write "none".

This information is not needed if an application is being made to register the land as a green under section 15(1).

Note 10

List all supporting documents and maps accompanying the application. If none, write "none"

Please use a separate sheet if necessary.

8. Name and address of every person whom the applicant believes to be an owner, lessee, tenant or occupier of any part of the land claimed to be a town or village green

NONE

9. Voluntary registration – declarations of consent from 'relevant leaseholder', and of the proprietor of any 'relevant charge' over the land

NONE

10. Supporting documentation

MAP SHOWING LOCATION OF POND
FOLDER GIVING HISTORY OF POND,
SHOWING PHOTOGRAPHS AND EVIDENCE
OF USE/MAINTENANCE BY VILLAGERS
OVER MANY YEARS

Note 11

If there are any other matters which should be brought to the attention of the registration authority (in particular if a person interested in the land is expected to challenge the application for registration). Full details should be given here or on a separate sheet if necessary.

11. Any other information relating to the application

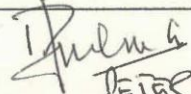
Note 12

The application must be signed by each individual applicant, or by the authorised officer of an applicant which is a body corporate or unincorporate.

Date:

14. 11. 2013

Signatures:

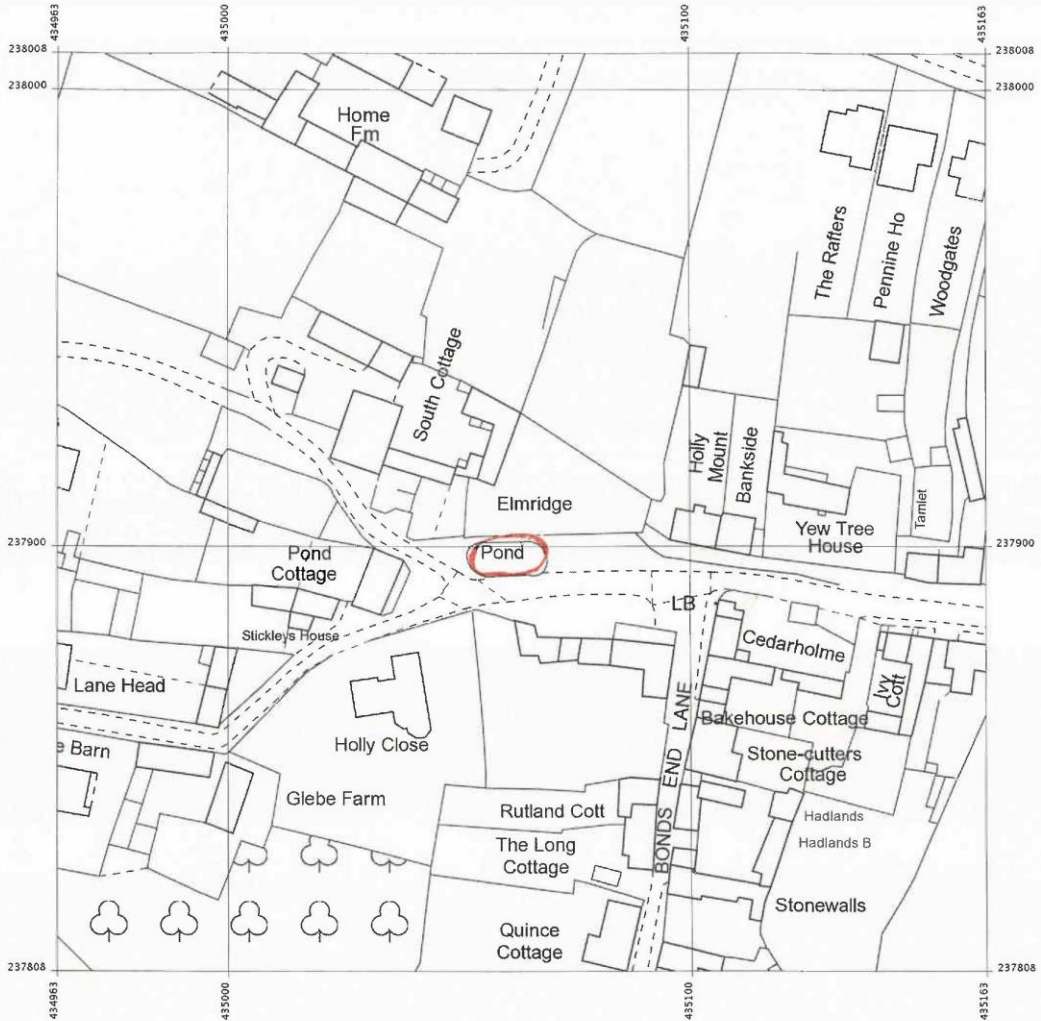

PETER BRIAN HARDMAN
CHIEF TO STAFFORD GOWER PARISH COUNCIL

REMINDER TO APPLICANT

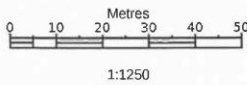
You are advised to keep a copy of the application and all associated documentation. Applicants should be aware that signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence. The making of a false statement for the purposes of this application may render the maker liable to prosecution.

Data Protection Act 1998

The application and any representations made cannot be treated as confidential. To determine the application it will be necessary for the registration authority to disclose information received from you to others, which may include other local authorities, Government Departments, public bodies, other organisations and members of the public.



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Supplied by: **Latitude Mapping Ltd**
Reference: OI544444
Centre coordinates: 435063 237908

The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

Statutory Declaration In Support

To be made by the applicant, or by one of the applicants, or by his or their solicitor, or, if the applicant is a body corporate or unincorporate, by its solicitor, or by the person who signed the application.

¹ Insert full name (and address if not given in the application form).

PETER BRIAN HARGREAVES solemnly and sincerely declare as follows:—

² Delete and adapt as necessary.

1.² I am ((the person ~~(one of the persons)~~ who (has) ~~(have)~~ signed the foregoing application))~~((the solicitor to (the applicant) (² one of the applicants))~~—

³ Insert name if Applicable

2. The facts set out in the application form are to the best of my knowledge and belief fully and truly stated and I am not aware of any other fact which should be brought to the attention of the registration authority as likely to affect its decision on this application, nor of any document relating to the matter other than those (if any) mentioned in parts 10 and 11 of the application.

3. The map now produced as part of this declaration is the map referred to in part 5 of the application.

⁴ Complete only in the case of voluntary registration (strike through if this is not relevant)

4.⁴ I hereby apply under section 15(8) of the Commons Act 2006 to register as a green the land indicated on the map and that is in my ownership. I have provided the following necessary declarations of consent:—

- (i) a declaration of ownership of the land;
- (ii) a ~~declaration that all necessary consents from the relevant leaseholder or proprietor of any relevant charge over the land have~~

Cont/

⁴ Continued

been received and are exhibited with this declaration; or
(iii) where no such consents are required, a declaration to that effect.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the Statutory Declarations Act 1835.

Declared by the said
PETER BRIAN HARDMAN)
at THE COTTAGE, MAIN)
STREET, SIBFORD FERIS)
IN THE COUNTY OF OXFORDSHIRE)
this 14th day of November 2013.



Signature of Declarant

Before me * JOANISE ELIZABETH CONNOR.

Signature:



Address: THE COTTAGE
MAIN ST
SIBFORD FERIS
OX15 8L9

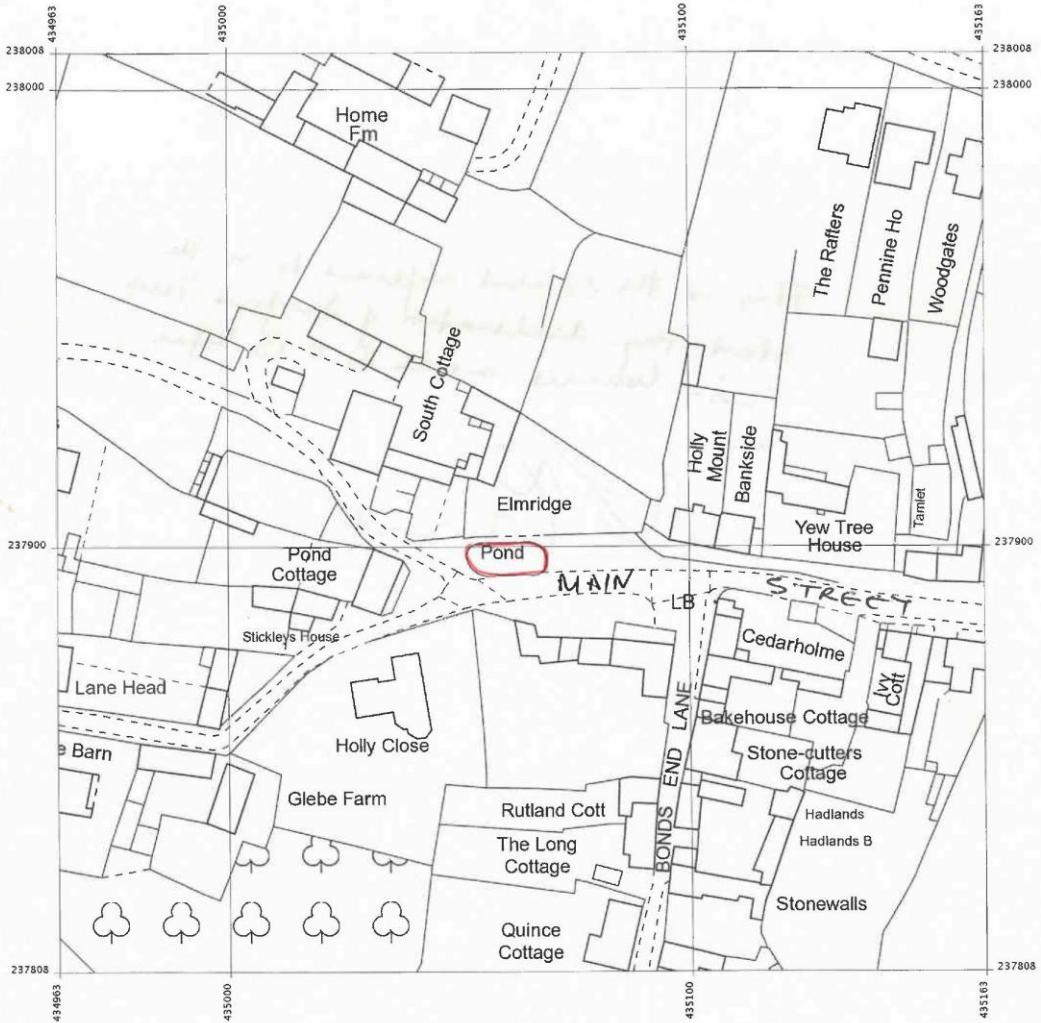
Qualification: Solicitor.
Roll NO 18377

* The statutory declaration must be made before a justice of the peace, practising solicitor, commissioner for oaths or notary public.

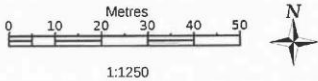
Signature of the statutory declaration is a sworn statement of truth in presenting the application and accompanying evidence.

REMINDER TO OFFICER TAKING DECLARATION:

Please initial all alterations and mark any map as an exhibit



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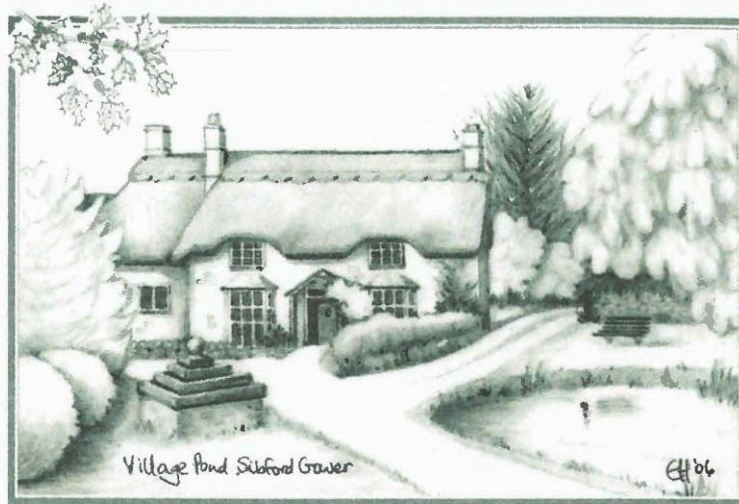
Supplied by: **Latitude Mapping Ltd**
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The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

This is the exhibit referred to in the
statutory declaration of Susan Gower
Parrish made 14.11.13 before
me



SIBFORD GOWER VILLAGE POND



**APPLICATION FOR OWNERSHIP
BY
SIBFORD GOWER PARISH COUNCIL**

OCTOBER 2013

Sibford Gower Village Pond

Sibford Gower Parish Council seeks to claim title to the Village Pond having established that there is no registered owner albeit that surrounding land is in the ownership of Oxfordshire County Council. The reason for so doing is that it requires to have control for the benefit of the local community and to ensure that the pond is properly maintained now and in the future. Anyone wishing to add pond plants (which may be unsuitable), put in fish or keep ducks would need prior permission from the Parish Council

Records show that the pond had historically been maintained by local residents in close co-operation with the Parish Council. Available information obtained from Parish Council records and local residents, who have been closely involved with the Pond since its creation from a stream, enable the provision of the following details evidencing how matters have progressed through time to the present date.

Originally, a muddy and sandy based stream fed from springs as shown in a water colour painting circa 1830 by John Mallows Youngman (1817 – 1899). In the background can be seen Hopkyns House which was totally destroyed by fire 1850. The original village water supply also ran into it from a well covered by a stone monument (grade II listed) provided by the Rev John Gilkes in 1845.

In the early 1970s the bottom of the pond was concreted over after first laying a corrugated iron wharf to stabilise the mud and wet running sand. To enable the water to be quickly drained for cleaning purposes in the winter of 1994 a deep trench was dug (with the help of a JCB) along the middle of the pond base and across the road past Pond Cottage. Steel pipes were put in position with a valve to take the overflow of water under the yard of Glebe Farm to discharge at the top of the field to run on towards the River Sib and eventually the Severn. The work was carried out by village men overseen by Mr Fred Inns and the cost of materials covered by a Pond Restoration Grant of £1,000 from Cherwell District Council which was not required in full and the balance was reserved for later pond maintenance.

In November 1994, the first cleaning operation successfully took place. The adult villagers, children and dogs assembled and the pond was drained. The base was cleared of weed and debris and thoroughly brushed and scrubbed – an exciting communal event. On the evening before, large carp fish had to be caught and temporarily transferred to Mr Upton's pool in Bonds End Lane.

Some years later, when a prolonged drought caused the water table to seriously drop, the fish were suffering from lack of oxygen and had to be removed by Cherwell District Council and re-homed in a reservoir. Over the years, ducks have been kept by various owners who made use of the pond. Frogs, toads and newts (including the protected Great Crested) visit the pond for spawning in March/April. They are protected by a local resident who, at dusk, dons reflective gear and alerts vehicles to slow down to avoid amphibians crossing the road on their way to the pond.

Page 2

In 2005, Cllr Martin Layer heard about the offer of a grant from Oxfordshire Pond Conservation based at Oxford Brookes University headed by Mr Rod d'Ayala. The Parish Council voted to take advantage of this in order to convert the bare looking pond and surrounding area into a nature reserve to give a softer appearance and attract wildlife such as dragonflies, butterflies and pond life. Mr d'Ayala drew up a plan recommending submerged oxygenating plants and flowering marginal plants with some ornamental shrubs on the surrounding grass and a wild flower area at the back of the pond. He stated that ducks and fish would not be compatible although a dozen small carp had recently been introduced. He also stressed that annual cleaning should cease so that natural sediment could build up on the base.

An Action Group of around fifteen local residents was set up with Mrs Glennis Hardman appointed as leader. Sand, gravel, aquatic compost, pea shingle, plastic baskets, waders, nets, rakes, plants, shrubs and wild flower seed were purchased and in 2006 the project was completed. Everything thrived and by 2008 was nicely established and enjoyed by visitors and school children for nature lessons.

However, unknown to the Action Group, a nearby resident had incubated and hatched out six Runner Duck eggs and the ducklings were duly placed on the pond. As they matured they systematically grubbed up and ate most of the growing plants. In view of this destruction, the Parish Council felt that it could no longer support the project and the Action Group was terminated.

A report of the situation appeared in the Banbury Guardian and was picked up by Radio Oxford and BBC South Today. Glennis Hardman and husband Peter (Parish Council Clerk) were interviewed by the pond surrounded by the offending ducks. The broadcasts went out on 8th December 2008.

Since then Glennis & Peter Hardman, Mr Ivor Hopkyns and Mr Christian Fletcher have maintained the pond by the clearing of blanket weed and excessive oxygenating plants at appropriate times of the year. Ivor Hopkyns mows the surrounding grass area and strims the wild flower patch in Autumn. The ducks were gradually killed off by foxes, loose dogs and vehicles and have not been replaced. The dozen carp grew large and multiplied in number. In the Spring of 2012 the water table dropped considerably leaving the fish, now large, short of oxygen. Twenty five were caught and permanently transferred to a deeper pool on the farm of Mr Richard Butt. This year, 2013, some new marginal plants have been added.

The pond is the centre of village life where children happily pond dip, feed the fish, sail toy boats and skate when the water is completely frozen over. People enjoy relaxing on the memorial seats. Dog walkers congregate there and it is generally a very pleasant meeting place.

To Page 3

Page 3

Around the early 1900s, Sibford Club Day was held annually and villagers, dressed in their best clothes, gathering around the pond area before being led by the village brass band to the old village hall for a sumptuous tea. A re-enactment of Club Day took place in June 2007.

It is hoped that the foregoing information, illustrated by photographs, shows that Sibford Gower Village Pond has been looked after by the Villagers and that they have enjoyed the use of it over many years. Official ownership now needs to be established.



Water Colour circa 1830 by John Mallows Youngman (1819 – 1899). Hopkyns House in background was destroyed by fire about 1850. Village pond in foreground with spring



Circa 1910 – showing Covered Well



Circa 1900



Pre 1907

Winter 1994 – Construction of deep trench for laying of a large steel pipe to enable water to be rapidly drained for the purpose of cleaning



Construction of deep trench (continued)



October 1999 – Pond cleaning by local residents





Winter 2008 – The Indian Runner Ducks



Spring 2012 – Children enjoying pond dipping



2012 – Catching carp to transfer to a deeper pond

**Left to Right – Peter Hardman (Clerk to Parish Council)
Oswyn Murray (Parish Council Chairman)
Richard Butt (Local farmer)**



2013 – Glennis Hardman clearing blanket weed

Sibford Club Day 1910



Sibford Club Day Re-enactment – June 2007





October 2012 - The Pond as it is now

