

23 January 2013**Agenda Item: 6****REPORT OF THE CORPORATE DIRECTOR (ENVIRONMENT AND RESOURCES)****APPLICATION TO REGISTER LAND KNOWN AS TOTON SIDINGS IN TOTON
NOTTINGHAMSHIRE AS A TOWN OR VILLAGE GREEN****Purpose of the Report**

1. To inform Committee of an application made under Sections 15(1) and 15(2) of the Commons Act 2006 to register land known as Toton Sidings as a Town or Village Green and to seek approval from Committee to accept the delegation of Derbyshire County Council's functions as registration authority with respect to the determination of the application.
2. The application for a Town or Village Green covers an area known as Toton Sidings and is situated between the main line railway to the west and an area of housing to the east and straddles the County boundary between Nottinghamshire and Derbyshire. The area is shown on **Plan 1**, which is the plan submitted by applicant showing the 'proposed village green'.

Legal Background

3. As Registration Authority, the County Council has a duty to decide whether or not the use of the Registration Land fully meets all the elements of qualifying use under Sections 15(1) and 15(2) of the Commons Act 2006 and therefore whether the land should be recorded in the Registers as a Town or Village Green. For land to have become capable of registration as a Town or Village Green under Sections 15(1) and 15(2) it must have been used:
 - By a significant number of local inhabitants;
 - For lawful sports and pastimes;
 - As of right (being without force, without permission and not in secrecy);
 - For 20 years, prior to the date of application
 - With such use continuing up to the time of the application
4. Whilst there is no statutory requirement to appoint an independent inspector to make recommendations as to the determination of an application, this is the usual practise of registration authorities. Where there is a dispute as to the facts relating to such an application it is usually necessary to hold a public inquiry in order that the evidence may be fully tested.
5. The Registration Authority is required to either accept or reject the application solely on the facts. Any other issues, including those of desirability or community needs, are not legally relevant and cannot be taken into consideration. Acceptance means the land will be registered. Rejection means that no registration will take place. Under the

current law, land can only have the legal status of a Town or Village Green upon registration.

Information and Advice

6. An application for a Town or Village Green was submitted to Nottinghamshire County Council in January 2012 for an area of land known as Toton Sidings. There were some deficiencies in the application and the applicant was given an opportunity to rectify them and has since submitted additional information. It was also noted that part of the site was in Derbyshire and so the applicant was informed that they needed to formally apply to Derbyshire County Council as the Registration Authority responsible for that part of the land.
7. A meeting was held in November 2012 with an officer of Derbyshire County Council to discuss how best to process and determine the application since it straddled the county boundary. It was identified that two options were available with the first being a joint agreement in accordance with Section 4(3) of the Commons Act 2006. This Section provides that two Registration Authorities may agree between them who will be the Registration Authority for an area of land, and is intended to permanently pass jurisdiction from one Authority to the other. An applicant may then apply to the recipient Authority for registration. If an agreement is made under this section, then whichever Registration Authority is the proper Registration Authority for the land is required to receive and consider an application, and to determine the application. If the land was found to be registrable, the land would then only be included in the Register of Town or Village Greens held by that Authority. If this were the case, then it is possible that part of Derbyshire would be shown in the Register held by Nottinghamshire County Council or vice versa, and searches in relation to that land would need to be made to the Nottinghamshire County Council for land within Derbyshire or vice versa.
8. The second option that was identified was to use Section 101(1) of the Local Government 1972 which allows local authorities to arrange for the discharge of its functions by another local authority, to the extent specified in the arrangement. If Committee were to adopt this option, then only one Authority needs consider the evidence and make the decision whether to register, with the effect that if the application land was registered as a Town or Village Green, each authority would register only that land which was within their administrative boundaries, which would ensure that searches could still be made of the relevant Registration Authority for each county.
9. Approximately two-thirds of the application land is in Nottinghamshire and it is therefore proposed that, if the delegation was accepted by Committee, Nottinghamshire County Council would take on the functions of Derbyshire County Council for the part of the application that is in Derbyshire and would therefore be able to confirm the validity of the application for the whole site, publish notices, accept statements of objection and if appropriate refer the matter to an independent Inspector for consideration. By so doing, all of the evidence for all of the land can be heard together, and the appropriate decision made based on this. This should also ensure that the most robust decision as to registration can be made, reducing the potential for challenge (which could arise with both Authorities looking at the evidence relevant to their portion of the application land separately). The determination of the application would then be made by this Committee on behalf of both Registration Authorities and, if the land is found to be registrable, entries would be made in each

authorities' register of Town or Village Greens for the parts of the land within their respective areas.

Financial Considerations

10. As two thirds of the land affected by the application is in Nottinghamshire, it is suggested that Nottinghamshire County Council recover one third of the total costs on external expenditure (publication of Notices, instruction of an independent inspector and venue hire if a public inquiry is held) from Derbyshire County Council. If the matter were not delegated then Nottinghamshire County Council would have to meet the total costs in respect of the part of the application that is within Nottinghamshire. There is therefore a cost saving to both authorities by dealing with this application in the manner proposed.
11. Derbyshire County Council took a report to its Licensing and Appeals Committee on 10 December 2012 with respect to this application and resolved to delegate its functions under Section 101 of the Local Government Act 1972 with respect to this application to Nottinghamshire County Council and to meet a proportion of the costs of determination up to one third of the total costs. A copy of the Derbyshire County Council report is shown as **appendix 1**.

Statutory and Policy Implications

12. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) It is RECOMMENDED that Committee accepts the delegation from Derbyshire County Council under Section 101 of the local Government Act 1972 to determine the application for a Town or Village Green for land known as Toton Sidings for a Town or Village Green.
- 2) It is RECOMMENDED that Committee accepts the delegation on the basis of Derbyshire County Council paying one third of the costs for determination of the application and that the Committee's thanks for this offer be communicated back to Derbyshire County Council.
- 3) It is RECOMMENDED that Committee authorises officers to proceed with the application, making such arrangements as are appropriate given the scope and complexity of the evidence, and that Derbyshire County Council be kept informed as to the progress of the application.

TIM GREGORY
Corporate Director (Environment and Resources)

For any enquiries about this report please contact:

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Definitive Map Officer

Constitutional Comments (SJE – 06/01/2013)

13. This decision falls within the terms of reference of the Rights of Way Committee.

Financial Comments (DJK 14.01.2013)

14. The contents of the report are duly noted; the financial implications are fully explained within Paragraph 10 and any costs incurred by Nottinghamshire County Council will be funded from existing revenue budgets with one third of the costs invoiced to Derbyshire County Council accordingly.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

The Application case file

Electoral Division(s) and Member(s) Affected

Chilwell and Toton	Councillor Richard Jackson
	Councillor John Doddy

ROW 92 – Toton Sidings
14 January 2013