



23 June 2016

Agenda Item:

REPORT OF INTERIM SERVICE DIRECTOR HIGHWAYS

LAND SEARCHES – PUBLIC RIGHTS OF WAY AND COMMONS AND TOWN OR VILLAGE GREENS

Purpose of the Report

To seek approval for resources to undertake land searches for public rights of way (PRoW) and Commons and Town or Village Greens (TVG).

Information and Advice

The County Council has both statutory duties and powers for the management, maintenance and recording of Nottinghamshire's PRoW (minor highway) network. The Council, as the surveying authority, is responsible for maintaining the definitive map and statement. The map and statement are legal documents; the map records the status and the line of rights of way and the statement lists definitive rights of way shown on the map together with a short description. The Authority also holds the registers for town and village greens (TVG) and common land.

Land charges or searches form part of the conveyancing process when someone is re-mortgaging, buying or selling property. The Local Land Charges Service is provided by the local district or borough council. The search request, usually undertaken by a solicitor or conveyancer, is a series of standard questions designed to give a potential buyer as much information about the property or land they're interested in. A number of questions are answered by the County Council's Highways division, for example, are there any public roads, public rights of way and commons and TVGs within the property boundary. The Highway aspects of the search are included on a form, designed by the Law Society, known as a CON29.

Searches for non-minor highways on the Authority's list of [publicly maintainable] streets are undertaken by the Highways Assets Team. Public rights of way, commons and TVGs are carried out by the Authority's Countryside Access Team (see Appendix 1 for organisational chart). Until recently both the public rights of way and the commons and TVG questions were optional on the CON29 form. However, following a review of the conveyancing procedure, the Law Society implemented changes to the CON29 form and changed which questions should be asked and as a result of this from the 4th July 2016 the PRoW questions will now become compulsory. This will have the advantage that all property buyers will be aware of the existence or not of a PRoW as well as any formal proposals in relation to any such PRoW.

Searches for the non-minor highway network are already a compulsory question on the CON29 form. The Highways Assets Team, in 2015 / 2016 financial year carried out 9341

searches. For the same period the Countryside Access Team completed 1375 PRow 'optional' searches and 1166 'optional' commons and TVG searches. When the PRow searches become compulsory on the 4th July 2016 the number of searches will increase considerably from an average of 1400 to an estimated 9000 searches. As part of the new CON29 form, in addition to the previously optional PRow question, there are also two additional compulsory questions asking if there are any claims and / or diversions, extinguishments etc. These will necessitate more time and resources to be applied in responding to each search than at present. Currently the optional searches in the Countryside Access Team are undertaken by a Definitive Map Officer taking two and half to three days a week to complete. By providing a searches service in the Countryside Access Team this already impacts on the core statutory activities of the team i.e. dealing with search requests rather than focusing on processing and analysing claims for public rights of way and resolving alignment anomalies and disputes etc.

The commons and TVG question will still continue to be an optional question, however, there will be two extra questions with reference to Authority's Statutory Statement and Declaration Register. Again, these extra questions will necessitate more time and resource needed to deal with searches.

The compulsory PRow search will also highlight the number of anomalies such as when poorly drafted Town and Country Planning Act Orders were made as part of housing developments from the 1950s. There are still a number of definitive rights of way which have never been diverted or extinguished as result of a development which will need rectifying by means of a Legal Order.

The proposal is to create a full time permanent post and a two-year fixed term post to undertake PRow and commons / TVG searches with continued assistance from current Countryside Access Team Officers. This will ensure a continuity of service and relieve pressure on the existing Access Team Officers. The full time posts, indicative Grade 4 (with on-costs - £52,664), will be funded direct by the revenue from the PRow and commons / TVG searches (£90,000).

The current charge, as set by the Highway Charges report (approved by THC on 17th March 2016) for the PRow question is £16.00 per search (identified as a parcel of land on a plan). If the search is negative i.e. there are no PRow's a standard written reply is sent. If the search is positive, that is, there is a PRow, a standard reply is sent together with a 1:10,000 scale plan at no extra charge. Contributions to cost include Officer time, maintaining a dedicated email account, managing the database and mapping system, printing plans and making copies for file, raising invoices and checking the original (paper) definitive map and statement and associated parish files. By employing two members of staff its proposed there will be a cost saving to the end customer due to the economies of scale of employing dedicated Officers solely working on searches. Therefore it is proposed to reduce the current rate of £16.00 to £10.00 per PRow search. This will be continually reviewed and if changes are required, a future report will be presented to Transport and Highways Committee setting out a recommendation.

For commons and TVG searches the current charge is £16.00 per search of the commons / TVG register. If the result is positive, we currently charge £16.00 for a copy of the register. As per para 6 there will be two extra questions. These extra parts will require a search of the Authority's Statutory Statement and Declaration Register. The register includes a large number of hard copy historical documents varying in size and clarity. For this optional question (now in three parts) it is proposed to charge £30 per search. There will be more scrutiny required on the

statutory statement and declaration documents which will need input from Senior Officers offering their expertise and advice. It is proposed to continue to charge £16.00 for a copy of the commons / TVG register and £16.00 for a copy of documents contained within the Statutory Statement and Declaration Register. Members of the public, solicitors and conveyancers will still be able to continue to view these documents free of charge at Trent Bridge House.

Other Options Considered

Not to recruit two members of staff. However, it is considered preferable to recruit in light of pressures on the Countryside Access Team in discharging the Authority's statutory duties i.e. Definitive Map Modification Orders and Town or Village Green applications.

Reason/s for Recommendation/s

The funding for the two posts will be covered by the income from undertaking searches. It is proposed that one post will be for a fixed two year period which will allow the Authority to assess the demand and make a recommendation after two years on the continuity of the post.

Statutory and Policy Implications

This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Human Resources Implications

Human Resources implications are contained in the body of the report. The grade of the post will be subject to a full job evaluation.

RECOMMENDATION/S

It is recommended that Committee;

- a) approve the creation of two posts; one permanent full time post and one post for a two-year fixed term contract at an indicative Grade 4
- b) approve the changes to the searches pricing structure for public rights of way and commons and town or village greens.

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Constitutional Comments (SJE – 03/06/2016)

- 1) Subject to consultation with HR and with the recognised trade unions having been undertaken regarding any HR implications arising from the content of this Report (as required by the Authority's Employment Procedure Rules) this decision falls within the Terms of Reference of the Transport & Highways Committee to whom responsibility for approving the relevant departmental staffing structures has been delegated.

Financial Comments (SES 25/5/16)

- 2) The financial implications are set out in the report.

Background Papers and Published Documents

- None

Electoral Division(s) and Member(s) Affected

- All