

Culture Committee

Tuesday, 21 July 2015 at 14:00

**Nottinghamshire Archives, Castle Meadow Road, Nottingham, NG2 1AG,
[Venue Address]**

AGENDA

- | | | |
|----|--|--------------|
| 1 | Minutes of the last meeting on 9th June 2015 | 3 - 6 |
| 2 | Apologies for Absence | |
| 3 | Declarations of Interests by Members and Officers:- (see note below)
(a) Disclosable Pecuniary Interests
(b) Private Interests (pecuniary and non-pecuniary) | |
| 4 | Application for a TVG - The Lord's Ground, Mansfield Woodhouse | 7 - 34 |
| 5 | Application for a TVG - Toton Sidings in Notts and Derbys | 35 - 80 |
| 6 | Service Update for the Period 18 May to 28 June 2015 | 81 - 84 |
| 7 | Sherwood Forest Visitor Centre & Country Park - Future Development & Management Arrangements | 85 - 90 |
| 8 | Sports Service Update December 2014 to May 2015 | 91 - 98 |
| 9 | Co-location of Tuxford Library into Tuxford Primary Academy | 99 - 102 |
| 10 | Work Programme | 103 -
106 |

11 EXCLUSION OF THE PUBLIC

EXEMPT INFORMATION ITEMS

12 Sherwood Forest Visitor Centre & Country Park - Future Development & Management Arrangements EXEMPT Appendix

- Information relating to the financial or business affairs of any particular person (including the authority holding that information);

Notes

- (1) Councillors are advised to contact their Research Officer for details of any Group Meetings which are planned for this meeting.
- (2) Members of the public wishing to inspect "Background Papers" referred to in the reports on the agenda or Schedule 12A of the Local Government Act should contact:-

Customer Services Centre 0300 500 80 80

- (3) Persons making a declaration of interest should have regard to the Code of Conduct and the Council's Procedure Rules. Those declaring must indicate the nature of their interest and the reasons for the declaration.

Councillors or Officers requiring clarification on whether to make a declaration of interest are invited to contact Martin Gately (Tel. 0115 977 2826) or a colleague in Democratic Services prior to the meeting.

- (4) Councillors are reminded that Committee and Sub-Committee papers, with the exception of those which contain Exempt or Confidential Information, may be recycled.
- (5) This agenda and its associated reports are available to view online via an online calendar - <http://www.nottinghamshire.gov.uk/dms/Meetings.aspx>

Meeting Culture Committee

Date 9th June 2015 (commencing at 10.30am)

Membership

Persons absent are marked with an 'A'

COUNCILLORS

John Knight (Chairman)
Pauline Allan (Vice-Chairman)

Roy Allan
Alan Bell
Chris Barnfather
John Clarke
John Cottee

Maureen Dobson
Sybil Fielding
Tom Hollis
Roger Jackson

Ex-officio (non-voting)
A Alan Rhodes

OFFICERS IN ATTENDANCE

Sara Allmond	- Democratic Services
Steve Bradley	- Group Manager, Cultural and Enrichment Services
Peter Gaw	- Group Manager, Libraries, Archives & Information
Malcolm Hackett	- Senior Practitioner, Greenwood
Derek Higton	- Acting Corporate Director, CFCS
Andrew Keen	- Serco Leisure
Laurence Jones	- Temporary Service Director, CFCS
Philippa Milbourne	- Children's, Families and Cultural Services
Mawa Sall	- Project Manager, Youth, Families and Culture

APPOINTMENT OF CHAIRMAN AND VICE-CHAIRMAN

RESOLVED 2015/023

That the appointment of Councillor John Knight as Chairman and Councillor Pauline Allan as Vice-Chairman by the County Council on 14 May 2015 for the ensuing year be noted.

MEMBERSHIP

RESOLVED 2015/024

That the membership as set out above be noted, with Councillor Roy Allan being appointed in place of Councillor Mike Pringle for this meeting only.

MINUTES OF THE LAST MEETING

That the minutes of the last meeting held on 28th April 2015 were taken as read and were confirmed and signed by the Chairman.

APOLOGIES FOR ABSENCE

None.

DECLARATIONS OF INTEREST

None.

AGENDA ORDER

With the agreement of the Committee the Chairman changed the agenda order to take National Watersports Centre Progress Report – Second Year Contract Review as the first item of business to enable the officer present from Serco to leave after consideration of the item.

NATIONAL WATER SPORTS CENTRE PROGRESS REPORT – SECOND YEAR CONTRACT REVIEW

Steve Bradley and Andrew Keen gave a presentation on the National Water Sports Centre and its progress in its second year of the contract with Serco Leisure.

RESOLVED 2015/025

That the second year update on the National Water Sports Centre management and development contract be noted.

GREENWOOD COMMUNITY FOREST

RESOLVED 2015/026

That the Annual Report of the Greenwood Community Trust be noted.

SERVICE UPDATE REPORT FOR THE PERIOD 6 APRIL TO 17 MAY 2015

RESOLVED 2015/026

That the update on a range of initiatives being undertaken to improve and enhance the quality of life for Nottinghamshire people be noted.

PERFORMANCE REPORT (1 APRIL 2014 – 31 MARCH 2015)

RESOLVED 2015/027

That the performance of the Council's cultural services during the financial year 2014/15 be noted.

CULTURE, LEARNING AND LIBRARIES SERVICES – ENTERING INTO LEGAL AGREEMENTS

RESOLVED 2015/028

That the intended award of the contract to the Society be approved with delegation of authority to the Acting Corporate Director, Children's, Families and Cultural Services, in consultation with the Group Manager for Legal Services and Section 151 Officer, to enter into the services contract and all other documentation required to give effect to this decision or to protect the Council's position provided no material facts change, the financial envelope and key commercial parameters remain the same.

ARTS SERVICE – CERAMICS PARTNERSHIP DEVELOPMENT

RESOLVED 2015/029

That approval be given for a formal partnership agreement to be developed and agreed with the Harley Foundation Charitable Trust to be custodians of the ceramics collection on behalf of the County Council and to receive surplus ceramics equipment to extend the provision of ceramic workshops available to the public.

WORK PROGRAMME

RESOLVED 2015/030

That the committee's work programme be noted.

EXCLUSION OF THE PUBLIC

RESOLVED: 2015/031

That the public be excluded from the remainder of the meeting on the grounds that discussions are likely to involve the disclosure of exempt information described in paragraph 3 of the Local Government (Access to Information) (Variation) Order 2006 and the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

EXEMPT INFORMATION ITEM


**EXEMPT APPENDIX TO ITEM – CULTURE, LEARNING AND LIBRARIES
SERVICES – ENTERING INTO LEGAL AGREEMENTS**

RESOLVED: 2015/032

That the exempt appendix be noted.

The meeting closed at 11.35am.

CHAIRMAN

 Nottinghamshire County Council	Report to Culture Committee
	21st July 2015
	Agenda Item: 4
REPORT OF SERVICE DIRECTOR (HIGHWAYS)	
APPLICATION TO REGISTER A TOWN OR VILLAGE GREEN – THE LORDS GROUND, MANSFIELD WOODHOUSE	

PROPOSAL: APPLICATION TO REGISTER LAND AS A TOWN OR VILLAGE GREEN

LOCATION: THE LORDS GROUND, MANSFIELD WOODHOUSE

APPLICANT: MR C. A. BARTON

Purpose of the Report

1. To consider an Application to register land as a Town or Village Green (“TVG”) under section 13 of the Commons Act 1965, made to Nottinghamshire County Council as Registration Authority. The Registration Authority’s responsibility to determine the application is a quasi-judicial function and is separate from all other functions carried out by the Authority. The decision as to whether or not the application satisfies the criteria for registration must be based entirely on the evidence submitted. The land subject to the application is outlined on the plan attached at Appendix 1.

The Site and Surroundings

2. The application land is comprised of three distinct areas namely; 1) a grassed recreation/sport field, 2) an earthen/unsurfaced area to the rear of the Park Road Business Centre (currently used as a car park) and 3) land comprising the Park Road Business Centre building and its frontage to Park Road. Photographs showing the application land are attached at Appendix 2.

Background Information and Advice

3. The application was submitted in November 2006 by Clive Anthony Barton, a resident of Pleasley, Mansfield, and was made to register land described by him as the “The Lords Ground”, Mansfield Woodhouse as a TVG (hereafter referred to as “the application land”).
4. Where land is registered as a Town or Village Green the right of the public to use the land for recreational activities is protected from then on. Land can only have the legal status of a TVG upon registration.

5. The application land was purchased by Mansfield Woodhouse Urban District Council from the Duke of Portland and his Trustees by means of a conveyance dated 4th May 1923. The land is currently owned by Mansfield District Council being successors to the Urban District Council. A copy of the 1923 conveyance plan is shown at Appendix 3.
6. The applicant states the land was purchased by the Urban District Council 'to expressly preserve the area for open air leisure use'. No evidence has been submitted to corroborate this point and there is no such reference in the conveyance itself. The applicant also states that the land has been used for lawful sports and pastimes from approximately 1880. Accordingly, it is noted that Ordnance Survey maps published in 1899 clearly depict the land as a Cricket Ground incorporating a pavilion. An extract taken from the 1899 Ordnance Survey plan is shown at Appendix 4.
7. Byelaws in respect of the application land were made by Mansfield Woodhouse Urban District Council on the 25th April 1923. Unfortunately, no copies of these byelaws have been found. The 1923 byelaws were repealed by the 1975 byelaw described below.
8. The 1975 Byelaws in relation to 'The Lords Ground' were made pursuant to section 164 of the Public Health Act 1875. The 1875 Act empowered local authorities to provide land for public recreation. Mansfield District Council has confirmed that the **whole** application land is subject to the 'Open Space and Pleasure Ground byelaws'. MDC also state that since 1974 the land has been laid out and maintained by the District Council as a pleasure ground. It is noted that the 1975 byelaws provide for the regulation of vehicles, bicycles, dog control, use of space for games, damage and nuisance etc.
9. Five user evidence forms were submitted with the TVG application in 2006. Another 16 forms were submitted in 2009 following a formal objection by Mansfield District Council. Therefore the claim comprises of 21 evidence forms in total. The forms refer to actual use on the application land for various sports and pastimes with the earliest use commencing in 1930. Users refer to having taken part in various activities which include; walking, playing as children, socialising, team games, cricket, football, rounders, riding bikes, running, exercise, flying kites, watching wildlife, picnicking, viewing the landscape and attending fetes/bonfire parties.
10. Although the TVG application was made under the provisions of the Commons Registration Act 1965, at the time the application was made (November 2006), certain provisions of the Commons Act 2006 had already come into force. In June 2008 advice was sought from Mr Jonathan Mitchell, Barrister at Ropewalk Chambers as to the procedure for dealing with the application during this 'transitional' period. Counsel duly advised that the appropriate tests to be applied were those set by the Commons Act 2006.
11. The applicant contends that the land became a TVG on the 26th November 2006. Accordingly, the test in subsection (2) of section 15 of the 2006 Act will apply whereby;
 - A significant number of the inhabitants of any locality, or 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
 - They continue to do so at the time of the application

12. Careful consideration has been given in respect of whether use of two parts of the application land actually ceased prior the application being made.
13. Firstly, Mansfield District Council has stated that 'temporary business units' were erected in 2006 on the application land under a lease agreement with Bullock Construction Ltd. The business units occupied an area which is accessed from Slant Lane on the eastern side of the application land and are clearly visible by comparing aerial photographs taken in 2004 and 2007 as shown at Appendix 5. MDC was unable to produce any further information in respect of this lease agreement. However, it is noted that some user evidence forms refer to the temporary business units having been in place throughout 2005. This earlier date is supported by evidence from a local newsletter (the Mansfield Warbler) which reports the business units as already being in place in December 2005. MDC have stated that no planning permission was required for the business units as these were subject to provisions of the Town and Country Planning (General Permitted Development) Order 1995 and that 'the provision of land for temporary buildings for carrying out works is classed as permitted development and does not require planning approval. Accordingly, use of the application land on the 'Bullock Construction land' did not continue up until the time of the application as claimed by the applicant.
14. Secondly, after the TVG application was made (November 2006), part of the land was developed and is now occupied by a business facility owned by MDC i.e. 'The Park Road Business Place'. The building was constructed on a similar 'footprint' to an air raid shelter which had previously been situated on the site and which had been used as changing rooms until around 1990. The shelter is visible on the 2004 aerial photograph shown at Appendix 5. According to MDC the shelter was demolished in 2006 to make way for construction of The Business Place. Although MDC has been unable to say when construction began on the development, it is noted that planning permission was granted on 21st December 2006, and that work appears to be underway in 2007 according to the aerial photograph at Appendix 5.

Consultation

15. Following the advertising of the application and formal notification to interested parties (October 2008), three objections were received from;
- Mr D Lisgo, Manager of the Park Road Business Place
Park Road, Mansfield Woodhouse
 - The Mansfield Woodhouse Community Development Group
Park Road Resource Centre
53 Park Road, Mansfield Woodhouse
 - Mansfield District Council
16. The objection by Mr Lisgo (Park Road Business Place) is summarised below (County Council officers comments are shown in italics);
- The area bordering Park Road and next to the Park Road Resource Centre was previously not 'green space'. It had a derelict building which attracted vandalism and was an eyesore.

The appearance of the land does not prevent the land being registered as a TVG. Furthermore, the land in question is still held as a pleasure ground under the 1975 byelaw.

- The area bordering Park Road is now occupied by a building... 'The Business Place'.
Again, the land on which the building stands is held by MDC as a pleasure ground. It is noted that although various powers permit a local authority to appropriate land from one purpose to another, MDC state 'there was no formal appropriation between committee and the land was held in a manner that did not require the same'. It is noted that the TVG application was made before 'The Business Place' was granted planning permission. The existence of this building is not therefore a relevant factor that can be considered in determining whether the land should be registered as a TVG.
- Granting the application could result in the Business Place not being able to function effectively. This would have a detrimental effect on the local business community and potential loss in employment.
At law, this point is not something that can be taken into account when determining whether the land should be registered as a TVG.
- Land which is currently used as a car park is essential to the business place. The parking area also provides a useful amenity for visitors to the British Legion Club and the Park Lane Resource Centre.
This point relates to the earthen/unsurfaced area to the rear of The Business Place, but which is still held by MDC as a pleasure ground. Although vehicular access may be regulated under the provisions of the 1975 byelaw, this point is not something that can be taken into account when determining whether the land should be registered as a TVG.
- Access should be maintained from Slant Lane to the Car Park at the rear of the British Legion Club and business incubation units as this is the only access for heavy vehicles.
Again, vehicular access appears to be regulated under the provisions of the 1975 byelaw, but this point is not something that can be taken into account when determining whether the land should be registered as a TVG.

17. The Mansfield Woodhouse Community Development Group objection repeats all the points made by Mr Lisgo, but does give support to the registration of a smaller area as a TVG i.e. the area which is laid to grass (Appendix 2.1).

18. The MDC objection is summarised as follows;

- The evidence discloses use by 5 individuals who have seen others using the land. This does not evidence that a significant number of inhabitants of a locality use the land. The applicant is put to strict proof as to the locality being relied upon and the numbers using the land from that locality.
A further 16 evidence forms were submitted at a later date making 21 forms in total. These do enough to make out a prima facie case, but it remains to be seen whether or not they establish evidence of use by a significant number of the inhabitants. Such evidence would usually require further investigation by holding a public inquiry to establish the facts in greater detail.
- Use has not been 'as of right' which is without permission, without stealth and without force. The applicant, the individuals who have completed user evidence forms, and others use the land with permission of the District Council which holds the land under Section 164 of the 1875 Public Health Act as a Pleasure Ground by virtue of the District Council's Open Space and Pleasure Ground byelaws confirmed on the 5th of August 1975 and coming into force on the 1st of September 1975.

*MDC is correct on this point. A relevant legal ruling is The Supreme Court judgment (R. (on the application of Barkas) -v- North Yorkshire County Council (2014)) which considered the meaning of the phrase 'as of right' in respect of TVG applications. The Court held that people taking part in recreational activities on land held by a local authority as a recreation ground and under statutory powers (in that case under S.12(1), Housing Act 1985) did so **'by right' rather than 'as of right'** and therefore any application to register a TVG on such land would fail on that basis. In 2015 The Supreme Court endorsed this interpretation in R.(oao Newhaven Port and Properties Ltd) –v- East Sussex County Council, stating that land to which the public has access, but where the activities which may be undertaken are regulated by byelaws, such use was by permission i.e. being 'by right' and not 'as of right' (the latter being required for registration as a TVG). Accordingly, in the case here, where the application land is owned by Mansfield District Council, who allocated the land as a 'Pleasure Ground' for public recreation under the Public Health Act 1875, use of that land, from 1st September 1975, is 'by right' and is not 'as of right'. N.B. Although the byelaw does not contain any plan to show the extent of the regulated land, MDC has stated that the byelaw covers the whole of the Lords Recreation Ground as conveyed in 1923 but minus a portion which was sold in 1967 and which is now occupied by the Mansfield Woodhouse Ex-Servicemen's Club. A plan which shows the land which was sold in 1967 is shown at Appendix 6.*

- Byelaws in respect of the land were made by Mansfield Woodhouse Urban District Council on the 25th of September 1923. These were later revoked by Mansfield District Council's 1975 byelaws. This confirms that the Urban District Council maintained the land as a pleasure ground from purchase [1923] until transfer in 1974.

Noted, but as no copy of the 1923 byelaw has been located, this point is given little weight.

- The sports and pastimes listed in the user evidence forms are no more than would be expected on a pleasure ground open to the public. The use is consistent with how the land is held by the District Council and the byelaws that regulate its use.
Apart from use by bicycles, which is barred under the provisions of the 1975 byelaw, the sports and pastimes referred to in the evidence forms are consistent with the types of activities which one would expect to see on land held as a pleasure ground.

19. As is legally required, copies of the objections were forwarded to the applicant for comment. Relevant points from the applicant's response are summarised as follows;

- Prior to 1940, the whole of the Lords Ground was open green space used as of right by the people of Mansfield Woodhouse for lawful sports and pastimes. Circa 1940 a brick air raid shelter was built on the Park Road frontage. The area surrounding the shelter was fully grassed and was usable for community activities. After the war the air raid shelter gradually deteriorated, it was however used as a changing facility for footballers and athletes up until circa 1990. Over the years there were calls to demolish the shelter to allow that small part of the ground to go back to its original state however the small 'concrete footprint' has allowed a much larger footprint to be put there [i.e. the Park Road Business Place]. The Mansfield Woodhouse Society objected to the planning application for the building of private business units on the site. This development is illegal due to the byelaw. The Council has derelicted its duties by not applying its own byelaws.

MDC have commented that the applicant is wrong on this last point as MDC only has 'powers' to enforce byelaws rather than it being a statutory 'duty'. MDC has said that it will not take action against the alleged breaches in the byelaw as it is not in the public interest

to do so and that the construction of 'The Business Place' was sanctioned by the granting of planning permission. MDC also state that concerns regarding the granting of planning permission are not matters to be considered in determining a TVG application. Any dissatisfied parties had the opportunity to challenge that decision by appeal or by judicial review.

- The so called car park area and vehicle access to the Lords Ground is barred under the byelaws. The number of vehicles on the land has increased over the last 2-3 years to over 40%. An increasing area is being lost and churned into sludge and mud. *The alleged byelaw breach is a matter for MDC and is not something that can be taken into account when determining whether the land should be registered as a TVG.*
- The statement by MDC that people's use was not as of right is 'nonsense'. The fact that MDC owns the land puts them in no different status to any other type of ownership. The ownership/byelaw issue is no 'blockage' to the land being used by the public under the 1965 Commons Registration Act. *Due to the above recent Supreme Court cases on this point, the applicant's view is no longer supported by the law which provides that, while ownership is indeed relevant (as stated by the applicant), the existence of the byelaws which provide that lawful sports and pastimes may be undertaken on the land is, in fact, a 'knock-out blow' to the application.*
- The information passed down from previous generations is that the Lords Ground (previously known as Holme Close) was the traditional area for village fairs and fetes as well as the general purpose use for a range of sports and leisure activities. Continuous use can be traced back to 1850.
- Prior to the 1965 Act, public use of the land goes back to circa 1100. *Any land subject to TVG status but not registered by 1970 ceased to be capable of registration until a subsequent period of twenty years use had accrued, and it is that subsequent period which is the subject of this report.*

The Legal Test

20. Committee 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. Rejecting the application would mean that no registration would take place. Committee must decide whether the application fully meets **all** the elements of qualifying use for land to have become capable of registration as a TVG. The applicant must establish on the balance of probabilities (the civil standard of proof) that use had been;

- i) by a significant number of the inhabitants,
- ii) of any locality or of a neighbourhood within a locality,
- iii) having indulged "as of right" (i.e. without force, secrecy or permission),
- iv) in lawful sports and pastimes,
- v) on the land,
- vi) for a period of at least twenty years,
- vii) and that such use continued up until the time of the application.

- (i) by a significant number of the inhabitants*
21. Twenty one evidence forms were submitted in total. This is sufficient to make out a prima facie case. However, such evidence would usually require further examination i.e. at a public inquiry to see if it comes up to proof.
- (ii) of any locality or of a neighbourhood within a locality*
22. For the purposes of the TVG legislation a 'locality' means an administrative district or an area within legally significant boundaries. The plan submitted with the application "Plan B" does not correspond with any recognised '**locality**' either at ward level or otherwise. However, Section 98 of the Countryside and Rights of Way Act 2000 amended Section 22 of Commons Registration Act 1965 by inserting 'or of any neighbourhood within a locality' as an alternate category; a 'neighbourhood' being a non-administrative area which exhibits cohesiveness by virtue of its physical location and/or shared services/facilities. However, it is also noted that no evidence has been submitted to show why the claimed area is believed to be a '**neighbourhood**'. Consequently, the applicant has failed to identify either a 'locality' or a 'neighbourhood within a locality' as required by the legislation. A copy of the locality/neighbourhood plan as per the original application documents is attached at Appendix 7.
- (iii) have indulged as of right*
23. As set out in paragraph 18, the Courts have shown that people taking part in recreational activities on land held by a local authority as a recreation ground under statutory powers do so "by right" rather than "as of right" and therefore any application to register a TVG on such a basis must fail. Accordingly, in this particular case where the application land is owned by Mansfield District Council, who allocated the land as a "Pleasure Ground" for public recreation under the Public Health Act 1875 (at least from 1st September 1975), use of that land is "by right" and is not "as of right".
- (iv) in lawful sports and pastimes*
24. The activities undertaken by those who completed evidence forms are lawful sports and pastimes for the purposes of the legislation.
- (v) on the land*
25. The user evidence forms do indicate use generally of the land which is subject to the application. However, such evidence would usually require further examination i.e. at a public inquiry, to verify the extent of the land actually used.
- (vi) for a period of at least twenty years*
26. Sixteen evidence forms indicate use for the requisite period (1986-2006). This is sufficient to make out a prima facie case. However, such evidence would usually require further examination i.e. at a public inquiry to ensure there was in fact, sufficient and continuous use.
- (vii) and that use continued up until the time of the application*
27. Apart from the land occupied by Bullock Construction, use is claimed to have continued up until the time of application. Again, evidence of claimed use would usually require further examination i.e. at a public inquiry to ensure use did in fact continue as claimed.

Other Options Considered

28. Due to the nature of user evidence and the complexity of the law relating to TVG applications a public inquiry could be held to further test and clarify the evidence. The use of a public inquiry for such applications has been approved of by the courts as being in the interests of openness and fairness. However, given that case law indicates that use of the land was 'by right' rather than 'as of right' there is no prospect that the application could succeed even if the evidence were tested at a public inquiry. The provisions of the Human Rights Act regarding the right to a fair hearing have been considered in reaching this conclusion.

Reason for the Recommendation

29. The applicant has failed to demonstrate that the area being relied upon is either a locality or a neighbourhood within a locality. This omission is important as the burden of proof for establishing that this criterion is met lies squarely on the applicant.
30. Use of the application land has been "by right" and not "as of right" by virtue of the Mansfield District Council Byelaw (1975).
31. Notwithstanding the above, in respect of the Bullock Construction land, as use did not continue up until the time of the application, the application also fails for this part of the application land.

Statutory and Policy Implications

32. 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 rejects the application for the reasons set out above.

Neil Hodgson
Interim Service Director Highways

For any enquiries about this report please contact:
Eddie Brennan (0115 9774709)
Definitive Map Officer

Constitutional Comments (SJE – 28/05/2015)

This decision falls within the Terms of Reference of the Culture Committee to whom, by virtue of Full Council Resolution 2014/027, responsibility for the exercise of the Authority's functions relating to common land and town or village greens has been delegated.

Financial Comments (SES 01/06/15)

There are no specific financial implications arising directly from this report.

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 Lords Ground Town or Village Green Application (Ref. NVG351) case file

Electoral Division(s) and Member(s) Affected

North Mansfield	Cllr J Bosnjak
North Mansfield	Cllr P Tsimbirdis

APPENDIX 1



Scale 1:2500

Produced by: e b40

Date: 22/05/2015



**Application Site
shown thus**

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APPENDIX 1



APPENDIX 2.1



Photographs taken from the Slant Lane entrance showing the land which is currently laid to grass.



APPENDIX 2.2



The Business Centre and its surroundings.

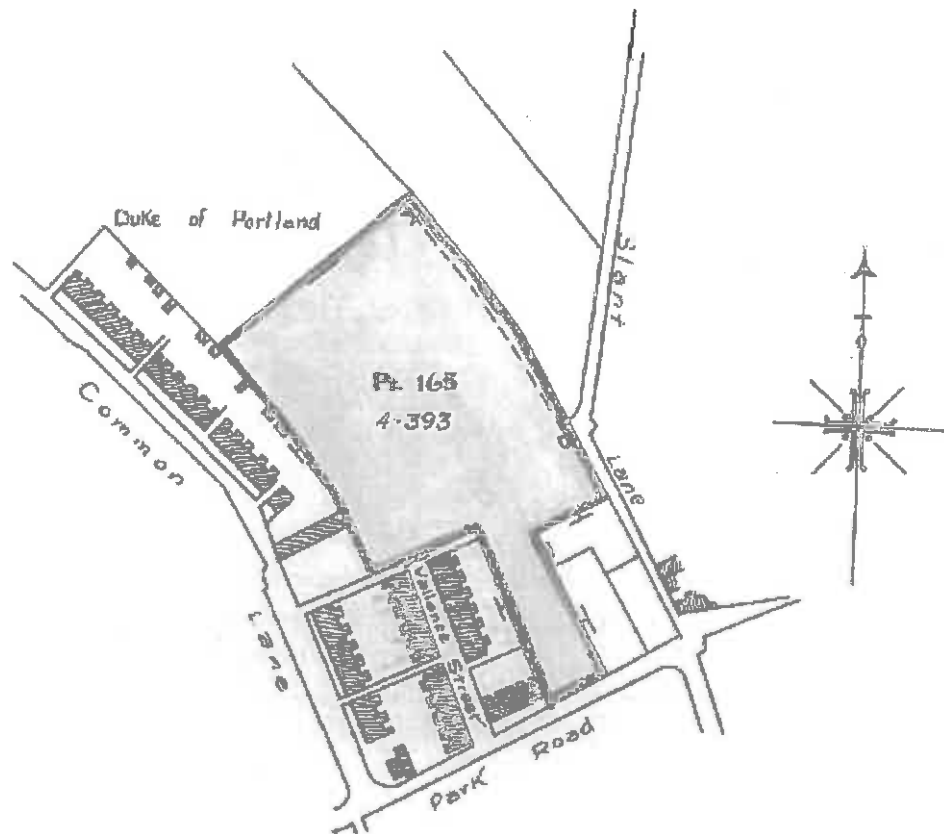
APPENDIX 2.3



Unsurfaced parking area to the rear of The Business Place.

APPENDIX 3

Plan referred to



Land conveyed to Mansfield Woodhouse Urban District Council in 1923

APPENDIX 4



Ordnance Survey Licence No. 100019713

Ordnance Survey Map (1899) showing the application land as a Cricket Ground.

APPENDIX 5



2004



2007

**Appendix 6 -
Hatched area
indicates land sold
to the
Ex-Servicemen's
Club in 1967**



Scale 1:1250

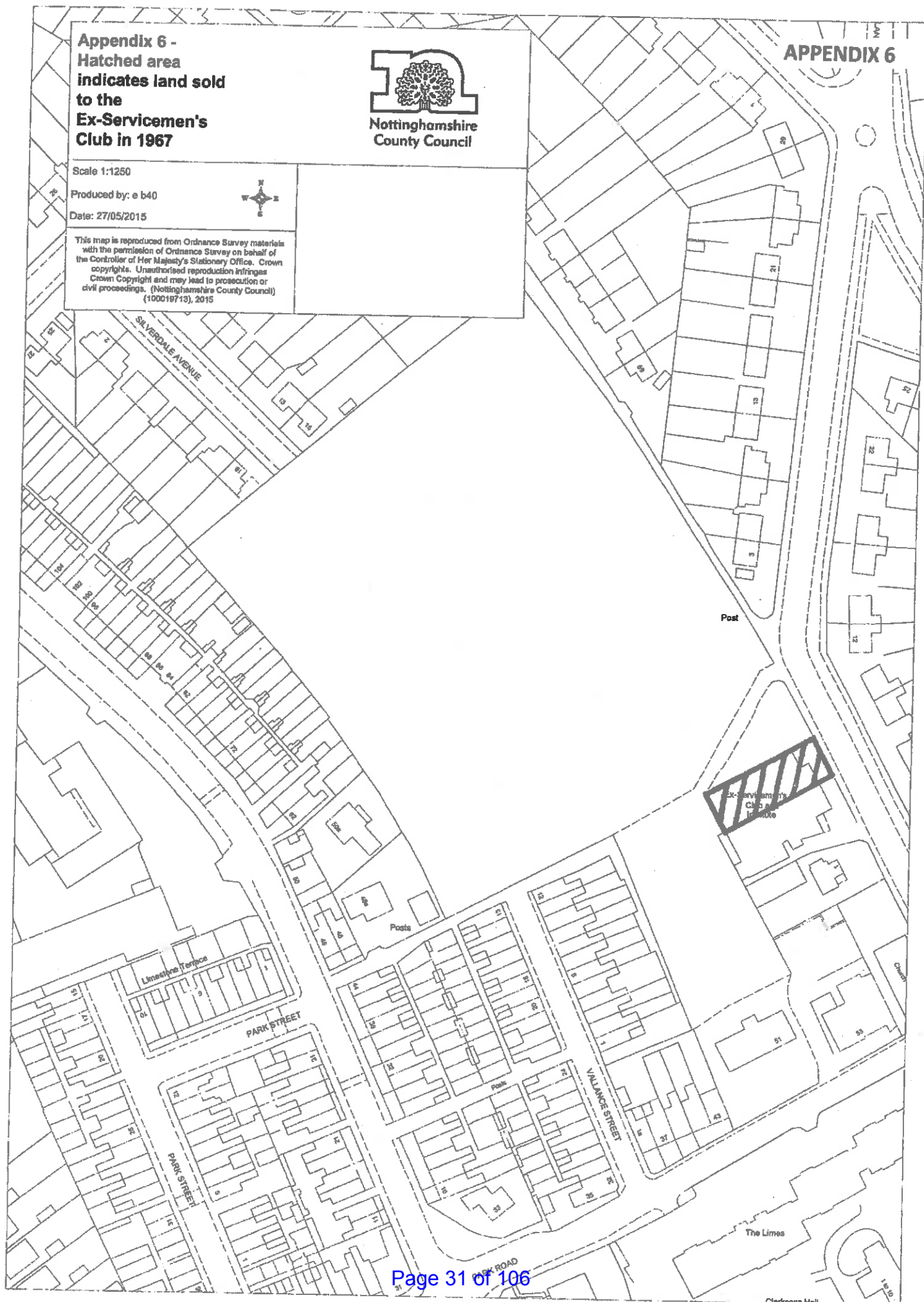
Produced by: e b40

Date: 27/05/2015

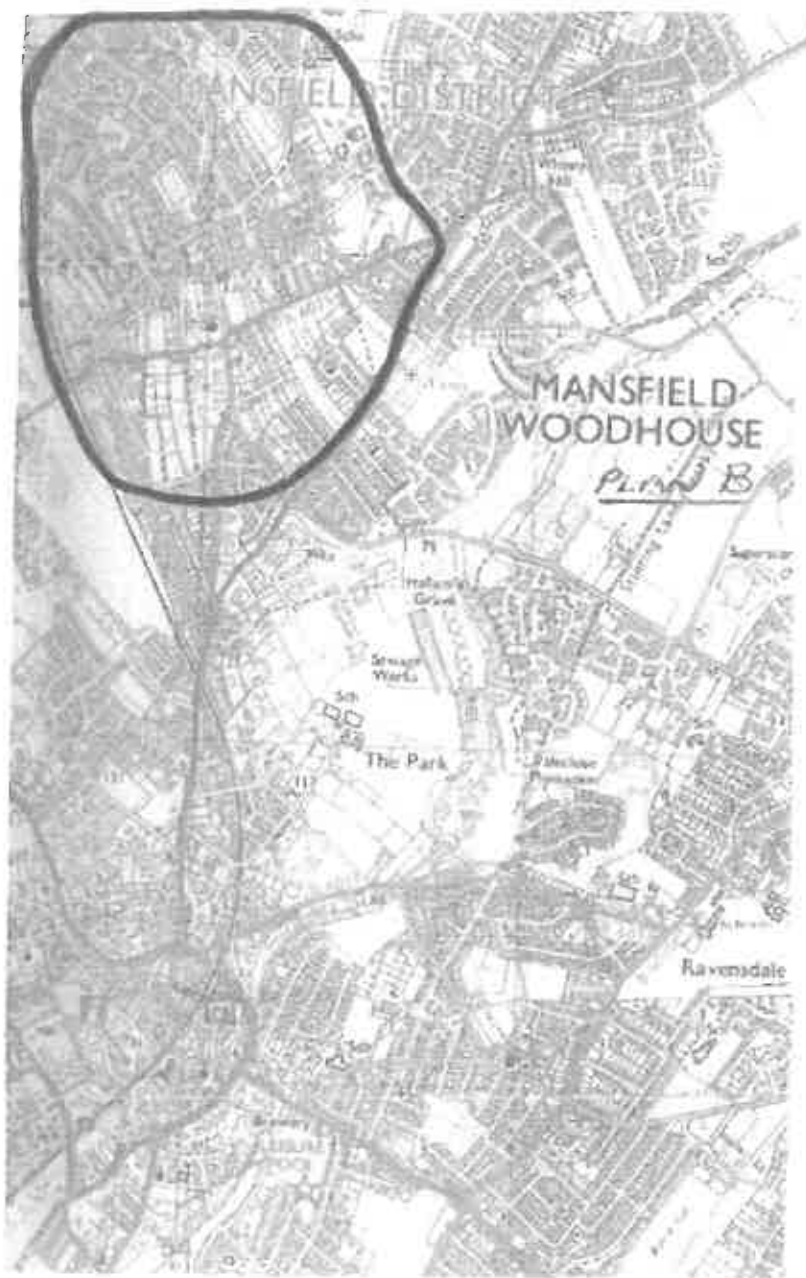


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APPENDIX 6



APPENDIX 7



The locality/neighbourhood plan appended to the application.

The area being relied on is outlined in bold in the top left hand corner of the plan.

REPORT OF SERVICE DIRECTOR, HIGHWAYS**APPLICATION TO REGISTER A TOWN OR VILLAGE GREEN AT TOTON SIDINGS IN NOTTINGHAMSHIRE and DERBYSHIRE****Purpose of the Report**

1. To enable Committee to consider Applications made under the Commons Act 2006 to Nottinghamshire County Council and to Derbyshire County Council as the respective Registration Authorities regarding the potential registration of land at Toton Sidings as a Town or Village Green; considering the Derbyshire Application under delegated authority accepted by the predecessor Rights of Way Committee on 23rd January, 2013.

Information and Advice

2. An Application was made by Mr. and Mrs Bakewell in January 2012 to register an area of land known as Toton Sidings as a Town or Village Green. About one third of the application was within Derbyshire and so another application for a Town or Village Green was made in December 2012 to Derbyshire County Council.
3. The application land is shown on the plan marked as **Appendix A** and is an irregularly shaped piece of land which has a railway on the western side and farmland, an area of housing, a public park and allotments to the east. Most of the application land was former railway sidings.
4. Notices of the Application were sent to all the interested parties and made available at Nottinghamshire County Council and Derbyshire County Council offices and at the offices of Broxtowe Borough Council and Erewash Borough Council. Notices were affixed at various places on and around the application land and were advertised in the local press. Objections were made to the application from Mr. Sahota, the majority owner of the land, as well as from D B Schenker, Network Rail, Miss Gebski and Mrs Andrews.

The Law

5. As Registration Authority, the County Council has a duty to decide whether or not the use of the Application Land fully meets **all** the elements of qualifying use under Section 15(1) and 15(2) of the Commons Act 2006. For land to have become capable of registration as a Town or Village Green it must be proved to have been used:
 - By a significant number of the inhabitants of any locality or of any neighbourhood within a locality;

- As of right (being without force, without permission and not in secrecy);
 - For lawful sports and pastimes;
 - For period of 20 years prior to the date of the Application;
 - With such use continuing at the time of the Application.
6. 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 may take place. Under the current law, land can only have the legal status of a Town or Village Green upon registration.

Public Inquiry

7. Due to the complexity of the evidence and the complex nature of the law relating to this subject, and following obtaining legal advice, a non-statutory public inquiry was held to test the evidence and to see if the requirements for registration had been met. The use of a public inquiry for such an Application has been approved of by the courts as being in the interests of openness and fairness.
8. The Registration Authority appointed a senior Barrister, Mr. David Manley QC from Kings Chambers, Manchester, as an independent Inspector to conduct a non-statutory public inquiry to hear the evidence, find the facts and prepare a report with recommendations on the Application.
9. The applicant and objectors were notified of the decision to hold a public inquiry and the Inspector issued directions in February 2015 setting out how pre-inquiry matters and the inquiry itself would proceed. Notices were affixed at various places on and around the Application Land informing members of the public of the arrangements for the inquiry and notices were also put in the local newspaper. The inquiry ran from Monday the 13 April 2015 to Thursday 16 April 2015 at the Lucy and Vincent Brown Village Hall, Attenborough, Nottingham. Opportunity was given by the Inspector at the Public Inquiry for the applicant and objectors to give evidence as well as any members of the public. The inquiry then resumed on the 21 May 2015 for closing submissions only.

The Inspector's Report

10. The Inspector's report contains a detailed analysis of the background to the case, site description, history, relevant statutory provisions, information heard at the public inquiry, the Inspector's conclusions, the application of the law and a recommendation. A full copy of the report is attached as **Appendix B** to this report.
11. The Inspector's report deals with each of the relevant elements of the qualifying use for Town or Village Green status and the Inspector concludes that the application is '**flawed in**

a number of ways and my very firm view recommendation is that it should be rejected' (Paragraph 14 Appendix B). The Inspectors reasons are summarised below:

- **Neighbourhood within a locality.** The applicant's case relied on a 'neighbourhood within a locality' but it was the Inspector's view that the applicants failed to explain why the particular neighbourhoods that were chosen were relevant and they did not explain what made them distinct from the rest of Toton. The Inspector therefore concluded that they were not qualifying neighbourhoods. (Paragraphs 14 and 15, Appendix B).
- **Significant Number.** The neighbourhoods that were claimed by the applicants were relatively large and evidence was presented at the inquiry that the use of the land for recreational purposes was less than 5% of the population of the claimed neighbourhoods and that this could not equate with general community use. (Paragraph 17 Appendix B).
- **Use for 20 years to the date of application.** Much of the land was cleared of self-set trees in January 2010 in a dramatic way over a period of 5 days with some of the material being pushed to the side. This 'bulldozing' event prevented access by the public during the works and for some time afterwards and was itself enough to break the necessary continuity of use for 20 years. (Paragraph 18 Appendix B)
- **Use of the land for lawful sports and pastimes.** The Inspector concluded that the evidence indicated that the land as a whole had not been used for sports or pastimes as the majority of the site was densely vegetated. The use of defined routes over the land for walking, cycling, jogging and horse riding is not a qualifying use for registration of a town or village green. (Paragraph 19 Appendix B)
- **Use of Right.** Following the clearance of the trees, fencing and gates were erected on site at the main entrances and in the middle of the site. Signs were also erected which were unequivocal with the wording 'Private Land. Keep Out' and 'please keep gate closed at all times'. These were a clear indication members of the public were not welcome on the land. The Inspector also considers that use of the site prior to 2009 would have been considered to be trespass under the British Transport Commission Act 1949 means use of the land would have been by force rather than as of right. (Paragraph 20 Appendix B).
- **Statutory Incompatibility.** A recent Supreme Court Decision would also indicate that registration of land as a Town or Village Green is incompatible with the land's use for a statutory function. As the application land was held over many years by British Rail (and subsidiary companies) and both was and is regularly used to access the operational sidings, this alone would be enough to deliver a fatal blow to the application. (Paragraph 21 Appendix B)

The inspector concludes that his formal recommendation is that Nottinghamshire County Council rejects the application for the 'multiple reasons contained in my Report'. (Paragraph 23 Appendix B).

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.
13. The following rights under the European Convention on Human Rights may be engaged when making this decision;
 - Article 1 of the First protocol provides that every natural or legal person is entitled to the peaceful enjoyment of their possessions.
 - Article 6 of the Convention is also applicable in that it provides a procedural right to a fair hearing. It is considered that the holding of a non-statutory Public Local Inquiry meets the requirements for a fair and open hearing.
 - Article 8 of the Convention provides everyone with the right to respect for their private and family life and their home.
13. These rights may be interfered with in certain circumstances. The rights of the landowners to enjoy their land and property may be affected by a decision to register such land as a Town or Village Green. Equally local residents may feel that they have rights to use the land and that it should be registered as a Town or Village Green for their enjoyment as part of their life. The Council may interfere with such rights in accordance with the law as contained in the Commons Act 2006 and, where necessary in a democratic society, in the interest of, among other things, the general interest.

RECOMMENDATION/S

- 1) It is RECOMMENDED that the Committee considers the Inspector's report and rejects the Application for the reasons set out therein.

Angus Trundle
Definitive Map Officer

For any enquiries about this report please contact: Angus Trundle
Tel: 01159774961

Constitutional Comments (SJE – 15/06/2015)

14. This decision falls within the Terms of Reference of the Culture Committee to whom, by virtue of Full Council Resolution 2014/027, responsibility for the exercise of the Authority's functions relating to common land and town or village greens have been delegated.

Financial Comments (SES 15/06/15)

15. There are no specific financial implications arising directly from this report.

Background Papers

16. 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 office file relating to the application.
 - Documents submitted at the inquiry.

Electoral Division(s) and Member(s) Affected

Chilwell and Toton. Councillors Richard Jackson and John Doddy

TOTON SIDINGS TVG APPLICATION
Ref: VG136/360 NVG

REPORT OF INSPECTOR D E MANLEY QC

1. This Report follows the holding of a non-statutory public inquiry into an application made by Mr and Mrs Bakewell (“the Applicants”) to register land known as Toton Sidings as a Town or Village Green (TVG). The inquiry sat on 13th April 2015 to 16th April 2015 (inclusive) and resumed on 21st May 2015 to hear legal submissions. I carried out an accompanied site visit on 14th April 2015 and I visited the site unaccompanied on 15th April 2015 (lunchtime) and on Sunday (am) 19th April 2015. The unaccompanied visits were to enable me to observe usage in circumstances where no notice had been given of my presence. My visits revealed regular use of the footpaths and bridleways for walking with and without dogs. On my accompanied visit I saw Network Rail staff crossing the site to access the adjacent operational land.

2. The application was originally made to Nottinghamshire County Council (“the RA”) on 25th January 2012 and stamped with that date. The application included Maps A and B without clearly defined boundaries and 39 Evidence Questionnaires (“EQs”) and supporting information. Network Rail, DB Schenker Rail (UK) Ltd and Mr Sahota were informed of the application on 23rd February 2012. By reason of the fact that the TVG claimed land falls within both Nottinghamshire County Council’s (“NCC”) and Derbyshire County Council’s (“DCC”) administrative areas, it was necessary to make a TVG application to DCC which was done on 4th December 2012. Both applications were made pursuant to Section 15(2) of the Commons Act 2006. On 23rd January 2013 NCC accepted an offer from DCC of delegated authority to determine the application on its behalf.
3. On 30th March 2013 the Applicants submitted a new Plan A with clearer boundaries and at an appropriate scale for the NCC application. The same exercise was undertaken for the DCC application on 29th April 2013. The applications were advertised in August 2013 and objections were lodged by:
 - Mr Sahota (principal landowner);
 - D B Schenker;
 - Network Rail’
 - Miss K Gebski of Mayfield Kennels located within the TVG land;
 - Mrs C Andrews.

In the event, Mrs Andrews thereafter had no engagement with the RA. Miss Gebski subsequently gave evidence on behalf of Mr Sahota. Network Rail did not engage with the public inquiry and D B Schenker ibid made brief submissions at the start of the inquiry that certain works undertaken on the land in January 2010 prevented 20 years' continuous user being established by the Applicants. Mr Sahota was represented throughout the inquiry process by Mr Pike of Counsel.

4. In July 2014 the Applicants submitted a new Plan B purporting to show a "neighbourhood within a locality." The locality identified was both the electoral ward boundaries of Toton and Chilwell Meadows in Broxtowe, Nottinghamshire and Nottingham Road in Erewash, Derbyshire.
5. The majority of the land in question was purchased by Messrs T and P Sahota at auction in Manchester on 3rd December 2009. The land comprises disused former railway sidings. The land was purchased from BRB (Residuary) Ltd ("BRBR") in whom non-operational railway assets had been vested. BRBR operated the site between 1993 and 2009 in accordance with its statutory undertaking pursuant to a Transfer Scheme of British Railways Board dated 26th January 2001 made pursuant to Section 35(1) of the Railways Act 1993 and by direction of the Secretary of State. By virtue of two Demarcation Agreements dated 22nd April 1996 and 22nd July 1996 made between BRB and Railtrack plc and BRB and English Welsh and Scottish Railway Ltd (now D B

Schenker) respectively, certain access rights were granted and reserved across the claimed TVG land in connection with the adjacent operational sidings. The TVG claimed land ceased to be an operational siding in the early 1980s when railway track and associated infrastructure were removed from the land. There is no doubt, based upon the evidence (see below) that the access rights are regularly exercised by Railtrack and D B Schenker operatives. The 1997 Demarcation Agreement also shows the small triangle of land within the claimed TVG site owned by D B Schenker.

6. The land comprises an irregularly shaped parcel formally accessed from Bessell Lane to the north and Mayfield Grove to the south. Both the access points were gated following the tragic death of a local boy in 1999 . The western boundary of the site is marked by paths and fencing which separate the land from the operational sidings beyond. Various access gates are set into the fencing. The eastern boundary runs adjacent to FP17 which is outside the claimed TVG land for much of its length until FP17 crosses the River Erewash on a footbridge and joins FP4 to run east/west across the site. FP4 then leaves the site's western boundary across a footbridge known locally as Asda Bridge. FP17 was registered in 1961. In June 2014 the Definitive Map was modified to recognise Bridleways 125, 126, 127 and 128 which run in a linear fashion in a north/south direction along the TVG claimed land north of the River Erewash. To the east of the site north of the river is an area of

housing and a public park. To the east of the TVG claimed land south of the river are playing fields and allotments with housing beyond.

7. The physical condition of the land merits specific comment. Entry into the site from Mayfield Grove is by way of a broad tarmac road. The vegetation to the east and west is very dense, although two informal and reasonably well-worn paths can be seen: one running east from the road and one running west. There is considerable evidence of fly-tipping to the west of the path. This initial vegetation makes the site either side of the road generally inaccessible save by way of the two informal paths. Heading north along the road there is generally vegetation either side of the road and to the west there is natural regeneration following the site clearance in 2010 (see below). This is fairly dense but not as dense as the initial area of vegetation.
8. The road then crosses the river (at this point the road and the three bridleways all coincide). There is steel palisade fencing either side of the road while the gate which barred the road and was introduced in 2010 has long been removed. The claimed TVG land to the north of the river has a flat central portion before the land rises to the east. Towards the middle of the site the embankment is very steep. Between Bridleways 126 and 127 there is an informal path which runs through the site in a north/south direction. However, save for these well marked linear routes the site north of the river is largely densely vegetated and in many parts inaccessible by reason of

extensive gorse and broom growth. Even where such is not present, only very limited access is possible in many areas.

9. The site as I have described it is not how it would have appeared over much of the relevant period of claimed use, ie 1992/93 onwards. Following the clearance of the site in 2010 which involved the felling of circa 2,100 trees, a replanting scheme was ordered by the Forestry Commission. The site therefore as it now appears is the product of relatively recent natural regeneration. Prior to 2010 the site was much more heavily wooded and both by reference to the evidence (see below) and common-sense I have no difficulty in concluding that the bulk of the site was generally far less accessible then than now.
10. The TVG claimed land is a Local Wildlife Site (see Page 341 of the Applicants' Bundle).

The Evidence

11. In this section I will summarise key elements of the evidence given by various witnesses. This does not purport to be a verbatim record:

- Mr Hourd:

Mr Hourd gave evidence relating to a proposal to amend the HS2 route through Long Eaton and Toton. I explained to Mr Hourd that this

evidence, while of interest in itself, was irrelevant insofar as my task was concerned.

- Mr Bakewell:

Mr Bakewell has lived in the area since 1989. He said he used to walk, run and cycle on the land several times per week and would access the land by way of one of the access points on its eastern side. He described his routes by reference to the use of the “myriad” paths across the site. He said he had taken his daughters sledging on the site, albeit he said this was not a regular occurrence. He said he enjoyed walking and watching wildlife. He said the site was highly valued as a recreational resource by local people.

In cross-examination he accepted that pre-2010 growth on the site was dense but said it was not uniform and in some places gaps of 3 - 4 feet between trees existed. He said it was possible to walk through the trees if one wished. He confirmed that between 1989-2009 the routes he used for walking, running and cycling had remained “broadly similar”. He is a committee member of Toton Environmental Protection Society (TEPS) and said that following the site clearance in January 2010 he sent a “round robin” e-mail to people on the TEPS mailing list. That led to a public meeting at which blank EQs were made available. The primary purpose of the meeting was to discuss planning issues. He thought about 40 EQs were subsequently

returned. He was asked how he derived his witness list and said he had e-mailed the TEPS list and asked who would be prepared to speak. He said photography and sledging activities had been on the open parts of the site. The fishing was by children with nets in the river. He said some children would go off the paths to play hide and seek.

He said he became aware of the site clearance work from a neighbour on a Saturday and visited the site on Sunday and spoke to a man in a bulldozer. It was pointed out to Mr Bakewell that work on clearance had started on 6th January 2010, ie Wednesday, but he said he only heard about it on the Saturday. He said that the fallen trees were pushed up against the western boundary and the foot of the eastern embankment. His attention was drawn to his EQ (Bundle, p.752) and his statement that his pattern of use had been the same until the felling and his statement that he had been prevented from using the land by “felled trees barring access and gates to informal footpaths - climbed over.” I note that similar observations are made in other EQs. He said it was still possible to get onto the site from the northern end. He also said there were areas where the tree barrier could be crossed. He said he thought the fence and gate on the vehicular bridge was to prevent vehicular access. It was put to Mr Bakewell in terms, “The landowner was sending you a message - It was his land and he would do what he wanted with it.” Mr Bakewell said, “Maybe.” He acknowledged signage was placed on the Bessel Lane, Mayfield Grove

and bridge gate. He said he thought the signs only related to vehicular access. It was put to him that one sign said “Private Land. Keep Out” and one sign said “Please Keep Gate Closed At All Times.” He said he did not see the signs that were replaced on the Bessell Lane and Mayfield Grove gates in September/October 2011 or the signs that were there in the 1990s. He said he regularly saw rail operatives on the TVG claimed land - often in a flat-back truck. He said he was aware of the boreholes being sunk in 2011 and said it possibly occurred over ten days or so. He says it occurred over the bulk of the site. He could not recall what plant and equipment he may have seen. He said he reported it to the Council.

- Mrs Sally Carnelley:

Mrs Carnelley is the proprietor of the St Leonard’s Riding School and said she had used the land for 45 years for hacking out with clients. She lived in Raeburn Drive for three or four years. There is no suggestion that the riders she and her daughter take out onto the land come from within the claimed neighbourhood. Mrs Carnelley described the route that she and the riders take. Mrs Carnelley said she had seen the tree felling but kept the horses away because it was noisy. She said the gate at Mayfield Grove was locked for a while but then open. She said she saw the signs on the gate over the vehicular bridge which said “Keep Out”, but the gates were not there for long. She also saw the signs on the Mayfield and Bessell Lane gates.

- Mr Lewis:

During the relevant period he lived on at Aldridge Close and Newmarket Way, leaving in 2011. He said he was a keen birdwatcher and that his family regularly walked the dog on the land. He said they did not necessarily stick to the well-used paths. He said he saw the bridge gate and signage but they were not in place for long. He said he never saw the gates at Bessell Lane or Mayfield Grove because he did not use those parts of the site. He said he was aware of the 2010 site clearance work and said he did not go onto the land because “It was very difficult to get onto the site; it was as if the wood had been piled up to keep us out. I did not get on that day [Saturday] but I just stood at the top of the embankment. It wasn’t obvious where you could get on anywhere.” He said he had seen railway company vehicles on the land.

- Mrs Bryce:

Mrs Bryce has lived on Marlborough Road since the 1980s. Mrs Bryce’s statement dealt exclusively with the wildlife interest of the site. She went on formal walks on the site with the Natural History Society “every four years or so.” She said the gates were sometimes locked (although I remain unclear as to which gates Mrs Bryce was actually referring to). She recalled the site clearance and said she stayed away. When asked for how long, she said “It could have been weeks.” She said she had seen railway workers on site “sporadically”.

She said she did not go onto the site in winter but she had heard about the boreholing activity.

- Christine Batham:

She has lived at 3 Edale Rise for circa 30 years and is a keen dog walker. She said she had seen people riding and walking on the land and children playing. She said she tended to stay on the paths but might go off “to look at the flowers.” She said she could not recall any signage on the gates. She had not seen borehole activity. She had seen railway operatives on the land. I asked Mrs Batham whether her walking routes were the ones the other walkers she saw used and she replied “Yes.”

- Mr Roche:

Mr Roche has lived at 5 Edale Rise for 29 years and said he and his family had used the site for years for walks and play. He said he had started taking his grandson onto the site for play about three years ago. He recalled seeing the gate and signage on the bridge in 2010 but said he thought it was to prevent vehicular access. He was made aware of the site clearance works by a neighbour and went down to the site the following Wednesday, ie 13th January 2010. He said he was shocked by what he saw and said “... I didn’t go onto the land; I didn’t think it was the thing to do.” He was asked, “The action of clearance deterred you from going on?” He replied “Yes.” He was asked how he subsequently accessed the site and said it was through a gap in the

banked up trees. He did not know if people had made the gap. He has never accessed the site from Bessell Lane or Mayfield Grove. He saw the borehole testing. He said he had never seen rail operatives on the site.

- Emma Wickins:

Emma Wickins lives at 50 Spinney Rise. Mrs Wickins has a four year old son and she takes him onto the site. She has a regular route which uses the paths on the top part of the embankment so that her son can watch the trains. She said until she had children she had not used the land herself since the early 1990s when she was 15 or 16 years of age. It therefore follows that her earlier use was prior to the commencement of the relevant 20 year period. She went to look at the site in 2010 following the clearance because it had been locally reported. She saw wood and brush pushed up against the foot of the embankment. She said she had accessed the site from Bessell Lane but had never noted a gate. She had never seen any rail operatives on site and had not witnessed any boreholing.

- Mr Hooton:

Mr Hooton lives at 29 Orpean Way. He says he has walked the site daily since retiring in 2012, but prior to this used the site regularly for dog walking. He moved to his present address 26 years ago when his children were 9 and 16 (Tracy). He said his daughter was not the outdoor type but his son used the land a lot. He said he had never

seen signs on the gate at Bessell Lane or Mayfield Grove. He said he “probably” saw the signage on the gate on the bridge. He said the Mayfield Grove gates had not been locked during the day for years.

- Mrs Bailey:

Mrs Bailey has been a resident of the claimed neighbourhood for in excess of 20 years. She said her children (now aged 30, 27 and 19) had used the land for play and that she walks the site daily. She has a route using the paths. She recalled the site clearance was in 2010 and was asked “So the felling of the wood, in your view, prevented or discouraged use of the land by residents?” Mrs Bailey replied “Yes.” She was asked if she had ever seen the Bessell Lane gate closed and she said it was closed every time she walked that way. She said she had never seen the signage on the bridge gate. She said rail operatives used the land “a couple of times a day” and had done since 1992/93. She said she witnessed the 2010 clearance from the top of the embankment but did not go back onto the flatter part of the site for one week or so. Access was via a gap in the banked-up trees. Mrs Bailey said “We found a little sneaky way in.”

- Mrs Jackson:

Mrs Jackson lives at 26 Cleve Avenue. Mrs Jackson has lived at her address for nearly 40 years and regularly walks with Mrs Bailey on the site. She walks on the top of the embankment. She said her

recollection of the 2010 clearance was similar to Mrs Bailey's. She said "We didn't go down - it was dangerous with the dogs."

- Mr Carruthers:

Mr Carruthers lives at 12 Rutland Avenue. He said the land has been used for recreation by Toton residents for many years. He saw the bridge gate and the signage. He did not see the clearance work. He likes to paint from the top of the embankment.

- Karen Barker:

Mrs Barker produced various photographs pre-January 2010 which show children playing on a path on the lower part of the site in the snow. She walks the site along the normal well walked routes. She became aware of the clearance through the local BBC News and went and saw the work on the Saturday. She said it was several weeks before she went back onto the land. I asked her "Why?" and she replied "It wasn't very nice." I asked "Was it the kind of place you would wish to recreate in?" She replied "No." She was unaware of the main entrance gates.

- Mrs Wilson:

Mrs Wilson lives at 21 Orpean Way. Mrs Wilson has been a resident of No.21 since December 1994. The children were then 8 and 9. Her children used to swim in the river but in a location outside the site. She walks the site but usually it is by way of a fixed route to the convenience store beyond Asda Bridge. She saw the clearance work

in 2010 and said “We had no cause to go on it [the land] then.” She said she might be the “most unobservant person in the universe,” but she could not recall the bridge gate or any signage, borehole sinking or having seen rail workers on the land.

- Mr Lewis, MBE:

Mr Lewis is in his 80s and has known the site all of his life. In the 1980s and 1990s his visits to the site were seasonal due to his particular wildlife interests. These visits might be once per month in the summer. He saw the clearance of the site in 2010 and saw the signage on the gate on the bridge which he said was “a bit forbidding.” He said “I thought they were inappropriate because we had prescriptive rights.” He said he also saw the gate and signage at Mayfield Grove. He had seen rail operatives on site fairly regularly.

- Mrs Hoskins:

Mrs Hoskins has lived at 16 Epsom Road since 1989. She has seen people trainspotting from the top of the embankment and sledging down it. Over the years she has walked three dogs on the land on an almost daily basis. She saw the clearance work and did not revisit the site for five or six days after that. She saw the boreholing activity and has seen railway workers on the land from time to time.

- Mrs Donovan:

Mrs Donovan has lived at 11 Erdington Way for 27 years. She said in 1993 her eldest child was 8 years of age and would play on the site

weekly. For her own part, she said he used it two to four times per week. She saw the clearance in 2010 but it did not prevent her walking on the site. She said she was aware of the Bessel Lane gate and said over the years several signs had been in place stating “Private Land - Keep Out” or words to that effect. She also saw the signage on the gate on the bridge. She said she sees railway workers on the land.

- Mr Wickins:

He has lived at 48 Spinney Rise since 1971. He walks the site infrequently - possibly ten times per summer - using a well walked route with his wife. He went to see the 2010 clearance work and was asked, “Did you go onto the land?” He replied “There was no point in going on; I could see what had happened ...” He could not recall seeing a gate at the Bessell Road entrance and had never been onto the site from Mayfield Grove. He said he had not been on the site much since 2010. I asked him why and he said, “It upset me.”

- Mr Donovan:

Mr Donovan has lived at 11 Erdington Way for 27 years. He said his family used the land when the children were smaller and he walks the site with his wife three or four times per week. He was asked about the clearance in 2010 and the mounding of trees at the foot of the embankment and he said “That did prevent access as a matter of fact.” I asked him if his perception at the time was that a clear attempt had

been made to prevent access and he replied “Yes.” He had seen the gates at Mayfield Grove and Bessell Lane but could not recall signage.

- Mrs Bakewell:

Mrs Bakewell said there were 460 people in the TEPS e-mailing list. TEPS was reformed after the 2010 felling (it had previously existed but gone quiet after 1991). TEPS is not solely concerned with the site but also various planning issues in the area. Mrs Bakewell has always enjoyed walking on the land and meeting people while out. Her grandchildren play on the land. Pre-2010 she used to enjoy sitting amongst the trees and relaxing. She said that the access gates and the banked trees did not prevent access due to the multiplicity of ways onto the site.

- Councillor Kee:

Councillor Kee has lived at 43 Banks Road since 2007. Councillor Kee uses the site for walking and running on a regular basis over a 5 km loop. She was told about the 2010 clearance work but did not see the site for some weeks after.

The Evidence for the Objector, Mr Sahota

12. Evidence was given by Mr Wallace, a solicitor, which related to the ownership issues pertinent to the land. I also heard from Mr Natkus, a

Chartered Town Planner with Messrs Barton Willmore, which dealt primarily with planning issues.

- Miss Gebski:

Miss Gebski has operated a kennels from within the site for many years. She recalled that in the mid-1990s locked gates were installed at the Mayfield Grove site entrance and signage that said “Property of Network Rail. No Trespassing on the Railway.” She said the land had always been used by dog walkers, riders and some cyclists. I asked her about the site pre-2010 and she said that there was a dense silver birch wood. She said, “It was very gloomy under the trees - not much could grow - it was very dense. There was some gorse.” She said walkers etc always stayed on the paths. She said she has always walked the site daily at variable times. She said the Mayfield Grove gates were not locked during the day. She said she had only seen people in the woods on one occasion: “Two lads in camouflage with airguns.” She confirmed that the southern neighbourhood area was self-contained and it was “our neighbourhood area.”

- Mr Sahota:

He confirmed that site clearance work was carried out between 5th January 2010 and 9th January 2010. He said it was cleared for management purposes, ie to investigate whether ash and ballast was recoverable. The mounding of the trees at the embankment was to secure the site. He said that gates were in place at the site’s main

entrances in 2009 and that he arranged the fencing and gate installation on the bridge in January 2010. Two signs were placed on each of the gates. The gates on the bridge and the signage were in place for several weeks before they were removed. The signs on the other two gates were in place for over one year before they were removed. In September 2011 Network Rail replaced the signs on the Mayfield Grove and Bessell lane gates (see objector Bundle, p.894) to read “Private Property - Right of Way only for Railway Personnel. Secure Gates after use with Combination Lock ...” These gates had been operated by padlock until in August 2011 they were replaced by combination locks. It is unclear how long the signage remained in place.

The Law

13. Section 15(1) and (2) of the Commons Act 2006 provides as follows:

“15. Registration of Greens

- (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.
- (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.”

It can be seen that the above definition raises a series of questions which have exercised the Courts.

- What is a “significant number”

“Significant number” is a concept that is relative to the size of the locality and/or neighbourhood relied upon. The issue is one of impression and the key question is whether the number of inhabitants using the land over the relevant 20 year period was sufficient to show that the land was in general use by the local community for informal recreation (see *R v. Staffordshire County Council ex parte Alfred McAlpine Homes Ltd* [2002] 2 PLR 1).

- What is a “locality”

“Locality” refers to an administrative unit that is recognised in law. It has been held that an ecclesiastical parish therefore can be a qualifying locality (see, for example, *R (on the application of Laing Homes Ltd) v. Buckinghamshire CC* [2003] EWHC 1578 (Admin)). A locality will not, without more, be sufficient for Section 15 *ibid* purposes simply because it has legal recognition. In *Suffolk CC ex parte David Donald Steed and Another* [1996] 71 P & CR 463 Carnwath J, as he then was, said in the context of the 1965 Commons Act:

“To state the obvious, a town or village green, as generally understood, is an adjunct of a town or

village or something similar. As such it may be contrasted with open spaces of various kinds, for example recreation grounds maintained by local authorities for the public generally (eg under the Open Spaces Act 1906) school playing fields; or areas of a more private nature, such as London garden squares, or land set aside under a building scheme for the occupants of a particular private development. None of these categories would naturally be regarded as 'town or village greens'. The statutory word 'locality' should be read with this in mind. Whatever its precise limits, it should connote something more than a place or geographical area - rather, a distinct and identifiable community, such as might reasonably lay claim to a town or village green as of right. In the present case, the 'locality' on which the application for judicial review and the supporting affidavit rely is Sudbury itself; I agree that this is the only realistic basis on which to proceed."

This was followed by R (on the application of Cheltenham Builders Ltd) v. South Gloucestershire DC [2003] EWHC 2803 (Admin) in which Sullivan J (as he then was) noted:

- "[43] Whatever may be meant by 'locality' is subsection 22(1A) I am entirely satisfied that it does not mean any area that just happens to have been delineated, in however arbitrary a fashion, on a plan. Such an approach would, in effect, deprive the word 'locality' of any meaning in the subsection, since anywhere could be delineated on a plan.
- [44] Parliament might have provided that land fell within section (1A) if a significant number of 'the local inhabitants' or 'persons living in the vicinity' had used the land for lawful sports and pastimes, but it did not do so.
- [45] Setting the claimant's submissions as to the meaning of 'locality' on one side (see *post*) it is plain that, at the very least, parliament required the users of the land to be inhabitants of somewhere that could sensibly be described as a

‘locality’. It may well be difficult to define the boundary of a ‘locality’ on a plan because views may differ as to its precise extent, but there has to be, in my judgment, a sufficiently cohesive entity that is capable of definition. Merely drawing a line on a plan does not thereby create a ‘locality’. In *Steed*, Carnwath J said, at p.501:

‘Whatever its precise limits, it should connote something more than a place or geographical area - rather, a distinct and identifiable community, such as might reasonably lay claim to a town or village green as of right.’

Although these observations were *obiter*, since there was no dispute that Sudbury was a ‘locality’ for the purposes of the Act, they capture the essential characteristics of a locality.”

The *Cheltenham* case was a locality case, albeit post the introduction of the concept of neighbourhood by the *Countryside and Rights of Way Act 2000*. However, more recently it has been suggested that “locality” is to be interpreted the same way in neighbourhood cases as well. In *R (on the application of Mann) v. Somerset CC* [2012] EWHC B14 (Admin) His Honour Judge Robert Owen QC sitting as a Judge of the High Court observed:

“95. Mr Laurence placed much reliance upon the recent decision of *Adamson v. Paddico (261) & Ors* [2012] EWCA Civ 262, in particular paragraphs 27 – 29 per Sullivan LJ and paragraph 62 per Carnwath LJ (as he then was). Mr Chapman submitted that these passages were indeed *obiter* and addressed the question whether a conservation area could stand as a locality, namely ‘community’ in the first limb of the subsection and did not affect, in any event, the second limb, ‘neighbourhood within a locality’. He disagreed with Mr Laurence’s submission that

‘locality’ necessarily has the same meaning or effect in both limbs. Mr Chapman’s submission has some support from Carnwath LJ (see paragraph 51).

96. Mr Chapman referred to the history of this issue within these proceedings to show the equivocal stance taken by the interested party on this issue. The history does not, of itself, undermine Mr Laurence’s argument, of course. However, the Inspector found on the evidence that the requirement in respect of a significant number of inhabitants of any locality, the polling districts identified in the application form was met and that the inhabitants, in any event, were from a neighbourhood within a locality (which could be more than a single locality as explained by Lord Hoffmann) which met any requirement as to cohesiveness.
97. Finally, Mr Chapman submitted that even if there was merit in the objection taken in respect of the inspector’s finding as to locality such objection could fairly be cured without causing prejudice to the interested party. I recognize Mr Laurence’s point that the locality must have a real or credible relationship with the field in question. For the reasons given by the inspector that criteria was established on the available evidence. I also accept that the locality must be credible in the sense that it is one from which inhabitants might be expected to come to enjoy the land. It is for that reason that the relevant locality could hardly or credibly be identified as, to use Mr Laurence’s example, ‘the county of Surrey’ (or Somerset). As an alternative, to meet the theoretical or technical objection raised (late in the day) by the interested party those who know the area and locality (in the non technical sense) are content to identify Yeovil which it appeared to the inspector, the defendant and claimant to be a credible and appropriate substitute. Thus, the interested party’s objection may be met by amendment.
98. On balance, I prefer the findings and conclusion of the inspector in his report(s) which mirrors the

approach taken by the defendant and which Mr Chapman adopts, namely, on the facts of this case, the polling districts in question constitute the relevant locality for the purposes of the section. In so far as that finding is impermissible then the matter may be cured by the proposed amendment.”

There is some judicial support for the proposition that a “locality” under both limbs (a) (a pure “locality” case) and (b) (a “neighbourhood within a locality” case) must be credible and have some sense of connection with the TVG claimed land. If it were otherwise, it is difficult to see why “locality” is a prerequisite under limb (b) given that, as a simple matter of fact, a neighbourhood must lie within an administrative unit known to law.

- What is a “neighbourhood”

While a neighbourhood need not necessarily have boundaries, it must be capable of a meaningful description and have a pre-existing cohesiveness, ie an identity that is not dependent on the claimed land (see *Cheltenham Builders* ibid and *R (on the application of Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Another v. Oxfordshire CC* [2010] EWHC 530 (Admin)). It is a matter of fact for the decision-maker using common-sense. In *Cheltenham Builders* ibid Sullivan J gave the example of a housing estate as being capable of falling within the definition.

- What is meant by “have indulged as of right in lawful sports and pastimes”

The use must be without force, stealth or the permission (implied or express) of the owner. The user itself must have been “of such amount and in such manner as would reasonably be regarded as the assertion of a public right” (see *R (on the application of Lewis) v. Redcar and Cleveland BC* [2010] UKSC 11). The use must be of such

a character as to make it clear that the TVG rights are being asserted and the test is an objective one. The pattern of the use must be continuous over the period claimed (see White v. Taylor (No.2) [1969] 1 Ch 160). Use of a defined route only as a footpath is not a qualifying TVG use (see Dyfed CC v. Secretary of State for Wales [1990] 59 P & CR 275 and Oxfordshire County Council v. Oxford City Council [2004] Ch 253. Lawful sports and pastimes is a composite class which could include communal activities or solitary activities. It is not to be interpreted in an unduly legalistic manner. However, sporadic events such as the holding of an annual bonfire would not of themselves qualify (see Redcar *ibid*). However, the necessity for lawfulness means that the use should not damage the landowner's property. It is not necessary that all of the claimed land has necessarily been used. If non-used areas are nonetheless integral to the enjoyment of the used area or otherwise represent only a modest percentage of the application area, then that should not be an obstacle to registration. A measure of common-sense has to be used.

The phrase "as of right" was usefully considered by Lord Rodger of Earsferry in the Redcar case at Paragraphs 87-92. They are instructive and so I set them out in full:

“[87] The basic meaning of that phrase is not in doubt. In *R v. Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 35 Lord Hoffmann showed that the expression ‘as of right’ in the Commons Registration Act 1965 was to be construed as meaning *nec vi, nec clam, nec*

precario. The parties agree that the position must be the same under the Commons Act 2006. The Latin words need to be interpreted, however, Their sense is perhaps best captured by putting the point more positively: the user must be peaceable, open and not based on any licence from the owner of the land.

[88] The opposite of ‘peaceable’ user is user which is, to use the Latin expression, *vi*. But it would be wrong to suppose that user is ‘*vi*’ only where it is gained by employing some kind of physical force against the owner. In Roman law, where the expression originated, in the relevant contexts *vis* was certainly not confined to physical force. It was enough if the person concerned had done something which he was not entitled to do after the owner had told him not to do it. In those circumstances what he did was done *vi*. See, for instance, D.4324.1.5-9, Ulpian 70 *ad edictum*, commenting on the word as used in the interdict *quod vi aut claim*.

[89] English law has interpreted the expression in much the same way. For instance, in *Sturges v. Bridgman* (1879) 11 Ch D 852, 863, 43 JP, 48 LJ Ch 735, where the Defendant claimed to have established an easement to make noise and vibration, Thesiger LJ said:

‘Consent or acquiescence of the owner of the servient tenement lies at the root of prescription, and of the fiction of a lost grant, and hence the acts or user, which go to the proof of either the one or the other, must be, in the language of the civil law, *nec vi nec clam nec precario*; for a man cannot, as a general rule, be said to consent to or acquiesce in the acquisition by his neighbour of an easement through an enjoyment of which he has no knowledge, actual or constructive, *or which he contests and endeavours to interrupt*, or when he temporarily licenses’ (emphasis added).

If the use continues despite the neighbour's protests and attempts to interrupt it, it is treated as being *vi* and so does not give rise to any right against him. Similarly, in *Dalton v. Henry Angus & Co* (1881) 6 App Cas 740, 786, Bowen J equated user *nec vi* with peaceable user and commented that a neighbour, 'without actual interruption of the user, ought perhaps, on principle, to be enabled by continuous unmistakeable protests to destroy its peaceable character, and so to annul one of the conditions upon which the presumption of right is raised: *Baton v. Swansea Waterworks Co* (1851) 17 QB 267, 20 LJQB 482, 15 Jur 675.' The contrary view, that the only manner in which enjoyment of window lights could be defeated before the Prescription Act was by physical obstruction of the light, 'was not the doctrine of the civil law, nor the interpretation which it placed upon the term "*non vi*" ...'

- [90] In short, as *Gale on Easements* 18th ed, (2002), para 4084, suggests, user is only peaceable (*nec vi*) if it is neither violent nor contentious.

- [91] In *R v. Oxfordshire County Council ex parte Sunningwell Parish Council* [2000] 1 AC 335, 350-351, Lord Hoffmann found that the unifying element in the three vitiating circumstances was that each constituted a reason why it would not have been reasonable to expect the owner to resist the exercise of the right. In the case of *nec vi* he said this was 'because rights should not be acquired by the use of force'. If, by 'force', Lord Hoffmann meant only physical force, then I would respectfully disagree. Moreover, some resistance by the owner is an aspect of many cases where use is *vi*. Assuming, therefore, that there can be *vi* where the use is contentious, a perfectly adequate unifying element in the three vitiating circumstances is that they are all situations where it would be unacceptable for someone to acquire rights against the owner.

- [92] If, then, the inhabitants; use of land is to give rise to the possibility of an application being made for

registration of a village green, it must have been peaceable and non-contentious. This is at least part of the reason why, as Lord Jauncey observed, in the context of a claim to a public right of way, in *Cumbernauld and Kilsyth District Council v. Dollar Land (Cumbernauld) Ltd* 1993 SC (HL) 44, 47, ‘There is no principle of law which requires that there be conflict between the interest of users and those of a proprietor’.”

The law upon the approach to the effect of a notice or notices was considered by Judge Waksman QC in *R (Oxfordshire and Buckinghamshire Mental Health NHS Foundation Trust and Another) v. Oxfordshire CC* [2010]LGR 631. Having reviewed various cases he stated, inter alia, as follows:

“[22] From those cases I derive the following principles:

- (1) The fundamental question is what the notice conveyed to the user. If the user knew or ought to have known that the owner was objecting to and contesting his use of the land, the notice is effective to render it contentious; absence of actual knowledge is therefore no answer if the reasonable user standing in the position of the actual user, and with his information, would have so known;
- (2) Evidence of the actual response to the notice by the actual users is thus relevant to the question of actual knowledge and may also be relevant as to the putative knowledge of the reasonable user;
- (3) The nature and content of the notice, and its effect, must be examined in context;
- (4) The notice should be read in a common sense and not legalistic way;

- (5) If it is suggested that the owner should have done something more than erect the actual notice, whether in terms of a different notice or some other act, the court should consider whether anything more would be proportionate to the user in question. Accordingly it will not always be necessary, for example, to fence off the area concerned or take legal proceedings against those who use it. The aim is to let the reasonable user know that the owner objects to and contests his user. Accordingly, if a sign does not obviously contest the user in question or is ambiguous a relevant question will always be why the owner did not erect a sign or signs which did. I have not here incorporated the reference by Pumfrey H in *Brudenell-Bruce's* case to 'consistent with his means'. That is simply because, for my part, if what is actually necessary to put the user on notice happens to be beyond the means of an impoverished landowner, for example, it is hard to see why that should absolve him without more. As it happens, in this case, no point on means was taken by the authority in any event so it does not arise on the facts here."

The above statements relating to the law relate to general principles.

In this case, certain discrete and specific legal issues also arise which I shall deal with during my analysis of the case.

Analysis

14. I should say at the outset that the Application is, in my view, flawed in a number of ways and my very firm recommendation is that it should be

rejected. I set out my detailed reasons below. But at the outset I want to note a particular problem. The Applicants were reminded by the RA on a number of occasions following the lodging of the Application of the need to identify a relevant locality and, if a neighbourhood was relied upon, a relevant neighbourhood. They were slow to do this and while they had condescended to particulars prior to the inquiry their evidence failed to explain how the areas chosen could be characterised as relevant localities and neighbourhoods for the purposes of Section 15(2) *ibid*. This was therefore an important issue for the inquiry itself. The burden of proving each element of Section 15(2) *ibid* lies squarely upon the shoulders of the Applicants. To this end I therefore told Mr Bakewell at the start of the inquiry that he would need both by himself and through his witness to explain why the localities and neighbourhoods were relevant and in particular what it was about the claimed neighbourhoods that meant they could be properly characterised as neighbourhoods for the purposes of Section 15(2) *ibid*. In fact, no evidence at all was led on this. The only person who commented at all was Mrs Gebski, but this only related to the southern claimed neighbourhood.

15. While it may be possible for an Inspector unfamiliar with an area in some cases to identify himself exactly what it is that makes a claimed neighbourhood satisfy Section 15(2) *ibid* purposes, this is not such a case. I have not been able to conclude, in the absence of evidential assistance, that the claimed neighbourhoods are in fact neighbourhoods for Section 15(2)

purposes. In particular, I do not understand what makes them distinct from the rest of Toton. On this basis alone the claim must therefore fail.

16. It is nonetheless my duty as Inspector to consider all the key issues raised as between the parties and therefore I shall proceed to discharge that duty.
17. It follows that consideration of the issue of whether there has been use of the land by a significant number of the inhabitants of the claimed neighbourhoods is somewhat academic given that I have concluded they are not qualifying neighbourhoods. Nonetheless, one of the problems with choosing a relatively large claimed neighbourhood area, as in the present case, is that for the test to be satisfied usage by a relatively large number of people would need to be established to demonstrate general community use. In that context, it is surprising that only 39 Evidence Questionnaires were submitted, ie there are 460 people on the TEPS mailing list and issues relating to the land were common knowledge. Mr Natkus' unchallenged evidence was that the Applicants' own written submitted evidence showed that less than 5% of the population of the claimed neighbourhood had claimed to use the land for recreational purposes. The clear impression I formed from listening to the evidence in particular was that there are a number of people who do use the land regularly and some who use it fairly infrequently, but taken at its highest I do not believe that the use evidenced could be equate with general community use.

18. I now turn to consider whether there has been continuous use of the land for the necessary 20 years. Leaving all else aside, the Applicants could never have succeeded in satisfying this requirement. The January 2010 clearance of the land was a dramatic and brutal event involving the felling of 2,000 or more trees. Contractors worked over five days continuously using bulldozers. Nobody claimed to have recreated on the land while this was going on; indeed, it is difficult to see how anybody could have safely used the land during this period save possibly for use of the land at the top of the embankment. The use of the land effectively excluded the public not only while the work was going on but the mounding of the material along the base of the embankment also discouraged many people, as my notes indicate, from accessing the land for a week or more after the event. This event itself was enough to break necessary continuity of use. I note other activities took place on the land in Spring 2010 (removal of cabling by thieves over two days) and April 2011 (widely dispersed boreholing over a ten day period), but I am not convinced that these events had the effect of excluding the public or were, in principle, incompatible with general recreational use. Nonetheless, the fact remains that the dramatic events of January 2010 were wholly incompatible with recreational use and broke the necessary continuity of use.
19. Whether the land was used for lawful sports or pastimes - It was patently clear from the evidence that the land as a whole has not been used by the

community of users for sports and pastimes. The evidence which I have been at pains to set out in this Report was consistent with use of the land for walking, jogging, cycling and riding on the well marked footpaths and bridleways. Use of fixed routes is not a qualifying use and it is not a use that could put any reasonable landowner on notice that a right to recreational use over all of his land was being claimed or established. The reason that the use was so confined was due to the fact that over most of the claimed period of use the vast majority of the site was densely vegetated. I have no doubt on occasion that children may have accessed areas to play hide and seek and such like, but this use would have been no more than occasional trespass and cannot be characterised by continual community use of the whole site.

20. The above further begs the question of whether use over the 20 years claimed period has been “as of right”. Again this test is failed by the claim. I accept Mr Sahota’s evidence that immediately following the January 2010 site clearance he arranged for fencing and gates to be installed on the bridge and that two signs were then placed on all gates, ie at the main entrances and over the bridge. Whilst the bridge gate and signs were removed by unknown third parties after only a few weeks, the main entrance gate signs were in place for over one year. The wording of the signs was unequivocal, namely “Private Land. Keep Out” and “Please Keep Gate Closed At All Times”. To any reasonable reader the signs were a clear indication that their presence on the land as a whole was not welcome. I rejects attempts to suggest that the signs

conveyed prohibition of vehicular access only. Moreover, once one combines the signage with the clearance events of January 2010 and the mounding of significant volumes of felled material at the foot of the embankment, it would have been clear to any reasonable person that third party use of the land was not welcome. Any use in defiance of the mounding and signage was contentious and by force. For the avoidance of doubt, I further accept Mr Pike's submission in the terms set out in his closing remarks that any use of the site as a whole prior to 2009 would have been trespass and unlawful by virtue of the operation of Section 55(1) of the British Transport Commission Act 1949. Again, use in these circumstances must be characterised as use by force.

Statutory Incompatibility

21. The Supreme Court decision in *R (on the application of Newhaven Port and Properties Limited) v. East Sussex County Council & Another* [2015] UKSC 7 is a recent development in the law relating to Section 15 of the 2006 Act. It is now clear that the 2006 Act cannot be read so as to enable registration of land as a TVG if such registration would be incompatible with the land's statutory function. This is because the registration of the land as a TVG would make it unlawful for the relevant statutory undertaker to either damage the green or interrupt its use for recreation. The claimed land was held over many years by BRTS and BRBR for statutory purposes and the land was and is regularly

used to access the operational sidings. It is self-evident that circumstances could have arisen whereby the statutory undertakers' use of the land could have been incompatible with recreational use. This finding of itself is enough to deliver a fatal blow to the Application.

22. I now turn to a final matter raised on behalf of Mr Sahota by Mr Pike. It has been argued that multiple trigger events for the purpose of Section 15(c) of the 2006 Acts had occurred prior to the Application so that the RA has no jurisdiction to entertain the Application. The question arises as to whether Section 16(5) of the Growth and Infrastructure Act 2013 is engaged and which provides as follows:

“The amendment made by subsection (1) [ie the insertion of section 15C and Schedule 1A into the Commons Act 2006] does not apply in relation to an application under section 15(1) of the Commons Act 2006 which is sent before the day on which this section comes into force.”

The provisions came into force on 25th April 2013.

23. The Application was sent to NCC on 25th January 2012 and to DCC on 4th December 2012. I am familiar with Church Commissioners for England v. Hampshire county Council [2014] EWCA Civ 634 and I drew attention to it at the very beginning of the inquiry. It is my view that the approach in that case, albeit a case in respect of Section 15(4) of the 2006 Act, is applicable to Section 15(c), namely that a corrected application can have retrospective effect. Applicants in Section 15 cases are almost invariably lay people and

just as the Courts have recognised that a degree of latitude is appropriate in respect of Section 15(4) *ibid* it is my view that that approach applies here. I am further aware that it is for the decision-maker to decide whether a defective application has been put in order within a reasonable time. Understandable delay in this case was caused by the need to make a duplicate application to DCC and for DCC to delegate powers to NCC. Thereafter NCC afforded time to the Applicants to address the defects in the Application in respect of defining a locality/neighbourhood. I am mindful, however, that it was a significant time after the DCC issue was resolved before the defect in the Application in respect of the locality/neighbourhood issue was drawn to the Applicants' attention. NCC did not regard the time taken to address the defect as unreasonable and I see no reason to disagree with their views on this issue.

I therefore formally recommend that NCC proceeds to determine the Application and that it should reject the same for the multiple reasons contained in my Report.

D E MANLEY QC

28th May 2015

**TOTON SIDINGS TVG
APPLICATION**

Ref: VG136/360 NVG

**REPORT OF INSPECTOR
D E MANLEY QC**

Appendix A

Plan of the Town or Village Green Applicaition site



Scale 1:8000

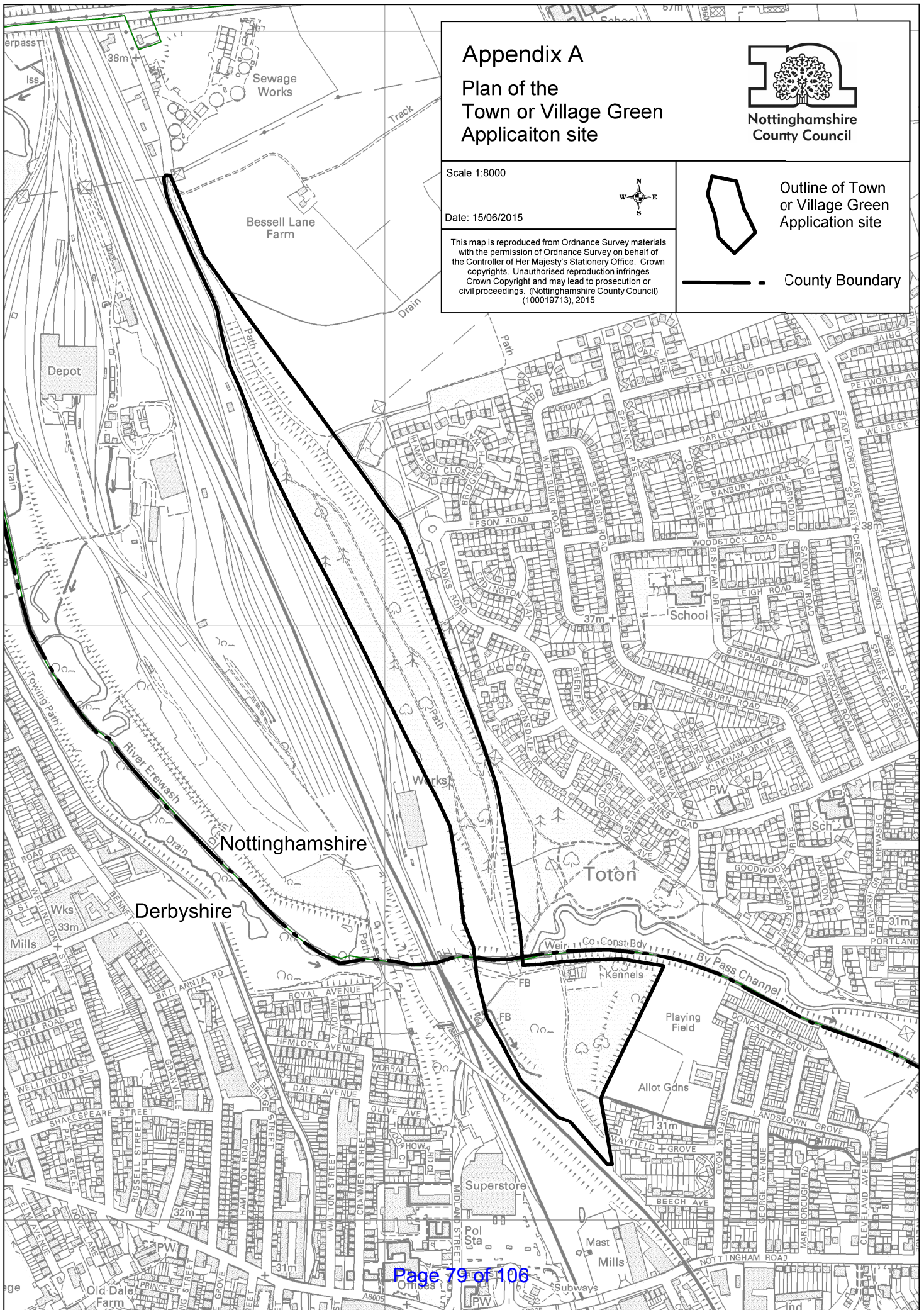
Date: 15/06/2015



Outline of Town
or Village Green
Application site

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County Boundary



**REPORT OF THE ACTING CORPORATE DIRECTOR, CHILDREN, FAMILIES
AND CULTURAL SERVICES****SERVICE UPDATE FOR THE PERIOD 18 MAY TO 28 JUNE 2015****Purpose of the Report**

1. To update the Committee on a range of initiatives being undertaken to improve and enhance the quality of life for Nottinghamshire people.

Information and Advice**LIBRARIES, ARCHIVES, ARTS, INFORMATION AND COMMUNITY LEARNING****Ofsted inspection of Community Learning and Skills Service**

2. Ofsted inspected Nottinghamshire's Community Learning and Skills Service (CLASS) between 11th and 15th May 2015 and judged the Service to be 'Good' with outstanding features.
3. An experienced team of six inspectors, led by two HMIs, conducted over 30 detailed assessments of the Service's provision, including: employability courses for young people (aged 16 to 18 years); its community programmes; and its family learning. Ofsted judged that the following were all 'Good': Outcomes for Learners; Teaching, Learning and Assessment; and Leadership and Management. They also judged that the Community Learning and Skills for Employment provision were both 'Good'. In addition, the Ofsted inspectors judged the Service's Family Learning provision to be 'Outstanding'. The Service's Overall Effectiveness, was graded to be 'Good'.
4. The report was published by Ofsted on their website on 16th June and is available here: <http://reports.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/53674>.
5. This is the tenth year that the Service's overall effectiveness has been judged to be 'Good' by Ofsted, and provides the foundation to support CLASS's transition to becoming an 'Outstanding' provider.

National Bookstart Week 2015

6. Nottinghamshire celebrated National Bookstart Week (9 - 4 June) with a series of special events in libraries. National Bookstart Week celebrates the Bookstart programme which gifts books to every child in England, at two key stages before they start school, to encourage the sharing and enjoyment of books from birth.

7. The theme for the week was Jungle Adventures. Over 40 special jungle themed sessions were held. The Bookstart Bear made appearances at Worksop, Carlton-in-Lindrick, Mansfield Central, Kirkby-in-Ashfield, Retford, Southwell, Balderton and Mansfield Woodhouse libraries, meeting over 200 children. Every child who attended an event received a free booklet of the popular *Rumble in Jungle* picture book by Giles Andreae. Booklets were also taken to King's Mill hospital neonatal unit to be distributed to families.
8. National Bookstart Week celebrations are part the continued work of libraries, in partnership with health visitors, schools, nurseries and other early years settings to ensure that every child in Nottinghamshire receives their free Bookstart entitlement and develops a love of reading from an early age.

Inspiring reading for pleasure

9. Bestselling author of over 100 children's books, Jeremy Strong, visited Mansfield Central Library in June. Over 160 year 3/4 children from four local primary schools were entertained by his tales of how he writes and his childhood as well as hearing him read from his latest book. Pupils explained what they liked best about the visit and Jeremy:

"He is very interesting and he writes good stories".

"He is very silly and very entertaining and he is the best author!!"

"...it was very funny, interesting and inspiring."

10. During May half term, Andy Seed, author of *The Silly Book of Side Splitting Stuff* and winner of 2015 Blue Peter Book Award for the Best Book with facts visited both Worksop Library and Mansfield Central Library. An enthusiastic family audience joined in with an interactive session full of facts, jokes and games.
11. Caryl Hart visited West Bridgford Library to deliver two participatory family workshops based on her books. Under 7s joined in with Caryl's popular picture book titled *How to Grow a Dinosaur* whilst older children found out about her chapter book, *Foxy Tales*.
12. Author visits, like these, for both family and invited school audiences are part of a continuing programme in libraries to encourage reading for pleasure. Children who regularly read for pleasure are more likely to do well at school.

Nottinghamshire Archives

13. Following the successful reopening of Nottinghamshire Archives in April two open days have drawn new audiences into the extended and refurbished building.
14. The two open days held by the service comprised a general reopening on 2nd May and a Magna Carta themed event to coincide with the 800 year anniversary on 13th June. The events were attended by approximately 250 people, many of whom were making first contact with the Archives service.

15. The Magna Carta event celebrated the significance of archives to Nottinghamshire, including its impact on the English Civil War and outlaws within the Forest of Sherwood. The day saw talks and dramatic readings drawn from the four million documents within the care of Nottinghamshire Archives. The siege of Newark was re-enacted via table-top gaming and a variety of activities entertained our younger visitors.
16. The customer response has been positive with one visitor commenting that the public area is a “great improvement on the previous layout...colourful, interesting and welcoming. Staff are always helpful and friendly and it’s an absolute pleasure to use.” Another customer commented that he is “very impressed with the new Archives service”.

COUNTRY PARKS AND GREEN ESTATES

17. May and June saw a strong start to the main visitor season at the country parks, and a number of events were organised to tempt visitors out into the fresh air.
18. Bestwood Country Park proved that the early bird gets the worm with a 6am ‘dawn chorus’ walk for bird watchers. The Park also continued its popular Saturday morning children’s event at the former colliery Winding House: “Mini Miners.”
19. At Sherwood, a living history encampment entertained Spring Bank Holiday visitors, with a number of smaller nature events ranging from a look at the archaeology of Sherwood Forest to nightjar and glow worm walks.
20. At Rufford Abbey, brass band concerts, a falconry demonstration and yoga in the park led up to one of the main events of the season – the Earth & Fire potters fair, organised by the County’s Arts Service.

CULTURAL AND ENRICHMENT SERVICES

Special Schools

21. The Arts service has worked with the County’s special schools for the last three years and places artists into schools on residency to create art work, dance and music. The works this year were themed on Carnival and brought together on a celebration day at Rufford in early June. Over 200 young people from the special schools were on site to share the work as a carnival parade which was an amazing spectacle of vibrant costume and sound. Artists, street performers, musicians and Architects of Air were also part of the day and its celebration of achievement for the young people involved.

Earth and Fire Ceramic Fair

22. The annual Earth and Fire Ceramic Fair took place in the grounds of Rufford Abbey Country Park and Craft Centre on 26 - 28 June 2015. It marked 21 years of the event. Over 100 potters from the UK and Europe travelled to Rufford and set up stalls to sell the amazing array of ceramics all of which begin life as a lump of clay. A full programme of demonstrations sharing the potters’ skills with the visitors attracted the crowds and there was a fun programme of potters’ competitive games including blind fold throwing.

23. In the gallery the final exhibition before the Craft Centre closes at the end of July is Inspired by Godfrey. Richard Godfrey was a potter and educator who sadly passed away last year before he could complete his solo show for the Craft Centre. The Arts service worked with community groups and the public and artists to create a range of works inspired by Richard's work and showed this alongside examples of Richard's work. The exhibition runs until 26 July. A smaller sample of the exhibition moves to Arnold Library in August.

RECOMMENDATION

- 1) That the update on a range of initiatives being undertaken to improve and enhance the quality of life for Nottinghamshire people be noted.

Derek Higton
Acting Corporate Director, Children, Families & Cultural Services

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C0668

**REPORT OF THE ACTING CORPORATE DIRECTOR OF CHILDREN,
FAMILIES AND CULTURAL SERVICES****SHERWOOD FOREST VISITOR CENTRE AND COUNTRY PARK– FUTURE
DEVELOPMENT AND MANAGEMENT ARRANGEMENTS****Purpose of the Report**

1. To inform Culture Committee of the outcome of the procurement process to seek a partner to a) design, build and operate a new visitor centre at Sherwood Forest Country Park and b) to decommission the existing site facilities.
2. To seek approval to enter into legal agreements with the preferred bidder who has been identified through the procurement process.
3. To seek approval for the Council's financial contribution towards the Centre as detailed in the **Exempt Appendix**.

Information and Advice

4. Some information relating to this report is not for publication by virtue of Schedule 12A of the Local Government Act 1972, paragraph 3, due to the confidentiality of information relating to the financial and business affairs of the Council and individual bidders. Having regard to all the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because the information would add a limited amount to public understanding of the issues but would significantly damage the Council's commercial position. The exempt information is set out in the **Exempt Appendix**.
5. Culture Committee received a detailed report at their meeting on 1st July 2014 that outlined the current position in relation to the replacement of the visitor centre at Sherwood Forest Country Park. At that meeting Members agreed to the commencement of a procurement process to seek a partner to develop, build and operate a new visitor centre to service visitors to Sherwood Forest Country Park. The overall project ambition for the County Council was:

“To create a new visitor centre which promotes and enhances the reputation of Sherwood Forest, the legend of Robin Hood and the broader history and heritage of Nottinghamshire”
6. More specifically, the business objectives which have guided the procurement process are summarised below:

- the creation of a replacement visitor centre and associated visitor facilities that will:
 - provide a modern visitor offer befitting the international status of Sherwood Forest
 - operate daily throughout the year
 - as a minimum support and accommodate current visitor numbers, this includes
 - providing sufficient car parking spaces
 - have a minimum life span of 20 years
 - ensure free access to the Visitor Centre and basic amenities
 - effectively promote Sherwood Forest and Robin Hood and the wider Nottinghamshire tourism offer
 - be connected safely to the National Nature Reserve (NNR) for all-ability visitor access
 - effectively support the management of visitor impact on the habitat of the NNR
 - provide appropriate interpretation/visitor information on Sherwood Forest and Robin Hood
 - be ambitious about modelling environmental and sustainable good practice in respect of the design, development and operation of the centre
 - allow for the accommodation of increased visitor numbers into the future.
- The establishment of effective and complementary arrangements for the long term operation of the Country Park's green space for the duration of the contract. This will include compliance with NNR management standards, appropriate staffing arrangements, health and safety and the retention of free public access.
- The effective conservation management of the Major Oak.
- The provision of accommodation and equipment storage facilities for NNR ranger and site management personnel and their equipment, including communication facilities.
- The Council's ambition is for the site to be operated with no revenue budget subsidy.
- Demolition and remediation of the existing visitor centre back to wood-heath in accordance with method statements agreed with Natural England.

Key Drivers

7. There are a number of key drivers that have influenced the decision to build a new visitor centre at Sherwood Forest. They include:
 - The directive from Natural England that states that all build infrastructure (including the existing visitor centre and car parks) must be removed from the site to retain its national and international status as a Site of Special Scientific Interest (SSSI)
 - The fact that the existing facilities are in excess of 40 years old and are no longer fit for purpose.
 - The challenge for the Local Authority to reduce revenue contributions to the running of facilities at Sherwood Forest in line with the savings required by the Local Authority as part of the medium term financial strategy.

The Procurement Process

8. As previously agreed by members, an EU Competitive Dialogue procurement process was followed. This was considered to be the best process to be followed as it gave a high degree of flexibility to potential operators within the context of the Council's ambition for the Centre.
9. The tender process had four distinct stages:
 - Pre-qualification (four companies submitted pre-qualification questionnaires)
 - Invitation to Submit Outline Solutions (three companies submitted outline solutions and three were shortlisted to the next stage)
 - Invitation to Submit Detailed Solutions (three companies submitted detailed solutions)
 - Invitation to Submit Final Tenders (three companies submitted Final Tenders).
10. The bids were evaluated by a multi-disciplinary officer panel and external advisors according to three broad criteria as shown below:

Design and Technical	15%
Operations and Services	40%
Commercial	45%
Total	100%

Outcome of Evaluation

11. The moderated scores for the three bids are contained in the **Exempt Appendix**, along with further information about the preferred bidder, their offer and the financial implications for the Council.
12. It is recommended that the contract be awarded to Bidder A on the basis of the moderated scores.
13. All bidders shall be informed of the outcome of the procurement process and given feedback in accordance with the requirements and obligations of EU public procurement rules.
14. The award will be subject to successful clarification/fine-tuning of any outstanding issues in the contract documentation to be addressed by the Council with Bidder A. The contract documentation will not be subject to re-negotiation. Any amendments to be made to the contract documentation will be a matter of fine-tuning.
15. On successful completion of the clarification/fine-tuning stage, the Council and the winning bidder will complete the contract. The contract will set out the overall design specifications and regulations to which the new visitor centre will be built. Effectively, it ensures the successful bidder builds what they say they will build. Following the build of the new visitor centre, the staff from the existing visitor centre will transfer to the successful bidder and operate the new visitor centre. The successful bidder will then demolish and return to natural heathland the existing visitor centre. Discussions will need to take place with the successful bidder regarding the possible lease or licence of the site

– as this may require the landowner's consent. The type of land interest granted will not affect the structure of the agreed transaction.

16. Should it not be possible to conclude these outstanding points, then the Council may consider re-engaging with the unsuccessful bidders. The Council also reserves the right not to award the contract to any bidder. In this case, this will be reported back to the Culture Committee for further consideration and approval.

Other Options Considered

17. The following options were considered prior to the commencement of the procurement process.
- Option 1: seek a partner to build manage and operate the Centre on the Council's behalf, with partner selection undertaken through a "competitive dialogue" procurement process. The dialogue and bidding process would be used to seek outside capital investment and a reduction in the ongoing revenue costs
 - Option 2: the Council provides the required capital investment, builds a new visitor centre and continues to manage and operate the Centre directly (or via a locally established Trust)
 - Option 3: the Council provides the required capital investment and completes the required works before procuring a partner to manage and operate the Centre on its behalf.

Reason/s for Recommendation/s

18. Option 1 was selected on the basis that it offered the best potential to meet the financial and future operational objectives set by the Council.

Statutory and Policy Implications

19. 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.

Financial Implications

20. Lease costs for the Natural Nature Reserve and surrounding areas of approximately £29,000 p.a. will continue to be paid by NCC to the landowner. The net cost of running the current site (including a share of CP&GE management and visitor services costs) is approximately £400,000 p.a. The long term savings to NCC over the 18 years to 2035 under all options were estimated to be around £7m. More detail on the financial offer is set out in the **Exempt Appendix**.

Human Resources Implications

21. The successful bidder will accept the transfer of existing employees with protection under the Transfer of Undertakings (Protection of Employment) (TUPE) regulations. Final details of the staff transferring will be agreed prior to the opening of the new centre in 2017
22. Full communications and consultation will take place with those employees affected and with the relevant trade unions, in respect of the planning and implementation of the transfer of employment.

Implications for Service Users

23. The impact on service user (visitors) will be positive as the new visitor centre will provide a much needed “fit for purpose” visitor experience. Continuity of access for visitors will be achieved by ensuring that the existing offer will remain open until the new centre is built and made ready to operate. Customers will be kept informed of developments and any disruption that may occur as part of the build phase by the use of direct messaging on site and via the Authority’s various communications channels.

RECOMMENDATION/S

That the Committee:

- 1) approves the award of Bidder A as the partner to build, manage and operate a new visitor centre for Sherwood Forest Country Park, subject to successful clarification/fine-tuning of the legal agreements described in this report
- 2) approves the Council entering into the necessary Legal Agreements to give effect to the project within the financial parameters set out in the **Exempt Appendix**.
- 3) gives delegated authority to the Corporate Director, Children, Families and Cultural Services, in consultation with the Group Manager, Legal and Democratic Services, to approve any additions or amendments to any agreements which in their judgement are necessary to give effect to the project and which are within the financial parameters set out in this report.

Derek Higton

Acting Corporate Director, Children, Families and Cultural Services

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Constitutional Comments (SSR 10/07/15)

24. The recommendations set out in this report fall within the scope of decisions which may be approved by the Culture Committee.

Financial Comments (SS 07/07/15)

25. The financial implications of the report are set out in paragraph 20 above with further details in the exempt appendix.

Background Papers and Published Documents

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.

Future of Sherwood Forest Visitor Centre – report to Culture Committee on 1 July 2014 (previously published)

Sherwood Forest Visitor Centre and Country Park procurement process – report to Culture Committee on 21 October 2014 (previously published)

Electoral Division(s) and Member(s) Affected

All.

C0670

**REPORT OF THE TEMPORARY SERVICE DIRECTOR, YOUTH, FAMILIES
AND CULTURE****SPORTS SERVICE UPDATE: DECEMBER 2014 TO MAY 2015****Purpose of the Report**

1. To update the Committee on the progress made since the secondment of the County Council Sports Service Team to Sport Nottinghamshire in December 2014.

Information and Advice**Background**

2. The secondment of the County Council Sports Service Team to 'Sport Nottinghamshire' was approved by this Committee for a period of two years at the meeting on 3 June 2014, alongside permission to negotiate the details of the new arrangements with Sport Nottinghamshire and Nottingham Trent University. The formal secondment took place on 7 December 2014 when County Council colleagues joined employees of Sports Nottinghamshire and the English Federation of Disability Sport (EFDS). The partnership of the teams has been welcomed by our key partners and stakeholders in the sport, health, community and education sectors.
3. The work undertaken by the Sports Service Team and Sport Nottinghamshire ensures that it has strong links to the County Council's Strategic Plan objectives. Examples of this are shown in **Appendix 1**. In addition to this work there are a number of areas where the partnership is starting to make a real difference to the sporting offer in Nottinghamshire. One of the key developments for the new team has been to work more closely with district councils and identify joint working opportunities. This is still in its infancy but has been well received by district partners and is likely to see further investment and projects taking place in each area.

The Work of Sports Nottinghamshire

4. A benefit of the combined team has been the ability to call upon a wider pool of support and resources to improve quality. Good examples of this are the Sports Awards and the Nottinghamshire School Games, both of which took place in February, with every officer contributing in some way to the success of those events. In both these examples this resulted in additional funding being found for the Sports Awards and the size of the audience increased. The School Games preparation was streamlined and the event was extended to accommodate 1200 athletes, supported by 100 young leaders.

5. The CPISRA (Cerebral Palsy International Sports and Recreation Association) World Games is a further event where the new team is making a real impact in the run up to it in August, preparing the Welfare Plan, organising the recruitment, training and deployment of the volunteer workforce of 300, sitting on various management committees and helping to shape the conference programme. As a Games legacy, this will increase the number of volunteers on our database and the creation of a Volunteer Event Management package will be of value for all future events held in Nottinghamshire. The Volunteering lead has been developing a Practical Guide to Effective Volunteer Management, which will be a further valuable resource. Discussions are being held with a national partner who is interested in purchasing this resource.
6. Working with the English Federation of Disability Sport, a very successful meeting was held with 30 partners to examine how to further improve Disability Sport in Nottinghamshire. As a consequence, a new Improvement Plan is being developed, which will lead to an enhanced sporting offer for people with disabilities in the County. The link with EFDS is also leading to the creation of Inclusive Satellite Clubs, based on school sites, which integrate young disabled people into local sports clubs. In addition, six clubs in Newark & Sherwood were part of a pilot project to help make them more accessible and inclusive in what they offer to their local community.
7. Coaching continues to thrive and Nottinghamshire is being seen to lead the way with its Talented Coaches programme, supporting and mentoring the best up and coming coaches around the County. There are currently 15 Talented Coaches enjoying this support, with a further 10 on the Participation Coaches programme and 18 on the Young Coaches Academy. The latter two programmes are a recent innovation and have impressed both 'sportscoachUK' and Sport England. Locally, these coaches are able to improve their delivery for the 1,300 athletes that they regularly interact with.
8. Getting National Governing Bodies of Sport (NGBs) to invest at a local level is always a challenge but currently those for golf, bowls, rounders and handball are all working in partnership with the team to deliver a range of outcomes in these sports. In golf and bowls alone, 640 participants are involved at least once a week in a range of programmes. The team has recently signed a Service Level Agreement with the British Basketball League Foundation (BBLF) to deliver basketball programmes across Nottinghamshire, increasing participation by 557 new young players over the next two years. Funding of £62,000 will be received from BBLF to employ an Activator, hire venues and pay the coaches to deliver.
9. 'Sportivate' is a programme funded by Sport England to the tune of £220,000 in Nottinghamshire and the Club Development Officer is now managing this initiative and focusing this work on local sports clubs to increase participation by 11 – 25 year olds. In 2015/16 the target is 2,279 retained participants and local clubs are just starting to deliver their sessions. The team is working closely with district partners to create more than 20 new Satellite Clubs across the County. In five districts, the Local Authority is funded to deliver the work and in Ashfield and Mansfield, the team are doing this directly. New clubs are then able to access Sport England funding to help them be sustainable.
10. 'This Girl Can' is a national campaign to encourage more women and girls to participate in sport and physical activity. The team is working closely with all Local Authority partners to drive this initiative locally and there are more than 75 dedicated sessions

identified on the Sport Nottinghamshire website and 2,705 people have liked the Facebook page to receive regular updates.

11. As can be seen the partnership between Nottinghamshire County Council Sports Service and Sport Nottinghamshire is delivering positive results. The impact is being felt across the County as delivery by the team and partners is driving increases in participation. There are also a number of key areas where the partnership is bringing added value to the pre-existing offer in local communities. It is anticipated that the impact and added value of the partnership will further develop over the two years, creating a platform for sports development in future years.

Other Options Considered

12. As this report is for noting only, no other options have been considered.

Reason/s for Recommendation/s

13. The report is for noting only.

Statutory and Policy Implications

14. 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.

RECOMMENDATION/S

- 1) That the progress made since the secondment of the County Council Sports Service Team to Sport Nottinghamshire in December 2014 be noted.

Laurence Jones

Temporary Service Director, Youth, Families and Culture

For any enquiries about this report please contact:

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Constitutional Comments

15. As this report is for noting only, no Constitutional Comments are required.

Financial Comments (SS 26/06/15)

16. There are no financial implications arising directly from this report.

Background Papers and Published Documents

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.

Secondment of the Sports Service Team into the County Sports Partnership – report to Culture Committee on 3 June 2014

Electoral Division(s) and Member(s) Affected

All.

C0669

Sport Nottinghamshire's Contribution to the Council's Strategic Plan

Supporting safe & thriving communities	
The most vulnerable children & adults will be effectively protected & supported.	The work on Safeguarding in Sport has once again been rated very highly by the Child Protection Unit in Sport, who have also used and promoted 3 areas of work produced by Safeguarding lead at a national level on events held in public parks and spaces, lost children and bullying. Further work is developing Anti Bullying resources and training for clubs and E Safety training to young sports leaders. The County Anti Bullying strategy now has sport firmly embedded in it.
Nottinghamshire is a fair and safe place to do business (Increase the number of partnerships with businesses)	Partnerships with Business are being developed as a result of the Workplace Challenge which encourages organisations and individuals to log their activity and sports participation, inspiring them to be more active. Since January, 134 local Businesses have signed up with over 700 individuals registered and 9 of these businesses entered the first Workplace Games event held in June.
Protecting the environment	
People in Nottinghamshire are encouraged to help protect the environment.	Local sports clubs are supported and encouraged to submit funding applications to the County Council and other organisations. Ashfield Rugby Club has been successful in securing two Sport England grants totalling £135,380, one from their Protecting Playing Fields Fund and the other from the Inspired Facilities Fund.
Our countryside is protected and attracts more visitors.	Major Sports Events are a regular feature at Trent Bridge and the National Water Sports Centre as well as others that take place across the County, attracting visitors from across the world for Test Match Cricket, Triathlon and Water Sports. The team is involved in discussions on how to secure more events in the future and assists in promoting these events. None of these events would be possible without the support of the Championing Notts Sports

	Volunteering Programme which supplies volunteers and leaders for almost every Major Sports Event held in Nottinghamshire.
Connectivity across the County and into the region will be improved (Proportion of people walking or cycling for short journeys)	The Workplace Challenge has been hugely successful in motivating people to engage in active commuting, walking or cycling rather than using the car, with over 9,500 trips being logged in the first half of 2015. The CO2 saving is estimated to be in the region of 7.3 tonnes.
Supporting economic growth & employment	
Training and apprenticeship opportunities for the local workforce are provided that reflect the needs of businesses.	Officers have been liaising with the professional sports clubs and Central College on a project, supported by the Royal Foundation, to create 20 new apprentices within the clubs. In addition, Sport Nottinghamshire itself will be taking on one of the County Council Apprenticeship placements later in the year.
More young people will be in work, education or training.	The establishment of a Young Coaches Academy has been hugely successful, providing 18 young people with a large amount of support and mentoring to improve their coaching delivery and their employability. Similarly the Nottinghamshire Leadership Academy Network currently has 249 young people within a structure that provides them with great training and varied volunteering deployment opportunities, which elevates the quality of their CV and experience. It is worth commenting that previous graduates of the scheme now sit on the Boards of Sport Nottinghamshire and the Youth Sport Trust whilst others state that their Leadership activity was a key influence in them attaining University Scholarships, Apprenticeship and job roles.

Closer working between schools, higher education, further education and employers to develop young people for early identifiable career pathways.	The Leadership Academy Network is managed by the Team with the support of the School Games Organisers in each district. In addition, there are strong links with the Volunteering and Leadership programmes in the FE Colleges and early discussions are taking place with NTU on effective work placements within Sport Nottinghamshire and a range of other business partners.
Providing care & promoting health	
The health inequalities gap is narrowed improving both health and well-being.	<p>Increasing participation in sport and physical activity will improve health and well-being amongst Nottinghamshire communities. The Active People Survey latest results show that participation in sport once a week has increased slightly since 2005/06 to just over 35% of the population but that participation of three times a week or more has seen a significant rise of 4% to 25%. Initiatives such as the Workplace Challenge and programmes such as Sportivate and Satellite Clubs are making an impact, across adults and young people.</p> <p>A partnership with the Community Sports Trust has resulted in a Sport England award of £434,000 toward a Fit for Life project targeted at people with Type 2 Diabetes. A further £150,000 has been secured from four of the Clinical Commissioning Groups and the total 3 year project costs exceed £600,000.</p> <p>The Midland Games has 230 athletes with learning disabilities participating in Boccia and a range of Athletics disciplines. Sport Nottinghamshire is currently involved in early discussions with a range of partners on a proposal to create a national sports organisation for those with a mental health illness.</p>
Investing in our future	
Young people are supported to reach their potential	There is a vast amount of work taking place across Nottinghamshire to encourage young people to fulfil their ambitions, whether these are as athletes, coaches or officials. The School Games County Festivals, Leadership

	<p>Academy Network and the Young Coaches Academy are all excellent examples of structured pathways designed to identify and nurture future talent.</p> <p>Grant Aid funding from Nottinghamshire County Council will support a number of talented young athletes in the County. Applications are currently being accepted and will close in September.</p>
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**REPORT OF THE TEMPORARY SERVICE DIRECTOR, YOUTH, FAMILIES
AND CULTURE****CO-LOCATION OF TUXFORD LIBRARY INTO TUXFORD PRIMARY
ACADEMY****Purpose of the Report**

1. To seek approval for the co-location of Tuxford Library into the Tuxford Primary Academy building in Tuxford and the development of a community partnership library.

Information and Advice**Context**

2. The Strategy for Nottinghamshire's Libraries outlines priorities for the service for 2012 - 2022.
3. The strategy has key pledges including:
 - putting libraries at the heart of communities
 - libraries being where people live
 - increasing community involvement.
4. The strategy has key actions including:
 - investing, developing and re-modelling the library network
 - to locate library services in the best location for the local community, with a key outcome of co-locating with other services.
5. Tuxford is one of the 28 level 3 libraries in Nottinghamshire. Visitors last year amounted to 5,963 with over 12,200 books and other items being issued.
6. The library is currently leased from the Read Foundation Trust. The current lease has expired which has provided the opportunity to consider alternative accommodation.
7. The current library is housed within a 17th Century Grade II* listed building which has listed structural access difficulties including a short flight of stone front steps and narrow, heavy wooden front doors. This has previously affected customers with mobility issues and those with wheelchairs and pushchairs.

8. The Principal of Tuxford Primary Academy and the Board of Governors have agreed to the co-location of Tuxford Library within the Academy site and will alter access to the Academy to allow library customers a front level entrance and bespoke access during and outside of Academy hours.
9. Ofsted inspected Tuxford Primary Academy in October 2014 and awarded it 'Good' but recommended some improvements including increasing opportunities for pupils to read widely and often in subjects other than English. Nottinghamshire Libraries have agreed that teachers may use the library room when it is closed to the public and the Academy will ensure that all library materials are in order and available to customers after each use. Pupils may borrow items for individual use at home and the Academy will maintain its own library for classroom learning purposes.
10. It is proposed that the County Council be given a pepper corn rent and long lease to secure the provision of a public library service within the Academy building. The library service will contribute to the running costs of the room. Overall premises costs will be at least 80% lower than current provision.
11. A library partnership with the Academy through increased volunteering and community activity will be developed as the library is co-located.
12. A report on the terms of the future lease of the room for co-location of the Tuxford Library within the Academy will be considered by Finance and Property Committee at its meeting on 14 September 2015.

Other Options Considered

13. The option not to co-locate was considered. This however would prevent achieving a reduction in ongoing running costs.
14. These options were evaluated following an appraisal of the suitability of locations, cost, potential for increasing levels of use, sustainability and access to other community services.

Reason/s for Recommendation/s

15. The proposal will facilitate a more sustainable library service at a lower cost.
16. This re-location allows for future development of volunteering and greater partnership working.

Statutory and Policy Implications

17. 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.

Financial Implications

18. The cost of relocation, furniture, equipment and minor works will be found within the modernising libraries capital budget allocation. This cost is estimated to be £10,000.
19. The recommendation is estimated to save premises related revenue costs of around £20,000 over five years.

Public Sector Equality Duty implications

20. This scheme enables ongoing provision of a static library service in the Tuxford area and improves the library environment.

RECOMMENDATION/S

That:

- 1) the co-location of Tuxford Library into the Tuxford Primary Academy building be approved.
- 2) a community partnership library be developed with the Tuxford Primary Academy.

Laurence Jones

Temporary Service Director, Youth, Families and Culture

For any enquiries about this report please contact:

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Constitutional Comments (LM 23/06/15)

21. The Culture Committee has delegated authority within the Constitution to approve the recommendations in the report.

Financial Comments (SS 06/07/15)

22. The financial implications of this report are contained within paragraphs 18 and 19 above.

Background Papers and Published Documents

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.

A Strategy for Nottinghamshire's Libraries – report to County Council on 15 December 2011

Electoral Division(s) and Member(s) Affected

Tuxford Cllr John Ogle

C0666

**REPORT OF CORPORATE DIRECTOR, POLICY, PLANNING AND
CORPORATE SERVICES****WORK PROGRAMME****Purpose of the Report**

1. To consider the Committee's work programme for 2015.

Information and Advice

2. The County Council requires each committee to maintain a work programme. The work programme will assist the management of the committee's agenda, the scheduling of the committee's business and forward planning. The work programme will be updated and reviewed at each pre-agenda meeting and committee meeting. Any member of the committee is able to suggest items for possible inclusion.
3. The **attached** work programme has been drafted in consultation with the Chairman and Vice-Chairman, and includes items which can be anticipated at the present time. Other items will be added to the programme as they are identified.

Other Options Considered

4. None.

Reason for Recommendations

5. To assist the committee in preparing its work programme.

Statutory and Policy Implications

6. 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.

RECOMMENDATION/S

That the Committee's work programme be noted, and consideration be given to any changes which the Committee wishes to make.

Jayne Francis-Ward
Corporate Director, Policy, Planning and Corporate Services

For any enquiries about this report please contact:

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Democratic Services Officer
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Constitutional Comments (HD)

7. The Committee has authority to consider the matters set out in this report by virtue of its terms of reference.

Financial Comments (NS)

8. There are no financial implications arising directly from this report.

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.

None.

Electoral Division(s) and Member(s) Affected

All.

CULTURE COMMITTEE - WORK PROGRAMME 2015-16

<u>Report Title</u>	<u>Brief summary of agenda item</u>	<u>Lead Officer</u>	<u>Report Author</u>
22 September 2015			
Service update	For noting	Derek Higton/ Sally Gill	Various
Performance reporting (Quarter 1 2015/16)	For noting	Celia Morris	Matt Garrard
Ofsted inspection of Community Learning and Skills Service – outcome		Derek Higton	Ian Bond
Future management arrangements for Rufford Country Park		Derek Higton	
Community Partnership Libraries – update on progress		Derek Higton	Peter Gaw
A Strategy for Nottinghamshire Libraries - six monthly progress report: January to June 2015		Derek Higton	Peter Gaw/Linda Turner
Staffing Changes in Country Parks service		Derek Higton	Linda Hardy
3 November 2015			
Service update	For noting	Derek Higton/ Sally Gill	Various
Performance reporting (Quarter 2 2015/16)	For noting	Celia Morris	Matt Garrard
The Robin Hood Festival 2015		Derek Higton	
8 December 2015			
Service update		Derek Higton/ Sally Gill	Various
Summer Reading Challenge 2015		Derek Higton	Carol Newman
2015 visitor satisfaction survey at Rufford Country Park		Derek Higton	
26 January 2016			
Service update	For noting	Derek Higton/ Sally Gill	Various
Cultural Services Strategic Events Programme 2016	For noting	Derek Higton	Peter Gaw
Fees and Charges 2016/17 – Country Parks and Green Estate	Annual determination	Derek Higton	
Fees and Charges 2016/17 – Libraries, Archives & Information	Annual determination	Derek Higton	Peter Gaw
A Strategy for Nottinghamshire Libraries: six monthly progress report: July to December 2015		Derek Higton	Peter Gaw/Linda Turner

<u>Report Title</u>	<u>Brief summary of agenda item</u>	<u>Lead Officer</u>	<u>Report Author</u>
8 March 2016			
Service update	For noting	Derek Higton/Sally Gill	Various
Performance reporting (Quarter 3 2015/16)	For noting	Celia Morris	Matt Garrard
Adult & Community Learning Service Annual Plan and Fees Policy 2016/17		Peter Gaw	Ian Bond
19 April 2016			
Service update	For noting	Derek Higton/Sally Gill	Various
Annual review of the County Council Cultural Strategy		Derek Higton	Peter Gaw
7 June 2016			
Service update	For noting	Derek Higton/Sally Gill	Various
Performance reporting (2015/16)	For noting	Celia Morris	Matt Garrard
National Water Sports Centre - annual update	For information	Derek Higton	
12 July 2016			
Service update	For noting	Derek Higton/Sally Gill	Various
To be placed			