

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

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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