

**DERBYSHIRE COUNTY COUNCIL**

**REGULATORY- LICENSING AND APPEALS COMMITTEE**

**10 December 2012**

**Report of the Director of Legal Services**

**Commons Act 2006**

**Application to register land known as Toton Sidings, Long Eaton,  
Derbyshire, as a town or village green**

**1. Purpose of the Report**

To inform the Committee of an application to register land known as Toton Sidings as a town or village green, and to seek approval to delegate the County Council's function as registration authority to Nottinghamshire County Council.

**2. Information and Analysis**

- 2.1 In August 2012 officers were notified by Nottinghamshire County Council of an application received by that authority to register land at Toton, Nottinghamshire, as a town or village green. Following initial consideration of the application it was noted that part of the land was in Derbyshire. The applicants were advised by officers of Nottinghamshire County Council to submit their application formally to Derbyshire County Council as registration authority for part of the land.
- 2.2 In early September the applicants provided this Council with a copy of their earlier application to Nottinghamshire County Council. The land in respect of which the applicants are seeking registration is shown on the plan at Appendix 1 to this report. Before asking that the applicants formally submit an application to Derbyshire County Council as registration authority it was decided to meet with officers from Nottinghamshire to discuss the options for determination of this matter.
- 2.3 Two options were identified. The first option would be to enter into an agreement in accordance with the provisions of section 4(3) of the Commons Act 2006. Section 4(3) of the 2006 Act provides that:

"Where any land falls within the area of two or more commons registration authorities, the authorities may by agreement provide for one of them to be the commons registration authority in relation to the whole of the land."

- 2.4 Should the Councils make an agreement in accordance with the provisions of section 4(3) of the Commons Act 2006 the registration authority making the decision would become the registration authority for the whole land, and the land would only be included, if registrable, in the register of town or village greens held by that authority.

- 2.5 The second option would be to utilise the Council's powers, under section 101(1) of the Local Government Act 1972. Section 101(1) of the 1972 Act provides that:

"Subject to any express provision contained in this Act or any Act passed after this Act, a local authority may arrange for the discharge of any of their functions— ... (b) by any other local authority."

Powers under section 101 of the 1972 Act have previously been used to delegate the Council's function, as commons registration authority, to another local authority where the land in respect of which the application had been made was within this Council's ownership.

- 2.6 The delegation of function using the powers set out in section 101(1) of the 1972 Act would give the registration authorities flexibility in agreeing the manner and extent of the delegation, and will not affect the inclusion of the relevant parts of the land in the registers of each authority.

- 2.7 The Committee is asked to consider the extent to which it wishes to delegate its function as registration authority. The functions of the registration authority in respect of this application could be delegated to Nottinghamshire County Council to deal with the application from receipt, in tandem with its consideration of the Nottinghamshire application. This would enable Nottinghamshire County Council to confirm the validity of the application for the whole of the site, publish notices and accept statements in objection, and if appropriate refer the matter to an independent Inspector for consideration. The determination of the application would be made by the Rights of Way Committee of that authority following which the relevant part of the land, if registrable, would be added to Derbyshire's register of town or village greens.

- 2.8 The applicants have been asked to formally make their application to Derbyshire County Council in respect of the land in Derbyshire. It is anticipated that the applicants will have submitted that application prior to the Committee's meeting.

- 2.9 Nottinghamshire County Council have now had the application in hand for many months, have confirmed that it is validly made, and wish to proceed to publish a notice of making of the application at the earliest opportunity.

### **3. Legal Considerations**

- 3.1 The application will be dealt with in accordance with the provisions of the Commons Act 2006 and regulations made under that Act.

- 3.2 The relevant legal test is found in section 15(2) of the Commons Act 2006, which provides that any person may apply to register land as a town or village green 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.”

- 3.3 Whilst there is no statutory requirement to appoint an independent inspector to make recommendations as to the determination of an application this is the usual practice of registration authorities. Where there is a dispute as to facts relating to such an application it is usually necessary to hold a public inquiry in order that the evidence may be tested.

- 3.4 Other legal considerations are set out in the body of the report.

### **4. Financial Considerations**

- 4.1 Two-thirds of the land affected by the application for registration falls within the county of Nottinghamshire and it is anticipated that Nottinghamshire County Council will accept the delegation under section 101 of the Local Government Act 1972.

- 4.2 Officers at Nottinghamshire have suggested that that authority will seek to recover one third of its total costs on external expenditure (ie. publication of notices, instruction of an independent Inspector to consider the application and make recommendations to the registration authority and costs of venue hire if a public inquiry or hearing is held) from Derbyshire County Council.

- 4.3 If the matter is not delegated to Nottinghamshire County Council this authority would need to meet the total costs in respect of the application

received for land in Derbyshire. There is therefore a cost saving to both authorities to dealing with this application in the manner suggested.

4.4 The cost of determining this matter will be met from the existing budget.

## **5. Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder; equality of opportunity; and environmental, property, health, human rights and personnel considerations

## **6. Background Papers**

Application Form 44 in respect of application to register land at Toton Sidings, held by the Director of Legal Services.

## **7. Officer's Recommendation**

That the Committee resolves –

- (a) in accordance with the provisions of section 101 of the Local Government Act 1972 to delegate the Council's function as commons registration authority to Nottinghamshire County Council for the purposes of determining an application to register land known as Toton Sidings as a town or village green.
- (b) to meet a proportion of the costs of determination of the application in respect of Toton Sidings, up to a maximum of one third of the total costs incurred by Nottinghamshire County Council.

**John McElvaney**  
**Director of Legal Services**