

**DERBYSHIRE COUNTY COUNCIL**  
**REGULATORY – LICENSING AND APPEALS COMMITTEE**

**26 February 2018**

**Report of the Director of Legal Services**

**Application to register land known as The Brook, Main Street, Calver,  
Derbyshire, as a town or village green (VG91)**

**1. Purpose of the Report**

To ask the Committee to authorise the Director of Legal Services to instruct an independent Inspector to advise the Council in respect of an application made under the Commons Registration Act 1965 to register land known as The Brook, Main Street, Calver, Derbyshire, as a town or village green, if necessary to hold a public inquiry into the application and to make recommendations to the Council as to its determination.

**2. Information and Analysis**

Background

2.1 The County Council ('the Council'), as commons registration authority, received an application to register land at Calver, known as The Brook ("the Application Land"), as a town and village green on 31 December 2004. The application was acknowledged and allocated reference VG91. The application was made by Mrs Jeni Edwards, Clerk to the Parish Council, on behalf of Calver Parish Council. The application was accompanied by 6 evidence questionnaires and 12 letters in support of the application.

2.2 The Landowner, local planning authority and the County Council's Environmental Services Department were informally notified of the application in January 2005. Formal notice of the application was published in The Derbyshire Times on 8 December 2005. Due to the prioritisation of applications in respect of other claimed town or village greens affecting land subject to proposed development, in accordance with a scheme of prioritisation previously agreed by this Committee, the application remains under consideration.

2.3 The Brook is an open area of land abutting the carriageway of Main Street, Calver, considered by the County Council as highway authority to form part of the publicly maintainable ('adopted') highway (plan appended to this

report). The land has remained accessible and no indication has been given to the County Council that the land is subject to any development proposals.

### The Application Land

2.4 The Application Land includes part of the accessway to the Village Hall and another point of access to adjacent agricultural land. As indicated above, the highway authority considers the whole of the Application Land to form part of the adopted highway and has previously granted approval to the Peak District National Park Authority for works to be undertaken on the land. Part of the Application Land is maintainable by the Parish Council in accordance with that approval.

2.5 Section 263(1) of the Highways Act 1980 provides that “every highway maintainable at the public expense, together with the materials and scraping thereof, vests in the authority who are for the time being the highway authority for the highway”. The land is included in the register of title held by the Land Registry. Whilst the County Council, as highway authority, controls the surface of the Application Land as part of the adopted highway, the sub-soil is controlled by the registered owners. There have been changes in ownership since the application was submitted.

### Statutory definition of town or village green

2.6 The statutory definition of a town or village green, as it applies to this application, is found in section 22(1) of the Commons Registration Act 1965, as amended with effect from 31 January 2001 by section 98 of the Countryside and Rights of Way Act:

“land on which, for not less than 20 years a significant number of the inhabitants of any locality or any neighbourhood within a locality have indulged in lawful sports and pastimes as of right, and continue to do so”.

### Use of the Application Land

2.7 The evidence in connection with this application was collated using evidence questionnaires produced by Open Spaces Society and in letters. The questionnaire identifies potential ‘lawful sports and pastimes’ including children playing, dog walking, picking blackberries, community celebrations, fetes, picnicking, people walking and bicycle riding. Other uses identified in this case include the use of the seat on the Application Land, washing vehicles and parking.

### Appointment of an independent Inspector

2.8 It is usual to seek advice from an Inspector (usually a barrister specialising in this area of law) as to whether it is appropriate to determine an

application on the basis of the application form and supporting documents, statements in objection and further written comments received from the parties. Where there are disputes of fact it is usually recommended that an inquiry be held to test the conflicting evidence.

2.9 In this case there may be disputes of fact, but there are also issues of law that need to be considered. Prior to submitting this matter to an Inspector it is intended to write to all affected parties, including those not previously involved with the matter, to establish their position with regard to the application.

### **3. Legal Considerations**

3.1 The legal test to be satisfied in order for land to qualify for registration is as set out at paragraph 2.6 above.

3.2 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 many registration authorities. Where the commons registration authority has another role in relation to the land affected by the application, then the appointment of an independent Inspector addresses any potential conflict of interest arising from those dual roles. 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.

### **4. Financial Considerations**

The costs of determining this application will be met from the existing budget.

### **5. Other Considerations**

In preparing this report the relevance of the following factors have been considered: prevention of crime and disorder, equality and diversity, human rights, personnel, environmental, health, property and transport considerations.

### **6. Key Decision**

No

### **7. Background Papers**

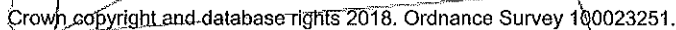
Legal Services file no. 26890

**8. OFFICER'S RECOMMENDATION**

That the Committee authorises the Director of Legal Services to appoint an Inspector to advise the Council, if necessary hold a public inquiry, and make recommendations to the Committee as to the determination of the application to register land known as The Brook at Main Street, Calver (VG91) as a town or village green.

**JOHN MCELVANEY  
DIRECTOR OF LEGAL SERVICES**

## (VG91)



16-February-2018

KEY:

