

DERBYSHIRE COUNTY COUNCIL**REGULATORY – LICENSING AND APPEALS COMMITTEE****29 October 2018****Report of the Director of Legal Services****Request to withdraw application to register land known as The Brook,
Main Street, Calver, as a town or village green (VG91)****1. Purpose of the Report**

To ask the Committee to authorise the withdrawal 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.

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, as a town and village green on 31 December 2004. The application was acknowledged and allocated reference VG91. The application was made on behalf of Calver Parish Council by its Clerk. 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 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 On 26 February 2018 this Committee was asked to authorise 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. That authorisation was granted.

2.4 Mr Philip Petchey, of Counsel, was appointed as the independent Inspector. Mr Petchey provided an initial Advice in which he raised a number of questions that the parties should be asked to respond to. He proposed that the Council, as highway authority, should be asked to produce the evidence on which it relied in concluding that the land subject to the TVG application was part of the public highway. He also proposed that the Parish Council be asked to provide any further relevant material, such as maps and photographs of the application site.

2.5 The parties were asked to provide their responses to the matters raised by the Inspector, by no later than 18 May 2018. The Applicant then proposed a site meeting to involve the Council, as highway authority, and any other objectors to the application. Prior to that meeting taking place, at its meeting of 17 May 2018, the Parish Council resolved to withdraw the application.

2.6 A TVG application raises a matter of public interest, in that it claims that a public right – albeit in relation to recreational use that would be restricted to the residents of a neighbourhood or locality – has been established. The Council has a statutory duty to determine such applications. There is no provision in the relevant legislation which specifically enables an applicant to withdraw, or a commons registration authority to abandon, a town or village green ('TVG') application. Therefore whilst the Parish Council has determined, by its resolution, to withdraw its application, the Council as commons registration authority must consider whether it will permit that withdrawal.

2.7 Further advice was sought from the Inspector with regard to the proposed withdrawal. The Inspector advised that whilst in the circumstances it seemed appropriate to allow the Parish Council to withdraw its application there was in such cases the possibility that there may be a member of the public who might have made an application for registration if the Parish Council had not; or who considered that the land should be registered as a village green. Accordingly he advised that it would be appropriate to post a notice in or on the land, and possibly by publication in the local press, indicating that the Parish Council had resolved to withdraw its application and giving anyone who might be interested the opportunity to make representations as to whether it is appropriate that the Parish Council should be permitted so to withdraw its application.

2.8 The Inspector advised that should there be no objections received in response to the notice it would be appropriate for the Council as registration authority to allow the application to be withdrawn and for no further action to be taken on it. Notice of the proposed withdrawal was posted on the land subject to the application on 23 July 2018, and was published in the 30 July 2018 edition of the Peak Advertiser, with a deadline for the submission of representations in response to the notice of 7 September 2018. No representations were received in response to the notice.

3. Legal Considerations

3.1 The application was made pursuant to the Commons Registration Act 1965 and if determined this must be in accordance with that legislation; the Commons Act 2006 is not retrospective.

3.2 As indicated above the legislation does not provide for the withdrawal of applications. The procedure adopted in relation to the proposed withdrawal of the application, and in accordance with the Inspector's advice, seeks to ensure that no other person is disadvantaged by the withdrawal of the application.

4. Financial Considerations

Costs of obtaining advice from the Inspector, and of publishing the notice, have been 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, social value, 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 resolves to authorise the withdrawal of the application to register land known as The Brook at Main Street Calver (VG91) as a town or village green.

JANIE BERRY
DIRECTOR OF LEGAL SERVICES