



<b>Report for:</b> <b>ACTION/INFORMATION</b>
<b>Item Number:</b> 5.

<b>Contains Confidential or Exempt Information</b>	<b>NO</b>
<b>Title</b>	Warren Farm – Applications for Modification of the Definitive Map
<b>Responsible Officer(s)</b>	Chris Bunting (Assistant Director, Leisure)
<b>Author(s)</b>	Yasmin Basterfield (Leisure Services) Alison Luff (Legal Services)
<b>Portfolio(s)</b>	Cllr Bassam Mahfouz, Transport, Environment and Leisure
<b>For Consideration By</b>	Regulatory Committee
<b>Date to be Considered</b>	14 July 2016
<b>Implementation Date if Not Called In</b>	N/A
<b>Affected Wards</b>	Norwood Green
<b>Keywords/Index</b>	Warren Farm, Definitive Map, Modification

**Purpose of Report:**

This report seeks determination by members of two applications to modify the Definitive Map received to include 2 new footpaths across the Warren Farm site. The report includes applications, the supporting statements, responses to the applications, and Counsel’s advice.

**1. Recommendations**

It is recommended that Regulatory Committee:

- 1.1 Consider the applications, representations, documentation and Counsel’s advice as set out in appendices 1 to 8 of this report.
- 1.2 Determine the applications by either allowing or refusing the changes to the definitive map as requested.

**2. Reason for Decision and Options Considered**

2.1 The Council is the ‘surveying authority’ responsible for maintaining the ‘Definitive Map’ for the borough which is required to be maintained under the Wildlife and Countryside Act 1981 (the 1981 Act). The Definitive Map is a legal record of the public’s rights of way in the borough. If a way is shown on the Map then that is conclusive evidence that the public has rights along the way. Surveying authorities are under a duty to keep the Definitive Map and associated Statement

under review and to make modification orders as necessary to keep them up-to-date as an accurate record of the public's rights.

- 2.2 The 1981 Act includes procedures under which the Map may be modified by way of a modification order. The Council has received two applications seeking orders to modify the Map under section 53(2) of the 1981 Act in respect of the Warren Farm site together with evidence in support of the applications seeking to demonstrate that rights of way across the site have come into being through presumed dedication following use over a period of 20 years before the making of the order.
- 2.3 On receipt of an application the Council as 'surveying authority' must investigate the matters set out in the application and decide whether or not to make the order applied for. Under the Council's Constitution Regulatory Committee is responsible for determining applications for an order to modify the Definitive Map.
- 2.4 The investigation of the applications included consultation with landowner of the site. In this case the Council is the freehold owner of Warren Farm and entered into a development agreement with QPR Holdings Ltd (QPR) in December 2013 to grant a 200 year lease to QPR once the conditions specified in the Agreement have been met. The Council therefore has two roles in this context and has submitted representations in its role as landowner in respect of the existence of the public paths. QPR have also submitted representations given their interest in Warren Farm.
- 2.5 The investigation process involved instructing Counsel to evaluate and advise on the evidence submitted by the applicants and by the Council (as landowner) and QPR. A copy of his advice is contained in the final Appendix (Appendix 8).
- 2.7 In terms of the format of the meeting to consider the applications, it was previously proposed to Committee that the applicant be given time to make a presentation to the Committee in respect of each application and that the Council (as landowner) or QPR be given time to respond to each presentation. However since that proposal was made (in October 2015) Counsel has advised that it that it is not necessary to hold a 'hearing' before the Committee and therefore the applications should be decided on the papers submitted. It should be noted that there is a right of appeal to the Secretary of State against a decision not to make an order and a process for objections be considered by the Secretary of State if an order is made. If appropriate the evidence will be heard orally by way of an Inquiry at that stage.

### **3. Key Implications**

The applications may result in orders modifying the Definitive Map being made and subsequently confirmed.

### **4. Financial Implications**

The cost of appointing a specialist barrister to provide advice for consideration by Regulatory Committee will be met within existing budgets.

## **5. Legal**

5.1 Any person may apply to the Council (as surveying authority) under section 53(5) of the Wildlife and Countryside Act 1981 for an order to modify the Definitive Map on the basis of presumed dedication by virtue of uninterrupted use by the public over a 20 year period.

5.2 Schedule 14 of the 1981 the Council must as soon as reasonably practicable after receiving an application investigate the matters stated in the application; and decide whether to make or not to make the order to which the application relates.

5.3 If the Council decides not to make an order, the applicant may, at any time within 28 days after service on him of notice of the decision, serve notice of appeal against that decision on the Secretary of State and the authority.

5.4 If the Council makes an order it must be advertised and any objections must be submitted to the Secretary of State for consideration as to whether the order should be confirmed.

## **6. Value For Money**

The proper conduct of the application process as outlined above will reduce the risk of legal challenge of the Council's decisions.

## **7. Sustainability Impact Appraisal**

A Sustainability Impact Appraisal is not required in this case.

## **8. Risk Management**

The procedures proposed for determining the applications has been designed to ensure that the decision making process is robust and reduces the risk of legal challenge.

## **9. Community Safety**

None

## **10. Links to the 6 Priorities for the Borough**

None

## **11. Equalities, Human Rights and Community Cohesion**

It is not considered that an EIA is required in this case.

## **12. Staffing/Workforce and Accommodation implications:**

None

### **13. Property and Assets**

Any decision to modify the Definitive Map would affect Warren Farm which is owned by the Council

### **15. Consultation**

The Council (as landowner) and QPR (as a party to the Development Agreement referred to above) have been consulted about the applications. The applicant has had further opportunity to comment, in the light of the Council's/QPR's submissions.

### **16. Appendices**

Appendix 1 Application no 1

Appendix 2 Application no 2

Appendix 3 QPR submissions

Appendix 4 Council's (landowner) response to application no 1

Appendix 5 Council's (landowner) response to application no 2

Appendix 6 Statement and supporting documents of Keith Townsend

Appendix 7 Response of applicant to Council's/QPR's submissions

Appendix 8 Counsel's advice

## Consultation

<b>Name of consultee</b>	<b>Post held</b>	<b>Date sent to consultee</b>	<b>Date response received</b>	<b>Comments appear in paragraph:</b>
<b>Internal</b>				
Finance	Ross Brown, deputy s151 officer/Director of Finance			
Legal Services	Alison Luff (Lawyer)			
<b>External</b>				

## Report History

<b>Decision type:</b>	<b>Urgency item?</b>
	No.
Report no.:	
Alison Luff (Legal) ext:7812 & Yasmin Basterfield (Leisure Services) ext:9860	