

Minutes of the meeting of the Regulatory Committee

Date: Thursday, 14 July 2016

Time: 19:00

Venue: Council Chamber, Town Hall, New Broadway, Ealing, W5 2BY

Attendees:

Councillor Fabio Conti, Councillor Kate Crawford, Councillor Kieron Gavan, Councillor Harbhajan Kaur-Dheer, Councillor Anthony Kelly, Councillor Ciaran McCartan

1 Apologies for Absence

Cllr Woodroofe, Cllr Dhami, Cllr Sumner

2 Urgent Matters

There were none.

3 Declarations of Interest

There were none.

4 Matters to be Considered in Private

There were none.

5 Warren Farm - Applications for Modification of the Definitive Map

The Chair thanked Committee Members and Officers for attending for this special Regulatory Meeting for Warren Farm.

The Chair explained that the purpose of the report was to seek the determination by members of the 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.

The Chair explained that Helen Harris, Director of Legal and Democratic Services, would give a brief overview of the process and explanation of

what is being asked of the Committee.

Ms Harris explained that this Committee was here as a surveying authority to consider the two applications before them using the evidence provided by the applicant, the responses to the applications and the advice sought by an external Barrister (appendix 8). It was important that the Committee understood that its responsibilities as surveying authority stood completely separate and independent from the council's other responsibilities as landowner and planning authority. It was for that reason that Ms Harris was there to advise the committee and separate external legal advice had been obtained from the external barrister (appendix 8).

The council had received two applications from Mr Weller separately, application no 1 dated 5 June 2015 and application no 2 dated 28 August 2015 seeking orders to modify the Definitive Map in respect of Warren Farm site together with evidence in support of the applications seeking to demonstrate that rights of way across the site. The members of the committee must decide whether to grant the modification of the Definitive Map to include 2 new footpaths across the Warren Farm site.

Ms Harris advised that after receiving the applications from Mr Weller, council officers investigated the applications and consulted with the other council officers in their capacity as representatives of the landowner (the council is the freehold owner of Warren Farm). QPR Holdings Ltd was also consulted, as it has had a development agreement with the Landowner since December 2013. Mr Weller was then given an opportunity to respond to the representations of the landowner and QPR Holdings. The advice of an external Barrister on all the representations made concluded the process.

The Chair opened the floor for discussion.

Councillor Gavan commented that the evidence and evaluation from the Barrister was compelling and that it was very clear the football pitches obstructed what was claimed to be the route taken by walkers accessing Warren Farm.

Ms Harris explained that if a person walked around the football pitches then this would allege that the path is around the football pitches; however these paths are across the football pitches therefore whilst the football was being played, they would have to interrupt the football to walk across the alleged footpath.

Councillor Conti questioned that if the public are stating that they have used these paths to walk their dogs for 20 or 30 years then the football pitches are not an obstruction.

It was responded that all members have read the evidence from the different parties and the legal advice in appendix 8, Point 10 states; 'In

my view, there is a fundamental impediment in Mr Weller's claim which affects both applications in precisely the same way. The evidence suggest strongly that the routes of both of the alleged footpaths crosses land that had been laid out and actively used as sports pitches.' Appendix 8, point 11; 'It follows on a straightforward analysis of Mr Townsend appendix 1 that the route of both alleged public footpaths would traverse parts of Warren Farm which were laid out and used as sports pitches and/or pass very close indeed to those pitches. No users of the alleged paths claim that they interrupted the use of such pitches. That of itself suggest strongly that where a user of the route encountered a pitch in operation, the user would adjust his or her route to avoid interrupting play.'... 'As such, by reason of this necessary and unavoidable interruption it would seem to follow that neither at common law nor pursuant to s.31 of the Highways Act 1990 can it be claimed reasonably that either route has become a footpath by implied or presumed dedication.'

Councillor Kelly said that that the public did not have the right to make a hole in the fence to enter Warren Farm to walk their dogs or use it as short cut. There have clearly been attempts to fix the fence on several occasions and the way in which the fence has been cut displays health and safety concerns.

Councillor Conti said that the hole does illustrate the point that the local community use the path as a short cut.

Councillor Gavan commented that the access points are clearly used, however the whole way in which the paths are used are through creating a hole in the fence and climbing over a locked gate which is unlawful and considered as trespassing.

Councillor Gavan explained that the fence is the secondary point, however the football pitches which were in use and are the obstacles in the way of the alleged footpaths is the primary point which makes it contentious.

After a vote it was resolved (vote results 6:1)

Based on the evidence, representations, documentation, appendices 1-8 and Counsels advice, the Regulatory Committee refused applications 1 & 2 to modify the Definitive Map to include 2 new footpaths across the Warren Farm site.

6 Date of Next Meeting

The next meeting will be held on 25th October 2016

