

From: Director of Growth Environment and Transport

To: Regulation Committee Member Panel 22 February 2016

Classification: Unrestricted

Summary: A report seeking a decision from the Regulation Committee Member Panel on whether to:

a) Make concurrent but independent Orders for the part extinguishment of Public Footpath ZF5 at Faversham Reach Estate and creation of a public footpath beside Faversham Creek linking Public Footpath ZF5 at Crab Island with Public Footpath ZF32 at Ham Marshes.

Background.

1.0 On 21 November 2012 a Panel of the Regulation Committee considered a report from the Head of Regulatory Services, recommending the diversion of a long obstructed public footpath, ZF5, at Faversham Reach. The footpath is obstructed by a wall (formerly the boundary to a shipyard) and by five residential properties within the Faversham Reach Estate, an estate built on the former shipyard site in 1987.

1.1 Members were asked to consider two proposals, one recommended by the Public Rights of Way Officer dealing with the case, submitted by the Faversham Town Council, seeking the diversion of the footpath to an unobstructed alignment providing some creek side access within the Faversham Reach Estate. The Faversham Reach Residents Association advanced a different proposal involving the extinguishment of the public footpath where it crossed the estate and the creation of a public footpath outside, and following, the boundary wall to the estate. This path had existed on the ground and been in use since 1938 when the shipyard wall was built.

1.2 Members viewed the proposals and heard evidence from all of the parties involved and decided that the Residents Associations proposals should be taken forward.

1.3 In December 2012, the PROW and Access Service made the extinguishment and creation Orders, reflecting the Member Panel decision. Objections to the Orders were received, as anticipated, and the Orders were subsequently submitted to the Secretary of State for decision. The Secretary of State held a Public Inquiry at Faversham from 20 - 23 May 2014 to consider the Orders. The Inspectors decision on behalf of the Secretary of State was received on the 2 July 2014. The Inspector concluded that neither

the creation Order nor the extinguishment Order should be confirmed on the basis that:-

- The creation Order route was of longstanding and was in effect an existing public highway.
- The extinguishment Order route would be likely to be well used in the future if the obstructions to the route are discounted. As a matter of policy, even obstructions such as houses are considered to be temporary circumstances.

In her conclusions the Inspector also stated that: “there appears to be no reason why it would not be feasible to divert the route from beneath the houses”

The Inspectors decision is provided as **appendix A**.

The decision was not challenged.

1.4 Public Footpath ZF5 remains obstructed; clearly an unsatisfactory situation for both the residents whose properties are affected and members of the public who wish to use it.

1.5 In June and July 2015 the County Council consulted on a number of options for the resolution of this long standing obstruction. The consultation documents are provided as **appendix B**.

1.6 In addition Amey, the County Council’s engineering consultant were tasked with providing a detailed feasibility report for the construction of ramps and a cantilever walkway including outline options for construction with indicative costings. This work was necessary both to respond to points raised in response to the consultation and to enable the County Council to reach an informed decision. The report is provided as **appendix C**.

1.7 The Public Rights of Way and Access Service preferred option, Option1, proposed the diversion of the obstructed length of Public Footpath ZF5 to run beside Faversham Creek, through Faversham Reach and Waterside Close Estates. Option 1 would require the construction of two ramps to provide access to the estates and a cantilever walkway to provide safe access around a slipway.

1.8 73 responses were received to the consultation, 35 in support of Option 1, 38 objecting to it. Little response was received in respect of:

- Option 2, a proposal previously submitted by Faversham Town Council and considered by the Regulation Committee Member Panel in November 2012.
- Option 3 a diversion within Faversham Reach Estate providing some creek side access. One response proposed a similar solution by diverting within the estate but providing no creek side access.

A detailed summary of the responses received and the PROW and Access Service position on them is provided as **appendix D**.

1.9 It is evident from the response to the consultation that any form of order made to divert, extinguish or create rights to overcome the current obstruction would receive objections and representations and therefore have to be referred to the Secretary of State for decision; inevitably requiring a further Public Inquiry.

1.10 Simply allowing the current position to continue cannot be considered an option as:

- Properties remain blighted,
- The public are unable to access a recorded public right of way,
- The County Council fails to meet its statutory obligations and is at risk of further action in the courts and Local Government Ombudsman Complaint.

Conclusion

2.0 In reaching a conclusion on how best to secure the resolution of this matter, taking account of the feedback received to the consultation the Public Rights of Way and Access Service has concluded that Option 1 should be implemented for the following reasons:

- It resolves the longstanding obstruction to access through Faversham Reach Estate.
- It resolves issues of blight in respect of the 5 properties that obstruct the public footpath.
- It delivers the creek side access identified within the Street Scape Strategy and emergent Neighbourhood Plan.
- It addresses the longstanding failure to deliver creek side access through a section 106 agreement at Waterside Close.
- It provides access that most closely reflects the Government's desire to provide access around the coast of England on foot.
- It discharges the County Council's statutory obligations.

2.1 A technical point was raised in response to the consultation in respect of potential hurdles to the use of a public path diversion order to deliver the creek-side access. Specifically it is thought that it may be difficult to satisfy the test set out in the Highways Act 1980 section 119 (2)(b) "A public path diversion order shall not alter a point of termination of the path or way – (where it is on a highway) otherwise to a point which is on the same highway, or a highway connected with it, and which is substantially as convenient to the public."

2.2 The Public Rights of Way and Access Service accepts this view and having given further consideration to the form of order has concluded that Option 1 could be secured through the making of concurrent but independent orders for the creation of creek side access and the partial extinguishment of Public Footpath ZF5. The legislation, tests to be applied and other relevant considerations are set out in **appendix E**. A plan showing the effect of the two proposed Orders is provided as **appendix F**.

Recommendation

3.0 Make concurrent but independent orders for the part extinguishment of Public Footpath ZF5 at Faversham Reach Estate and creation of a public footpath beside Faversham Creek linking Public Footpath ZF5 at Crab Island with Public Footpath ZF32 at Ham Marshes.

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