

Statement of Reasons

THE KENT COUNTY COUNCIL (PUBLIC FOOTPATH ZF5 (PART) FAVERSHAM) PUBLIC PATH DIVERSION AND DEFINITIVE MAP AND STATEMENT MODIFICATION ORDER 2015

On 21 November 2012 a Panel of Kent County Council's Regulation Committee considered 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.

Two proposals were considered, one seeking the diversion of the footpath to an unobstructed alignment providing some creek side access within the Faversham Reach Estate and one, advanced by residents, 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.

Ultimately it was the second proposal advanced by residents that was pursued.

In December 2012, the Kent County Council PROW and Access Service made the extinguishment and creation Orders. Objections to the Orders were received and the Orders were therefore 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 Inspector took the view that there was "no reason to doubt that the right of way exists" over the alternative route.
- 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 Government policy and case law, even obstructions such as houses are considered to be temporary circumstances. (Order decision reference FPS/W2275/6/4, FPS/W2275/3/12 : http://www.planningportal.gov.uk/uploads/pins/row/documents/fps_w2275_6_4_3_12.pdf)

No challenge was made to the Secretary Of State's decision. Public Footpath ZF5 therefore remained obstructed; clearly an unsatisfactory situation for both the residents whose properties are affected and members of the public who wish to use it.

The feasibility of various options to resolve the long standing obstructions and provide creek-side access, a desire of the local community expressed in the neighbourhood plan, was considered and reported to the Kent County Council Regulation Committee and Swale Borough Council.

Three options were considered:

Do nothing; this would fail to meet the County Council's statutory duty to assert and protect the highway, perpetuate an unsatisfactory position on the ground, blight homes and leave the County Council open to the risk of a challenge through the courts.

Remove the obstructions: there was no suggestion that obstructions other than sections of the shipyard wall should be removed given that the obstructions include residential properties. This was not considered a realistic or desirable solution.

Divert the obstructed section of the public footpath. The Inspectors report stated that "there appears to be no reason why it would not be feasible to divert the route from beneath the houses".

The County Council had already rejected one proposal for diversion. It was recognised that it would be most unlikely that a route could be identified that enjoyed universal support.

Potential options for diversion were considered (referred to as 1,2,and 3 below) and plans prepared for each.

Option 1

Diversion of Public Footpath ZF5 to provide continuous creek-side access between Crab Island and Public Footpath ZF32.

This proposal would deliver the creek-side access sought in the draft Neighbourhood Plan.

It provides a route that can be readily followed with little need for waymarking. It is subject to natural surveillance from neighbouring properties and could be further segregated from the Faversham Reach and Waterside Close Estates should that be desired or necessary.

This option delivers access along the creek-side at Waterside Close that should have been delivered through a Town and Country Planning Act 1990 section 106 agreement.

The route would require the construction of 2 ramps (points C and L on the Order plan) to provide access to Faversham Reach Estate and from Waterside Close Estate if travelling north west along the route. A

cantilever walkway is required to provide access beside the slipway at point H. A significant contribution to the cost of the provision of the ramps and walkway has been offered by the Faversham Municipal Charities and Bensted Charity. It is anticipated that any balance required will be met by the Kent County Council, Swale Borough Council and other partner organisations.

One of the ramps would be situated on a registered village green. Consideration has been given to whether the construction of the ramp would be a nuisance under the Victorian statutes that protect village greens. In light of DEFRA's¹ guidance on the subject and the fact that any ramp would appear to add to the better enjoyment of the green it is hard to see how the construction of a ramp would cause material harm to the green, interfere with the public recreational enjoyment or be at odds with the rights associated with village green status. It is therefore considered that de-registration of a small area of the village green would not be required to enable the construction of the ramp.

While provision is made within the Highways Act 1980 for the payment of compensation to affected landowners any claims are considered to be weak as in the case of Faversham Reach public rights of way already exist (albeit obstructed) and in the case of Waterside Close a Town and County Planning Act section 106 agreement and supporting documentation exist clearly indicating the landowner/ developers intention to create a public right of way creating creek-side access at the time of construction.

Option 2:

The proposal, as previously 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.

This option had already been considered and rejected by the Regulation Committee Panel. It would require the construction of a ramp to breach the difference in levels between Crab Island and Faversham Reach Estate. The existing wall would need to be breached at the top of the ramp to provide access to the estate. Egress from the Estate would be via the existing gates, compromising security.

The option does not provide a route that is obvious to users without the aid of waymarks and was again rejected.

Option 3

A diversion following the creek-side through Faversham Reach but turning north to link with the continuation of Public Footpath ZF5 passing through the gates of Faversham Reach.

¹ DEFRA Management and Protection of Village Greens January 2010.

Should it not be possible to divert or create the route along the creek-side around the slipway and through Waterside Close there would be little option but to divert the route entirely within Faversham Reach Estate.

This route has an advantage in that it requires only one ramp but has similar limitations to option 2 in that egress from the estate would be via the existing gates, compromising security.

The option does not provide a route that is obvious to users without the aid of waymarks.

Both Kent County Council and Swale Borough Council concluded that option 1 provided a solution that was feasible and would deliver the best outcome for residents and the public if successful.