

# FAVERSHAM FOOTPATHS GROUP

**PUBLIC FOOTPATH ZF43 (parts) FAVERSHAM; PUBLIC CREATION ORDER 2016**  
**PUBLIC FOOTPATH ZF5 (parts) FAVERSHAM; PUBLIC PATH EXTINGUISHMENT ORDER 2016**

**REF: ROW/3175170**

Public Inquiry – 16 January 2018 – Creekside path at Faversham Reach and Waterside Close

## STATEMENT OF CASE

### Faversham Footpaths Group – Background

1. The Group was formed in June 2015 with the stated aim of preserving, maintaining and promoting the use of public rights of way in Faversham and the surrounding area and encouraging the creation of more public rights of way. It currently has 66 paid-up members.
2. The Group has campaigned from the outset for the creation of a continuous public right of way around Faversham Creek. In particular, it has supported the attempts to create a public right of way along the whole of the Creekside at Faversham Reach and Waterside Close. It has also made representations to Natural England about the route of the England Coast Path in Faversham, supporting a Creekside route wherever practicable.
3. Several members of the Group have campaigned on these issues for some time prior to the setting-up of the Group and were also actively involved in the public inquiry held in May 2014 concerning the obstructed public footpath ZF5 at Faversham Reach. The Secretary of the Group, Brian Caffarey, represented 25 other objectors at the inquiry. Two other members of the Group's Executive Committee, Andrew Osborne and Anne Salmon, also gave evidence at the inquiry.
4. The Group's website [www.favershamfootpathsgroup.org.uk](http://www.favershamfootpathsgroup.org.uk) provides comprehensive information about its objectives and activities.

### Preliminary Observations

5. The Group considers that there is an overwhelming case for confirming the present Orders.
6. In relation to Faversham Reach, the previous public inquiry [*Decision Letter submitted by KCC*]:

- (i) Confirmed that the path around the back of Faversham Reach (ZF43) was already a public right of way (para 13)
  - (ii) Confirmed the existence of ZF5 as a public right of way and accepted that there appeared to be no evidence that it had been added to the Definitive Map in error (para 60)
  - (iii) Confirmed that the definitive line of the path was capable of being used from at least 1937 till it was obstructed by the building of Faversham Reach (paras 23/24)
  - (iv) Concluded that, thereafter, there appeared to have been limited use of the route, via access from Crab Island, till at least 2003, when the railings were added, and that access subsequently to some of the path could continue to be gained via the main entrance to Faversham Reach (paras 27 and 28)
  - (v) Concluded that, if the obstruction was removed by diverting the footpath, its use was likely to be extensive (paras 55 and 60)
  - (vi) Concluded that there appeared to be no reason why it would not be possible to divert the route from under the houses (paras 40, 44 and 60)
  - (vii) Determined that the footpath should not be abolished (para 64)
  - (viii) Pointed to the continuing legal duty on KCC to take action to deal with the obstruction (para 36).
7. The Group would argue, therefore, that the inquiry established the principle that the obstructed footpath ZF5 within Faversham Reach should be re-opened by breaching or surmounting the concrete wall and diverting the path from under the five properties which obstruct its definitive line; and that, consequently, the issues for the 2018 public inquiry to consider concern only the specific route in the present Orders and the specific impacts of that route, and not the origins and history of the path or the principle of re-opening/diverting it.
8. In relation to Waterside Close, the Group considers that, in the light of the s.106 agreement [*submitted by Swale BC*] relating to the original planning approval, the principle of establishing a public right of way along the promenade there is settled. The approved plans for the development [*submitted by Bensted's Charity*] clearly showed that there would be public access along that promenade. It seems plain, moreover, that planning approval would not have been given without such a provision.
9. Again, therefore, we would argue that the only issues for this public inquiry are the particular route chosen (i.e. going round the slipway to join the Faversham Reach promenade instead of the original intention to go out of the estate's main gate) and the specific impacts of that decision. We would argue, in any event, that even if the s.106 agreement were disregarded, the public benefit of having a public right of way

along the promenade at Waterside Close – and especially one which links directly along the Creekside with the promenade at Faversham Reach – would fully justify confirming the present Orders.

#### The need for a Creekside path at Faversham Reach and Waterside Close

10. The Group considers that the need and desire for the continuous Creekside path proposed in the Orders are abundantly clear for the following main reasons:
- (i) It is plain from the representations made previously and no doubt to this inquiry that a substantial number of people believe that there is a public need for the path and that, when taking a Creekside walk, they would use it, for persuasive reasons, in preference to footpath ZF43 round the back of Faversham Reach and the Brents Industrial Estate, a route which involves a lengthy and partly unsightly diversion from the Creekside
  - (ii) The creation of this route would bring into being a continuous walk along the whole of this side of the Creek, from Stonebridge Pond out to Hollowshore, the Shipwright's Arms pub and then round to Oare along Oare Creek. There cannot be any doubt that this would constitute a hugely attractive walk and that it would represent a significant enhancement of the present 'Two Creeks Walk' and this section of the Saxon Shore Way
  - (iii) The proposals are fully supported by all the local representative elected bodies: Faversham Town Council, Swale Borough Council and Kent County Council
  - (iv) They are also supported by all the local walkers' groups i.e. Ramblers, the Faversham Footpaths Group and Swale Footpaths Group
  - (v) The fact that two Faversham charities, the Faversham Municipal Charities and Bensted's Charity, have put funds aside to help fund the proposals attests to the fact that the path is considered to be of benefit to Faversham residents
  - (vi) The proposals fully reflect the objective of creating a continuous Creekside path set out in the agreed Faversham Creek Streetscape Strategy and the Faversham Creek Neighbourhood Plan *[both submitted by Swale BC]*. The creation of a continuous Creekside path received overwhelming approval in consultations on the Plan *[see Appendix 1 attached; relevant passages sidelined]*. In a survey conducted in 2013, 161 out of 165 respondents strongly agreed or agreed with the intention to 'preserve and create access to the waterside, including wharfage and moorings, and provide a Creekside walk with high quality materials as specified in the streetscape strategy'. The Plan itself was endorsed by 88% of those who voted in a referendum held in May 2017
  - (vii) It is plain from Parliament's approval of the relevant legislation, and the remit given by the Government to Natural England to create an England Coast Path, that it is public policy to enable people to walk along the English coastline wherever practicable

- (viii) It is also clear that, had the path in the Orders been available, Natural England would have recommended it as part of the Coast Path. Instead, they have given an unqualified commitment to make a variation order to align the Coast Path with the KCC route if the latter is established *[extracts from report submitted by Bensted's Charity]*
- (ix) The Creekside path would provide an attractive and convenient route on foot for the residents of both estates to and from Faversham town centre.

#### Route at Faversham Reach

11. While the Group recognises that most, if not all, of the residents of Faversham Reach would prefer that there was no public right of access to any part of the estate, the route proposed in the Orders seems to be the least undesirable from their perspective, as well as being the one that would afford maximum enjoyment for walkers:
- (i) It would have very little impact on residents' privacy. It would be distant from most of the houses and, even in the case of numbers 1-3 and 13-15, the path would be separated from the houses by gardens and walls: very much like many people's experience of pavements in front of their houses
- (ii) The Orders would result in the extinguishment of that part of the present footpath that runs from the promenade towards the main entrance, thus potentially increasing security within the estate and enabling the residents to secure the main entrance if they wished to do so. Previously, residents have expressed concerns, albeit greatly exaggerated, about the mingling of pedestrians and traffic in Faversham Reach if this part of the definitive path was fully re-opened. There would be no incentive for walkers to wander away from the Creekside since this is the line which they would be following from either direction and the route could, if necessary, be clearly waymarked within the estate
- (iii) Adopting this route would potentially obviate any problems arising from the 'coastal access' provisions of the England Coast Path. If, as presently proposed by Natural England, the Coast Path were to follow footpath ZF43/the Saxon Shore Way round the back of the estate, all the 'non-private' areas of the estate (e.g. the roadways and walkways) would be open to the public. This seems to be the worst possible outcome from the residents' perspective. But, as already noted, if the footpath proposed in the Orders were created, Natural England would make a variation order to align the Coast Path with the Creekside path, and the 'coastal access' provisions would not be applicable.

## Route at Waterside Close

12. We have already referred, in paragraph 8 above, to the s.106 agreement and our belief that the principle of having a Creekside public footpath along the Creekside there has been fully established. We would add the following points:
- (i) The final approved plans show the promenade with the words 'public access to Creekside' annotated
  - (ii) It is plain to see from the aerial OS Map of Waterside Close [*Appendix 2 attached*] that properties there would barely be affected by public use of the promenade
  - (iii) The residents of Waterside Close have always been aware of the intention to create a public footpath along the promenade there
  - (iv) In 2006 the Local Government Ombudsman, following a complaint brought by one of the present residents, criticised Swale Borough Council for the delay in implementing the s.106 agreement [*LGO letter submitted by Bensted's Charity*]
  - (v) The fact that the residents may have become used to not having a public right of way along the promenade does not afford any reason for failing to provide one now
  - (vi) Although the present Orders propose that the path should leave the estate by a different route, the original intention was clearly that the route would follow the whole of the existing promenade, including going in front of 2 Waterside Close, the owners of which have argued that the path would be too close to their property. While the Group would obviously welcome it if any appropriate mitigation measures could be agreed with the owners, we would emphasise that they would have been aware of the proposed public path when they bought the property. We would also point out that many people have a public right of way running next to their property and, in some cases, with their front door leading directly onto it
  - (vii) Following the Creekside rather than going out of the main gate would obviate the concern, voiced by some residents at the previous inquiry, about mingling pedestrians and traffic at the road leading into the two housing estates and the Brents Industrial Estate.
13. A number of Waterside Close residents have argued that there are substantial objections to the proposed slipway route. These centre on the alleged impact on the use of the slipway and on the use by residents of adjoining areas for such matters as parking and composting. The Group considers that those objections carry very little weight and agrees with the observations made by KCC in its 'Statement Containing Kent County Council's Comments on the Objections' (paragraphs 34, 35 and 38).
14. In relation to the use of the slipway, the Group would add several points. It is interesting to note, first of all, that the plans for Waterside Close show that the intention was to fill in the slipway, so its existence was not seen as a fundamental part

of the development. We would also add that, from observations made from across the Creek over many years, the slipway has been very rarely used in our experience. More importantly, we would maintain that the very minor adjustment in the width of the mouth of the slipway would have no impact on its use for launching or landing boats. First, the absence of any winching gear or similar equipment means that large vessels cannot use the slipway. We have been assured that the slipway would remain more than capable of accommodating any vessel that could conceivably use it. Second, as Appendix 2 illustrates, the width of the top of the slipway – which would be unaffected – would restrict the size of any vessel which could be launched, rather than the part of the slipway bordering the new walkway.

#### Other objections made by residents

15. The Group notes that the residents of Faversham Reach and Waterside Close have revived a host of other objections which were aired at the previous public inquiry, ranging from the risk of death or injury from people falling in the Creek to such matters as crime, fouling by dogs, graffiti and litter. The Group considers that these objections are either unfounded or grossly exaggerated and notes that, in relation to Faversham Reach at least, they were clearly considered unpersuasive by the Inspector who chaired the previous inquiry. Insofar as the objections concern supposed dangers to users of the proposed path, the Group's members have much experience of walking paths along the banks of rivers, canals and creeks and along cliff-top routes. The Group can assure the residents that the promenades along this part of the Creek are perfectly adequate for public use and pose no particular danger to users.
16. The Group welcomes and endorses the comprehensive and reasoned response given to the various objections by KCC in its Statement and does not otherwise think it necessary to add to them. It also notes the Council's offer to discuss possible mitigation measures.

#### Conclusion

17. The establishment of the path in the Orders would neatly achieve a number of very desirable objectives. It would:
  - (i) solve the problem of the current obstruction of footpath ZF5 at Faversham Reach in a way which would have minimal impact on the residents there and enable them to create the 'gated community' which they seem to desire
  - (ii) remove the planning blight from the five houses which obstruct the present route
  - (iii) implement the clear intention to provide public access along the Creekside at Waterside Close
  - (iv) enable walkers who wish to follow the Creek to avoid having to cross the road which serves both estates and the Brents Industrial Estate

- (v) enable Natural England to make a variation order in due course to make this route part of the England Coast Path and obviate any difficulties arising for the residents of both estates and the Brents Industrial Estate from the application of the 'coastal access' provisions
  - (vi) maximise the convenience and enjoyment of those who wish to walk along this part of Faversham Creek.
18. The Group considers, therefore, that the Orders should be confirmed subject to the proposed modification of the timetable for implementation.

Faversham Footpaths Group  
10 November 2017

Statement of Case – Faversham Footpaths Group

DOCUMENTS ENCLOSED

Appendix 1. Faversham Creek Neighbourhood Plan – Extract from consultation responses and summary of report on those responses.

Appendix 2. Ordnance Survey aerial photograph of Waterside Close, including slipway.



Statement of Case – Faversham Footpaths Group

**APPENDIX 1**

**Page 30 of Action for Market Towns’ summary of responses to consultation on the draft Faversham Creek Neighbourhood Plan and summary of AMT report by Neighbourhood Plan Steering Group**

Statement of Case – Faversham Footpaths Group

**APPENDIX 2**

**Ordnance Survey aerial photograph of Waterside Close, including slipway.**