

FAVERSHAM FOOTPATHS GROUP

CLAIMED DELETION OF PART OF PUBLIC FOOTPATH ZF5 AT FAVERSHAM IN THE BOROUGH OF SWALE

1. This note is in response to Maria McLauchlan's email of 13 May 2019, seeking any information which the Group wishes to submit in relation to the application made by the Faversham Reach Residents' Association (FRRRA) to delete part of public footpath ZF5 at Faversham Creek on the basis that it was wrongly recorded on the Definitive Map.
2. The Group considers that there is absolutely no evidence to back up the FRRRA's assertion that the path was wrongly recorded and that, indeed, this contention was clearly disproved during the public inquiry held in January 2018, when the FRRRA set out its case in detail.
3. The Group considers that it is regrettable that the FRRRA is pursuing its application, since it will involve unnecessary public expense and contribute to the delay in opening the Creekside path for public use.

History of the recording of public footpath ZF5 on the Definitive Map

4. Claims that the footpath had been wrongly recorded on the Definitive Map were raised by residents in connection with Orders unsuccessfully promoted by Faversham Town Council in 2012. It was alleged that its appearance on the Definitive Map was the result of a clerical error, although no evidence was produced to support this contention and no attempt had been made by the residents to seek a diversion order.
5. At the public inquiry held in May 2014 the Joint Objectors, who included the Town Council, submitted detailed evidence setting out the history of the path and its recording on the Definitive Map: see Appendix 11 to the Joint Objectors' Statement of Case dated 18 February 2014. The Group considers that the evidence submitted then provided conclusive proof that the footpath was correctly recorded. Neither KCC nor the residents' associations produced any evidence to the contrary. The Inspector's Decision Letter of 1 July 2014 noted: "KCC accepts that the public is entitled to use footpath ZF5 and there is no suggestion that it has been added to the definitive map in error" (para 60).
6. In its Statement of Case, dated 13 November 2017, for the public inquiry held in January 2018 the FRRRA set out the reasons why it believed, "on the balance of probabilities" (page 6), that the path had been wrongly recorded on the Definitive Map, arguing that it should have been shown as going round the outside of the wall of the extended shipyard, not along the boundary of the original yard. In December 2017 the FRRRA submitted the present application for a DMMO but without any supporting evidence.

7. In his Proof for the inquiry, Mr Andrew Osborne, representing Bensted's Charity, summarised the history of the path and explained in detail how it came to be added to the Definitive Map (see in particular paragraphs 8 to 19). Mr Osborne was a member of Faversham Borough Council's Works and Highways Committee and its Footpath Sub-Committee which had recommended in 1969 that the path should be added to the Definitive Map. He was also able to attest personally to the fact that, before the shipyard was extended in 1938 to encompass the land now occupied by Faversham Reach, he and others were able to walk or cycle along the route which was added to the Definitive Map.

8. Mr Osborne also pointed out in his Proof that various maps produced by the FRRRA in their Statement of Case showed the path in question and that the directions given by the Borough Council for the path corresponded with the route on the Definitive Map, not the route suggested by the FRRRA.

9. Mr Rusling, in his Proof of Evidence for KCC (see paras 46-52), similarly set out the reasons why the Highways Authority was satisfied that the path was correctly recorded on the Definitive Map. This was reinforced at the inquiry by the Opening Statement on behalf of the Order Making Authority (see paras 41-44) and by Mr Rusling's oral evidence.

10. Subsequently the FRRRA representative, Mr Palmer, made a lengthy presentation, seeking to argue that the footpath was wrongly recorded. However, in cross-examination by KCC's Counsel, Mr Palmer's attention was specifically drawn to an aerial photograph taken in 1927 of Faversham Creek, including the area which subsequently became, first, part of the extended shipyard and, later, Faversham Reach. Mr Palmer agreed that the photograph appeared to show a path on the line of the route shown on the Definitive Map.

11. The Closing Note on behalf of the Order Making Authority also dealt with the FRRRA's claim (see paras 9-13), summarising the reasons why it did not believe that an error had occurred and why the FRRRA's evidence did not meet the legal tests for establishing a mistake.

12. The Inspector's Decision Letter of 21 February 2018 noted, in relation to the FRRRA's application: "This application has not yet been determined and is unlikely to be for some time. It is not for me to anticipate the outcome of the application although I note that KCC takes the view that it is highly likely to be rejected" (para 52).

13. The Group is aware that Mr Andrew Osborne, who gave evidence for Bensted's Charity at the 2018 inquiry and who is also a member of the Group's Executive Committee, has recently made a Statement of Truth, asserting again that the footpath recorded on the Definitive Map follows the route used prior to the extension of the shipyard in 1938 and that it is on the line sought at the time by Faversham Borough Council.

Conclusion

14. The Group understands that for an application to extinguish a public footpath on the grounds of incorrect recording to succeed it must be demonstrated that the evidence is genuinely new and not something which was known at the time or on which a different

interpretation is now being placed; that the evidence must be of sufficient substance to displace the legal presumption that the Definitive Map is correct; and that the evidence must be cogent.

15. The Group does not consider that any of these tests is met. All the evidence relied on by the FRRRA at the 2018 public inquiry was available to the Highways Authority at the time. In relation to the facts, the FRRRA has failed to demonstrate that any error occurred, with all the available evidence pointing clearly to the fact that, on the contrary, the footpath was recorded on the line of an existing route which had been used and which was the route which the then Borough Council and the Highways Authority intended to add to the Definitive Map.

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