

Faversham Reach Residents Association Ltd.

Clive Richards
The Planning Inspectorate
3A Temple Quay House
2 The Square
Bristol
BS1 6PN

28 November 2019

Dear Mr Richards,

CASE REF NO FPS/W2275/14A/21 - Appeal against the refusal to delete part of Public Footpath ZF5 (Parish of Faversham)

1. Faversham Reach Residents Association submitted an application on 7th December 2017 under Section 53(5) of the Wildlife and Countryside Act 1981 for an Order modifying the Definitive Map and Statement by deleting part of public footpath ZF5 at Faversham.
2. Kent County Council informed us in their Notice of Decision reference PROW/SW/C403 dated 7 November 2019 that they declined to make an Order.
3. We have previously served notice (email to Planning Inspectorate sent 14 Nov at 11.09, acknowledged 14 Nov at 12.13) and to Kent County Council that we wish to appeal against the decision of Kent County Council under paragraph 4 (1) of Schedule 14 to the Wildlife and Countryside Act 1981.

This letter provides the grounds for our appeal.

Background

4. As is acknowledged in KCC's report Ref PROW/SW/C403 dated 6/11/2019 para 54 part of Footpath ZF5 has been the subject of a variety of Orders over the past few years to try to resolve the alleged obstruction of the claimed route of the path through what is now the Faversham Reach estate. In 2014 Kent County Council (KCC) led a plan, in conjunction with the FRRRA residents, to extinguish this part of ZF5, substituting the route of what is now designated as ZF42 but which, at the time, had no official status; this proposal was rejected by the Inspector. Subsequently KCC changed sides by proposing Orders to create ZF43 and to extinguish most of the same part of ZF5; these Orders were confirmed by the Inspector in 2018. This DMMO was applied for prior to the 2018 public inquiry, but has not been considered by KCC until earlier this year.
5. We believe, after this history and the conflict of interests that follow from it, that it is almost impossible for KCC to act as an honest broker in determining this DMMO application; inevitably there will be bias towards the view expressed by KCC in their Proof of Evidence for the 2018 Inquiry (PINS ref ROW/3175170 & 71) paragraphs 46 – 53. This appears to be the situation in KCC's report; so we welcome an opportunity for a neutral and balanced review of the application.
6. In our view the report and decision contain errors of process and may not have legal or statutory standing; the report contains errors of fact; it contains errors of omission; it contains errors of interpretation; and it does not present a coherent summary of the pros and cons of its conclusions on the evidence submitted, nor of how it arrived at a conclusion 'on the balance of probabilities'.

Grounds for Appeal.

The appeal is based upon the following grounds;

Ground 1. Errors of Process:

7. The investigation claims to have been carried out in accordance with a *'Report to the Sub-Committee dated February 1990 which outlines the procedures to be used and the legal tests to be applied'* (para 3). We requested a copy of this document from KCC, but no copy of it was apparently available to the report writer within the KCC PROW and Access Department. (See email copy in Annex B from Mrs Laura Wilkins dated 13 Nov at 09.14) Under these circumstances it is difficult to see how KCC can substantiate the legal tests and procedural grounds on which it claims it has based its assessment.
8. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 No. 2583 lay down the responsibilities for which a local authority's executive may be delegated. Contrary to these regulations, the decision not to make the Order requested was made by a Director, not by elected members of the Council. Therefore the decision is void as it did not comply with the statutory requirements as to who should make it. Local convention, as claimed but not substantiated, cannot override Parliament's direction. The decision is outside the law therefore unlawful. Also see *Miller v Prime Minister* 2019.

Ground 2. Identification and Treatment of Evidence

9. The report is flawed in that it does not contain all the evidence adduced, fails to advise the decision maker properly, on the balance of probabilities, and does not allow the decision maker to make her own decision. (See *O'Keefe (1) R v Isle of Wight County Council ex parte O'Keefe* [1989] JPL 934, [1989] 59 P & CR 283).
10. KCC acknowledged receipt of the narrative evidence FRRRA submitted to support this application, but specific points are not mentioned directly in the report, so it is not possible to know how they have been considered. Similarly, within the report, reference is made to evidence submitted by FRRRA to the 2018 Inquiry, but whether or not it has been considered and what assessment has been made of it is not made clear.
11. The mapping used to create the Draft DM was not included for the decision maker. If it had been, the decision maker would have seen how the error in drafting the 1970 Definitive Map occurred.
12. The report that the decision maker based her decision upon appears to have made a number of assumptions without assessment of evidence to support them.

Ground 3. Map used for the 1970 Definitive Map was out of date

13. FRRRA's application was partly based on the evidence that the written request from the Borough of Faversham Council (BoFC) to add a footpath was misinterpreted by the County since the KCC draughtsman used an out-of-date map without the benefit of any sketch, survey or site visit when plotting the route requested by the BoFC in 1969.
14. The report implies that the 3rd Edition of the OS 6in series was used for the Definitive Map – this edition was dated 1938 and published in 1946. However, this map does not reflect the actual situation on the ground in 1946, let alone in 1969/70. The map did not show that Pollocks shipyard had been extended on two occasions: to the West during the 1930s and to the North in the 1940s.
15. The route drawn therefore would have passed through a six-foot-high concrete wall just behind the wall on the South West side of the shipyard main gate and another six-foot wall perpendicular to the Creek on Crab Island. The route has thus been obstructed since it was inserted on the map in 1970. Since the route in fact passed through the working shipyard area, an alternative route had been provided by the

shipyard owners, but this seems not to have been recorded at the time. Rectifying this omission appears the most likely intention of the BofFC. In contrast the footpath now known as ZF1 was altered and recorded as such to go around the shipyard to the North, first when the shipyard was established in 1917, secondly when it was extended in the 1940s. It can be assumed that all these changes were made during the war years using the Defence Act 1842 c. 94 Section XVI or The Emergency Powers (Defence) Act 1939 and subsequent Regulations which gave powers for officers to stop up or divert paths, at the same time providing a 'bypass' route. In the case of the route of ZF5, this bypass route would have been that now known as ZF42.

16. The decision maker was not made aware of these points.

Ground 4. Misinterpretation of Consistency Guidelines and case law.

17. This path has a complex history over which there has been much dispute. As is made clear in the Inspectors Consistency Guidelines 2.2 a decision needs to be made on the **balance of probabilities** of all the evidence.

*"Once all of the evidence has been individually assessed, the 'balance of probability' test demands a comparative assessment of the evidence on opposing sides. This is a complex balancing act, involving careful assessment of the relative values of the individual pieces of evidence and **the evidence taken together. It is the infinitely variable nature of this assessment which makes WCA 81 case decisions unique**".*

18. KCC's report shows no attempt to present and weigh up the evidence in this way.

19. The report misinterprets case law concerning the requirement for "**new evidence**". See Inspectors Consistency Guidelines at 4.4.

"Mayhew confirms that the discovery of evidence under S53(3)(c) does not have to be the discovery of fresh evidence. It held that the meaning of "to discover" is to find out or become aware. This implies a mental process of the discoverer applying their mind to something previously unknown to them"

20. The report also fails to consider that the use of this part of ZF5 has not been possible certainly from 1938 (and probably from 1917); that the route goes through two concrete walls; that no one complained of it being obstructed when added to the draft DM, or when it was added to the finished DM in 1987; when it was further built upon, or at all until its existence was first noticed in 2005 – 15 years after Faversham Reach was built (with full planning permission) after a member of the public complained to KCC that the path was obstructed. Letters from local residents totally unconnected with Faversham Reach show that there was no public path, or usage, through the area. See Philip Ellis (page 21 of Illustrations file), Dorothy Smith, Colin Frake, Brian Boorman and Brian Weaver letters at Annex B.

Ground 5. Denial of Natural Justice.

21. The applicants, despite making a verbal request, were denied the chance to review the report prior to it going to the decision maker and then denied the opportunity to address the decision maker, contrary to natural justice and Article 6 of the Human Rights Act 1998. An email exchange on 9 October 2019 refers and is attached in Annex B.

Points of detail of KCC report to Director of Environment, Planning & Enforcement PROW/SW/C403

22. In Annex A we append a schedule of issues and comments on the KCC report, which we believe to be relevant to be considered as part of this appeal.

23. Our Appeal

24. We appeal to the Secretary of State to review our case and to instruct Kent County Council to make the Order to extinguish and remove all of that part of ZF5 within Faversham Reach from the Definitive Map historical record.

Chair, Faversham Reach Residents Association Ltd

List of Files sent by email to Planning Inspectorate:

Original DMMO application

1. FRRR Modification Order Application ZF5 Map Attachments Dec 17.pdf
2. DMMO letter to KCC 6 Dec 17.pdf
3. Annex to support FRRR DMMO Application dated 6 Jan 17.pdf
4. FRRR ZF5 Modification Order cover letter Dec 17.pdf

Notice to landowners:

5. Notice to landowners FRRR ZF5 Modification Order cover letter Dec 17.pdf
6. FRRR ZF5 Modification Order Dec 17.pdf

Rationale for DMMO

7. Narrative: PROW_SW_403 Annex to support FRRR DMMO Application dated 5 Dec 17.pdf
8. Illustrations: PROW_SW_403 FRRR Supporting Narrative for DMMO Application dated 6 December 2017.pdf

Supporting information for original DMMO application sent to KCC in June 2019

9. 1 FRRR DMMO for ZF5 additional evidence.pdf
10. 2 FRRR DMMO for ZF5 additional evidence.pdf

Kent County Council's report & decision notice

11. KCC Notice of Decision 7 Nov 19.docx
12. KCC Report PROW/SW/C403 dated 6/11/19

This FRRR Appeal

13. CASE REF NO FPS/W2275/14A/21 - Appeal.pdf
14. Annex B to CASE REF NO FPS/W2275/14A/21.pdf

Faversham Reach Residents Association Ltd.

Annex A

CASE REF NO FPS/W2275/14A/21 - Appeal against the refusal to delete part of Public Footpath ZF5 (Parish of Faversham)

**FRRR Comments on KCC Report and Decision on DMMO for ZF5
PROW/SW/C403 dated 6/11/19**

KCC Report	Comments
Summary	Decision made on delegated authority not valid; it should be a decision by Elected Members. Cf Function Regulations 2000 – Miscellaneous; bullet point 2 applies in particular, but also bullet points 1, 3, 4, 6 and 7 to some extent. The decision therefore appears to be unlawful and void. Miller v Prime Minister 2019 also refers.
Para 3	Refers to Report to Sub-Committee in Feb 1990; copy requested 13 Nov 19 but apparently not available within PROW & Access Dept. Has it been updated in line with 2000 legislation as above? Without this, KCC has been unable to substantiate the legal and procedural basis on which it has made its assessment and decision.
Para 4(b)	Path cannot have been used by the public certainly since 1938 – over 80 years and probably since 1917 (refer to Defence powers to stop up or divert paths, providing a ‘bypass’ route). It is difficult to see how 20-year rule might apply. No specific reference date is given in the report, nor is any evidence or argument offered to justify dedication; extensive evidence of the lack of intention is referred to, but does not seem to have been taken into account. Relevant dates are 1938 (or 1917 at earliest) until 1969 (or to date). Counting retrospectively from any of these dates would not have allowed actual or intended periods of ‘...use... by the public...could not give rise at common law to any presumption of dedication, has been actually enjoyed by the public as of right and without interruption for a full period of 20 years ...unless there is sufficient evidence that there was no intention during that period to dedicate it’.
Para 4(e)	Trevelyan requires Balance of Probabilities, but this report does not provide it.
Para 8	The report does not refer to or present all the specific evidence, weighting and arguments, pros and cons, which have been taken into account in reaching the report’s conclusion, on a balance of probabilities. It is unclear what ‘proper legal tests’ can have been applied - see comment at para 3 above that it has not been available to the report writer.
Para 12	The report completely misinterprets the basis and purpose of our DMMO. Our claim was (and is) that the whole route, from point A to point B on the Appendix A map, was designated in error, <u>not</u> just the section from point E to point F on the Appendix B map. It is true that our DMMO would have the effect today on the ground as described in the report. But if our claim to have the whole route deemed incorrect is accepted, then that means that imposition of a replacement route (ZF43) is unnecessary and also incorrect. The report refers to the Definitive Statement being attached at Appendix C, but this document is not attached. Nor is any assessment made of the Statement in the report, hence not made available to the decision maker. Refer also to comments on Para 27.
Para 15	The 1st Edition OS map shows a path not the path at this point. The map does not indicate whether the path was a ‘private’ path or a ‘public path’. As for <u>all</u> three OS maps referred to, this map includes the disclaimer ‘Representation on this map of a road, track or footpath is no evidence of a right of way’.

Faversham Reach Residents Association Ltd.

Para 16	Comment on Para 15 applies to all three maps. Dates of all three editions of the OS referred to are not specified, particularly those of the 3 rd Edition, which was apparently used for base mapping (see Para 18 below).
Para 17	<p>Every land holding was surveyed and mapped for the 1910 Finance Act and it would include visible and non-visible rights of access. Tax deductions could be made for public and private rights of way. It did not confirm the existence of rights that were not claimed, but it did confirm those that were. Any failure to claim a tax deduction for a PROW would suggest that no public rights existed..</p> <p>But the report writer did not scrutinise this map, stating it would not assist. The report does not set out the alternatives above, clearly implying a foregone conclusion, without considering the balance of probabilities.</p>
Para 18	The date of the 3 rd Ed OS is important, because it was apparently used for base mapping, and was not fully up to date in this area – this edition was dated 1938 and published in 1946. However, this map does not reflect the actual situation on the ground in 1946, let alone 1969/70. The map did not show that the shipyard had been extended on two occasions: to the West during the 1930s and to the North in the 1940s, with paths diverted, first from when the shipyard was established, secondly around both extensions. This is clearly shown in the aerial photographs included in the FRRR Rationale Illustrations.
Para 19	The 1932 Rights of Way Act encouraged Parish Councils to survey all public ways. It was a precursor to the similar 1949 process under the National Parks and Access to the Countryside Act. As for the Finance Act, if a path was not claimed to be a PROW, it was not. Similarly to comments on Para 17, the report does not state this.
Paras 20 & 22	ZF5 is not shown on these two maps (Parish Map 1950 and Draft Definitive Map 1952). The report does not state what weight is given to this evidence, again implying a foregone conclusion.
Paras 23 & 24	Provisional Map 1952 and First Definitive Map 1952 ditto. The report does not explain what weight was given to the fact that no objections were received, but it is very important. The report appears to assume that the landowners would have objected, but it is not surprising that no objections were received to something which was not shown! Equally, it means that no objections were received because no-one thought that the path should have been shown.
Para 25	The report states that ZF5 (FP5 at the time) was not recorded, but that ‘ the path’ (should be ‘a path’) is, but without further comment. The route of FP1 is described, correctly, as having been relocated as we had described in our claim. The date of base mapping used and whether or not this was fully up to date, is important, because the route of ‘the path’ could not have been used since 1938, probably since 1917.
Para 27	<p>In spite of what Andrew Osborne may claim was the ‘intention’ of the Borough of Faversham Council’s description (Para 44), the only logical interpretation which makes sense <u>on the ground</u> is that the path was intended to follow the route of what is now ZF42.</p> <p>Following the description, the only ‘boundary wall of shipyard’ which existed at the time still exists today; no map or sketch of the intended route accompanied the B of FC’s description; no survey was carried out by the B of FC or KCC to validate the route; and the base mapping (if this was the 3rd edition OS) was certainly not up to date – as for Paras 18 and 25 above. Nor was any reference made to the alleged route during the planning process for the Faversham Reach development in 1987/88, with which the Faversham Town Council (including Andrew Osborne), SBC and KCC were all involved. The report makes no reference to these factors.</p> <p>The wording of the Definitive Statement itself, which accompanied the Definitive Map, is “FP5 Bramble Hill Road and front of Brents Shipyard NW across fields to FP2 at junction with Ham Road” (see page19 of Annex to support DMMO Application).</p> <p>This description can only be interpreted as being a route along Upper Brents, from its junction with Bramble Hill Road to the front of the Shipyard and thence NW to join Ham Road. This in no way accords with the route of FP5 as requested by BofFC, or as drawn. The report makes no comment on this glaring inconsistency. The ‘front of the shipyard’ can only mean the front gate in Upper Brents.</p>

Faversham Reach Residents Association Ltd.

	<p>The report highlights that no objections were received to FP5 as it appeared on the Definitive Map, in 1969/70. It makes no mention of the fact that the shipyard had gone into liquidation at the time and was between owners. Nor does it mention that the DM in general was only publicised at the time in a small classified advertisement in the London Gazette and the DM was not physically published until 1987. Philip Ellis' letter makes it clear that he did not recall any correspondence about a footpath through the yard at a time when he was Managing Director of the shipyard (see Page 21 of Annex to support DMMO Application); see also para 36. The DM was not referenced at any stage of the planning process for the Faversham Reach development in 1987/89. This is not perhaps surprising since there was no physical path on the area of the planned estate; but there was a footpath clearly in use (now ZF42) that follows the boundary wall.</p>
Para 30	<p>The report does not state that, in fact, the 1946, 1990 and 2008 aerial photographs all show that there was <u>no</u> path on the alignment on those dates. To say that this '<i>does not assist</i>' implies biased judgement - not an assessment of the balance of probabilities.</p> <p>The report states that the 1927 aerial photograph (in fact there were two such 1920s views) clearly shows a path on the alignment of ZF5 alongside the Creek.' This could only be the towpath, which has never been designated as a PROW and which was made available, on a permissive basis, along the whole Creekside frontage of the shipyard, only for the movement of shipping.</p> <p>The report does not refer to the route of what was later to be designated as ZF42, which is clearly shown on all five aerial photographs referred to.</p>
Para 36	<p>The report does not refer to the statement by the then Managing Director of the shipyard, Philip Ellis, that he denies any knowledge of consultation about the proposed route of FP5 in 1969/70.</p>
Para 37	<p>The report casts doubt on our interpretation of changes to the alignments of footpaths in the area over time, but does not offer any alternative interpretation or evidence for this.</p>
Para 38	<p>Similarly, the report casts doubt on our interpretation of the existence, status, use and control of the towpath, but it does not offer any alternative interpretation or evidence for this.</p>
Para 39	<p>The report interprets our highlighting of changes to land uses in the area over time, evidently without acknowledging or assessing our argument. In fact, we were highlighting the ways in which the routes of footpaths changed in response to or as a forced result of these changes in land use. These route changes, either because they were functional, or carried out by fiat under Defence powers, appear to have been universally accepted.</p>
Para 44	<p>The report does not refer to the fact that in 2012/14 KCC had adopted and was promoting the FRRRA's case for deletion of ZF5 and substitution of the existing path now known as ZF42, whereas in 2016/18 KCC was promoting the case for substitution of a new path, ZF43, to which FRRRA had objected.</p> <p>The Inspector at the 2014 Inquiry stated that she had been <u>shown</u> no evidence that ZF5 had been added in error, but did not state that there was none. At the time of the Inquiry in 2018, the Inspector and KCC were fully aware that FRRRA had presented such evidence, in their application for a DMMO, but the report does not refer to the fact that both the Inspector and KCC had arbitrarily dismissed that evidence at the 2018 Inquiry, without it having been properly assessed.</p> <p>The report refers to KCC's Proof of Evidence to the 2018 Inquiry para 46-52. This included KCC's unsubstantiated dismissal of the FRRRA case for the DMMO at the 2018 Inquiry, stating it was not based on new or cogent evidence. The report refers to Faversham Footpaths Group (FFG) putting this forward as evidence that it must be true and the report is evidently concluding the same.</p> <p>But see Inspectors Consistency Guides at 4.4 "<i>Mayhew confirms that the discovery of evidence under S53(3)(c) does not have to be the discovery of fresh evidence. It held that the meaning of "to discover" is to find out or become aware. This implies a mental process of the discoverer applying their mind to something previously unknown to them</i>".</p> <p>The report repeats the FFG representations to this DMMO, without making clear whether it</p>

Faversham Reach Residents Association Ltd.

	agrees with them, particularly the last sentence. The report also does not explicitly weigh up any of the statements in its assessment of the balance of probabilities.
Para 45	The report does not state what conclusion it draws and what weight in the balance it gives to the statement that the East Kent Area PROW Officer could offer no evidence either way.
Para 46	<p>The report does not state what weight it gives in the balance to statements made by former workers at the shipyard, including Philip Ellis the last Managing Director, none of whom had any interest for or against either the ZF5 alleged route or the ZF43 path promoted by KCC in 2016/18, compared with statements and evidence given by others who were self-evidently prejudiced against the status quo. Nor does the report refer to the fact that these latter statements have been disputed, including at the 2018 Inquiry, as at best contentious, alternatively duplicitous.</p> <p>The report also ignores the fact that the ZF5 route could not have been available for use by the general public, probably since 1917 and certainly since 1938 to date.</p> <p>Philip Ellis, Dorothy Smith from 2014, Colin Frake, Brian Weaver and Brian Boorman statements apply – see also para 50.</p>
Para 50	<p>It is absolutely clear from the written statements by former shipyard workers, including the last Managing Director, that the provision referred to cannot apply. The shipyard owner cannot be said to have acquiesced to any use by the general public of the towpath. Very occasional use by individuals may have occurred on an ad hoc, anecdotal basis but there is no evidence that this was authorised or acquiesced to by the owner. Use of the rest of the alleged route of FP5/ZF5, from the towpath to the front gates is anecdotal, has been disputed and is extremely unlikely to have occurred. The route was for internal working access from the front gates to and from the shipyard buildings on the South West side, so public access would probably have been forbidden under Defence powers from 1917; it would have been extremely hazardous at any date. See also comments under Para 53 Bullet point 4.</p> <p>To follow the whole route within the shipyard area would also have been pointless, as it is longer and would have been more difficult than the bypass alternative (ZF42).</p> <p>Public users of the path would also have had no reason to go through the shipyard because they would have been coming and going between the town centre and the farms, land and fishing base to the North East, using ZF1 and the original ZF5 routes.</p>
Para 51	The report does not make clear its conclusion on the requirements of Para 4.33. Our contention is that much of the evidence we presented is new, as well as interpreting and re-interpreting evidence not known to us in 2012/14, when KCC was promoting the FRRRA case; the evidence is of sufficient substance; and the evidence is cogent. The report does not state whether or not and why it may conclude otherwise, on the balance of probabilities and in natural justice.
Para 53 Bullet 2	See Para 30 comments above, particularly the last sentence.
Para 53 Bullet 3	In fact most of the alleged ZF5 route does not run along the towpath, but inland away from it. See Para 50 comments above. Perhaps 50m or so of the route coincides with the towpath, which has never been designated as a PROW. The report does not refer to this.
Para 53 Bullet 4	<p>This statement is incorrect – no one runs a shipyard without secure boundaries when working on Admiralty work.</p> <p>The shipyard was established in 1917 and operated under Admiralty contracts, using powers under the Defence Act 1842 1842 c. 94 Section XVI or The Emergency Powers (Defence) Act 1939 and subsequent Regulations. This allowed officers to stop up or divert paths, at the same time providing a ‘bypass’ route. In the case of the route of ZF5, this bypass route would have been that now known as ZF42. Provision of the ‘bypass’ route is thus explained but it appears was never formalised. In the absence of evidence to the contrary (apart from Andrew Osborne’s), the B of FC’s intention in 1969/70 would have been to formalise it; in the end this was what was carried out by KCC in 2016, as ZF42. See also comments under Paras 50 and 53 Bullet point 6.</p>
Para 53 Bullet 5	The report does not correctly assess the significance of the gate for the towpath – the alignment was different because the gate was for the ‘hufflers’ assisting in moving shipping, not for ZF5, which did not exist.

Faversham Reach Residents Association Ltd.

Para 53 Bullet 6	The bypass route (now ZF42) was not provided to discourage use of the alleged route via the shipyard, but to provide a connection between Front Brents/Crab Island and Upper Brents/FP1 and FP5. Letters from former workers make it clear that the gate was never used. See also comments under Para 50 on use of the route.
Para 53 Bullet 10	This point ignores the fact that full detailed planning consent was given to the Faversham Reach development by Swale Borough Council, supported by Faversham Town Council, with no reference being made or conditions imposed in respect of the alleged ZF5 route. Mr Graham Thomas, Principal Planner at SBC, stated in terms at the 2018 Inquiry that in 1987/89 SBC officers were not responsible for checking planning applications against the Definitive Map, with KCC officers seconded to SBC being responsible for PROW issues. The report makes no reference to this.
Para 53 Bullet 11	This is not correct - the Regulation Panel in fact <u>approved</u> the application; hence the two Orders referred to in Para 53 Bullet point 12.
Para 54	See comments on Paras 27, 44 and 53 Bullet point 10 above. Also, it is facile to argue that because the historic evidence we have now submitted was available at the time the path was recorded, it is not new evidence. It was new to us, because we had to research it from scratch and none of the evidence or analysis we have cited was presented, assessed and generally drawn out in any of the previous proceedings.
Para 55	See also comments on many Paras above – 30, 38 and 53(5) in particular. In fact, the documentary evidence does not support that there was a path running on the alignment of ZF5...' There is no '...consensus that there was a path...it was a towpath...'. No evidence is cited that this towpath was designated or used as a PROW. The report's subsequent statement concerning lack of awareness by former shipyard workers is purely speculative.
Para 56	Similarly, see comments on many paras above. The conclusion in the last sentence ignores the fact that the alleged route through the shipyard could not have been used by the public, probably from 1917, certainly from 1938 to date. This would have involved walking through walls!
Para 57	The report only identifies one principal ground for our application; there are others. Concerning the wording of the path description, see comments on Para 27 above.
Para 58	The report here adopts Andrew Osborne's comment to the 2018 Inquiry. This argument is facile; by KCC's own admission, Definitive Statement descriptions which accompany Definitive Maps are often not worth the paper they're written on. See comments on ZP1/ZF1 on Para 27 above. No assessment of the balance of probabilities seems to have been made; certainly none is presented.
Para 59	The evidence is new, not just re-interpretation. It has substance and is cogent. No evidence is cited that the towpath was designated or even used as a PROW.

Annex B to CASE REF NO FPS/W2275/14A/21 - Appeal against the refusal to delete part of Public Footpath ZF5 (Parish of Faversham)

Sent by email in a separate file: Annex B to CASE REF NO FPS/W2275/14A/21.pdf

Contents:

Copies of letters and emails relevant to this appeal

Email exchanges with Laura Wilkins KCC by Mike Palmer:

- A. Concerning the process followed to determine DMMO
- B. Concerning non availability of Report to Sub-Committee in Feb 1990

Letters from past shipyard workers and caretaker:

- C. Dorothy Smith
- D. Colin Frake
- E. Brian Weaver
- F. Brian Boorman

Letter from last Managing Director of Pollocks Shipyard

- G. Philip Ellis letter is shown on page 21 of Illustrations file