

FAVERSHAM FOOTPATHS GROUP

WILDLIFE AND COUNTRYSIDE ACT 1981

Kent County Council

Appeal against the refusal to delete part of Public Footpath ZF5 (Parish of Faversham)

1. The Group has considered the response provided by KCC to the appeal lodged by the Faversham Reach Residents' Association (FRRRA) against the former's decision not to delete part of public footpath ZF5. We would like to add a few observations.
2. The FRRRA's appeal mainly comprises arguments, on various grounds, that KCC failed to consider their application properly. It appears to us that KCC have responded fully to those arguments and we have nothing to add.
3. The remaining elements of FRRRA's appeal seem to be, first, a reiteration of their view that KCC misinterpreted the intent of Faversham Borough Council (see e.g. paras 13 and 15 of their appeal) and, second, a re-stating of some of the evidence given at the two public inquiries about the use of the route at various times, in particular the repeated statement (see e.g. para 20 and the comment in Annex A on para 4(b) of KCC's report) that the path cannot have been used after 1938 or probably even 1917.
4. On the former argument, we think it is absolutely clear that the FRRRA have failed to provide any new evidence – as required by the relevant legal criteria – that an error was made as opposed to putting forward a different interpretation of the evidence available at the time. Indeed, the FRRRA themselves make it clear at para 13 of their appeal that their application, in this respect, was based on their view that Faversham Borough Council's request was "misinterpreted". While we believe that the failure to produce any new evidence is of itself fatal to the FRRRA's argument, we would like to draw attention again to the evidence given by Mr Andrew Osborne – see paras 7-9 and 13 of our observations of 8 June 2019 – about what Faversham Borough Council intended.
5. We turn to the FRRRA's statements about the use of the route, in particular their repeated assertion that the relevant part of the path could not have been used since 1938, when the shipyard was extended, or probably from 1917. We are pleased to see that KCC have pointed out several times in their response that the FRRRA have misunderstood the basis for the decision to add the path to the Definitive Map on the line chosen. Our case has always been that, ever since the Creek was straightened in the 19th century, the path/towpath, including the part which subsequently became the extended shipyard and then Faversham Reach, was a path walked by members of the public and became a public right of way. As noted in para 7 of our earlier observations, Mr Osborne has personally attested to the fact that, before the shipyard was extended in 1938, he and others were able to walk or cycle along this route. And this is, of course, backed up by the 1927 aerial photograph, which shows a clear footpath line. It would have been very strange indeed if a towpath/path along

the Creekside had not been used in this way. As KCC have pointed out, too, in paragraph 34 of their response, the FRRRA appear to accept that there was a public right of way along the Creekside since they argue that the ZF42 route was provided by the shipyard as a bypass. We would add that it is illogical in our view for the FRRRA to imply that the public right of way suddenly stopped at a cul-de-sac formed by the wall and no longer applied to that part of the path which had been newly enclosed by the shipyard extension.

6. The FRRRA's reliance on statements made by various people about the extent to which the path was or was not walked once the shipyard wall was built is misconceived and irrelevant. Those arguments were germane to the matters which fell to be decided by the 2014 and 2018 public inquiries but are not relevant to the matter now at issue.

7. In conclusion we believe that KCC have amply demonstrated that the FRRRA's case falls a long way short of meeting the criteria required in law to found a claim that an error was made and that it cannot therefore displace the presumption that the path was correctly added to the Definitive Map. Going beyond that, a re-examination of all the evidence points overwhelmingly to the conclusion that KCC's original decision was correct on a balance of probabilities.

10 February 2020