

Timothy Howes, Solicitor
Director of Corporate Governance & Monitoring Officer
Thanet District Council
DX: 30555
Margate

Furley Page LLP, 39 St Margaret's Street,
Canterbury, Kent CT1 2TX
Tel: 01227 763939 Fax: 01227 762829
DX5301 Canterbury

Our Ref: TDH/KAD/FR0844/0014
Your Ref:

Direct Line: 01227 863167
Direct Fax: 01227 863219
E-Mail: tdh@furleypage.co.uk

By DX & Email: tim.howes@thanet.gov.uk

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Dear Sirs

Representations in relation to the Asset Disposal List

We act for William Friend of East Northdown Farm, Margate, Kent CT9 3TS.

We are instructed to make representations in relation to the asset disposal list with particular reference to the proposed disposal of The Coach House within Northdown Park.

Northdown Park, including The Coach House, was gifted by Mr Friend's late grandfather (James Irvine Hatfeild Friend) to the Borough of Margate by a conveyance dated 13th January 1937. The Borough of Margate, through its representatives, covenanted with Mr Friend Senior for the benefit of Mr Friend Senior and his successors in title that the whole of Northdown Park would be laid out and used "**and forever be maintained as an open space and public park**". This covenant is recorded on the Charges Register of the Council's registered title number K903155 at item 1 (including the first schedule of the Conveyance recorded in that entry). We enclose a copy of that register.

It is quite clear that the land and buildings were given to the Borough of Margate for the benefit of the people of Margate and that there should not be a disposal of any part of the property which was gifted.

The Coach House forms part of the property of Northdown Park and is therefore bound by the restrictive covenant and cannot be disposed of by the Council.

A disposal of Northdown House was considered by your Council in 2008 but subsequently removed from the list as it was considered a disposal would be in breach of the restrictive covenant.

In addition The Coach House was leased in 1986 with these restrictions in mind as the lease provides for the building to be restored and then used as a museum on the ground floor open to the public for a minimum of 100 days per year. The first floor was to be used for residential accommodation for a curator of the museum. The premises were to open as a museum no later than 1st April 1987. The restoration of the building was to have been completed within 2 years namely by 6th May 1988.

The rent was set at a nominal amount of £100 per year subject to review, this to reflect the fact that the lessee was to carry out work of restoration. The rent review dates were 1996, 2006 and 2016, to reflect the 10th, 20th and 30th years of the term of the lease.

The lease is a full repairing lease requiring not only that the premises be put into good repair within the first 2 years of the lease but also to be maintained in good repair and condition both as to the interior and exterior of the premises. There is also a covenant to paint the exterior of the premises in every third year and the interior of the premises in every 7th year as well as provision to allow the Estates and Valuation Officer of the Council to inspect and examine the condition of the property on notice. There is no provision for Thanet District Council to expend money on the repairs whatsoever. There is however provision for the Council to carry out works if the lessee defaults, but there is then provision for recovery of costs from the lessee.

The Coach House is on the Asset Disposal List apparently because the Council considers it too expensive to maintain and/or retain as an asset of the Council. As is clear from the terms of the lease, the lease is a full repairing lease which requires the lessee to repair and maintain at his own cost without the burden falling on the Council purse.

Rather than dispose of The Coach House, which we consider would be a breach of the Council's covenant to retain the property as public space, the Council would benefit from retention of the property if it took action against the lessee and required the lessee to comply with his covenants of the lease (to restore the building, maintain it, open it as a museum).

If after appropriate notice to the lessee under Section 146 of the Law of Property Act 1925 requiring the outstanding breaches to be remedied, the lessee failed to remedy the breaches, the Council would be in a position to end the lease by forfeiture and carry out the repairs and recover the cost from the lessee.

Accordingly, the value of The Coach House is not devalued by there being a lease in place as it would be a straight forward matter to obtain vacant possession and bring the lease to an end by virtue of the significant breaches of covenant committed by the lessee. In any event, the lease expires in May 2021 and in view of the substantial breaches of covenant, the lease should not be renewed even if at that date, a business use is being made of the premises. Appropriate notice can be given by the Council at the relevant time.

This gives an option to the lessee to take a further 35 year lease. However the option clause is null and void for failure to register as a land charge within a period of 3 months from the date of the lease and furthermore, cannot operate as the lessee has failed to perform and observe the lessee's covenants under the lease.

Taking the above into account, we consider that The Coach House should be removed from the list of assets for disposal on the following grounds:

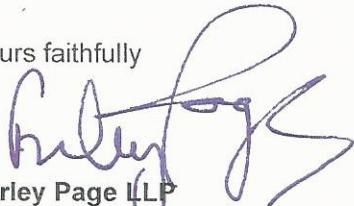
- a) The lessee can be compelled to restore the premises to good condition and maintain it;
- b) If the lessee is in default, the lease can be terminated and the cost of restoration recovered from the lessee;

- c) Thereafter the restored building can be leased to another tenant who is willing to carry out a public service from the building and benefit the public at large;
- d) Disposal of the property would be in breach of the Council's covenants under the conveyance of 1937 to retain the building for public benefit.
- e) It would be contrary to public policy and against the interests of the rate payers of Margate for the property to be sold to the existing lessee at a discounted price because he is "the tenant" or because the property is in disrepair, because the tenant would then benefit from his own breaches of the repairing covenants of the lease.

We enclose a report from Mr Justin Thomson, Asset Manager, to the "Coach House Working Party" dated 28 September 2010 which shows the matter has been considered in detail, but little action has been taken, since then.

We look forward to hearing from you that you will put forward these representations to the appropriate channels within the Council and to also hearing from you with the outcome of the review.

Yours faithfully



Furley Page LLP

c.c. Timothy Hewett Estates Manager

tim.hewett@thanet.gov.uk

Encl:

- Report from Justin Thomson (Asset Manager TDC) to Coach House Working Party – 28 September 2010
- Official copies of title document of Northdown Park