

29 [419]

PLAN
TRANSPORTATION
DEPARTMENT
1998

CENTRAL SERVICES RECEIVED	
ADDRESS	DATE
	- 7 APR 1998

East Northdown House,
Margate,
KENT. CT9 3TS.
6th April 1998

Mr D. Brown.
Planning & Transportation,
Thanet District Council,
P.O. Box 9.
Margate.

PRIVATE & CONFIDENTIAL

Dear Sir,

RE: P/TH/97/0857 EAST NORTHDOWN FARM

I write further to my letter of the 11th March and in response to your letter of the 2nd April.


In your letter, you state that Mr Friend has now included the roadway within his application and further, has served notice on Mr LJC Friend his father, as alleged owner of the road.

By way of background to the general history of East Northdown, I purchased my property in 1982. At the time, Mr LJC Friend the Vendor, claimed title to the roadway, together with other land which he did not own. Included in the contract was a condition that he would procure a Deed of Grant over the Roadway. Solicitors who incidentally acted for both LJC Friend and myself, were subsequently advised in an opinion gained for LJC Friend, that neither LJC Friend or his father before him, had any title to the Roadway. No Deed of Grant was therefore procured. — *express right of way granted.*

In 1986, a High Court action was commenced against me by Mr LJC Friend and Mr & Mrs Riorden of East Northdown Cottage. The action was subsequently abandoned by LJC Friend. Mr W. Friend was materially involved in the above action acting on behalf of his father, and is fully aware that his father holds no title whatsoever to the roadway.

As you have confirmed, it is an offence under section 68 subsection 1 of the 1990 Planning Acts, to knowingly make a false statement as to ownership, and I would request that the Council make enquiries to satisfy itself as to the facts of the matter and thereafter to prosecute W. Friend under the said section 68.

Yours sincerely,


P.H. Miles.

B

CENTRAL SERVICES - RECEIVED	
ATTENTION	RECEIVED
PLANNING AND TRANSPORTATION	
DE 14 APR 1998	
RECEIVED	

East Northdown House,
Margate,
KENT. CT9 3TS.
14th April 1998

Mr D. Brown,
Planning & Transportation,
Thanet District Council,
P.O. Box 9,
Margate.

Dear Sir,

RE: F/TH/97/0857 EAST NORTHDOWN FARM

I write further to your letter of the 2nd April regarding the above with my representations.

I wish to register my strongest objections to the above retrospective application for the following reasons:-

The applicant states that the proposed use of the roadway as an access to the development, will not result in any material increase in traffic movements. I can state without any doubt, that the number of farm vehicular movements claimed by the applicant as existing, is a wild exaggeration and a figment of his imagination. The farm, even when properly managed by the previous occupant and run efficiently, only produced a fraction of the traffic movements claimed. The applicants operators licence has recently been amended to take account of the limited movements which until recently, had been unchallenged.

Until recently, the occasional movement of tractors associated with the farm use could be considered as adding to the character of the area. The proposed use together with the proposed access arrangements for undisclosed commercial developments, including car/coach repairs etc. will if implemented, cause demonstrable harm to the character and tranquillity of the Conservation Area and cause nuisance to the residents of East Northdown. The Roadway, which you inform me the applicant claims to be in the ownership of his father is not and never has been. This can be confirmed to you should you so wish.

As advised previously, the roadway is deteriorating, despite my efforts to carry out limited maintenance. The damage is being caused by commercial use for which the roadway is not constructed. I believe that the proposed development should not in any event be approved until the roadway is made up to a sufficient standard.

I trust the above will be considered and brought to the attention of the Committee when this matter is considered.

Yours sincerely,

P. R. Miles.



*Written
within
written*

Thanet District Council
MEMORANDUM

FROM: ALUN DAVIES
ASSISTANT SOLICITOR

TO: DOUG BROWN - SENIOR PLANNING
OFFICER

CENTRAL SERVICES - RECEIVED	
DATE	BY
16 APR 1998	

PLEASE QUOTE REF: AD/HK

DATE: 16 April 1998

(dictated 15/9)

PLANNING APPLICATION NO. F/TH/97/0857 - EAST NORTHDOWN FARM EAST NORTHDOWN MARGATE

I refer to my telephone conversation with you today when I mentioned that I had spoken to Mr Miles regarding the correspondence you have received from him relating to the access roadway to the above property.

I advised Mr Miles that unless he can show that there is definite fraud on the part of Mr Friend and he can produce clear unequivocal evidence to rebut the existence of a right of way and/or ownership of the roadway, there is nothing that can be done to stop the planning application going ahead.

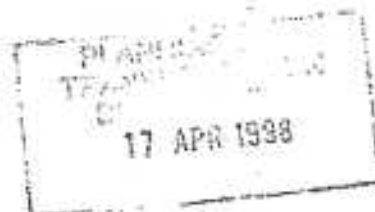
If there are disputes as to ownership, this may or may not affect Mr Friend's ability to implement the planning permission but is not a matter which concerns the Council at the present time.

I also mentioned to Mr Miles that if there is evidence to show that the certificate is improperly given, then it could amount to grounds for a prosecution under Section 68 of the 1990 Act.

In the circumstances the planning application shall continue in the normal way but if Mr Miles has any evidence to show the true ownership of the roadway, the matter will be considered in the light of such evidence at that time.

Should you wish to discuss the matter with me further, do not hesitate to do so.

Alun Davies



East Northdown House,
Margate,
KENT. CT9 3TS.
12th May 1998

Mr D. Brown,
Planning & Transportation,
Thanet District Council,
P.O. Box 9,
Margate.

Dear Mr Brown,

RE: F/TH/97/0857 EAST NORTHDOWN FARM

As requested I have forwarded to your Mr Davies a copy of the Opinion of Counsel confirming that Mr Friend senior has no title to the roadway as claimed. I also enclosed copy correspondence from Mr Friend severely criticising a former Council officer (who now incidentally acts for Mr Friend junior) for stating that the Council did not acknowledge his ownership. *continue*

As I have previously stated, one of my concerns is the deterioration of the private roadway which I personally have maintained and repaired for the past ten years. The road is not constructed to a proper standard and there is no maintenance programme. Any increase in traffic will inevitably cause the surface to deteriorate even faster than now, with no-one being responsible. *work done*

A further point of concern is the proposed use of the redundant farm buildings for industrial use. Two at least of those buildings are merely temporary asbestos-clad structures which will give very little to no protection from noise. This problem will particularly affect the occupiers of East Cottage.

Finally, when the various residential properties were purchased from Mr Friend in the eighties, it was represented that the locality was quiet and tranquil, which indeed it was and has been until now. The claims submitted of levels of farming activity and vehicle movements are a gross exaggeration.

Now it appears that Mr Friend wants to destroy what is left of the character of East Northdown, which your Authority quite correctly saw fit to designate a Conservation Area, for nothing more than further financial gain.

Please accept my apologies for submitting this further letter at such a late stage. In order to save your officer time, I have enclosed copies for the Members of the Planning Committee.

Yours sincerely,


P.R. Miles.

26th May 1998
AJDA.VJN.12

Alan Davies
2405



Dear Mr Miles

I have now had an opportunity to consider the copy documents which you delivered to me, but find that there is insufficient evidence upon which the Council could base a successful prosecution.

The copy letters you have supplied raise a number of issues, but I do not feel represent sufficient proof of title upon which to prepare a case to put before the court. The extract from the Council's Opinion does no more than express his views, and have no legal force.

Unfortunately, upon the basis of the paperwork presently before me there is insufficient evidence for me to recommend to Members that a prosecution should be brought. As mentioned to you during our conversation it may be that your only redress would be an action through the courts against Mr Friend, but of course you will need to take advice from your solicitors in this respect.

Should you wish to discuss the matter with me further do not hesitate to do so.

Yours sincerely

Alan Davies
Assistant Solicitor

P R Miles Esq
East Northdown House
MARGATE
Kent. CT9 3TS

PLANNING DEPARTMENT
RECEIVED

24 OCT 2005

**IN THE MATTER OF LAND AT EAST NORTHDOWN
FARM, CLIFTONVILLE, MARGATE**

AND OF THANET DISTRICT COUNCIL

1. H/L for payment
please.
2. To discuss with
DB + Steve Allan.

ADVICE

1. I am asked to advise in this matter which arises from the grant of a planning permission (Reference TH/97/0857), dated the 15th May 1998, to Mr W Friend of East Northdown Farm, Margate permitting a change of use to mixed agricultural and business (B1) use. Subsequently complaints have been regularly received, primarily from Mr Miles of East Northdown House, regarding the activities and operations on the site and raising questions about the parties' interests in the access road which serves the application site as well as several other properties (including Mr Miles' property).
2. I have been provided with various documents including:
 - An office copy entry of HMLR Title number K711875 which shows that a caution against first registration of the access road was registered by Mr Miles in February 1992,
 - The original planning application, dated the 25th October 1997, which has the "Certificate A" section filled in declaring the applicant to be the only owner of the land covered by the application.
 - A letter dated 19th November 1997 from Mr Brown of Thanet DC to the agent for Mr Friend (a Mr Hunter) asking him to "amend the submitted application plan to include [the] access road within the red line [i.e. within the application site]".

- A letter dated the 18th March 1998 from Mr Hunter to Mr Brown referring to "reference ... made by a local resident to the access lane to the site and whether this should form part of the application. We formed the view ... that there was no reason to incorporate the lane in the application. The lane has been used for access to East Northdown Farm for many years The applicant may use the lane as of right and as a consequence the lane has no relevance to the application."
- A letter dated the 31st March 1998 from Mr Hunter to Mr Brown referring to "various discussions" and confirming that a Notice has been served "upon the owner of Farm Lane East Northdown as required by you" and enclosing a copy of the relevant certificate: I have not seen copies of the said certificate or notice but assume that they remain on the Council's file, I also assume that they show Mr Miles to be the alleged owner of the lane.
- A report to committee, date stamped 22nd April 1998, which refers to a letter which "queries whether the applicant has ownership rights over the access and whether he should be able to use the access [in connection with the proposed use]" (I have not seen the said letter, but assume that it came from Mr Miles). The officer's comments in the report include the following: "Concern has been expressed relating to the use of the private access known as East Northdown. The applicant has included this access road within the application site and has served a certificate on the person the applicant understands to be the owner of the land. Whilst this issue remains a matter of contention between the applicant and a neighbour who has made representations relating to this issue, at the time of writing this report I do not consider that this issue prejudices the consideration of this planning application. I am however taking further legal advice on this matter." (I have not seen the result of this "further legal advice").
- A letter dated the 1st May 2004 from, it seems, Mr Miles to Mrs Runacre of the Council's Planning Department, regarding on-going problems with the condition of the access road which "has deteriorated since being used as access for the commercial developments at East Northdown Farm, and

additionally now that the two developments which were only recently granted planning permission.

- Two letters dated 8th and 13th June 2005 from Mr Miles to the Council's Planning Director setting out various complaints regarding the operations at the site; some of the complaints are clearly private disputes between Messrs Miles and Friend and some relate to allegations of breaches of planning conditions (which no doubt are presently being investigated), the letter also includes a request that the Council consider the validity of the grant of planning permission in the light of allegations about Mr Friend's various "attempt[s] to claim ownership of the lane" (see the earlier letter for details of the individual attempts). Obviously I have been instructed in respect of issues arising from this last request.
- I have also been provided with various documents supplied by Mr Miles relating to disputes arising from his purchase of East Northdown House in 1982. I have to say that these add very little to the matter I am asked to consider, save for the analysis of the situation regarding the "estate roads" set out from page 19 of ACG Hopper's Report from October 1992.

I have set out the relevant contents of the various documents in some detail in order to provide the background to this matter.

3. Those instructing me will be aware of the caselaw regarding defects in the statutory procedure required under the Town and Country Planning (General Development Procedure) Order 1995 (S.I. 1995/419) (see also section 65 of the Town and Country Planning Act 1990), in particular the decisions in Main v Swansea City Council (1984) 49 P&CR 26 and R v Secretary of State for the Environment ex parte Kent [1988] JPL 706 and more recently R v Derbyshire County Council ex parte Poole and Others CO/4962/1999 (unreported) and R v Salisbury District Council ex parte Pridmore and Others [2004] EWHC 2511 (Admin) as regards the circumstances when the Court will exercise its discretion to quash planning permissions granted following procedural irregularities.

4. Of particular assistance are the following dicta:

"The Court, in exercising its discretion, must consider the consequences of a failure to observe such requirements, in the light of a concrete state of facts and a continuing chain of events, looking not only at the nature of the failure, but also at such matters as the identity of the applicant for relief, the lapse of time, the effect on other parties and on the public." Gibbs J at paragraph 14 of Poole.

See also the Planning Encyclopaedia at P65.11 and the Butterworth's Planning Law Service at C [367] both of which set out the test in very similar terms to those used in the extract from Poole quoted above.

"A factual error in a certificate ... might be no more than an irregularity that did not go to the jurisdiction of the planning authority to entertain the application for planning permission notwithstanding that the provisions included the words 'shall not entertain'. (Newman J in Pridmore at paragraph 37)

5. Mr Miles' complaint, in a nutshell, is that "the planning application may not be valid because the lane should not have been included within the application site, together with the declared ownership or control" (from the 8th June 2005 letter). Factually it is clear that the reasons for the inclusion of the lane in the application site was entirely as a result of the Council's request that the applicant should show the access arrangements, furthermore, it seems that the proper notice and certificate was served dealing with the notification of the owner of the land. It follows that Mr Friend did not at any stage purport to be the owner of the lane; indeed his agent was at pains to point out the extent of Mr Friend's right to use the lane, as opposed to claiming any greater interest in the land. I have not seen a copy of the certificate but given that at the time of the planning application the dispute between Messrs Friend, Miles and others regarding the "estate roads" was well known to all parties it seems reasonable to assume that there was no attempt to 'pull a fast one' as far as the notification was concerned (whether as regards the actions of either the applicant or the planning authority); so we are not in the Main situation of an unknown landowner affected by, but ignorant of, the proposal, nor a Pridmore situation where a developer filed a certificate, declaring that he had notified a landowner when he had not done so. Nor is there any

suggestion, so far as I am aware, that the local authority had any reason to suppose that the certificate and/or notice were false in any material regards.

6. In any event it seems clear that all relevant parties were made aware of the application in good time for them to make representations to the Planning Committee (I note the reference in the letter of the 18th March 1998, above, to a resident's letter and the date of the final decision and the grant of permission on the 15th May 1998); indeed it is obvious and a matter of fact that such representations were made, were included in the officer's report and were, no doubt, properly considered by the Committee. Given that Mr Miles had been aware of the application from the outset and, assuming that Mr Miles was "the neighbour who ... made representations" to the Committee on the subject (from the report to Committee); it is difficult to see any justification for his assertion of recent knowledge of the alleged defect in the original application or any explanation as to why there has been a seven year delay in raising this matter. It is equally clear that the grant of planning permission is not fatal to any proposed litigation between the various parties concerning the use or maintenance of the lane so there is no significant effect on private or public interests.

7. In the circumstances, I have to say that I do not feel that there was any false declaration of ownership in the sense required to justify quashing the permission. However, even if I am wrong in that assessment, it is clear when one considers the requirements for the exercise of the Court's discretion, as set out in Pool (in summary, the consequences and nature of the failure and/or irregularity, the identity of the person challenging the original grant of permission, the lapse of time and the effect on other parties and the public) that any perceived procedural or factual error has not had such an impact as would justify quashing the permission.

8. Those instructing me indicated that it may be possible to have a discussion with Mr Miles on this subject; frankly I think that such a course would be a mistake. I

would suggest that those instructing me write to Mr Miles indicating that the allegations of breaches of the planning conditions are being investigated and that he will be kept informed of developments, but that, having sought advice on the point, the Council does not accept that there is any merit in the suggestion that the original permission was invalid. Mr Miles has already indicated a willingness, and indeed a propensity, to litigate matters, he has already instructed a solicitor and, it appears, Counsel and if he wishes to pursue the matter as against the Council he no doubt will. It seems to me that no useful purpose would be served in disclosing privileged matters to a probable litigant.

9. Those instructing me should not hesitate to contact me if they wish to discuss this Advice or this matter further. Finally, I must apologise for the delay in providing this Advice due to pressure of work; I shall endeavour to deal with further enquiries within the more usual two-week 'turn around' time!

Paul TapSELL

PAUL TAPSELL
16th October 2005

Becket Chambers
17 New Dover Road
Canterbury
By e-mail and DX

[+19] p4

2 April 1998
DB/KAF/TH/97/857

Mr D Brown
2135

Dear Mr Miles

TOWN AND COUNTRY PLANNING ACT 1990
RE: PROPOSED CHANGE OF USE TO MIXED AGRICULTURAL AND BUSINESS USE
- EAST NORTHDOWN FARM

I refer to your letter of 11 March regarding the above-mentioned application and particularly to your concern relating to the roadway.

← at Miles' insistence

I can confirm that the roadway known as East Northdown has now been included within the planning application site and that the applicants have served notice on the person they understand to be the owner of that road, a Mr I J C Friend. On this basis it is my intention to proceed with determination of this application, and I would be grateful for your further observations and representations which I understand you wish to make within the next fourteen days.

←

Yours sincerely

Mr. Miles knew that.
correct notice served in 1998

Senior Planning Officer

Mr P R Miles
East Northdown House
MARGATE
Kent CT9 3TS