

Land Registry Tunbridge Wells Office

Mr P R Miles
East Northdown House
Margate
Kent -
CT93TS

Date
22 May 2006

Your Reference
N/a

Our Reference
K570231/ANO/248/MLB

Land Registry
Tunbridge Wells Office
Forest Court
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Dear Mr Miles

Title No: K570231
Property: East Northdown House, East Northdown,
Margate

Thank you for your letter of 24 April. Please accept my apologies for the delay in responding but it has been necessary for me to revisit our correspondence last year concerning this matter.

I note that you and 2 other owners wish to make an application for registration of those sections of the roadway abutting your respective properties under the ad medium filum presumption.

You will recall that in my letter to you of 22 June 2005 I indicated that I felt that an application for registration of part of the roadway abutting your property on the basis of the ad medium filum presumption would be unlikely to succeed given that the transfer of the property dated 9 November 1982 granted an express right of way over the private road. The ad medium filum presumption is just that, a presumption, and the presumption may be rebutted. It is possible that the history of the use or repair of the land or acts of ownership over the years may rebut the presumption. As mentioned in my previous correspondence I am of the view that the existence of the entry in the register of your title relating to the express grant contained in the 1982 transfer would appear to rebut the presumption.

Given the entry in your register relating to the grant of the right of way it seems to me that before being able to make such an application this aspect would need to be addressed. In my



earlier correspondence I mentioned that it would be necessary for you to make an application for alteration of your register to remove the right of way and in doing so you would need to clearly demonstrate to the Registry's satisfaction that the right of way was not validly granted and provide evidence to establish that Mr Friend was not able to make the grant because he did not own the road and did not have the benefit of a right of way over the road. You would need to bear in mind the contents of the statutory declaration of Mr I J C Friend dated 28 October 1982 a copy of which has been forwarded to you. There is also the question of your having presumably relied upon the benefit of the right of way since acquiring the property.

As you know, your property has the benefit of a right of way over the extent of the roadway shown coloured yellow on your title plan. Any application for registration of part of the road based upon the presumption could only relate to that section of the roadway abutting your property to the mid-point of the roadway. The implications of making an application to alter your register to remove the entry relating to the right of way would need to be carefully considered.

In your letter you suggest that the right of way registered in favour of your property relates to a right acquired on the basis of prescription i.e. long user. The entry was, however, made pursuant to the express grant contained in the 1982 transfer. It seems to me that relying upon a prescriptive right of way over a piece of land is unlikely to assist since seeking to rely upon a right of way is at odds with a claim to ownership of the land in question.

I remain of the view that in order to make an application for registration based upon the presumption you would need to satisfactorily address the question of the right of way granted by the 1982 conveyance and provide convincing evidence to establish that the presumption has not been rebutted. While writing I would mention that although I have not investigated all of the titles to those properties within the vicinity of the roadway I see that the titles to East Northdown Cottage and Lawn Cottage also refer to the benefit of an express right of way having been granted by Mr I J C Friend. In order to succeed with the type of application you have in mind it would be necessary to address these express grants of rights of way over the roadway.

With regard to the final paragraph of your letter, an application for alteration of the register should be made in form AP1 accompanied by a fee of £40 and evidence in support. An application for registration based upon the presumption would need to be made in form FR1 again with the necessary supporting evidence and a fee of £40. I would point out that if a satisfactory application were to be made notice of the application would be sent to appropriate persons which would include the owners of properties within the vicinity of the roadway and any other interested parties and those people would have an opportunity to object to the application. However I do believe that you and your neighbours face real difficulties in making an application for registration based upon the ad medium filum presumption for the reasons set out in this letter.

As you will appreciate I am not able to offer you legal advice and if you have any queries concerning the contents of this letter or this matter generally I would recommend that you take independent legal advice. (end -yours sin M Br.)