

William Friend
East Northdown Farm,
Margate, Kent. CT9 3TS
01843 862060 f 860206
friend.northdown@ukonline.co.uk
077 1424 1668
22nd May '07

Private and confidential – disclosure of this document to third parties could be prejudicial to legal matters in hand.

EK/AH/Margate/TM1

Dear Mr. Hutchinson,
Without prejudice.

Thankyou for your letter of the 15th May. As mentioned previously, matters regarding the lane , and Mr. Miles are in the hands of my solicitors, Furleypage in Canterbury.

Amongst the matters being looked into is the cost effectiveness of pursuing :-
The registration of the road.

Claiming damages against Mr. Miles for the costs of countering his untrue allegations , including claims of ownership of the road and lobbying of other road users to withhold payment.

Back payment of road maintenance arrears payable by Mr. Miles.

This month I have paid out £14,000 in legal fees and £5,000 in planning consultancy fees as a direct consequence of Mr. Miles activities.

Mr. Miles' position is nonsensical and illogical:-

A)That I am liable for the repairs to the road, and for any mishap befalling anyone using the lane on the one hand:

but on the other he maintains that he is not liable to contribute to the repairs himself , that all the deterioration is caused by me

B), that I am not the owner, and thus not entitled to maintain (or even use) the road .

This catch 22 situation is intolerable and indefensible.

In Mr. Miles' transfer of November 1982, the upper part of 'the private road' is referred to as 'retained land' in the ownership of my father ,the vendor. A right of way was granted by my father to Mr. Miles over the upper portion of the lane- 'the land coloured green' and this grant of access was subject to the payment of a road maintainance charge.

If Mr. Miles believes he has substantive evidence to the contrary , or has produced any such evidence to you , it should be produced now, so that its validity can be challenged once and for all. The onus is clearly on him to do this , or otherwise for him to put up and shut up.

In any event, Mr. Miles , is only claiming ownership of his frontage to the mid point. The opposite frontage of the section of lane to which repairs are proposed , currently belongs in part to my aunts and in part to the council, neither of which enjoy , or have ever claimed to enjoy , any rights of vehicular access onto the road, or accordingly , any responsibility for contributing to its upkeep.

Thus ,on the one hand, (option A) I am prepared to accept sole legal responsibility, (I am prepared to enter into a statutory undertaking to that effect) for the condition of the road. I am not unduly concerned of Mr. Miles' threats of legal action , as I do not believe there is any legal basis for them , and thus if such a case were brought it could be easily countered. I am fully insured for carrying out works on land over which I have an interest. In the meantime, on the other hand, (option B) I cannot be held accountable for failing to proceed with works that I have been barred from proceeding with or have liability for the state of land which is outside my ownership or control . All existing obligations by frontagers to contribute to the cost of maintainance are through me directly , or indirectly through my late father. I personally have no such liability to contribute to any third party. These obligations , if not enforceable over Miles ,by me, could not be enforced by any third party .

Option A

In the first instance if it is accepted I do have responsibility for the road ,I am prepared to exercise this responsibility by conducting the following repairs as suggested.

- *Clearing any surface vegetation, leaves and detritus, - we do this on a regular basis
- *Treat any weeds with suitable weedkillers –we do this on a regular basis.
- *Regulate and compact existing surface with vibrating roller where loose – we have done this on various occasions in the past.
- *Regulate the surface , filling dips and holes with suitable material.
- *Supply and lay 30mm of 10mm dense bitumen over trafficked area.
- *Ensure camber is sloped to the farm side
- *Ensure the water can flow freely along the farm-side margin of the road and into the soakaway on the farmside – this we regularly attend to.
- * install a gully in front of the farmhouse entrance to take the water across to the other side at the point that the camber reverses,
- * Clear the soakaway in the corner of the Lawn Cottage garden –easement retained.

The road has been in place for centuries so I believe there is no need for the base layer , as long as the camber is sufficient to throw all water to the side and that a new tarmac 'skin' is established. This would significantly reduce the costs of the works, which would still represent an overall 'improvement' to the original spec. and certainly to the current state.

It is worth noting that the relocation of the drain and soakaway at the top of the road has helped the situation of the water running down the lane and crossing it 20-30 yards down, which was the cause of the sudden and marked deterioration of the surface. You will

recall that you instigated this, at my request , once I drew your attention to the problem. A further soakaway at the top , on the farm-side might also be beneficial.

I believe these repairs would address the problem in hand , and represent an improvement not just to the current state of the lane , but to the previous tarmacing , put in place by my grandfather , and the Steed family. Incidentally, I understand that the main road , around Northdown park , by the Church was one of the first roads to be ‘tarmaced’ in the country at the instigation of my great grandfather , to reduce the dust blowing into Northdown House.

I would be prepared to ‘stand’ the full cost of repairs in the first instance and then would hope to recover the costs of materials ,which I estimate to be £2-3,000, apportioned between the four properties that are likely to be willing to contribute. I would meet the cost of labour, and equipment hire myself. I would personally undertake and supervise the work.

Option B

I do not accept that this work on a privately owned bridleway needs to be conducted by an ‘approved contractor’. Either I am liable for the repairs and should be free to instigate them –to the standards expected of a Public bridleway across private land - or I am not.

You have previously conceded , in correspondance, that I **am** entitled to carry out repairs to the road myself, provided I give notice before hand to avoid the usual problems from the usual quarter. I cannot see any justification for this apparent U-turn in your position.

In short , I remain as anxious as anybody , to ensure there is a lasting mechanism, to allow the ongoing maintainance of the lane and fair apportionment of costs. I believe such a mechanism is already in place. Your enquiries appear to have failed to come up with any enthusiasm for an alternative arrangement, from that set out by my father and myself, and has failed to get any guarantee of a contribution of payment from Miles or Rowland -Spinks. I maintain that the best realistic hope of a long term solution is to establish the legitimacy of the existing arrangements by liasing with me and my solicitors, whom I have now tasked with resolving these issues, and holding Mr. Miles to account for deliberately obstructing the mechanisms put in place, and trying to create the current catch 22 situation for his own ends.

This has been the approach of TDC officers who have instigated an independent report into Mr. Miles allegations against me and them to exonerate themselves for the way that they have responded to his complaints. They also sought legal opinion as to the validity of his claims to part ownership of the road, which were not found to be valid.

An expensive one off repair to a small portion of the road would do nothing to resolve the problem as to who is the owner of the road, and who therefore has the authority/responsibility to carry out a continual programme of repairs and maintainance, (which I carry out at present at no cost to the other road users or the taxpayer) and how these repairs and ongoing maintainance are to be funded on an ongoing basis. I suggest

the existing terms should be enforced , rather than obstructed. If you do not accept that I am the owner of the road, then I clearly have a long standing right of access over it for me and my successors in title and those authorised by me for all purposes with all classes of vehicles - but no responsibility for its upkeep or to contribute to its upkeep. I personally would not stand the cost of these repairs –way in excess of what is necessary to maintain the ‘bridleway’ in a safe condition.

If my rights over the road continue to be denied, as at present, and I continue to be obstructed from carrying out the backlog of repairs , in a manner which I and the majority of other contributors are willing to contribute freely, then we clearly cannot be held accountable for this backlog. If you endorse Mr. Miles’ position and prolong the current stalemate, then nobody can be held accountable for the maintainance of the road, which will ultimately lead to its further deterioration akin to other private roads in the area where there is no overall management control or consensus – which clearly would not be in the public interest.

I believe this matter can only now be taken forward sensibly by a constructive meeting between ourselves to try and look for some common ground to overcome the impasse Mr. Miles has tried to engineer.

Yours sincerely

William Friend.