

**THE ADJUDICATOR TO HER MAJESTY'S
LAND REGISTRY
LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM
HM LAND REGISTRY**

BETWEEN:-

WILLIAM OFFLEY HINCHLIFFE FRIEND

Applicant

and

PETER ROBERT MILES

Respondent

APPLICANT'S STATEMENT OF CASE

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BETWEEN:-

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Respondent

**Property: Land adjoining East Northdown Farm, Margate, Kent
Title Number K947213**

APPLICANT'S STATEMENT OF CASE

1. Applicant's name: William Offley Hinchcliffe Friend.

2. Applicant's address for service:

Furley Page LLP, 39 St Margaret's Street. Canterbury. Kent CT1 2TX.

DX 5301 Canterbury. Solicitors for the Applicant.

3. References herein thus – [1/5] – are references to the document to be found in the [bundle/tab] accompanying this Statement of Case. Because of the costs associated with their production, it is the Applicant's intention that these bundles (and any others necessary) should comprise part of the hearing bundles.

REASONS FOR SUPPORTING THE ORIGINAL APPLICATION

Summary

4. By an application dated 24 October 2008 the Applicant applied for first registration of land comprising a private roadway adjacent to East Northdown Farm, Margate, Kent CT9 3TS which is marked (for the purposes of identification in this reference on the plan served herewith coloured Brown (“the Road”). (Plan at [1/5]).

5. As against the registered title which the Applicant seeks to establish, he recognises and welcomes the registration of the various rights of way to which the Road is subject in favour of the houses and land adjoining it, including the express grant in favour of the Respondent by the Applicant’s father and predecessor-in-title on 9 November 1982 under which the Respondent’s property, East Northdown House (title number K570231), enjoys and/or exercises
 - (i) an express grant of a right of way over the Road for all purposes and at all times

 - (ii) a right to enter the Vendor’s adjoining land (i.e. that of I J C Friend) in respect of pipes, wires and cables, some of which (*inter alia*) run under the Road (see Girlings’ letter dated 24 May 1982 and plans at [3/11])and in relation to (i) above, the Respondent covenanted to contribute in respect of the maintenance and repair of the Road: see (Schedules 1 & 3 of the Transfer dated 9 November 1982 at [1/13]).

6. HM Land Registry has served notice of this application on all the current registered proprietors whose properties adjoin the Road, including the Respondent. Save for the Respondent, none have objected.

Particulars of other adjoining registered properties

- (i) By a Transfer dated 1 June 1972, I J C Friend transferred Oast Cottage (now registered at HM Land Registry under title number K385370 [2//3]) to Mr and Mrs Davies, obtaining a covenant that they should contribute in respect of the maintenance of the Road.
- (ii) By a Conveyance dated 1 November 1982, I J C Friend conveyed Lawn Cottage (now registered at HM Land Registry under title number K543663) to Mr and Mrs Goodall and granted a right of way over the Road and imposed an obligation to contribute towards the maintenance of the same [1/11];
- (iii) By a Transfer dated 9 November 1982, I J C Friend transferred East Northdown House (now registered at HM Land Registry under title number K570231) to the Respondent [1/13];
- (iv) By a Transfer dated 18 August 1986, I J C Friend transferred East Northdown Cottage (now registered at HM Land Registry under title number K612306) to Mr and Mrs Riordon together with a right of way over the Road.

(It is the Applicant's case that the adjoining owners and the Respondent have, from time to time, made contributions towards the maintenance of the Road in accordance with their obligations). See [3/12].

7. Notwithstanding the express grant to the Respondent of a right of way over the Road – which has been registered for the benefit of the Respondent's property - the Respondent objects to the application on the basis that

- (i) the Applicant cannot establish paper title to the Road; alternatively
- (ii) the Respondent has title under the *ad medium filum* presumption – see paragraph 8 below.

8. For the reasons that appear below, the Applicant can establish paper title to the Road. In doing so, the Applicant relies on the presumptions that

(i) where land adjoins a highway or private right of way, the boundary of that adjoining land is presumed, in the absence of evidence to the contrary, to extend to the middle of the roadway (in the case of land adjoining on one side alone) or to include the roadway in its entirety (land on both sides);

(ii) where land so adjoining is conveyed and in the absence of evidence to the contrary, that conveyance operates to convey the roadway without express mention

(a) in the case of land on one side alone, to the half-way line and

(b) in the case of land on both sides, the entirety of the roadway itself

and/or

(iii) the express terms of the conveyances and other documents of title referred to below (to which he will refer at trial).

9. Further or alternatively, it is denied that any title in the Road or any part of the Road passed to the Respondent on the Transfer dated 9 November 1982 and/or his registration as proprietor of land within title number K570231 under the presumption aforesaid, the same being clearly and sufficiently rebutted in the circumstances of the case and, in particular, by the matters pleaded in paragraph 5 above.

10. Further or alternatively, the Respondent is estopped

(i) from asserting title to the Road or any part of it by virtue of his ownership of the land transferred to him by the Transfer dated 9 November 1982. The terms under which he acquired that estate and/or

his contributions towards the upkeep of the Road comprise representations/acts inconsistent with title to the Road being vested in the Respondent as he alleges and further comprise representations/acts on which the Applicant's predecessor-in-title relied when entering into the contract for sale and/or effecting the transfer and/or maintaining the Road; alternatively,

- (ii) by his deed from denying the title thereto of I J C Friend and, the Applicant, as his successor-in-title.

TITLE

- 11. Land around and in the vicinity of East Northdown House and East Northdown Farm (including land adjacent to the Road and which is registered in the name of the Applicant) has been farmed by the Applicant's family for several hundred years and prior to the 1930's comprised a substantial estate of over a 1,000 acres.
- 12. Further, the Road (*inter alia*) has always been reputed to belong to the said Estate and, in the circumstances described below, the Applicant and his predecessors-in-title. The Applicant will rely on the matters set out below together with

Particulars

- (i) A newspaper article dating from about 1937 or 1938 and probably taken from the Thanet Gazette or Thanet Times was included in a book of newspaper cuttings of Maude Friend and refers to the construction of a concrete road ruining the old Home Farm Lane on the Estate and to the retention of another lane at East Northdown with the farmhouse and 12 cottages: [3/13]. This latter reference, is a reference to the Road and the buildings which (*inter alia*) adjoin it;

- (ii) On various occasions, the Estate/the Applicant's predecessors in title have granted rights over the roads lying within the estate and the Road in particular; reference will be made to, *inter alia*, the rights granted to the Respondent and the other properties adjoining the Road and, in particular, those matters referred to in I J C Friend's statutory declaration dated 28 October 1982 [1/9].
13. By the Will of James Taddy Friend ("J T Friend") dated 16 July 1906 and its associated Codicils, all of which were proved in the Canterbury District Registry on 11 October 1909 (exhibited at 'WOHF 1' to Mr Friend's statutory declaration dated 16 August 2007 ("the 2007 Declaration") – see [1/7], Exhibit 1), J T Friend devised two moieties of his estate, one (now known as East Northdown House) to his then unmarried daughters, Elfrida Friend and Maude Friend, in the terms set out in paragraph 15 below ("the Daughters' Settlement") and the other (East Northdown Farm and the land comprising the same) to his son, James Irvine Hatfield Friend ("J I H Friend") in the terms set out in paragraph 16 below.
14. The division of title thus created persisted until Maude Friend's death in 1965 when the Daughters' Settlement came to an end and the land comprising that settlement was subsequently assented to J I H Friend's son, I J C Friend (the Applicant's father). A family tree is at [3/14].
15. The devise by J T Friend to his daughters was, insofar as is material, in the following terms:-

"Fourthly, as to all that my messuage and premises known as East Northdown with the outbuildings stabling ground and premises thereto belonging now in the occupation of Launcelot Bartle and also the cottage used as a laundry and now occupied by Mr Silver, farmyard stables cottage and granary land and premises in the occupation of Barzali Sackett all adjoining the said House and on the same side of the High Road there and situate at East Northdown in the Parish of St John the Baptist aforesaid with the entirety of all walls enclosing and surrounding the same upon trust that my said trustees or trustee shall pay the net rents profits and income thereof to my two daughters Elfrida Mary de Vaynes Friend and Maude Irvine Friend so long as they shall both continue unmarried in equal shares as tenants in common and after the marriage or death of either of them to the other of them so long as she shall continue unmarried and if both of my said daughters shall die without having been married then I declare that the said premises hereinbefore fourthly described shall fall into and form part of my real estate and premises herein fifthly

described and devised to my son James Irvine Hatfield Friend and his issue and go therewith accordingly

The identification of the land as being in the Parish of St John the Baptist allows the identification of the land as East Northdown House (see the parish boundaries shown on the plan to the Abstract of Title beginning with the Assent dated 24 July 1926 (“the Abstract”) – see [1/8]).

16. The devise by J T Friend to his son, J I H Friend is, insofar as is material, in the following terms:-

“Fifthly as to all that my mansion house and premises wherein I now reside and known as Northdown with the outbuildings grounds and appurtenances thereto belonging and also all that and all those my farmland and premises situate at Northdown aforesaid and comprising 467 acres or thereabouts and situate in the several Parishes of St John the Baptist and St Peter the Apostle aforesaid and comprising all other my real estate in those Parishes on the north side of the London Chatham & Dover railway not hereinbefore specifically devised and also all such other my real estate (if any) including chattels real as is not hereinbefore specifically described and expressed to be subject to other trusts hereinbefore firstly secondly thirdly and fourthly declared and contained upon trust that my said trustees or trustee shall pay the net rents and profits and income thereof to my said son James Irvine Hatfield Friend or permit him to receive and enjoy the same rents and income and to have the sole and exclusive use and enjoyment of all the said premises hereinbefore fifthly described during his life and from and after his death in trust for all or any of the children or child of my said son James Irvine Hatfield Friend who shall be living at my death or born afterwards therefore his or her respective heirs executors administrators or assigns if more than one in equal shares as tenants in common

17. In the premises and having regard to the terms of the Will set out above, title in (*inter alia*) the Road devolved to the Executors of J T Friend either by virtue of the devise of Northdown and/or the inclusion of provision concerning the realty not otherwise specifically devised and/or the presumptions referred to above.

18. Following the coming into force of the Settled Land Act 1925 on 1 January 1926, a Vesting Assent of the lands settled on J I H Friend was executed on 24 July 1926 (“the 1926 Assent”) by the Trustees in whom the lands settled above had become by then vested (the devolution of their title being recited in the 1926 Assent). Those Trustees assented to J I H Friend in fee simple

“ALL the freehold property described and comprising the first schedule thereto and all other (if any) real property capable of being vested by abstract and which was

then by any means subject to the trusts of the Settlement in favour of [J I H Friend] as beneficially entitled to the possession or the receipt of the rents and profits thereof

(See the Abstract, exhibited as 'WOHF 2' to the 2007 Declaration).

19. The material parts of the First Schedule to the 1926 Assent vesting land in J I H Friend operated to assent to him:-

“ALL THOSE pieces or parcels of land together with the appurtenances rights and privileges thereunto belonging situate in the several Parishes of St John the Baptist and St Peter the Apostle in the said Isle of Thanet and County of Kent which together with the boundaries and abuttals thereof are not only for the purposes of identification but for all the purposes of the abstracting Vesting Deed *more particularly delineated* and coloured Pink in the map or plan annexed to the abstracting deed Together with All and Singular the Messuages dwelling houses and other buildings thereon or on any part thereof erected”. (*Emphasis added*).

20. The Abstract contains a plan (“the Plan”) ([1/8]) upon which various parcels of land are coloured: the roadways (of which the Road forms part) being coloured brown, the land within the estate being coloured pink (save for the land within the daughter’s settlement) and, around its external and internal perimeters (the latter delineating the land within the Daughters’ Settlement) delineated in red.

21. For the avoidance of doubt, it is averred that by virtue of the 1926 Assent and/or the presumptions aforesaid, the Road was assented to J I H Friend.

22. J I H Friend died on 24 April 1954: see paragraph 10(a) to the 2007 Declaration. Under the Will of J I H Friend (see [1/11]) (probate of which was granted from the Principal Probate Registry on 20th August 1955: [3/1]) certain properties were devised to trustees in trust for I J C Friend absolutely, including

“(i) a messuage or dwellinghouse known as East Northdown Farmhouse with the buildings including five cottages occupied therewith And also several pieces of land comprising 138 acres or thereabouts situate at East Northdown in the Parish of St John the Baptist of Margate in the said County of Kent being a property let by the testator on lease dated 29 September 1952 then vested in Percy Walter Steed

(ii) a messuage or dwellinghouse and premises known as East Northdown Manor House together with Lawn Cottage and another Cottage and farm buildings and land all situate on the West side of the said Manor House and on the same side of the road

there and situate at East Northdown aforesaid being property over which the testator had a power of appointment to take effect upon certain events happening.”

The reference in (ii) above is clearly a reference to East Northdown House and the lands comprised in the Daughters’ Settlement which had, as at J I H Friend’s death, yet to fall in.

23. By a Lease dated 29 September 1952 (“the 1952 Lease”) ([1/10]), J I H Friend demised to Percy Walter Steed “in substitution for any existing tenancy” for a term of 8 years from 11 October 1951:-

“ALL THAT Farmhouse situate at East Northdown near Margate together with the five cottages farm buildings and pieces or parcels of land extending in the whole to 138½ acres or thereabouts ... TOGETHER with a right of way at all times and for all purposes for which the same is applicable over the roadway coloured yellow on the plan annexed hereto but in common with the Lessor and all others now or hereafter to become entitled to the like right ... All which premises hereby demised by the Lessor are more particularly delineated and coloured pink in the said Plan.”

The Road is the only road coloured on that plan and the lands demised straddle it, with part of those lands lying to the North of East Northdown House on the Western side of the Road. In the premises, J I H Friend was by that demise granting a right of way over *inter alia* the Road insofar as it was (i) vested in him by virtue of the 1926 Assent (and thus perfectly permissible as a matter of paper title) and (ii) (as to that part within the Daughters’ Settlement) over which a prescriptive right in favour of J I H Friend would, *prima facie*, have been established by 1952.

24. By a conveyance dated 30 April 1958 (“the 1958 Conveyance”) [2/18] and made between J I H Friend’s executrix and I J C Friend, the land comprising

“ALL THAT Farmhouse situated at East Northdown near Margate in the Isle of Thanet in the County of Kent with the five cottages known as East Northdown Cottage and Nos 1 – 4 Seaview Cottages the farm buildings and pieces of land formerly taken to be one hundred and thirty eight acres or thereabouts but by recent survey found to be one hundred and forty acres or thereabouts TOGETHER with all rights of way and other rights appertaining thereto Which said pieces of land were situate partly in the Borough of Margate and partly in the Urban District of Broadstairs and St Peters and were more particularly delineated on the plan annexed to abstracting presents and thereon coloured pink TO HOLD UNTO [I J C Friend] in fee simple”.

25. In the premises, there was devised and conveyed to I J C Friend that comprised in *inter alia* the 1952 Lease, with the freehold reversion subsequently conveyed to him in 1958. Such a conveyance transferred to I J C Friend the land comprising the subsisting leasehold estate (insofar as it was within J I H Friend's title) together with the benefit and burden of that estate. Thus the land within the 1952 Lease and to the East of the Road was conveyed to I J C Friend.
26. Further, by reason thereof, the Road (outside the Daughters' Settlement) was expressly conveyed to I J C Friend and/or was conveyed by operation of the presumptions above.
27. I J C Friend obtained title to the land within the Daughters' Settlement after Maude Friend's death on 28 July 1965. By an Assent dated 1 November 1966 ("the 1966 Assent") [1/20], her surviving married sister (who on her marriage had forfeited her interest in the settlement) assented

'ALL THAT freehold property comprising the messuages East Northdown House East Northdown Cottage and Lawn Cottage....ALL of which premises are for identification purposes only shown edged red on the plan annexed hereto for an estate in fee simple'

to I J C Friend. The land which comprised East Northdown House, East Northdown Cottage and Lawn Cottage under the Daughters' Settlement was that coloured white on the Plan to the 1926 Assent and thus the 1966 Assent operated to convey to I J C Friend the land within the Daughters' Settlement and thus that part of the Road not conveyed to him in 1958.

28. In the premises and by these routes (his father's Will and the 1958 Conveyance and, secondly, the 1966 Assent) I J C Friend obtained title to, *inter alia*, the Road in its entirety.
29. The land comprising title K398436 was transferred by a Transfer dated 6 April 1973 by I J C Friend to Northdown Investments (Jersey) Limited ("the Company"). It remained registered in the name of the Company until 20

March 1990 when that registered title was transferred by the Company to the Applicant, in whose name it remains. Official copies at [2/5].

30. In connection with the sale to the Respondent of land now comprising title numbered K579231 (East Northdown House), pursuant to the terms of the contract of sale to the Respondent and the Transfer dated 9 November 1982 [1/13], the land edged red on the plan to that Transfer (which excluded the Road in its entirety) was transferred to the Respondent together with the rights set out in the First Schedule.
31. Paragraph 1 of the First Schedule granted to the Respondent “a right of way for all purposes and at all times over the private road way leading from George Hill Road as is coloured green on the plan”, i.e. the Road. Further, in addition to exercising the rights so granted, the Respondent has hitherto contributed towards the maintenance and upkeep of the Road in accordance with his covenant [3/12 and 3/15].

Particulars

- (i) Payment of £107.50 per annum was made on 25 November 1985 for the years ending April 1983 and 1984.
 - (ii) A further payment of £107.50 was paid on a date which is unknown to the Applicant (see Statement 11 December 1986 from Stewart Gore to I J C Friend at [1/15]) showing a further receipt of £107.50 for the year ended April 1985.
32. East Northdown Farm House – registered at HM Land Registry under K799114 was first registered on 27 April 1973 under K398436 under the Transfer dated 6 April 1973 referred to at paragraph 29 and transferred to the Applicant, with the farm, on 20 March 1990. The separate title of K799114 was created when the Applicant re-arranged his loan facilities in 1999 [2/4]. It enjoys no express rights of way over the Road.

33. By an Assent dated 31 July 2007 [1/5], the Executors of Irvine James Cowley Friend under his Will dated 27 March 1980, probate of which was granted from the District Probate Registry at Birmingham on 1st July 2004 assented to the Applicant ‘all such right title and interest as [they] have’ in the Road.
34. In the premises, title to the Road is vested in the Applicant. The Adjudicator is asked to direct that the registrar give effect to his application in whole.

STATEMENT OF TRUTH

The Applicant believes that the facts stated in this Statement of Case are true.

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William Offley Hinchcliffe Friend.

Date: 2009

Furley Page LLP
39 St Margaret’s Street
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Kent CT1 2TX

DX 5301 Canterbury

Solicitors for the Applicant

LIST OF WITNESSES

35. The Applicant intends to call the following witnesses to give evidence in support of its case:-

(i) William Friend;

(ii) June Riordan

IAN CLARKE

**List of Documents
within the Applicant's control Ben.**

(originals unless otherwise stated)

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**List of Documents
Upon which the Applicant intends to rely**

	Description	Date
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