

Canterbury

Strutt & Parker LLP
2 St Margaret's Street
Canterbury, Kent CT1
2SI
Telephone 01227 451123
Facsimile 01227 459657

canterbury@struttandparker.com
www.struttandparker.com

Peter Miles, Esq.
East Northdown House
East Northdown
Cliftonville
Kent
CT9 3TS

Dear Peter

EAST NORTHDOWN HOUSE, EAST NORTHDOWN, CLIFTONVILLE, KENT, CT9 3TS

You have instructed me to provide advice in preparation for possible litigation and Counsel has directed you to request the following:

1. Confirmation that a nuisance exists with supporting evidence.
2. Identify the damage caused by the nuisance.
3. Identify steps (if available) to relieve, modify or remove the nuisance.
4. Identify the extent of the damage in financial terms.
5. Provide an opinion as to whether or not there is a greater than 51 % chance of a successful action through the courts.

If Counsel considers there to be a reasonable chance of success in relation to this dispute then it is anticipated that further independent advice may be required. As such, this letter merely seeks to address the above points in an advisory capacity pre litigation and it should be noted that this letter does not comply with the Civil Procedure Rules Part 35.

BACKGROUND

You have kindly provided me with some detailed background surrounding events in the immediate vicinity of East Northdown House and I have relied upon this information provided to me. This has been supported, where possible, by two inspections of the area which I carried out on 20 May 2009 and 15 October 2009.

East Northdown House was purchased by you in 1982. At that time, the vendor claimed to own the road and the contract provided for him to procure a Deed of Grant over the road. At this time the road provided access to five residential dwellings and a farm growing cauliflowers. The various property owners along the road at the time were contracted to make contributions towards the upkeep of this road based on the old rateable values of the various properties. It is understood that you, following your acquisition of East Northdown House duly made payments to the agents of the vendor for a period of some 3 years.

It is noted that the solicitors acting for you in the purchase were the same solicitors acting for the vendor in the disposal and at some point it transpired that the vendor had no Title to the road (or other land included in the sale although this is to be treated separately). Further, the contracted Deed of Grant was never procured and there were no Title documents relating to the road. Despite there being no title documents as far as I'm aware, the Land Registry nevertheless registered a right of way over the road for all purposes for the benefit of East Northdown House.

(~RIC~) Regulated by RICS

Authorised and regulated by the Financial Services Authority.

Strutt & Parker LLP: Is a limited liability partnership and is registered in England and Wales with registration number OC334522.
A list of members' names is seen to be included in our registered office; 13 Hill Street London W1J 5LQ.

09/0345693

STRUTT
-PARKER

Direct dial: 01227473705

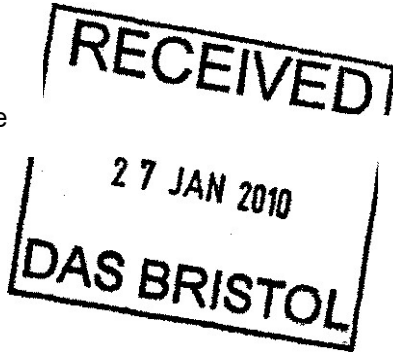
Direct fax: 01227459657

Email:

tim.mitford.slade@struttandparker.com

Our ref: TMS/EID

02 December 2009



It is not~ ~at the time of purchase, the farm use opposite East Northdown House was considered by you insignificant and causing no appreciable problems. From a planning perspective, the area was designated: a Conservation Area In 1985/6 and was also within the Green Wedge separating Broadstairs and Margate.

It is understood that occupation of the farm opposite changed in 1986 when the son of the owner moved in and there is a history of planning enforcement action commencing at this time for a series of unlawful developments.

Further Planning permissions were granted around 2000 for the change of use of redundant farm buildings to provide three light industrial units. While the initial planning application did not include the roadway between East Northdown House and the farm, this was amended later and included within the area granted planning permission. It was the original intention to access the industrial units from Botany Road (it is understood that there is a letter on a local Planning Authority file to this effect). This anticipation was not tight enough to legally enforce such access to the industrial parts of the complex, some of which now run to the front of East Northdown House.

It is understood a planning condition was imposed requiring the submission of a scheme of gates and fences to restrict access, down the private road to small vehicles only. This is deemed to have been complied with by virtue of a removable scaffold pole although there was no evidence of such during either of my inspections. It is understood the time has now lapsed for the Local Planning Authority to enforce a scheme for gates and fences to restrict access.

It is understood that there has been intensification of the original three light industrial units which have been sub-divided and further added to although I have been unable to inspect or verify this information. It is understood from you that there are now approximately 25 industrial units with a resulting increase in traffic, noise and associated disruption to the front of East Northdown House.

It is understood from you that from approx 2005 the light traffic originally envisaged along this road had increased to regular movements of vehicles including articulated lorries leading to major damage to the road surface. While many repairs have been carried out by you there were some repairs carried out by the landowner of the industrial estate in October 2007.

It is understood from you that not only has there been continuing damage to the road surface caused by an increase in traffic movements but that the width of the road that is useable has been reduced as the edges of the road have been excavated by the landowner of the industrial estate to form drainage gullies.

It is accepted by you that currently, some of the heavy traffic movement is being redirected to an alternative main road entrance off Botany Road, despite a 'blip' in August 2008 when a scaffolding company used the road. The local Planning Authority took successful enforcement action to cease this use. However, other traffic including lorries, vans and cars associated with the industrial units continue to cause a nuisance by virtue of breakup of the road surface and you have evidenced this by a series of photographic records.

1. Confirmation That a Nuisance exists

A private nuisance is the unreasonable, unwarranted or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individuals property.

It is, clear from the evidence provided by you in terms of activity records supported by photographs that a nuisance does indeed exist. This nuisance takes the form of:

Increased noise from vehicular traffic along the private road to the front of East Northdown House from cars, vans and, lorries.

- A visual intrusion created by the increased traffic movements along the private road serving the industrial buildings opposite.
- Physical degradation of the private road surface compounded by questionable ownership and a lack of direct responsibility for the upkeep and maintenance of the road.
- A nuisance in the form of a history of nuisance planning developments which would need to be disclosed in any replies to enquiries in the event that East Northdown House were to be sold.

I am unable to provide detailed commentary on the alleged breaches of various planning permissions, conditions and enforcements on the land opposite East Northdown House as the scope of this letter does not go into such detail. However, it is my understanding that the above nuisances are as a direct result of an intensification of use of the land and buildings opposite East Northdown House which, in your opinion, have been as a direct result of unauthorized development from a planning perspective. Whether or not the nuisance arises from unauthorized planning, it is nevertheless a fact that the creator of a nuisance is always liable for it.

2. Identify The Damage Caused by The Nuisance

The law recognizes that landowners have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation.

I consider the damage caused by the nuisance as being a diminution in value of the subject property and-loss of amenity.

3. Identify Steps (If Available) To Relieve. Modify or Remove The Nuisance

The extent to which one persons activities are allowed to impinge upon his or her neighbours must be limited to some extent English Law has for centuries used the Tort or Private Nuisance for this purpose. According to this Tort, an owner or occupier of land must tolerate a degree of interference with: the use and enjoyment of its property from those near it however; it is not expected to tolerate any unreasonable interference. As to when interference becomes unreasonable and thus actionable in law, a Judge will have to answer the following question; "Is this the kind of interference that the claimant should have to put up with as part of everyday living?"

An occupier is therefore under a "measured duty of care" to abate a nuisance of which it is aware as set out in *Leakey v National Trust* [1980] 1 All ER 17.

The steps to relieve, modify or remove the nuisance are primarily, an injunction or damages. The case of *Sheffer v City of London Electric Lighting Co. (no. 1)* [1895] 1 Ch 287 sets out that damages in lieu of an injunction should be awarded only under exceptional circumstances and the appropriate remedy ought to therefore be an injunction.



While it may be appropriate to obtain an injunction to prevent the alleged unlawful use of the properties as well as a cessation of inappropriate traffic and its associated noise, intrusion and physical degradation of the private road, I also consider that damages are an appropriate remedy for the history of nuisance associated with developments which will also have a detrimental effect on the value and marketability of East Northdown House in the event of sale. The case of *Watson v Croft Promo-Sport Ltd* [2008] EWHC 759 (QB); [2008] 2 EGLR 149 is a useful cross-reference.

4. Identify the Extent of the Damage in Financial Terms

I am of the opinion that the extent of the damage caused by the nuisance can be remedied by way of financial compensation.

Based on comparable evidence in the marketplace, copies of which can be provided upon request, I am of the opinion that the market value of East Northdown House without blight is in the order of £80,000. The effect of the nuisance on the subject property is somewhat subjective and cannot easily be quantified in terms of comparable evidence. However, in my professional opinion I have applied the following discounts:

- Increased noise from vehicular traffic and a visual intrusion created by the increased traffic movement *minus 5%*.
- Physical degradation of the private road compounded by questionable Ownership *minus 5%*.
- A history of nuisance planning developments *minus 10%*.

I am therefore of the opinion that the value of East Northdown House with the blight as outlined in this letter is in the order of £640,000, a notional loss of £160,000".

5. An Opinion as to Whether or Not There Is a Greater Than 51% Chance of A Successful Action

I am not in a position, as a qualified Chartered Surveyor, to provide advice as to the likelihood of a successful action through the courts as this is an opinion that is required of a suitable qualified lawyer based upon your evidence and my opinions as to the issues set out in this letter.

As previously discussed I would be happy to work this pre-litigation affidavit into a report which complies with the CPR Rules and a report that is compliant with the RICS Guidance Note For Surveyors Acting as Expert Witnesses. In the meantime, please find enclosed my interim fee as agreed.

Kind regards

Yours sincerely

Tim Mitford-Slade

End.