

Heads of Terms

East Northdown Farm
Without Prejudice Save As To Costs
Subject to Contract

1 Parties

1.1 Peter R Miles "P Miles"

East Northdown House
Margate
Kent
CT9 3TS

Telephone: 01843 862571

Email: priles@hotmail.co.uk

Solicitor: TBA

1.2 William Friend "W Friend"

East Northdown Farm
Margate
Kent
CT9 3TS

Telephone: 01843 862060 (M) 0771 4241668

Email: Friend.northdown@btinternet.com

Solicitor: Furley Page
39 St. Margaret's Street
Canterbury
Kent
CT1 2TX

Attention: David Hall

Telephone: 01227 863167

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Agent: J W Squier
Bidwells
Trumpington Road
Cambridge
CB2 9LD

Telephone: 01223 559224
Email: jsquier@bidwells.co.uk

1.3 **Daughters of J. I. H. Friend "Friend family"**

Legal Owners in Common of Orchard Land

- a) Mrs Sheilagh Stanton
- b) Lady Creasey
- c) Executors Mrs J Courtney-Hood
- d) Lady Crofton

Solicitor: Furley Page
39 St. Margaret's Street
Canterbury
Kent
CT1 2TX

Attention: David Hall
Telephone: 01227 863167

1.4 **"The Mediator" (Deleted)**

Agent: J W Squier
Bidwells
Trumpington Road
Cambridge
CB2 9LD

Telephone: 01223 559224
Email: jsquier@bidwells.co.uk

Or such other person agreed by the parties from time to time or, in the event of disagreement, appointed by the President of the RICS.

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(Deleted) Or such other person agreed by the parties from time to time or, in the event of disagreement, appointed by the President of the RICS.

2 The Properties

2.1 "The Orchard"

The Orchard, East Northdown Farm Lane, as shown coloured pink on the attached plan.

2.2 "East Northdown Farm Lane"

The road marked in brown on the plan.

2.3 "East Northdown House"

The property coloured blue on the plan.

2.4 "The Paddock"

The property coloured yellow on the plan.

2.5 "The East Northdown Cottage Access"

The property coloured orange on the plan.

2.6 "East Northdown Farm"

The property East Northdown Farm of which, for information purposes, is the area coloured green on the plan but which includes further land to the south of George Hill Road.

3 The Matters in Dispute

3.1 The legal ownership of East Northdown Farm Lane.

3.2 The repairing obligations and means of recovery of cost of repairs to East Northdown Farm Lane by W Friend, assuming W Friend to be the legal owner of East Northdown Farm Lane.

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- 3.3 The right, if any, of P Miles to complete a purchase of The Orchard for which documents have been presented but the relevance of which are disputed, and the terms of the transaction.
- 3.4 The right, if any, for the owner of The Orchard to gain vehicular access to this land.
- 3.5 The right, if any, for P Miles to have a right of way for vehicular access to The Paddock over East Northdown Farm Lane and The Northdown Cottage access.
- 3.6 The right, if any, for P Miles to gain access to the septic tank to East Northdown House from East Northdown Farm Lane.
- 3.7 Complaints about the uses of property by both Parties.
- 3.8 The costs of the Dispute.

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4 The Agreement for the Settlement of all Disputed Matters

4.1 Berrymans Lace Mawer Claim

P Miles will withdraw the claim submitted on his behalf by Berrymans Lace Mawer, without a claim against W Friend for costs, and will agree not to submit a future claim relating to these matters.

P Miles will withdraw the claim submitted on his behalf by Berrymans Lace Mawer, subject to all undertakings as required in letter of claim together with financial settlement to be agreed.

4.2 The Registration of East Northdown Farm Lane

P Miles is to co-operate with W Friend and the Land Registry to achieve Registration of the Freehold of East Northdown Farm Lane in W Friend's name, subject to existing Rights of Way for all properties including East Northdown House, and subject to Mr Miles for East Northdown House entering into a repair commitment as defined in Clause 4.12.

Subject to agreement with regards all matters P Miles is to withdraw objection against W Friend's application for Registration of the Freehold of East Northdown Lane in W Friend's name, but subject to existing Rights of Way for all purposes benefiting East Northdown House. Please provide draft document for consideration

4.3 Planning Objections for Approved Uses

P Miles will agree that he will not object to planning applications relating to East Northdown Farm and W Friend will agree that he will not object to planning applications relating to East Northdown House, the Paddock and the Orchard, which comply with the terms of this agreement, the extant Local Development Framework or otherwise meets with a Planning Officer's recommendation for approval and each Party will otherwise make no adverse representations to Public Authorities over legitimate, established or approved uses of these properties.

Not agreed

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4.4 Complaints relating to W Friend's Tenants

P Miles will direct any complaint relating to a tenant of W Friend to W Friend directly, or to the Mediator.

Please clarify and supply draft clause for consideration. It is understood that any complaints would be separate issues

4.5 The Orchard Transfer

Friend Family to transfer the freehold Title of The Orchard to P Miles, subject to payment on completion of monies now held by solicitors, £4,000, plus interest back dated to the payment date.

Friend Family to forthwith transfer the freehold Title of The Orchard to P Miles, subject to payment on completion of monies now held by solicitors, £4,000, plus any interest accrued in the solicitors clients account. (Girlings)

4.6 Lorry Use of East Northdown Farm Lane

W Friend will continue to use his best endeavours to prevent large Heavy Goods Vehicles from using East Northdown Farm Lane by improved signage and directions to his tenants and representations to mapping agencies, so that East Northdown Farm Lane is no longer shown as a through route to East Northdown Close and Palm Bay on sat-nav systems. As far as it is practicable commercial vehicles gaining access to East Northdown Farm will be encouraged to do so from the garden centre access off George Hill Road.

W. Friend will cease the use of the Lane for all commercial use.

4.7 Grant of Right of Maintenance for Septic Tank

W Friend to grant specific access rights, as far as he is entitled to, for P Miles to maintain the septic tank of East Northdown House (if existing rights under the Land Registry Title are inadequate).

Subject to 4.2, W. Friend will agree to the registration of a vehicular right of way over the remainder of East Northdown Lane for the purposes of emptying and maintaining the septic tank. Please supply draft clause for consideration

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4.8 Grant of Right of Way

W Friend will grant a vehicular right of way to the Paddock and the Orchard over East Northdown Farm Lane and the East Northdown Cottage access, such right of way to be exercised having due regard at all times to the use and enjoyment of the adjoining property known as Old Cottage (also known as East Northdown Cottage), subject also to the Terms of Paragraph 4.12.1.

Subject to 4.2 above, W Friend will agree to the registration of a right of way for all purposes to the Paddock and the Orchard over East Northdown Lane and the East Northdown Cottage access, such right of way to be exercised having due regard at all times to the use and enjoyment of the adjoining property known as Old Cottage (also known as East Northdown Cottage), subject also to the Terms of Paragraph 4.12.1. Please supply draft clause for consideration

4.9 Wall adjacent to the East Northdown Cottage Access and Other Matters

4.9.1 W Friend will not object to the construction by P Miles of 1 metre high brick wall on the existing wall foundations, on the boundary between East Northdown House and the East Northdown Cottage access.

W Friend will not object to the construction by P Miles of 1 metre high wall on the existing wall foundations, on the boundary between East Northdown House and the East Northdown Cottage access and W Friend acknowledges that he has no title or interest in the said wall Please supply draft clause for consideration

4.9.2 P Miles will agree to remove the redundant caravan adjacent to the garden of East Northdown Cottage to a position where it is not visually obtrusive to this property.

New matter and would be subject to planning and would incur costs.

4.9.3 P Miles and W Friend agreed that their boundary walls may be demolished and rebuilt or raised but only with prior consent of the Local Planning Officer to comply with the Conservation Area Regulations.

Please clarify

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- 4.9.4 P Miles will agree to replace the metal gate on the boundary of the East Northdown Cottage Access with a more suitable gate in keeping with the character of the area.

New matter. Not discussed or agreed but would incur costs. Please clarify and confirm that all costs would be met

- 4.9.5 P Miles will agree not to place any structure over the East Northdown Farm Lane or the East Northdown Cottage access.

New matter. Please clarify.

- 4.9.6 P Miles and W Friend will agree to permit CCTV cameras in the area of East Northdown Farm Lane and the East Northdown Cottage Access only for the purpose of controlling crime and subject to the position of any CCTV camera first being approved by the other party.

New and not agreed

- 4.10 **Complaints to the Council or Local Planning Authority**

The Parties will agree not to submit a representation or complaint to the Local Planning Authority or Council with respect to a use, development or other property related matter for which Planning Permission exists or for which the relevant Authority has previously investigated and concluded their decision in writing.

Not agreed The parties will appoint an agreed planning consultant to provide a written report.

- 4.11 **Future Dispute Resolution**

W Friend and P Miles will agree the following procedure for the resolution of future disputes:

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- 4.11.1 Disputes relating to a planning matter (including Regulations relating to a Conservation Area, Listed Building Consent matters and Development Control matters): The matter will be referred to the relevant Local Planning Authority or Council in writing, with a copy sent to the other party.
- 4.11.2 Disputes relating to a property use or any other matter for which Regulation is not the responsibility of the Local Planning Authority or Council: The matter will be referred to the Mediator and, if not resolved, then to formal Mediation.

The cost of a reference of any matter to the Mediator will be paid by the party making the reference.

W Friend and P Miles will agree the following procedure for the resolution of any future disputes:

The parties will initially write to the other party and make a request.

- 4.11.3 **If the above approach does not result in a satisfactory resolution, disputes relating to a planning matter (including Regulations relating to a Conservation Area, Listed Building Consent matters and Development Control matters) will be referred to the relevant Local Planning Authority or Council in writing, with a copy sent to the other party.**
- 4.11.4 **Disputes relating to any other matter or if the procedure in 4.11.3 does not resolve the matter to the satisfaction of the party complaining, the matter will be referred to a Mediator and, if not resolved, then to formal Mediation.**
- 4.11.5 **The cost of a reference of any matter to the Mediator will be paid by the party adjudged by the mediator to have been at fault or to have been the cause of the referral.. Please supply draft clause for consideration**

4.12 The Maintenance of East Northdown Farm Lane and the East Northdown Cottage Access

It is proposed that all of the property owners gaining vehicular access from East Northdown Farm Lane should be approached to formally clarify the means of funding repairs to the road, and the access rights, and for these rights to be Registered at the Land Registry.

4.12.1 The Right of Way

The vehicular right of way is to be unrestricted and for all purposes, other than:

- a) uses for which Planning Permission is not extant as at July 2010.

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- b) a right to park vehicles on East Northdown Farm Lane but not that such parking might interfere with the obligation for W Friend to carry out work on the road or W Friend or another permitted person (including emergency services) from gaining access over the road.
- c) an items such as, but not limited to a skip, caravan or trailer parked temporarily in the Lane but not such that it causes an obstruction and only if it is not possible for if to be parked off the Lane

NB. It is agreed that this should not prevent occasional and temporary parking, on East Northdown Farm Lane, where this would be normal in comparable situations and does not cause an obstruction (say for a visitor for 30 minutes maximum parking time).

The vehicular right of way is to be unrestricted and for all purposes, and include:

- a) **deleted**
- b) **a right to park vehicles on East Northdown Farm Lane but not that such parking might interfere with the obligation for W Friend to carry out work on the road or W Friend or another permitted person (including emergency services) from gaining access over the road.**
- c) **items such as, but not limited to a skip, caravan or trailer parked temporarily in the Lane but not such that it causes an obstruction and only if it is not possible for if to be parked off the Lane**

NB. It is agreed that this should not prevent occasional and temporary parking, on East Northdown Lane, where this would be normal in comparable situations and does not cause an obstruction. Please supply draft clause for consideration

4.12.2 **The Repairing Obligation**

The Obligation to Maintain

W Friend and his successors in title will be responsible for maintaining the fabric of the road to a reasonable standard for an access to domestic property and in the event of a disagreement on the standard of maintenance the matter will be referred first to W Friend and, in the event of a disagreement on the specification, to formal Mediation.

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W Friend and his successors in title will be responsible for maintaining the fabric of the road to an agreed standard and will keep the lane insured against all third party risks. W. Friend will also arrange for maintenance and cleaning of the road to an agreed standard. W Friend will restrict the use of the land by all unauthorised vehicular through traffic using the lane. (currently motorcycles) Please supply draft clause for consideration.

Proposed Contribution Levels

The following allocated percentage contributions are proposed, by reference to the Council Tax bands of the various properties:

		Council Tax Band
The Old Warren Barn	14.2%	G
The New Manor House	14.2%	G
East Northdown House	14.2%	G
Lawn Cottage	10.2%	E
Oast Cottage	10.2%	E
East Northdown Cottage	10.2%	E
Mockett Cottage	5.5%	A
East Northdown Farmhouse & Buildings (composite use)	21.3%	N/A (E plus buildings)
	<hr/> 100%	

Contributions will be invoiced to owners plus VAT where applicable. For expenditure over £2,500 plus VAT gross, W Friend will first notify the owners of the estimated expenditure and timing of works. In the event of non-payment of an invoice for reimbursement of expenses interest may be added at 4% over Barclays Bank Base Rate.

The following allocated percentage contributions are proposed, by reference to the Council Tax bands of the various properties:

	Council Tax Band
The Old Warren Barn	G
The New Manor House	G
East Northdown House	G

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Lawn Cottage	E
Oast Cottage	E
East Northdown Cottage	E
Mockett Cottage	A
East Northdown Farmhouse	E)
	<hr/>
	100%

Contributions will be invoiced to owners plus VAT where applicable. Other than for routine cleaning of the lane, all expenditure for repairs of the lane, W Friend will first notify the owners of the estimated expenditure and timing of works and if requested provide proper specification and second estimates for the work from a competent contractor. In the event of non-payment of an invoice for reimbursement of expenses interest may be added at 4% over Barclays Bank Base Rate. Please supply draft clause for consideration

4.12.3 Registration of Maintenance Contributions

These percentage contributions, if agreed, will be recorded on the Land Registry, at the cost of each owner. In the event of a further occupier being added to the schedule, the contribution from the new occupier will be deducted from the gross cost before the net sum is recovered under the percentages stated.

These percentage contributions, if agreed, will be recorded at the Land Registry, at the cost of each owner. In the event of a further occupier being added to the schedule, the contribution from the new occupier will be deducted from the gross cost before the net sum is recovered under the percentages stated. Please supply draft clause for consideration.

4.12.4 Agreement with Third Party Owners

For the purposes of this Agreement between the Parties it is proposed that W Friend will use his best endeavours to agree this proposal with the third party owners but P Miles will agree to proceed immediately with the proposal for East Northdown House (in the event it proves impossible to agree this proposal with some or all of the third party owners, the existing provisions within their Land Registry Titles will remain unchanged).

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For the purposes of this Agreement between the Parties it is proposed that W Friend will use his best endeavours to agree this proposal with the third party owners. Subject to all parties agreeing, P Miles will agree to proceed with the proposal for East Northdown House. In the event it proves impossible to agree this proposal with some or all of the third party owners, the existing provisions within their Land Registry Titles will remain unchanged and all sums due will be collected and will be accounted for. (Some fair formula could then be agreed) Please supply draft clause for consideration

5 Costs

Each party will bear its own costs in concluding the necessary legal documents to effect this Agreement and no claim will be made between the parties for costs incurred to date relating to the Matters in Dispute.

Subject to full agreement including a satisfactory resolution of the 'matters not covered', before 20th August, each party will bear its own costs in concluding the necessary legal documents to effect this Agreement and no claim will be made between the parties for costs incurred to date relating to the Matters in Dispute. Please supply draft clause for consideration.

6 The Legal Dispute

The Parties will agree to instruct solicitors forthwith to prepare a Contract giving effect to these Heads of Terms and the settlement of the Matters in Dispute between the parties, to include the necessary Registration of the agreed rights at the Land Registry.

Subject to full agreement with all matters, the Parties will agree to instruct solicitors forthwith to prepare a Contract giving effect to these Heads of Terms and the settlement of the Matters in Dispute between the parties, to include any necessary Registration of the agreed rights at the Land Registry.

Matters not Covered

1. **W. Friend must be restrained from approaching any member of my family, friends or acquaintances, including with regard to use of the lane.**
2. **At the WP meeting with Mr Squier, a limited residential development to replace the industrial units was discussed and I agreed to support a limited residential scheme that did not have access to the lane and which would replace the redundant farm buildings now used for industrial use..**
3. **The cessation of all the nuisance industrial uses and any other uses which cause nuisance. In the interim the compliance with all planning conditions and the section 106 planning agreement and immediate cessation of all unauthorised developments. Undertaking not to repeat.**
4. **Cessation of the use of mechanical equipment causing noise nuisance (currently old fork lift truck)**
5. **Resolution and cessation of all the unauthorised developments on the land to the south of George Hill Road**
6. **Subject to agreement with all parties installation of a gate towards the junction of the land with the main road.**
7. **Some means of restricting speed on the lane**
8. **Legally enforceable written undertaking from W. Friend that he will never again make false defamatory or any allegations or statements concerning or relating to P Miles to any third parties.**
9. **W. Friend will raise no objection should P Miles ever wish to open an access in wall to Orchard**
10. **W. Friend not to interfere with or cut back any trees/hedges adjoining or growing over the lane other than if these are the cause of danger or a nuisance and then only after consultation.**
11. **NEW Losses from the inability to use East Northdown House for use other than solely residential. (ie B & B previous attempts have been frustrated and would have been unworkable)**
12. **Financial recompense for diminution of value and general damages.**