

Dear David and James,

Please see my comments on Miles' points, James Squires negotiations' were 'subject to contract' and 'without prejudice save as to costs'. Both sets of terms, and all attempts at formal mediation were rejected. Miles has had a surfeit of legal representation, with a plethora of different solicitors and barristers coming and going over the years. (Peter Leighton, by the way, is the old buffer who turned up to the adjudication hearing in March '10.) It was Miles that proposed that these matters could be sorted out between him and a FRICS, at that meeting, it was not my proposal in the first instance. Had such a settlement been possible (which it was not) then costs could have been saved all round. As it is, James has remained in dialogue with Miles continually, *alongside*, not instead of the formal legal processes. Miles could have withdrawn his objections, settled or accepted our terms at any time, avoiding costs all round. As Miles rejected the terms offered, he is liable for the extra legal costs incurred by failing to withdraw his objection or settle earlier, this is clearly understood and spelt out by the adjudicator in his reasons for awarding costs.

Yours Will

East Northdown House,
Margate,
Kent CT9 3TS
10th July 2011

Mr J. Squier,
Messrs Bidwells.

Without Prejudice

Dear Mr Squier,

Re: Adjudicator Costs

My costs solicitors have forwarded to me a letter from Messrs Furley Page of the 7th July, in which they state, "You refer to your client having received a letter from our client, Mr Friend, and subsequently your client spoke to Mr Squier, but you do not give any indication of the date when this discussion took place. Perhaps you can assist so that we can check our file. Equally, please let us know when your client says that Mr Squier said that he would be arranging for us to write to your client".

Please advise Miles that you (David) are not instructed to deal with him directly on this matter, or any other.

It may be helpful if James, however, explain the situation along the lines I have set out here, answering all the points, and that both letters sent submitted, along with both sets of rejected Heads of Terms.

The adjudicator had seen this 'without prejudice' correspondence, including an account of James Squire's attempt to reach settlement. The two sets of heads of terms clearly state 'without prejudice save as to costs' i.e. that should the terms be rejected this will have costs implications for the loser should the matter proceed to court/ adjudication.

You will recall that when you first contacted me as a mediator, you insisted that I could not be legally represented in any negotiations and we then met at my home. *The 'negotiations' were not of a legal nature, neither side had legal representation, James was acting for me to explore routes of possible settlement.*

These attempts to reach settlement were in parallel to the ongoing processes of litigation then in train, to avoid the mounting costs of those formal litigation processes. Separate attempts were also made, also in parallel, by us, to meet Miles in formal mediation, in a further attempt to avoid the mounting costs of preparing for court or adjudication hearings.

I accepted your word that your client wished to finally conclude all the long standing matters of contention, *true*
and that it would be advantageous to allow your client to take responsibility and ownership for the road, *true*

notwithstanding that he would have been estopped during any proceedings because of the agreement reached when the previous court proceedings were concluded in 1991. *untrue, I was not party to any previous proceedings, title to the road was not subject to those proceedings,*

We agreed:- *WE DID NO AGREE !!!!, All irrelevant, as both sets of terms were REJECTED by Miles, clearly the terms offered by us were conditional on both sides agreeing a set of terms, not cherry picking those which sounded 'nice' to him and giving us nothing in return, except ongoing harassment and threats of legal action. . .*

1. The transfer of the orchard would be completed,

*Our two sets of terms for settlement of the orchard issue were rejected Miles chose instead to proceed with his high court action against my aunts instead. We responded by unilaterally withdrawing our objection to his adverse possession claim, he agreed to a consent order, withdrawing from further legal action over the orchard on this basis alone, **instead** of either of our two previous proposed sets of settlement terms. .*

2. I would withdraw my objection to your client road application subject to my rights being registered and a maintenance agreement being forthcoming (which you were to provide), *r*

This was also part of our two sets of heads of terms which Miles rejected.

Miles had already given an undertaking before the adjudicator on the 15th March to unilaterally and unreservedly withdraw his objections to the first registration of the road in the event that he failed (for any reason) to establish full paper title to the orchard. The heads of terms sought to grant him such full title, in return for a consideration, firstly with access for development and secondly without access, but for minimal payment, but he chose to reject them and try his luck in court instead.

3. Neither party would pursue the other for costs,

This was one of our proposed Terms, that were rejected by Miles!, It was made very plain to Miles at the outset that the heads of terms were without prejudice save as to costs, i.e. there would be costs implications if he incurred unnecessary costs to us, by not accepting our heads of terms.

4. Your clients nuisance industrial uses would be curtailed and all industrial traffic would cease using the road,

Our proposed Terms rejected by Miles provided for a cease to allegations /complaints about old vexatious issues of this sort by either side. In any event we have unilaterally installed Signs in accordance with discussions with the T.D.Council and other neighbours, diverting all business traffic to the access directly of George hill Road, Clearly marking that the road, is Private, only leads to East Northdown, is unsuited to HGV's, is a no through road, and has a

speed limit of 20 MPH . SAT Navs continue to show the lane as a through route however. I have ensured the OS maps show the road as blocked to through traffic , and have tried to advise Google of the same.

5. Your client would bring forward residential development proposals and an alternative access, and,

Mediation and further discussions were suspended following rejection of the second heads of terms , and confirmation from Miles that orchard court case was to proceed in any event without mediation.

*A Consent order giving adverse possession of the orchard to Miles, and payment of his costs in bringing his adverse possession claim was agreed upon **instead** of our proposed terms or settlement discussions.*

My letter to Templeton's solicitor's of nov 2010 clearly states the terms under which I would grant access to the orchard for development over the road.

6. A procedure would be put in place if any future difficulties arose.

These proposed terms rejected in our sets of terms.

In view of the then impending court hearing, the owners of the orchard offered a settlement (*no, untrue, it was a consent order*) which I accepted, and subject to my rights of way being registered (*no, untrue , not part of the consent order*)

Notwithstanding the above , All rights and easements are entered against the titles of the properties in question on the relevant transfers. The orchard and paddock enjoy rights of way , from the garden of east Northdown house under the terms of the original agreement of May 1982 , which also states that such use is subject to the land being used as a single private dwelling.

and notwithstanding my undertaking, I agreed to withdraw my objection to your clients application for the road.

Only done under duress at the 11th hour following determination by adjudicator to ignore objection anyway in view of undertaking

We spoke by telephone and following that conversation, I awaited correspondence from Messrs Furley Page.

Furley page were not instructed with matters regarding defamation, apologies , settlement etc raised in the letters from Templeman's marked' private and confidential. The undertaking to withdraw the objection to first registration was made before the adjudicator of the 15th March 2010. It was not subject to any reservations or subsequent settlements etc. Costs were to be paid by the objector , in the event of a withdrawal coming into effect. , i.e. if the objection, which to be valid , rested upon Miles possible rights of full title to the orchard, as successor in title to the registered proprietors, were not after all established in court. - which , in the event , they were not. Adverse possession , only conversely possessory title , and any rights of way and easements enjoyed that may have been enjoyed by the successors in title , do not transfer to the new owner of a title acquired adversely.

Unfortunately, nothing was received and Messrs Furley Page who now appear to be implying that they have no record of you having made any contact with them.

correct , Furley page not instructed in matters beyond the first registration of the road and consent order terms on orchard.

Would you please confirm receipt of the letter from your client, which you described as a load of 'verbiage', the date of that letter and that you advised that I should not withdraw my objection until my rights had been agreed.

W.F Letter to Templeton's , clearly sets out the terms under which access and development of the orchard/ further discussions would be possible. Copy recently forwarded to Berryman's, No existing rights of way have ever been challenged

for existing uses. All such rights of way have been protected by a caution and are entered at the LR.

For completeness, I would conclude by saying that far from ceasing hostilities as you maintained was your clients wish, he has since registration of the road verbally abused a member of my family

untrue, I have spoken briefly to Miles once, wife and step son in last 12 months, on cordial terms on all three occasions.

and his hostile campaign regarding my tenancy of the Coach House continues unabated.

Mr. Miles has after 25 years, and a further 6 month extension, and 3 further months failed to meet the terms of the lease or covenants on the property to use open it to the public as a museum, council taking legal advice with a view to eviction. I am only one of 2000 petitioners calling for the observance of the terms of lease/covenants. This situation as with all of the above is entirely of his own making.

Finally, may I advise that I also still await the proposed maintenance agreement,

Terms rejected, maintenance carried out without reference to Miles, contributions received from other users. Invoice to be submitted by James for road cost contribution from Miles as per transfer terms. (once costs etc. sorted)

development and alternative access proposals

our proposed Terms rejected by Miles, no proposals for any alterations for road access arrangements.

and suggested future dispute resolution procedure.

Our proposed Terms rejected by Miles, no remaining disputes, all allegations by Miles have been dismissed by the relevant authorities.

The nuisance industrial uses continue

The business B1 use has the benefit of 2 full planning permissions and has been subject to 4 years review by council and an independent consultants report. Clear evidence that no noise nuisance is generated. Policy of vexatious complaints adopted by council in response. B1 uses are, by definition those that do not cause a 'nuisance' in a residential area.

as does industrial use of the road.

*Planning permissions allow for use of road as access for the business premises for light vans, cars. There is no regulation for other H.G.V.s using the lane. My goods vehicles operators licence stipulates that this is the designated route for farm HGV's (after traffic enquiry called by Miles calling for diversion to other access). Notwithstanding this a new access has been built, which serves **all** B1 HGV traffic and **90%** of the B1 light traffic leaving and **all** the nursery traffic the road quieter than the previous agricultural use. Clearly as my ownership of the road is now unchallenged, I do **not** need an easement from Miles to use the road, myself or for those authorised by me as he has hitherto claimed.*

Yours sincerely,

P.R. Miles