

IN THE THANET COUNTY COURT

B E T W E E N:

PETER ROBERT MILES

Claimant

- and -

WILLIAM OFFLEY FRIEND

Defendant

DEFENCE

1. References to paragraphs by number alone in this Defence are references to the correspondingly numbered paragraphs in the Particulars of Claim dated 22 October 2011 and served on 23 December 2011 unless otherwise expressly stated. The Defendant adopts the definitions employed in the Particulars of Claim herein without making any admissions thereby.
2. It is admitted that the Claimant is the registered proprietor of East Northdown House under Title No. K570231. East Northdown House lies to the west of a private roadway registered in the sole name of the Defendant under Title No. K947213 ("the Roadway"). The Roadway itself runs (roughly) north-south, joining George Hill Road at its southern end. On the sale of East Northdown House to the Claimant, that property was granted a right of way for all purposes and all times over part of the Roadway.
3. East Northdown Farm (a phrase not defined within the Particulars of Claim) lies to the east of the Roadway and consists of various titles registered at HM Land

Registry, all of which are now registered in the Defendant's name. In particular, the Defendant is the registered proprietor of:-

- (1) Title No. K799114 (land being and known as East Northdown Farmhouse);
 - (2) Title No. K398436 (East Northdown Farm), part of which comprises
 - (a) (to the east of the Roadway) the former farmyard to East Northdown Farm ("the Farmyard"), access to which has historically only been by the Roadway. Since about 1988 has also been partly accessed from the east, via the Nursery Land and the access pleaded in paragraph 11(2) below and since 1998 access has been as pleaded in paragraph 22(4) (ii);
 - (b) land lying to the east of the Roadway and the south and east of East Northdown Farmhouse, on which the Defendant conducts his nursery and farm shop businesses ("the Nursery Land").
4. At all material times at least since the 1920s East Northdown Farm and neighbouring land has been used by the Defendant and his family and their tenants to grow cauliflowers, potatoes and cereals as well as keeping livestock. The Defendant himself farmed East Northdown Farm from 1986. During the period from 1997, (as before) the Farmyard was the focus of the Farm's commercial operations, to which (via the Roadway) all machinery and equipment was brought for storage, maintenance and repair. Further, all produce was brought by tractor and lorries to the Farmyard along the Roadway and (from 1988) partly via the Nursery Land and from the access on to George Hill Road as pleaded in paragraph 11(2) below. The produce was sorted and packed in the Farmyard for onward sale. The Defendant continues to hold a goods vehicle operator's licence from East Northdown Farm in connection with his farming, horticultural and business operations, access being via the Roadway, although the Defendant no longer operates or permits others to operate goods vehicles along the Roadway in connection therewith.

5. In the premises, the Roadway was subject to repeated and frequent tractor and lorry and other movements in order to grow, harvest and sell produce and crops and remains permitted to be used for the same. Prior to the farm sale in 1997, 70,000 crates of cauliflowers (each containing c. 12 units) weighing some 1,750 tonnes and 500 tonnes of potatoes were grown on, processed at and sold from East Northdown Farm.
6. After about 1998, the Defendant began to diversify the activities to which the buildings on East Northdown Farm were used, obtaining *inter alia* the planning permissions pleaded below.
7. Save as aforesaid, paragraph 1 is denied.
8. Paragraph 2 is denied. For the avoidance of doubt, it is denied that the Defendant is liable as alleged or at all for any acts or omissions of his tenants, licensees or any third parties by reason of the matters complained of in the Particulars of Claim. Without prejudice thereto, the Defendant pleads to the various subparagraphs as set out below.
9. Paragraph 2(a) is denied. The Claimant's land and that part of the Defendant's land lying to the north of George Hill Road is
 - (1) in a conservation area save that, the land on which the farmshop, car park and part of the Nursery Land to the east of the farmhouse garden and farmyard is situated, is outside that area; and
 - (2) within the local urban area and has been since the draft Local Plan was issued in or about 1996
10. Paragraph 2(b) is denied. It is, however, admitted that an application was made in 1989 (and subsequently refused) to enable the farm shop to sell additional produce from other parts of the farm holding and from other farms. The Defendant will refer to the planning decision at trial for its full terms and effect. Further and in any event, to the extent that it is said that the refusal remains relevant, it is denied that the circumstances said to have justified the refusal in 1989 continue to apply or are relevant in light of changed circumstances (see below).

11. Further:-

(1) By various determinations under section 64 of the Town & Country Planning Act 1990 numbered TH/91/0312, TH/91/0313 and TH/91/0314 dated 21 or 22 May 1991 (to which reference will be made at trial for their full terms and effect) it was determined that, in relation to part of the Defendant's land lying to the east of East Northdown Farmhouse and to the north of George Hill Road,

(a) the sale of agricultural produce and flowers grown and/or dried on the Defendant's land and/or picked on the land and sold from the farm shop to the general public; and

(b) the parking of customers' vehicles thereon

was not development for which planning permission was required.

(2) the farm shop is a substantial distance (c. 200m) from the Claimant's land and is screened by the Defendant's house on East Northdown Farm and the trees and hedges in the garden thereof. Access to and egress from the nursery (both for deliveries and for members of the public) is by a junction lying substantially to the east of the Roadway (and the Claimant's land), directly from George Hill Road;

(3) it is denied (if the same is alleged) that the Defendant's use of the Nursery Land and/or the operation of the farm shop is either illegal or contrary to planning regulations and/or constitutes a nuisance to the Claimant or at all.

12. As to paragraph 2(c):-

(1) Planning permission dated 9 March 1994 on application number F/TH/92/0324 was granted for the retention of an existing polythene greenhouse, the erection of one quadruple span greenhouse, the erection of one glass greenhouse and the use of a glass greenhouse and land for the retail sales of plants and associated products and to allow the formation of a parking area and to make alterations for vehicular access and general landscaping in conjunction with a section 106 Agreement dated 9 March

1994. The Defendant will refer at trial to the same for their terms and effect.

- (2) The existing polytunnels have been in place since 2000 and
 - (i) are used in connection with the Defendant's nursery business on land inside the urban envelope to which access to and egress from (both for deliveries and by members of the public) is directly from George Hill Road as aforesaid;
 - (ii) the polytunnels are a substantial distance from the Claimant's land and are invisible or substantially screened therefrom;
 - (iii) in the premises, do not constitute a nuisance to the Claimant or at all.
- (3) it is denied (if the same is alleged) that the polytunnels' erection or retention on the Nursery Land was/is either illegal or contrary to planning regulations.
- (4) In the absence of any meaningful particulars in connection with the last sub-paragraph of paragraph 2(c), the same is embarrassing to plead to and should be struck out. Without prejudice thereto it is denied. In any event, it is denied that any of the Defendant's commercial activities on the Nursery Land constitute a nuisance to the Claimant or at all.

13. Save as aforesaid, paragraph 2(c) is denied.

14. As to paragraph 2(d):-

- (1) By a grant of full planning permission dated 15 May 1998 on application numbered F/TH/97/0857 the Council granted permission for change of use of the land comprising part of the Farmyard and existing farm buildings to mixed agricultural and business use (B1) on the terms therein contained (to which reference will be made at trial);
- (2) The said land and buildings lay within the urban area then (as they do now);

- (3) It is admitted that the planning permission did not extend to use for:
- (i) motor vehicle repairs, motor vehicle body repairs and spraying or motor vehicle breakers; and
 - (ii) light industrial purposes other than:-
 - (a) between the hours of 8 am and 6.30 pm on any weekday Monday to Friday;
 - (b) between the hours of 8 am and 5 pm on any Saturdays;
 - (c) nor shall the premises be used at any time on Sundays and Bank Holidays.

- (4) It is denied – if the same is to be alleged – that
- (a) the repair of motor vehicles or other activities precluded by the provisions set out in sub-paragraph (3) above are being undertaken on the Defendant's land (or have been permitted by the Defendant) or that light industrial use of that land is being made outside the said hours (or if it is, is being undertaken to any material extent such as to cause a nuisance to the Claimant as alleged or at all or further, that any nuisance thereby created (which is denied) is/are one(s) for which the Defendant is liable).
 - (b) The times of access to or egress from the units by those renting or occupying them is restricted.

15. Save as aforesaid, paragraph 2(d) is denied. Paragraph 22(2) is repeated.
16. Save as admitted below, paragraph 2(e) is denied.
17. By an enforcement notice dated 25 October 2006 the Council alleged a breach of planning control, namely that without planning permission, land or premises at East Northdown Farm were being used as storage by a furniture importation company (that land or premises being part of a building referred to as 'Block D' below).

18. By an application for planning permission dated 24 January 2006 and numbered F/TH/06/0086, the Defendant applied (with the encouragement of the Council's planning officer) for change of use of part of Block D to storage use (class B8). The said Block is c. 150m from the Claimant's land and invisible therefrom.
19. Although the application was recommended by the officer for approval, the said application was subsequently refused on or about 21 June 2006.
20. By an enforcement notice dated 25 August 2006, the Council required the cessation of the use of part of Block D for storage. An appeal in relation to that notice was dismissed on 17 August 2007.
21. Accordingly, use of part of Block D in the farm yard for the storage of furniture ceased in or about October/November 2007 and in any event within 3 months of the determination of the appeal. In any event, it is denied that the same constituted a nuisance to the Claimant as alleged or at all.
22. As to paragraph 2(f):-
 - (1) It is admitted that between 1998 and 2002 the Blocks A, B and C in and adjacent to the Farmyard for which B1 use was permitted by the grant of planning permission on 15 May 1998 were sub-divided. Block C was further sub-divided in 2007.
 - (2) The Council (on complaints by the Claimant) repeatedly investigated the use of the Blocks between 1999 and 2008 and concluded, *inter alia*, that no condition was imposed by any planning permission preventing the sub-division of the Blocks at East Northdown Farm or any internal alterations that had been affected. The Defendant will refer to the Council's Head of Development Services' report to the planning committee dated 15 February 2006 at trial for its full terms.
 - (3) In the premises and in any event, it is denied that the sub-division and/or the letting of the same requires planning permission and/or is either contrary to planning permission and/or unlawful.
 - (4) It is admitted that:-

- (i) Block A is let to up to 9 tenants/licensees; Block B is let to up to 8 tenants/licensees and that Block C is let to up to 10 tenants/licensees.
 - (ii) Access to and egress from Block A alone is via the Roadway, although the heavier deliveries to certain units within Block A are effected via the alternative access from George Hill Road and across the Nursery Land, as aforesaid: see paragraph 31(2) below. Blocks B and C are accessed only from George Hill Road and across the Nursery Land as aforesaid, in any event. Block D has been occupied by the Defendant since October/November 2007 and (in any event) is accessed only from George Hill Road across the Nursery Land as aforesaid. Further, the leases and licences of Blocks B and C do not permit access along the Roadway or through the Farmyard.
- (5) It is denied that the sub-division and letting of Blocks A, B or C has intensified the use of those blocks and/or the businesses operated therefrom constitute a nuisance as alleged or at all. In particular, it is averred that approximately the same number of people are present at and work within the said Blocks and/or the Farmyard as formerly has been the case, and that the traffic using the Roadway in connection with the businesses has decreased from former levels when the Farmyard was used for the processing of produce as pleaded above and the primary access was via the Roadway.
23. Further, at all material times since 1 January 2003 Unit C6 has been let by the Defendant to Thomas Corrigan at a rent for food storage and ancillary parking together with a right to park one refrigerated unit and two vans in the designated parking and storage area between Blocks C and D. It is in this area that the refrigerated unit has been located, having been supplied, installed and maintained by the tenant, who remains wholly responsible therefor and/or whose property it remains.
24. Further, the tenant covenanted

- (1) not to use or permit the use of the Unit or any part thereof in any manner that may be or become a nuisance or annoyance to the owner or occupier of any neighbouring premises
 - (2) at all times to comply with the requirements of the Planning Acts (as therein defined) in so far as they affect the property let
 - (3) to comply promptly and at the tenant's cost with all orders notices regulations or requirements of any competent authority pursuant to any statute requirement any alteration addition modification or other work on or to the property let.
25. It is admitted that there is a refrigeration unit between Blocks C and D, some 100 metres from the Claimant's land and not visible therefrom.
26. Further, pursuant to a grant of planning permission dated 7 October 2002 and numbered F/TH/02/0776, permission was granted for the change of use of land from agricultural parking and storage to mixed agricultural and class B1 (offices and light industry), parking and storage. (Reference will be made at trial to its terms and effect). In the premises, storage on the Defendant's land was permitted. The refrigeration unit referred to is storage within the ambit of the permission granted.
27. By abatement notices dated 23 September 2008 from the Environmental Health Department and served only on the tenants of Unit C6, it was alleged that a statutory nuisance at the externally sited refrigeration container used in association with Unit C6 at East Northdown Farm, Margate, Kent was being committed, by reason of noise emanating from that unit. The Notice required the tenants, as the persons responsible for the said nuisance, to abate the same and prohibit its recurrence. The said tenants complied with the abatement notice by installing additional sound baffling measures around the compressor, to the satisfaction of *inter alios* the Environmental Health Department.
28. If (which is denied) the same constituted a nuisance to the Claimant, it is denied that the Defendant was liable in any event and averred that the same was abated in or about mid October 2008

29. If (which is denied) the said unit has since caused a nuisance to the Claimant or at all, it is denied that the Defendant is liable in any event.
30. In the premises, paragraph 2(f) is denied.
31. Further and in the premises, paragraph 2(g) is denied. In particular:-
- (1) Paragraphs 4, 5, 22(4)(ii) and 22(5) in particular are repeated.
 - (2) The gates within the Farmyard and situated between Unit C6 and the WC block are kept locked except to permit access for HGV vehicles to units A2, 3 & 4 from the Nursery Land via George Hill Road. In the premises, all access to Blocks B and C and HGV access to part of Block A via the Roadway is prevented or rendered unnecessary.
 - (3) signage at the entrance of the Roadway directs unauthorised traffic elsewhere, and all HGV vehicles for the business units are directed to use the nursery access directly off George Hill Road.
 - (4) large vehicles seeking access to and egress from Units A2, 3, and 4 use the alternative route for access and egress via George Hill Road as aforesaid; Units A5, 6, 7, 8 and 9 fronting the Farmhouse courtyard are only small units, generally accessed by light vehicles only. In any event, the only vehicular access to those units is via the Roadway.
 - (5) the Roadway is used only/predominantly by light vehicles and motor cars gaining access to East Northdown Farmhouse, Block A and/or the other dwellings located along the Roadway (including the Claimant's property). It provides no other access, except as a bridleway. With the exception of parts of Block A (see above) these properties have no other means of access to them. Through-traffic is barred by bollards installed on the final development of the Palm Bay/Sunley estate in the early 1990's replacing the former farm gate which controlled access along the Roadway.
 - (6) any "breaking up" of the Roadway was as a result of natural wear and tear and the Claimant's refusal to co-operate with the Defendant in the maintenance of the road, and is not attributable to the use of the Roadway

in connection with the Defendant's land and/or is not such as to constitute a nuisance;

- (7) the scheme and methodology of repairs effected in or about 2007 have been (i) agreed by the Defendant with the Highways Authority and other neighbours and (ii) (in any event), carried out properly and to an appropriate standard.
 - (8) Further in or about 2007 the Defendant restored the old, historic drainage gutters alongside the Roadway which has prevented further deterioration of the road surface and has not reduced the width of the Roadway from its pre-existing historic width.
32. Following the Defendant's registration as proprietor of the Roadway in 2011 (and opposed by the Claimant who sought to establish title to one-half of the Roadway), the signage directing traffic away from the Roadway has been upgraded and replaced. Heavy vehicles are directed elsewhere but access to East Northdown Farm and other premises accessed solely via the Roadway (see above) – including the Claimant's land – remains as before: via the Roadway.
 33. In any event, it is denied that the use of the Roadway by the Defendant or his tenants/licensees constitutes a nuisance as alleged or at all.
 34. Paragraph 2(h) is denied.
 35. The Claimant has spent the last 25 years complaining vexatiously about many aspects of the Defendant's operations at East Northdown Farm and/or Council officials felt by the Claimant not to be sufficiently proactive on the Claimant's behalf in respect of his numerous complaints as aforesaid. As to paragraph 2(i), the Defendant had avoided direct communication with the Claimant since 1987. In the absence of any pleaded particulars concerning the instances on which the Claimant says he complained, the allegation is embarrassing to plead to and is denied.
 36. Paragraph 2(j) is denied. Paragraph 35 above (and in particularly the last sentence) is repeated.

37. Paragraphs 2(k), (l), (m) and (n) are denied.
38. In any event, it is denied that the Claimant (whose obligation under the transfer of East Northdown House was to contribute a sum towards the costs of maintaining the Roadway) can claim damages for the totality of its costs of repair.
39. If, contrary to the Defendant's defence herein, he is found to be responsible for the nuisance as alleged or any nuisance which has/have caused the Claimant loss or damage, the Defendant avers that any loss or damage caused more than 6 years prior to the issue of the claim form herein on 23 December 2011 is statute-barred pursuant to the terms of the Limitation Act 1980, upon which the Defendant relies.
40. It is admitted that the Claimant's solicitors sent the Defendant's solicitors a letter dated 10 June 2010. The Defendant will refer to it at trial for its terms and effect. Save as aforesaid, paragraph 3 is denied.
41. In the premises, paragraph 4 is denied.

IAN CLARKE

STATEMENT OF TRUTH

The Defendant believes that the facts stated in this Defence are true. ~~I am duly authorised to sign this statement on the Defendant's behalf.~~



DATED the

day of

2012

Claim ITT00777

IN THE THANET COUNTY COURT

BETWEEN:

PETER ROBERT MILES

Claimant

- and -

WILLIAM OFFLEY FRIEND

Defendant

DEFENCE

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