



REF/ 2012/0164

PROPERTY CHAMBER, LAND REGISTRATION DIVISION,  
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

PETER MILES

APPLICANT

and

WILLIAM FRIEND

RESPONDENT

Property Address: Land adjoining East Northdown House

Title Numbers: K570230 K570231 K599525 K947213 K913678

Before: Judge Michell

Sitting at: Thanet County Court

On: 16<sup>th</sup> July 2013

Applicant Representation: Mr Peter Leighton, counsel, instructed by Templetons solicitors  
Respondent Representation: Mr McNae, counsel, instructed by Furley Page solicitors

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ORDER

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Upon the functions of the Adjudicator to H M Land Registry having been transferred to the First-tier Tribunal, Property Chamber by The Transfer of Tribunal Functions Order 2013 (S.I. 2013 No. 1036) ("the Transfer of Functions Order") and The First-tier Tribunal and Upper Tribunal (Chambers) (Amendment) Order (S.I.2013 No.1187) on 1 July 2013

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AND UPON HEARING Counsel for the Applicant and Counsel for the Respondent  
AND UPON the parties having agreed the terms set out in the Schedule attached hereto  
BY CONSENT

IT IS ORDERED THAT:

The Chief Land Registrar do cancel the application of the Applicant, Peter Miles, dated 14 July 2011 for the registration of easements over land of which the Respondent, William Friend is the registered proprietor.

Dated this 16 July 2013

*Michael Michell*



BY ORDER OF THE TRIBUNAL

## SCHEDULE

### WHEREAS:

- A. The parties are entering into this agreement on the understanding and on the basis of mutual promises that the parties intend to bring an end to the litigation between them.
- B. The Applicant hereby acknowledges that the ancient flint wall between the Road and the Orchard is in the ownership of the Respondent.
- C. The Applicant has no intention to use either the Paddock or the Orchard for commercial purposes save for the present use of the said land for the keeping of 4 horses.
- D. Both parties recognise that the present state of affairs would not give rise to a successful cause of action against the Respondent in nuisance.
1. The following terms are used in this Agreement:
  - a. 'East Northdown House' means the land comprising and registered under Land Registry title number K570231;
  - b. 'The Paddock' means land comprising and registered under Land Registry title number K570230;
  - c. 'The Orchard' means the land comprising and registered under Land Registry title number K599525;
  - d. 'The Blue Land' means the land comprising and registered under Land Registry title number K913678;
  - e. 'The Road' means the land comprising and registered under Land Registry title number K947213.

2. The Applicant shall by 13 August 2013 cut back and thereafter maintain with the Respondent's permission the hedge line within six inches of the line of the existing boundary as demarcated by the metal railings in front of East Northdown House.
3. That the parties shall enter into a Deed of Grant in respect of the following rights set out in Paragraphs 4 to 6, below, and in the manner as set out in paragraph 8, below:
  4. In relation to rights over the Blue Land and the Road:
    - a. to the benefit of the Paddock, use limited to existing use namely:
      - i. The keeping of up to four horses (shared in common with the Orchard)
      - ii. The keeping of building materials for the purpose of repairing East Northdown House and further limited storage of building materials for other uses ancillary to the use of East Northdown House as a single private dwelling
    - b. In relation to rights over the Blue Land and the Road to the benefit of the Orchard use limited to existing use namely the keeping of up to four horses (shared in common with the Paddock).
  5. Insofar as any of the above grants any ancillary rights of access to the Paddock and the Orchard, any such right of access shall be by the existing route only namely, over the Blue Land, and shall be limited to access for existing uses only.
  6. In order to give effect to the terms of the contract dated 1<sup>st</sup> June 1982 and Transfer dated 9<sup>th</sup> November 1982, the parties agree that the Applicant shall pay ¼ of the

annual council tax obligation (or any successor thereto) for Mockett Cottage and East Northdown House to the Respondent towards the upkeep of the Road payable on the 1<sup>st</sup> April each year in substitution of the provision referring to rateable value.

7. The parties hereby agree that for so long as the Applicant remains the freehold title owner of the Orchard, Paddock and East Northdown House then the Respondent shall request no sums due in accordance with the Road maintenance levy as set out in the Transfer dated 9<sup>th</sup> November 1982 or the covenant above in substitution thereof. Further, for as long as this personal agreement shall be in place the Applicant shall by his servants, agents or others make no complaint in relation to the Road or the quality of the maintenance of the Road to the Respondent or any others including any public authorities or neighbouring land owners.
8. The Deed of Grant shall be prepared by the Respondent's solicitors, who shall provide a draft to the Applicant by 8<sup>th</sup> August 2013. The Applicant shall respond with any comments thereon and an amended draft Deed of Grant (if any) by 2 September 2013. Liberty to apply by either party to the Property Tribunal for determination of the terms of the Grant. The parties shall bear their own costs of preparing, executing the Deed of Grant, and if necessary, referral for determination, save that in the event that the Respondent's costs exceed £1,000 the Applicant shall be responsible for the payment of any additional fees such payment to be made prior to the execution of the Deed, and the Applicant shall indemnify the Respondent to the extent as herein set out.
9. The Applicant shall pay a contribution towards the Respondent's costs of these proceedings agreed in the sum of £35,000 by 13 August 2013.
10. The Respondent shall waive his right to enforce the payment by the Applicant of all past road maintenance payments owed to the Respondent in accordance with the provisions of the Transfer dated 9 November 1982.

11. The Applicant shall discontinue the nuisance proceedings commenced in the Thanet County Court under claim number 1TT00777 on the following terms:

- a. Payment by the Respondent/Defendant of the sum of £35,000 in full satisfaction of any damages, interest, costs and legal fees of the nuisance proceedings.
- b. The Claimant or his solicitors shall write to the Court notifying the Court of the discontinuance of the proceedings and shall file any appropriate notice by 6<sup>th</sup> August 2013.
- c. The above payments shall be made within either 7 days of receipt of the Order of the Court discontinuing the nuisance proceedings, or 13<sup>th</sup> August 2013 whichever is later.

12. In the event that the Claimant or his solicitors are unable to file a Notice of Discontinuance by 4.00pm on 13<sup>th</sup> August 2013 then the Applicant hereby agrees that the Respondent's solicitors may write to the Court enclosing a copy of this agreement and requesting that the proceedings be struck out and the Applicant shall not object to any such application. Upon the Court so striking out the nuisance proceedings the Defendant shall within 7 days credit the Claimant with £35,000 in accordance with the terms of this agreement.

13. The parties hereby give each other mutual undertakings not to harass or defame the other party or the other party's immediate family whether by themselves, their servants, agents or otherwise.

14. This agreement is in full and final settlement of any and all claims which the parties have against each other whether presently the subject of proceedings or otherwise. Further and for the avoidance of doubt, the parties hereby waive all rights they may have to bring any further proceedings against the other party in relation to any matter known or which should with reasonable enquiry have been

known to that party as at the date of this agreement. Further this agreement precludes the bringing of any claim as may presently exist against a party to these proceedings by a third party which may at a future date be assigned to one of the parties, their nominee or any other entity or person over which they exert influence or control.

15. There be liberty to apply to the County Court in relation to enforcement of this agreement.
16. This agreement represents the entire agreement between the parties and the parties hereby confirm that they have not relied upon any representations made by the other party in entering into this agreement save as contained herein.

[A copy of the agreement dated 15 July 2013 between the parties to which this Schedule gives effect is annexed to this Order]