

**A FORMAL LETTER BEFORE CLAIM  
PURSUANT TO CIVIL PROCEDURE RULES  
1999**

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Our ref: COI138277.16

10 June 2010

Dear Sir

**Our client: Mr P Miles, East Northdown House, East Northdown, Cliftonville, Kent  
CT93TS**  
**Alleged nuisance emanating from East Northdown Farm**

We act for the above named client on the instructions of his insurer DAS Group Ltd. We understand you are the owner of the land known as East Northdown Farm ("the Farm").

We have been put on notice that from approximately 2004 activities being carried on - at the Farm are giving rise to considerable nuisance which is affecting our client. Our client holds you responsible for the nuisance.

**Summanr of facts upon which the claim is based**

It is alleged that from approximately 2004 your various business activities on the Farm have become increasingly harmful. to the interests of neighbouring properties including the property of our client. In particular our client's and his family's specific right to quiet enjoyment of his property has been severely impacted. The locus in question was formerly green belt and is a conservation area and we have been shown evidence that the nuisance activities being carried on the land is high in terms of both noise and visual disturbance.

We understand that in 1989 Thanet District Council refused a retrospective planning application for the use of an agricultural building as a farm shop. A subsequent appeal was dismissed and the inspector concluded that the additional use would cause material harm to the character of this part of the countryside and green wedge, and to the adjoining Conservation Area.

Subsequently, and following polytunnels having been erected without planning permission, Thanet District Council granted permission for the retention of existing polythene green house, erection of one triple span green house, erection of one glass green house, and use of glass green house and land for the retail sale of plants and associated products, formation of car parking area; alterations to vehicular access and landscaping. This permission was subject to a legal agreement limiting developments.

Since 2004, there has been considerable intensification of this use into a garden centre which now exceeds the boundary's contained in the legal agreement with Thanet District Council.

We understand that in 1998 Thanet District Council granted planning permission for use of part only of the Farm for mixed agricultural and business purposes as three separate units, which was not to include the repair of motor vehicles and was to be limited to the hours of 8:30am to 6:30pm Monday to Friday and 8am to 5pm on Saturdays with no use on Sundays or bank holidays.

We understand that in 2007 planning permission was refused for the change of use of part of an agricultural barn to storage (Use Class BS).

Since 2004 there has been considerable intensification of the business use of the Farm and we understand from our client that there are now 25 industrial units carrying out various activities, including the use of a refrigeration unit which runs all day and during the night.

Our client purchased East Northdown House in 1982 from your late father and at that time the contract provided for our client to procure a deed of grant over a small access road which served five residential dwellings and a farm growing cauliflowers. In the past our client has contributed financially to the upkeep of this road and the Land Registry have registered his right of way over the road for all purposes for the benefit for East Northdown House.

From approximately 2005 the light traffic that previously used this road has increased to regular movements of vehicles including articulated lorries, this has led to major damage to the road surface. There is continuing damage to the road surface caused by the increase in traffic movement. The width of the road that is usable has been reduced as the edge of the road has been excavated by you to form drainage gullies. Traffic including lorries, vans and cars associated with the industrial units continue to cause a nuisance by virtue of the breakup of the road surface.

It is also alleged that you have verbally abused, shouted and screamed at our client and his family when they attempt to exercise rights of enjoyment of their property to include

partaking in possible defamatory blog entries and demonstrating unnecessary aggressive behaviour such that our client and his family feel physically threatened.

**Why you are liable:**

As the owner of the Farm we allege that you are causing a Private Nuisance. A Private Nuisance is the unreasonable, unwarranted or unlawful use of property in a manner that substantially interferes with the enjoyment or use of another individual's property. 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.
- Visual intrusion created by the increased traffic movement along the private road serving the industrial buildings and the garden centre opposite.
- Physical degradation of the private road surface.
- A nuisance in the form of a history of nuisance planning developments and breach of planning controls.

**What action we want you to take:**

We require you to abate the nuisance by:

- i) Finding an alternative route for traffic to and from the Farm so as to reduce the vehicular use of the access road.
- ii) Abate the noise nuisance caused by the industrial units and the garden centre.
- iii) Restore the surface of the road and width of the road so that it is useable.
- iv) Take corrective action to ensure that the uses of all buildings and land comply with proper Planning control.
- v) Pay to our client compensation in respect of the diminution in value of our client's property and his loss of amenity due to the continuing nuisance since 2004.

**Financial loss:**

Our client believes there has been a diminution in his property value of 20%. The property is valued in its unblighted condition at £800,000 and deductions should be made for different aspects of nuisance in the following way:-

- a) Noise nuisance and visual intrusion from vehicles using the road - 5%
- b) Physical deterioration of the surface of the private road - 5%
- c) Nuisance caused by the increased number of business and planning development on the site -10%

This would result in a claim against you for damages for approximately £160,000. Our client will also claim for past nuisance at approximately £2,000 per annum since the nuisance began.

**Documents:**

Our client's claim relies upon.-

- An expert report from a surveyor Mr T Slade.
- A DVD produced by a neighbour showing activities being carried on at the Farm.
- Copies of previous Planning Permissions and appeals granted in relation to East Northdown Farm.

The documents we require from you are: -

- Details of the businesses operating on the Farm, including confirmation of business use and copy leases.
- Copies of any complaints you have received from neighbouring properties or tenants of the Farm from 2004 onwards.
- Copies of any previous assessments of noise and vehicular use at the Farm together with any factors you may have taken to reduce or eliminate this.

**Funding:**

Our client is currently funded by his Legal Expense Insurer, DAS Group Ltd.

Please be aware that our client is at all times willing to consider alternative dispute resolution and considers that mediation may be the most suitable for this case and would invite you to agree to this.

We refer you to the Practice Direction of the Civil Procedure Rules dealing with pre-action protocol, particularly the courts power to impose sanctions for failure to comply with our request for documents.

If you fail to respond to this letter before claim, this may lead to our client starting proceedings and may increase your liability for costs.

You should provide a copy of this letter to your insurer as soon as possible and provide us with the details of them as soon as possible.

We look forward to receiving your full response to this letter in 28 days.

Yours faithfully,

**Berrymans Lace Mawer**

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