

**BETWEEN:**

**WILLIAM OFFLEY HINCHLIFFE FRIEND**

**Claimant**

**-and-**

**PETER MILES**

**Defendant**

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**3<sup>RD</sup> WITNESS STATEMENT OF PETER MILES**

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I, **PETER ROBERT MILES**, of East Northdown House, East Northdown, Margate, Kent  
**WILL SAY AS FOLLOWS:**

1. The facts and matters set out in this statement are within my own knowledge unless otherwise stated, and I believe them to be true. Where I refer to information supplied by others, the source of the information is identified; facts and matters derived from other sources are true to the best of my knowledge and belief.
2. I refer in this statement to a bundle of documents marked "PM3".

**Background**

3. The background to the overarching dispute between the parties is well documented in my previous two statements.

### **Issues for the Court to Resolve**

4. I note that the claim was issued under Part 8 of the Civil Procedure Rules. I am informed by my solicitors that under CPR 8.2 it is mandatory that the claim form includes (amongst other things):
  - a. the question which the claimant wants the court to decide; or
  - b. the remedy which the claimant is seeking and the legal basis for the claim to that remedy.
5. I am also informed that CPR 8.9 states “where the Part 8 procedure is followed – provision is made in this Part for the matters which must be stated in the claim form and the defendant is not required to file a defence and therefore –
  - (i) Part 16 (statements of case) does not apply;
  - (ii) Part 15 (defence and reply) does not apply.”
6. It is therefore unclear to me whether the claim is limited to that which is included in the claim form i.e. an application for the court to determine the terms of the deed of grant or whether it includes the matters set out in the separate document entitled “particulars of claim”.
7. I also note that the box on the claim form for legal representative’s costs is blank.

### **The Agreement**

8. The Agreement dated 15<sup>th</sup> July 2013 was an attempt to settle the following issues:
  - a. My claim for registration of easements over land which Mr Friend is registered proprietor;
  - b. My Claim in nuisance against Mr Friend.

9. The agreement was represented to be a final resolution to many long running matters of contention between Mr Friend and myself since 1986. At the time of the agreement two legal matters were live:
- a. My action in nuisance against Mr Friend for developments on his land opposite to my home,
  - b. The registration of easements over the Blue land and the road to benefit land known as the Paddock and the Orchard.
10. In 1982, I had purchased East Northdown House and the Paddock from Mr Friend's late father, when he claimed to be the owner. Messrs Girlings solicitors, who acted for all parties failed to advise me of a conflict of interests, failed to advise me that Mr Friend's late father did not own the Paddock, failed to convey the Paddock to me and instead procured only a possessory title in my name, using a false statutory declaration sworn by Mr Friend's late father. Contracted easements over the Blue land for the benefit of the Paddock, were never registered at the time of my purchase, and Mr Friend's late father failed to procure a contracted Deed of Grant over the road for the benefit of both the Paddock and East Northdown House, because Mr Friend's late father had no title to the road.
11. In 1983, unaware of any difficulties with title to the Paddock, I contracted to purchase the adjoining Orchard from the sisters of Mr Friend's late father and by agreement took possession of the land. Messrs Girlings again acted for all parties in this transaction. At the time, the sisters were unaware that I had purchased their Paddock land from Mr Friend's late father, and I was unaware that the Paddock land that I had purchased from Friend's late father, belonged to the sisters. Mr Friend's late father objected to the sale of the Orchard and Messrs Girlings claimed that I only occupied the Orchard as a licensee.

12. From 1986, and when Mr Friend moved to East Northdown Farm, I became aware of the conveyancing irregularities for the Paddock and that Mr Friend's late father had no title to either the Paddock or the Road. Mr Friend become exceedingly hostile and denied any wrongdoing by his late father.
13. Additionally, Mr Friend's developments at East Northdown Farm caused and continue to cause significant nuisance and damage to the Northdown conservation Area.
14. In c2008 I issued proceedings for specific performance of the 1983 contract for my purchase of the Orchard. Mr Friend represented the sisters of the late Mr Friend in the action.
15. In c2009, Mr Friend applied to the Land Registry to register the road. The application was dismissed.
16. Mr Friend brought an action before the Adjudicator to the Land Registry for registration of the road. I gave an undertaking to withdraw an objection if I did not achieve absolute title to the Orchard land in my proceedings for specific performance of the Orchard contract.
17. Mr Friend on behalf of the sisters then offered adverse possession of the Orchard in my specific performance proceedings, which I instructed my then solicitors to accept subject to safeguarding the Road proceedings. An agent acting for Mr Friend, Mr Squier advised me that I should not withdraw my objection to Mr Friend's application for the registration of the road, unless my easements for the Paddock and the Orchard were registered. Mr Squier agreed to arrange for the registration of those easements with Mr Friend's solicitors. I withdrew my objection to Mr Friend's application to register the road which was then registered in Mr Friend's name. Easements for neither the benefit of the Paddock or the Orchard were registered against the title for the Road.

18. The Blue land was registered to Mr Friend and neither easements for the benefit of the Paddock or the Orchard were registered against that title.
19. In 2010, and because of Mr Friend's worsening nuisance developments, I issued proceeding in nuisance against Mr Friend.
20. An application for registration of my easements over the Blue land (which for the Paddock were contracted to be provided in 1982) together with my nuisance claim, were compromised by the agreement of the 15<sup>th</sup> July 2013.
21. During negotiations with Mr Friend's representatives immediately prior to the signing of the 15<sup>th</sup> July 2013 agreement, it had been agreed that:
  - a. Mr Friend would not intensify his nuisance activities beyond the level they were as of the 15<sup>th</sup> July 2013, Mr Friend having commuted those uses prior to the 15<sup>th</sup> July 2013.
  - b. Mr Friend would not re-introduce commercial traffic accessing his industrial estate onto the road, Mr Friend having ceased the use of the road by commercial traffic and repaired damage caused by that use, prior to the 15<sup>th</sup> July 2013.
  - c. Mr Friend would cease all publication of all defamatory material whether by himself or others.
  - d. Mr Friend would cease all harassment.
  - e. Mr Friend's solicitors would draw up a Deed of Grant on the terms agreed for the benefit of the Paddock and the Orchard, and for the keeping of building materials for other properties that I own.
22. Future owners of East Northdown House would contribute towards the cost of maintaining the road (together with other residential occupiers) based on ¼ of the Council Tax payable specifically for East Northdown House only.

23. Mr Friend would be responsible for the costs of drawing up the Deed of Grant and in the very unlikely event that those costs exceeded £1,000.00, I would pay any difference.
24. Damages and costs were agreed.
25. The terms agreed during the negotiations on 15th July 2013 to be included in the proposed Deed of Grant were for:
- a. An easement for the benefit of the Paddock and the Orchard for the keeping of four horses.
  - b. An easement for the keeping of building materials for other properties on the Paddock.
  - c. Future owners of East Northdown House would contribute towards the cost of maintaining the road based on  $\frac{1}{4}$  of the Council Tax payable for East Northdown House.
26. All of the terms of the agreement were to be honoured as an entire agreement in order to settle once and for all, the then 28 years of contention between Mr Friend and myself. There was no agreement that either party could breach any of the agreed terms and continue to rely on any of the other terms. Specifically my agreement that Mr Friend could have title to the wall separating the Orchard and Road was requested at the very end of those negotiations and it was again only on the basis that the entire agreement would be honoured, that I agreed to that request.
27. In direct contravention of the agreement of 15<sup>th</sup> July 2013 however, Mr Friend has:
- a. Intensified his nuisance commercial activities to the point where new nuisance proceedings are ready to issue.
  - b. Re-introduced commercial traffic to the road accessing his industrial estate (albeit currently commuted again).

- c. Repeatedly published defamatory material, either directly or through third parties, and continues to do so. The latest know defamatory publication by Mr Friend being dated 14<sup>th</sup> October 2019. A further publication by a third party being the subject of a letter before action to a third party dated 19<sup>th</sup> December 2019.
- d. Continued with his behaviour amounting to harassment.

28. On the 15<sup>th</sup> July 2013 the following people met both and/or either at my property East Northdown House and at Mr Friend's East Northdown Farm House property which is opposite to East Northdown House, to try and agree terms for a final settlement:

- a. William Friend (remained at East Northdown Farm House);
- b. Mr David Hall solicitor for Mr Friend;
- c. A secretary to Mr Hall;
- d. Jonathan McNae (counsel for Mr Friend);
- e. Peter Miles (remained at East Northdown House);
- f. Mrs Amanda Miles (remained at East Northdown House);
- g. Ms Daksha Thacker solicitor for Mr Miles;
- h. Peter Leighton (counsel for Mr Miles).

29. Mr Hall, his secretary and Mr McNae moved between the two properties with Mr Friend remaining at East Northdown Farm House and Peter Miles and Mrs Amanda Miles remaining at East Northdown House.

30. In terms of the Deed of Grant, the relevant clauses of the agreement of 15<sup>th</sup> July 2013 are 6 to 8; 11 and 19.

31. These provide that:

**Clause 6**

This states *“that the parties shall within 14 days enter into a Deed of Grant in respect of the following rights set out in paragraphs 7 to 9 below”*

32. The wording of this clause is unequivocal in that it states the rights are “set out” [my emphasis] in paragraphs 7 to 9 below.

**Clause 7**

This states *“In relation to rights over the Blue Land and the Road:*

*To the benefit of the Paddock, use limited to existing use namely:*

*The keeping of up to four horses (shared in common with the Orchard)*

*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.*

*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)”.*

**Clause 8**

This states *“Insofar as any or 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”.*



## **Clause 9**

This states *“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 2982, 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”*.

During the negotiations it was not agreed that future owners would pay ¼ of the annual council tax obligation (or any successor thereto) for Mockett Cottage.

## **Clause 11**

This states *“The Deed of Grant shall be prepared by the Respondent’s solicitors, who shall provide a draft to the Applicant by 8th 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”*.

During the negotiations it was not agreed that the costs of preparing the draft deed were to include any costs of any ‘referral for determination’.

## **Clause 19**

This states *“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 in this agreement.”*

## **The Tomlin Order**

33. The relevant clauses in the Tomlin Order are 3 to 5; 8 and 16. These provide that:

### **Clause 3**

This states *“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 set out in paragraph 8, below:”*

### **Clause 4**

This states *“In relation to rights over the Blue Land and the Road:*

*to the benefit of the Paddock, use limited to existing use namely:*

*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*

*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)”.*

## **Clause 5**

This states *“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”*.

## **Clause 8**

This states *“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”*.

## **Clause 16**

This provides that *“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.”*

34. I am informed that the purpose of an entire agreement clause is to give the parties certainty that the entirety of the agreement between them is set out in writing and to ensure that any pre-contractual representations, statements, arrangements or discussions will not form part of the agreement they are entering into.

### **Draft Deeds of Grant**

35. The Claimant's solicitors drew up draft deeds of grant dated:
- a. 7<sup>th</sup> August 2013 (a copy of which is at pages 1 to 7 of "PM3")
  - b. 9<sup>th</sup> October 2013 (a copy of which is at pages 8 to 13 of "PM3")
  - c. 15<sup>th</sup> November 2016 (a copy of which is at pages 14 to 20 of "PM3")
  - d. 2<sup>nd</sup> October 2019 (a copy of which is at pages 21 to 25 of "PM3")
  - e. 23<sup>rd</sup> October 2019 (a copy of which is at pages 26 to 30 of "PM3")
36. Taking each of these in turn, I have identified the clauses which the Claimant's solicitors have included but which were never agreed in either the agreement of 15<sup>th</sup> July 2013 or the Order of 16<sup>th</sup> July 2013.

### **Draft Deed of Grant dated 7th August 2013**

37. **At clause 2.1.1** of this draft deed it provides that "*Pursuant to the Order the Grantor with Full Title Guarantee grants to the Grantee the following rights over the Blue Land and the Road:- Full right and liberty for the Grantee, his successors in title as owners or occupiers for the time being and all persons authorised by him or them in common with the Grantor and all other persons having the like right at all times and for the purposes set out in this clause to pass and re-pass on foot and with or without vehicles to and from East Northdown House, The Paddock and The Orchard over and along the Road and the Blue Land, subject to and in accordance with the following: ....*"
38. The inclusion of East Northdown House did not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013

39. **At Clause 4** GRANTEES COVENANTS of this draft deed it provides that *“The Grantee covenants with the Grantor not to make any Disposal without first procuring that the person to whom the Disposal is being made has that his successor in title shall executed a Deed of Covenant containing positive covenants in the same terms as those given or referred to by the Grantee in this Deed and shall delivered the same to the Grantor and or his solicitor (or his successor or assign) within 28 days of such disposal together with and a certified copy of the Deed or other document effecting the succession or assignment”*.

40. This does not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013.

41. **At NEW CLAUSE 5.** of this draft deed it provides that *“The Grantee covenants to procure the making of the following Restriction against the Grantee’s Titles to East Northdown House registered under title number K570231, The Paddock and The Orchard at the Land Registry following the registration of this Deed and shall provide the Grantor an official copy of that title as soon as practicable following completion of registration:-*

*“No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by William Offley Hinchliffe Friend or his successor in title or by their Conveyancer”. shall be completed until a Deed of Grant is properly executed and delivered to the Grantor and or his successor in title.’*

42. These do not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013.

43. **At NEW CLAUSE 6.** of this draft deed it provides that “*Grantor’s Obligations COVENANTS – New clause 6 The Grantor covenants with the Grantee that the Grantor or his successors in title or assignees shall:*

*Provide written consent for the registration of a Disposal at the Land Registry immediately upon receipt of a Deed of Covenant properly executed by the person to whom the Disposal is being made provided that there are then no outstanding obligations due from the Grantee under the terms of this Deed or other Deeds or documents referred to in this Deed.*

*Following any subsequent Disposal the Grantee or as appropriate any successor in title who has subsequently executed a Deed of Covenant shall on full compliance with the obligations set out herein (or clause having the same effect in any Deed of Covenant) (and unless liability to make a payment has arisen but not been discharged) be released from all further liability to make payments hereunder.*

44. These do not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013.

45. **Clause 5 Grantor’s Obligations** “*The Grantor covenants with the Grantee that the Grantor or his successors in title or assignees shall:*

*Provide written consent for the registration of a Disposal at the Land Registry immediately upon receipt of a Deed of Covenant properly executed by the person to whom the Disposal is being made provided that there are then no outstanding obligations due from the Grantee under the terms of this Deed or other Deeds or documents referred to in this Deed.*

*Following any Disposal the Grantee or as appropriate any successor in title who has subsequently executed a Deed of Covenant shall on full compliance with the obligations set out herein (or clause having the same effect in any Deed of Covenant) (and unless liability to make a payment has arisen but not been discharged) be released from all further liability to make payments hereunder”.*

46. These do not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013.

#### **Draft Deed Dated 9th October 2013**

47. **At clause 2.1.1** of this draft deed it provides that *“Pursuant to the Order the Grantor with Full Title Guarantee grants to the Grantee the following rights over the Blue Land and the Road:- Full right and liberty for the Grantee, his successors in title as owners or occupiers for the time being and all persons authorised by him or them in common with the Grantor and all other persons having the like right at all times and for the purposes set out in this clause to pass and re-pass on foot and with or without vehicles to and from East Northdown House, The Paddock and The Orchard over and along the Road and the Blue Land, subject to and in accordance with the following: ...”*

48. The inclusion of East Northdown House did not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013.

49. **At clause 4** Disposals and Restriction of this draft deed it provides that *“4.1 The Grantee covenants with the Grantor not to make any Disposal without first procuring that*

*the person to whom the Disposal is being made has executed a Deed of Covenant containing positive covenants in the same terms as those given or referred to by the Grantee in this Deed and delivered the same to the Grantor (or his successor or assign) and a certified copy of the Deed or other document effecting the succession or assignment.*

*4.2 The Grantee covenants to procure the making of the following Restriction against the Grantee's Titles to East Northdown House, The Paddock and The Orchard at the Land Registry following the registration of this Deed and shall provide the Grantor an official copy of that title as soon as practicable following completion of registration:-*

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by William Offley Hinchliffe Friend or his successor in title or by their Conveyancer".*

50. These do not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013.

51. **Clause 5 Grantor's Obligations** *"The Grantor covenants with the Grantee that the Grantor or his successors in title or assignees shall:*

*Provide written consent for the registration of a Disposal at the Land Registry immediately upon receipt of a Deed of Covenant properly executed by the person to whom the Disposal is being made provided that there are then no outstanding obligations due from the Grantee under the terms of this Deed or other Deeds or documents referred to in this Deed.*



*Following any Disposal the Grantee or as appropriate any successor in title who has subsequently executed a Deed of Covenant shall on full compliance with the obligations set out herein (or clause having the same effect in any Deed of Covenant) (and unless liability to make a payment has arisen but not been discharged) be released from all further liability to make payments hereunder”.*

52. These do not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013.

53. The clause relating to placing a restriction on my property is a serious curtailment of my rights and was never agreed to. At page 31 of “PM3” is a redacted e-mail passing between me and my solicitor dated 29<sup>th</sup> August 2013. In that e-mail I state that, *“My initial view is the killer clause in the proposed draft is the new requirement for potential purchasers of my property to have to enter into any deeds, deeds contracts etc. That was never agreed.”*

54. Despite this, it appeared in the drafts dated 7<sup>th</sup> August 2013 and 9<sup>th</sup> October 2013.

55. At pages 32 to 33 of “PM3” is a redacted e-mail passing between me and my barrister at the time, Peter Leighton, dated 18<sup>th</sup> August 2013. In that e-mail I state *“I recall Mr Hall has already refused to amend 2.1.1 relating to storage of building materials kept for other properties. I distinctly remember the discussion and if it was not agreed then why has he included the wording at all?.....”*

56. Similarly, in the e-mail of 18<sup>th</sup> August 2013, I state that *“The clauses proposed are cumbersome and were not part of the agreement or even discussed.”*

57. The court will note that I have agreed to the e-mails at pages 31 to 33 appearing as exhibits to this witness statement on the strict understanding that this does not constitute a waiver of the general privilege attached to correspondence passing between me and my advisers. They are included as it is important for the court to understand that these issues are not something that I have thought of long after the event to justify not signing the draft deeds of grant but instead they have been live issues throughout.

**Draft Deed Dated 15<sup>th</sup> November 2016**

58. **At clause 2.1.1** of this draft deed it provides that *“Pursuant to the Order the Grantor with Full Title Guarantee grants to the Grantee the following rights over the Blue Land and the Road:-*

*Full right and liberty for the Grantee, his successors in title as owners or occupiers for the time being and all persons authorised by him or them in common with the Grantor and all other persons having the like right at all times and for the purposes set out in this clause to pass and re-pass on foot and with or without vehicles to and from **East Northdown House**, The Paddock and The Orchard over and along the Road and the Blue Land, subject to and in accordance with the following:*

The inclusion of East Northdown House did not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013

59. **At clause 4 Disposals and Restriction** of this draft deed it provides that *“4.1 The Grantee covenants with the Grantor not to make any Disposal without first procuring that the person to whom the Disposal is being made has executed a Deed of Covenant*

*containing positive covenants in the same terms as those given or referred to by the Grantee in this Deed and delivered the same to the Grantor (or his successor or assign) and a certified copy of the Deed or other document effecting the succession or assignment.*

*4.2 The Grantee covenants to procure the making of the following Restriction against the Grantee's Titles to East Northdown House, The Paddock and The Orchard at the Land Registry following the registration of this Deed and shall provide the Grantor an official copy of that title as soon as practicable following completion of registration:-*

*"No disposition of the registered estate by the proprietor of the registered estate is to be registered without a written consent signed by William Offley Hinchliffe Friend or his successor in title or by their Conveyancer".*

60. This does not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013

61. **At Clause 5 - Grantor's Obligations** *"The Grantor covenants with the Grantee that the Grantor or his successors in title or assignees shall:*

*Provide written consent for the registration of a Disposal at the Land Registry immediately upon receipt of a Deed of Covenant properly executed by the person to whom the Disposal is being made provided that there are then no outstanding obligations due from the Grantee under the terms of this Deed or other Deeds or documents referred to in this Deed.*

*Following any Disposal the Grantee or as appropriate any successor in title who has subsequently executed a Deed of Covenant shall on full compliance with the obligations set out herein (or clause having the same effect in any Deed of Covenant) (and unless liability to make a payment has arisen but not been discharged) be released from all further liability to make payments hereunder”.*

62. This does not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013

**Draft Deed Dated 2nd October 2019**

63. **At clause 2.1.1** of this draft deed it provides that *“Pursuant to the Order the Grantor with Full Title Guarantee grants to the Grantee the following rights over the Blue Land and the Road:-*

*Full right and liberty for the Grantee, his successors in title as owners or occupiers for the time being and all persons authorised by him or them in common with the Grantor and all other persons having the like right at all times and for the purposes set out in this clause to pass and re-pass on foot and with or without vehicles to and from East Northdown House, The Paddock and The Orchard over and along the Road and the Blue Land, subject to and in accordance with the following:*

64. The inclusion of East Northdown House did not form part of the agreement between the parties whether in the agreement dated 15th July 2013 or the schedule to the Tomlin Order dated 16th July 2013

**Draft Deed Dated 23<sup>rd</sup> October 2019**

65. At clause 2.1.1 of this draft deed it provides that *"Pursuant to the Order the Grantor with Full Title Guarantee grants to the Grantee the following rights over the Blue Land and the Road:-*

*Full right and liberty for the Grantee, his successors in title as owners or occupiers for the time being and all persons authorised by him or them in common with the Grantor and all other persons having the like right at all times and for the purposes set out in this clause to pass and re-pass on foot and with or without vehicles to and from East Northdown House, The Paddock and The Orchard over and along the Road and the Blue Land, subject to and in accordance with the following:*

66. The inclusion of East Northdown House did not form part of the agreement between the parties whether in the agreement dated 15<sup>th</sup> July 2013 or the schedule to the Tomlin Order dated 16<sup>th</sup> July 2013.

67. Under the proposed clause, the rights which are recorded in both the agreement and the order as being for the paddock and the orchard, have been in all of the draft deeds offered to date (including the latest versions), to include the same qualified rights of access as the Paddock and Orchard, to East Northdown House i.e. *"Grant of Rights - Full right and liberty for the Grantee, his successors in title as owners or occupiers for the time being and all persons authorised by him or them in common with the Grantor and all other persons having the like right at all times and for the purposes set out in this clause to pass and re-pass on foot and with or without vehicles to and from East Northdown House, The Paddock and The Orchard over and along the Road and the Blue Land, subject to and in accordance with the following:"*

68. Rights of way to East Northdown House were never discussed, agreed or included in either the agreement or the Order. East Northdown House has a registered right of way for all purposes. If any of those deeds including the latest deed containing that particular wording were ever executed, I could be open to challenge that my rights of way to and from the house were commuted to a single private dwelling.
69. The claimant's solicitors have had over 6 years to produce a Deed of Grant that reflects the unequivocal terms contained within the agreement dated 15<sup>th</sup> July 2013 and the schedule to the Tomlin Order dated 16<sup>th</sup> July 2013, yet they have consistently sought to introduce new clauses that were never agreed or even discussed. The drafts of the Deeds of Grant provided by the Claimant from 15th June 2013 have all contained additional and/or onerous clauses never discussed or agreed with the Claimant and his representatives or contained in the agreement of 15th June 2013 or the order of the 16th June 2013.
70. Even the final proposed Draft Deeds of Grant forwarded to me whilst I was unrepresented and which were purporting to have had the onerous additional un-agreed clauses removed, and to reflect only the clauses contained in the 2013 Agreement and Order, retained the wording in Clause 2.1.1. i.e. granting rights, "to and from East Northdown House, The Paddock and The Orchard". East Northdown House benefits from a right of way for all purposes. My application for registration of easements was for the benefit of the Paddock and the Orchard. No discussion ever took place or any agreement reached, that the Deed of Grant was to grant any easement to East Northdown House.

## Indemnity

71. **Para 11.** The agreement of the 15<sup>th</sup> July 2013 states, *“The parties shall bear their own costs of preparing, executing the Deed of Grant, and if necessary, referral for determination, save 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 execution of the Deed, and the Applicant shall indemnify the Respondent to the extent as herein set out”*.
72. During negotiations with the Claimant and his representatives on 15<sup>th</sup> July 2013, it was stated that the possibility of the costs of drawing the Deed of Grant exceeding £1,000.00 were extremely remote. There was no discussion whatsoever with regard to my being in any way responsible for anything other than the costs of drawing a Deed of Grant which was simply to reflect the terms agreed during those discussions of the 15<sup>th</sup> July 2013.
73. The drafting of the Deed of Grant should have been a very straightforward and relatively inexpensive exercise. Back in August 2017, the Claimant, in his witness statement dated 24<sup>th</sup> August 2017, was alleging that he was entitled to recover, on an indemnity basis, some £18,212.80 in costs purportedly arising from the drafting of the deed of grant. I find it hard to believe that the alleged legal costs remotely represent legal fees genuinely incurred for the minimal drafting of the Deed of Grant that has taken place to date.
74. Further my solicitor and counsel were so concerned at the inclusion of the new and onerous conditions and the escalating costs because of those inclusions, that attempts were made for my counsel to resolve the differences directly with Mr Friend’s counsel. Even these attempts were thwarted.
75. My solicitors inform me that there is a principle in law that a party cannot rely on its own breach to obtain a benefit and therefore I am firmly of the view that, as the costs have

only been incurred because of the Claimant's failure to produce a deed of grant that accords with the agreement between the parties, the indemnity should not apply.

**Statement of Truth**

I believe the facts stated in this Witness Statement are true.

Signed: .....

Name: Peter Miles

Date: 17<sup>th</sup> January 2020