

CASE REFERENCE/ 2012/0164

Peter Robert Miles – Applicant

Vs

William Friend – Respondent

Statement of Case by Peter Robert Miles – Applicant

Name and Address for Service:

This is the statement of case of Peter Robert Miles “the Applicant”. The address for service of documents is care of Templetons Solicitors of Temple House, 221-225, Station Road, Harrow HA1 2TH

Reasons for supporting original Application

1. The Applicant has at all material times namely since 25th May 1984 been the registered proprietor of the freehold property situate at and known as ‘East Northdown House, Margate Kent’ registered K570231, together with land known as, ‘Land lying to the south of East Northdown House, Cliftonville, (CT9 3TS), Margate Kent registered K570230. Both titles are more particularly edged red on the plan annexed hereto (referred to as the plan) and marked PRM 1.
 2. The date of the contract for the sale and purchase and the occupation by the Applicant of both K570231 and K570230, was 1st June 1982.
 3. Land lying to the south of East Northdown House, Cliftonville, registered K570230 is now known and referred to as “The Paddock”.
 4. The Applicant is also the registered proprietor of the freehold property situate at and known as ‘Land lying to the north east of Northdown Park Road, Cliftonville, Margate’ under title no K599525. This land is also now known and referred to as ‘The Orchard’. The date of the first contract for the sale and purchase and the occupation by the applicant was in 1983. K599525 is more particularly edged yellow on the plan annexed hereto (referred to as the plan) and marked PRM 1.
- The Respondent is and has at all material times namely since 12th April 2005 been the registered proprietor of the freehold properties situate at and known as, ‘Land adjoining East Northdown House, Margate (CT9 3TS)’ and ‘Land forming road and access way lying to the north of George Hill Road, Broadstairs’.
5. These Properties are registered at HM Land Registry under title numbers K913678 and K947213 respectively and are more particularly blocked and edged blue on the Plan marked PRM 1.

Facts on which the Applicant intends to rely:

1. In 1982, the Applicant in a single contract agreed to purchase all that land and buildings known as East Northdown House Margate and now registered at HM Land Registry with title number K570231 (the Applicant's home), together with land lying to the south of East Northdown House and now known as the Paddock and Registered at HM Land Registry under title number K570230.

2. Initially the Applicant acted in person. The Vendor, IJC Friend the late father of the Respondent, purported to sell all of the land as beneficial owner. The Applicant was led to believe by Mr IJC Friend, that he had good title to all the land at Northdown including the land in the sale now registered K570230 and K570231 and that the land in both titles would be conveyed as one parcel and that the Applicant would benefit from the rights contained in the contract, including rights of way for all purposes.

K913678 and K947213.

3. Exchange of contracts took place at the Birchington office of Mr Paul Girling of Messrs Girling Wilson & Harvie solicitors who acted both for the Vendor and also the Applicant's mortgagees, Lloyds Bank.

4. At the Applicant's request a small parcel of land additional to that in the sale and which contained the remains of a field shelter building situated to the south of the Paddock K570230, was added to the land in the sale at the time of exchange by Mr Girling. Mr Girling altered the plan attached to the contract in the Applicant's presence without any reference to the purported vendor or anyone else.

5. At that time, the Applicant who is not legally qualified considered this action to be reasonable because it related to a very small parcel of land and the purported Vendor had represented to the Applicant that he owned all of the land at East Northdown, including the further land described to the Applicant by the purported Vendor IJC Friend as the Orchard, and now registered at HM Land Registry under title number K599525. The Applicant therefore believed that Mr Girling may have obtained some prior authority from the vendor for whom he was acting to make the alteration.

6. At the time, the Applicant certainly had no reason to believe that Mr Girling did not have authority from the owners to include the additional land or indeed the Paddock land in the sale.

7. Following exchange of contracts, Girling Wilson & Harvie provided the Applicant with an Assent dated 1st November 1966 as a root of title. The Assent showed no title to the Paddock now registered K570230.

8. At that time, Girling Wilson & Harvie also acted for the Applicant on other matters. Because the title to East Northdown House and the Paddock was unregistered and no title had been shown for the Paddock in any event, the Applicant engaged Girling Wilson & Harvie at their Margate office to act in his purchase of East Northdown House and the Paddock now registered K570230 and K570231. The Applicant knew of no conflict of interest at that time and had no reason to question the purported vendors claims to own all the land at East Northdown or the integrity of the solicitors, Girling Wilson & Harvie. Girling Wilson & Harvie never disclosed to the Applicant that there was a conflict of interest in their acting for both parties.

9. The Applicant's Mortgagees, Lloyds Bank instructed Girling Wilson & Harvie at their Margate Office to provide a report on title and register a mortgage. No report on title was ever provided by Girling Wilson & Harvie.

10. Girling Wilson & Harvie failed to disclose to the Applicant, the Land Registry or the Applicant's mortgagees the existence of a Deed of Family Arrangement of 1958 evidencing the conveyance to the Vendor's sisters in 1958 of land described as, "The piece of land comprising one acre or thereabouts and being used as an old orchard with garden ground and a small area of woodland and situated on the South side of the messuage, known as East Northdown House".

11. Notwithstanding the Applicants mortgagees having written to Girling Wilson & Harvie on no less than 13 occasions, Girling Wilson & Harvie made no disclosure to the Applicant, the Land Registry or the Applicant's mortgagees, that they were unable to convey to the Applicant any proper title for the Paddock, including the small additional parcel of land, or that they held convincing documentary evidence that title to the Paddock land was vested in the four sisters of their Vendor client ("the four sisters") and not the vendor himself.

12. Girling Wilson & Harvie made no disclosure to the Applicant, the Land Registry or to the Applicant's mortgagees, that the Paddock which IJC Friend had contracted to sell, was the land described as the 'garden ground' conveyed to the four sisters and described in the Deed of Family Arrangement.

There is now produced the said Deed of Family Arrangement marked **PRM 2**.

13. Following the Applicant entering into correspondence with a Mr IPC Creasey, the son of one of the four sisters Lady Creasey and who was acting on her behalf, the Applicant received a letter dated 10th September 1991 from Mr Creasey requesting confirmation of the sum that the Applicant would pay for a confirmatory transfer for the Paddock land. Mr Creasey stated in his letter, "The original transaction (sale of the Paddock by IJC Friend) was carried out without her (his mother's) knowledge or permission..."

There is now produced the said letter of Mr IPC Creasey marked **PRM 3**.

14. Girling Wilson & Harvie concealed from the Applicant, the Land Registry, and the Applicant's mortgagees the fact that that they had received a letter dated 2nd August 1982 from a Mr Daniel a solicitor of Messrs Daniel & Edwards, who had previously acted for the Friend family including the four sisters.

15. In the letter of 2nd August 1982 addressed to Mr Paul Girling, Mr Daniel stated, "I had a telephone call from Mrs Stanton this morning. She is one of Mr IJC Friend's sisters. She and her two surviving sisters, Lady Crofton and Lady Creasey have been asked by Mr I.J.C. Friend to sell him for I think £1,600 the Orchard. She is not inclined to sell and does not know where the Deeds are anyway. This leads me to suppose that the deeds to the Orchard are probably among the many documents which I handed to IJC Friend following Mrs Cockrofts death some years ago. He had better therefore look into that and if he finds the deeds of the Orchard are there they had better be returned to me", and "Mrs Stanton is not inclined to accept her brothers offer".

There is now produced the said letter from Messrs Daniel and Edwards marked **PRM 4**.

16. Girling Wilson & Harvie concealed from the Applicant, the sisters and the Applicant's mortgagees, that in October 1982 they received an opinion from Counsel, Mr Andrew Lloyd James. In his opinion, Counsel advised, *"My first impression was that the Paddock described in my instructions corresponded with the land described in paragraph 1 in the Second Part of the First Schedule to the agreement and release dated 24th April 1958. If this were in fact the case then the Paddock would have been vested in the persons referred to as the four daughters (i.e. the Respondent's Aunts in the 1958 agreement as tenants in common in equal shares"*. There remains an unanswered question as to whether Girling Wilson & Harvie provided a copy of the opinion to the Land Registry.

There is now produced the said opinion marked **PRM 5**.

17. Further, Counsel advised, *"I am, however instructed that the Paddock is not the piece of land referred to in paragraph 1 of the second part of the First Schedule. It appears, from such information as is at present available to me the Paddock is no-where else referred to in the First Schedule to the 1958 agreement: certainly, it does not appear that the Paddock was comprised in the first part of the schedule."*

18. The land conveyed to the four daughters and known by them as the Orchard, is the land described in Paragraph 1 in the Second Part of Second Schedule as land of one acre or thereabouts.

19. A survey of the land comprising The Paddock and the Orchard in 2008 confirms the area of the land comprising the Paddock now registered K570231 and the Orchard K599525 has a total area of 1.1 acres. This accords with the description of the land in paragraph 1 in the Second Part of the First Schedule to the agreement and release dated 24th April 1958.

There is now produced the said survey marked **PRM 6**.

20. In 1965 agents for the four sisters as owners, applied for residential planning permission for the Orchard land conveyed to them in 1958. The plan accompanying that application clearly shows the land owned by the four sisters, as being the land now known as the Orchard together with the Paddock, sold to the Applicant by the Respondent's father Mr IJC Friend.

There is now produced the said planning application marked **PRM 7**.

21. In 1987 enquiries of a firm of solicitors who acted for the purchaser of another parcel of land that was conveyed to the four sisters of IJC Friend in 1958, revealed a plan and an abstract in their files, showing the various properties conveyed to the four sisters in 1958. Those properties as identified on the plan included the Orchard and the Paddock, now registered to the Applicant as K570230 and K599525 and having been land conveyed to the four sisters by the conveyance of 1958, allegedly removed from the offices of the owners solicitors Messrs Daniel & Edwards by the Respondents father.

There is now produced the letter from Messrs Robinson and Allfree solicitors marked **PRM 8**.

22. On 10th October 1986, agents for the Respondents father Messrs Stewart Gore, wrote to the Applicant confirming that in 1979 they had submitted two residential planning applications on behalf of Mr IJC Friend for five dwellings. One of the applications included a proposal for three houses on

the Paddock land belonging to the four sisters. The planning application was submitted by Messrs Stewart Gore on behalf of the Respondents father. Certificate A on the application was completed stating that no other person other than the applicant, the Respondent's father, was an owner.

There is now produced the said planning application letter from Messrs Stuart Gore marked **PRM 9**.

23. In or about 1986, the Applicant spoke with Mrs Stanton, one of the four sisters, concerning a telephone conversation she had had with a Mr Lawrence of Girling Wilson & Harvie in 1982. Mrs Stanton stated that Mr IJC Friend had denied his sisters access to their land. Mrs Stanton stated that Girlings had also stated that they had no right of access.

There is now produced a transcript of the conversation between the Applicant and the said Mrs Stanton marked **PRM 10**.

24. It is the Applicants belief that the evidence available is overwhelming and proves beyond doubt that the land then known collectively as the 'Orchard' and described in the deed of family arrangement as 'an orchard, garden and small area of woodland', and now known as the 'Orchard and Paddock' was the land described in the Second Part of the First Schedule to the agreement and release dated 24th April 1958 being land conveyed to the four daughters.

25. Further, it is the Applicants belief that the Respondent's father Mr IJC Friend wrongfully denied the four sisters access to their land, wrongfully removed and withheld the deeds for the Orchard land from Messrs Daniel & Edwards and knowingly and wrongfully instructed solicitors to include the land known as the Paddock belonging to the sisters, in his sale to the Applicant in 1982.

26. Notwithstanding the above circumstances, Girling Wilson & Harvie continued to act against the interests of their clients being the Applicant, Lloyds Bank and the sisters, but continued to act in the interests of their fourth client, the Respondent's father Mr IJC Friend, and to his advantage. Girling Wilson & Harvie made application for registration of the Paddock by submitting the Statutory Declaration of Mr IJC Friend which stated, "I verily believe that the Paddock was omitted from the 1966 assent because of some oversight or mistake in the past".

27. Girling Wilson & Harvie failed to disclose the then known conflicting interests in the land, either to the Applicant or the Applicant's mortgagees or the Land Registry, and failed to advise the sisters that they were acting in a sale of their land to a third party and were submitting an application for registration of part of the land conveyed to the four sisters in 1958, notwithstanding Girling Wilson & Harvie being aware that the sisters did not wish to dispose of any or all of the said land.

28. Girling Wilson & Harvie applied for, and the Land Registry registered a right of way for all purposes benefitting East Northdown House registered K570231, over land registered K947213 (Land forming road and accessway lying to the North of George Hill Road, Broadstairs) together with land Registered K913678, in accordance with the terms of the contract of June 1982.

There is now produced the said contract marked **PRM 11**.

29. Girling Wilson & Harvie applied for registration of the Paddock by submitting the Statutory Declaration provided by the Respondents late father IJC Friend. The Applicant believes that Girling

Wilson & Harvie also paid the proceeds of sale of the Paddock to the Respondent's father, Mr IJC Friend despite the advice received from Counsel concerning the distribution of funds received.

30. Notwithstanding Mr IJC Friend's removal of the conveyance, his offer to purchase the land from his sisters in the sum of **£1,600.00**, the 'initial' view of Counsel and the Deed of Family Arrangement and the survey of the land, Mr IJC Friend claimed in his Statutory Declaration that the Paddock Land had been omitted from the 1966 Assent because of some conveyancing oversight.

There is now produced the said Statutory Declaration marked **PRM 12**.

31. Girling Wilson & Harvie failed to apply to register either the land now registered K570231 East Northdown House, or K570230 The Paddock until May 1984. The Applicant believes that Messrs Girling Wilson & Harvie delayed applying for registration of both K570230 and K570231 and failed to apply for registration of the Orchard in the name of the Applicant, because Girling Wilson & Harvie were aware that by applying for registration of the Paddock and the Orchard in the name of the Applicant using the title documents available to them, would have alerted the Land Registry to the fact that the two applications would have related partly to the same parcel of land.

32. Girling Wilson & Harvie failed to apply for registration of the right of way for all purposes for the benefit of the Paddock K570230 over the land registered at HM Land Registry K913678 and K947213 in accordance with the contract of 1982.

33. Because the Vendor had removed the conveyance of the Orchard and Paddock from the offices of Messrs Daniel and Edwards and the owners had refused to sell their land or part thereof, Girling Wilson and Harvie could adduce no paper title for the Paddock. The Land Registry registered a possessory title only.

34. The Applicant has used the land known as the Paddock K570230 as appurtenant to East Northdown House K570231 for the purposes of a residence and other uses since 1982.

35. Contrary to the Respondents claim that the Paddock is incapable of benefiting directly from the grant of the rights of way because of a **metal gate only four feet wide**, the Respondent knows his claim to be totally untrue.

36. In 1982, the Applicant created an opening approximately 11ft wide and installed a metal gate of a similar size in a southern wall of the Paddock K570230, to allow for inter alia vehicular access.

37. The Applicant also created a concrete driveway of a similar width in order to gain inter alia vehicular access to the opening and the gate. Both gate and driveway have been clearly visible from the Respondents land since 1982.

38. In 1986, following an acrimonious disagreement between the Respondent and a potential purchaser of the adjoining East Northdown Cottage, the Respondent requested the Applicant to assist him to dismantle scaffolding that had been erected around East Northdown Cottage by the potential purchaser and to store roof tiles that had been removed from East Northdown Cottage.

There is now produced a letter signed by the Respondent's father IJC Friend to solicitors acting for the proposed purchaser of East Northdown cottage in which he alleged conspiracy and professional fixing by the solicitor, that members of the firm of Boys & Maughan solicitors have gone to jail, that

the solicitors have failed to keep up professional standards, that monies were held in a solicitor's piggybank, and that there had been planning consent on the side, marked **PRM 13**

39. Contrary to the Respondents claim that the said gate is only four feet wide, in 1986 the Respondent or a member of his staff, drove a full sized commercial farm tractor and trailer belonging to the Respondent through the 11' wide gate onto the Applicant's Paddock Land, where the trailer with tiles was stored in July or August of 1986.

There is now produced a copy of a photograph showing the Respondent's trailer situated on the Applicants land registered K570230 marked **PRM 14**.

40. On 10th September 1986 the Respondent provided a receipt for the trailer when it was then collected and removed through the gate, again by the Respondents commercial tractor. There is also a letter of even date evidencing receipt of the trailer.

There is now produced the letter and the said receipt for his trailer signed by the Respondent marked **PRM 15 and 16**.

41. Further and again contrary to the Respondent's claim that in 1986 the said gate was only four feet wide, on 8th May 1986, Mr IJC Friend complained in a letter to a Mr Fisher that "Mr Miles has put mobile homes and caravans on the site" (The Orchard).

There is now produced the said letter signed by IJC Friend marked **PRM 17**.

42. The Respondent is aware of a mobile home which the Applicant sited on the Orchard land and which it would have been impossible to access had the opening and gate been restricted to four feet as the Respondent knowingly, wrongfully claims.

43. Further and again contrary to the Respondents claim that the said gate is only four feet wide, on 10th November 1986, the Respondent's late father Mr IJC Friend, wrote to Thanet District Council complaining that the Applicant had "bulldozed an access through a significant flint wall".

There is now produced the said letter signed by the Respondent's father marked **PRM 18**.

44. The Respondents late father, Mr IJC Friend complained to Thanet District Council again on the 1st December 1986 that, "Mr Miles (the Applicant) has seen fit to make a lorry access through significant walls to win planning consent to a new car park on agricultural land..."

There is now produced the said letter signed by the Respondent's father marked **PRM 19**.

45. The Respondent has therefore been fully aware since 1986 when he moved to East Northdown that the gateway into the Paddock and the driveway leading thereto has been approximately 11ft wide and not four feet as the Respondent has wrongfully claimed. The opening is sufficiently wide for motor vehicles and caravans to pass through.

46. Both the Applicant and his visitors have openly enjoyed vehicular rights without any hindrance, interference or objection over the land registered K913678 (Land adjacent to East Northdown House) and K947213 to gain access to the land registered K570230 for purposes associated with the residential use of East Northdown House K570231.

47. The Applicant therefore applies for the registration of prescriptive rights for vehicular access benefiting K570230 for all purposes as was registered for East Northdown House K570231 but omitted by the solicitors for the Paddock registered K570230.

Orchard Vehicular Access Right of Way

48. In 1983, a lady who introduced herself as Lady Creasey called at the Applicant's home, East Northdown House. Lady Creasy stated that she and her sisters were the owners of the adjoining Orchard land and on behalf of herself and her sisters, she offered to sell the land to the Applicant.

49. Lady Creasey and the Applicant entered through the abovementioned 11foot gate onto the land belonging to the sisters which including the Paddock land which the Applicant had contracted to purchase from the Respondents father.

50. At that time it was the Applicant's belief that the conveyance to him of an absolute title to both East Northdown House and the Paddock had been completed, the mortgage with Lloyds Bank registered, and a report on title provided to the mortgagees.

51. At the time, Lady Creasey was unaware that IJC Friend, had contracted to sell part of her land which was then known to the Applicant as the Paddock. It is the Applicant's understanding that Lady Creasey was offering to sell all of the land conveyed to Lady Creasey and her sisters in 1958.

52. Lady Creasey stated that another of her sisters, Mrs Stanton, would be acting on behalf of all the co-owners in the sale. The Applicant subsequently agreed with Mrs Stanton, to purchase the land in the sum of £4,000. Mrs Stanton advised the Applicant that Girling Wilson & Harvie would be acting for the sisters, in the sale. At that time the Applicant was unaware that Girling Wilson & Harvie had failed to even submit an application to register title to either East Northdown House K570231 or The Paddock K570230.

53. The Applicant entered into a contract, paid all of the purchase monies to Girling Wilson & Harvie and took possession of the land now known as the Orchard K599525 in 1983.

54. From 1983 the Applicant has used the Orchard together with the Paddock K570231 and East Northdown House K570230, as one.

55. The Respondents claim that the Applicant occupied the land as a licensee is denied.

56. The Respondent refers to a claim for adverse possession. Following exchange of contracts for the sale and purchase of the Orchard, the Respondent's father claimed to have the authority to object to the sale which caused completion of the sale to be delayed. The Applicant issued proceedings in the High Court which included a claim of Adverse possession. The action was settled on the terms of a part 36 offer of accepting the adverse possession part of the claim, subject to the acceptance of the offer having no effect on any other matter, including a claim by the Applicant for title to part of the roadway now registered K947213.

57. In addition, a settlement was agreed between the Applicant and Mr Squier of Messrs Bidwells surveyors, acting for the Respondent in which many issues of contention between the Applicant and the Respondent were addressed and apparently resolved.

58. A comprehensive agreement was reached between the Applicant and Mr Squier including that the Applicant would withdraw his claim for title of the roadway K947213 and the Respondent would cease alleged nuisances affecting the Respondent's property and agree to rights of way.

59. Mr Squier advised the Applicant not to withdraw his objection to registration of the road in the name of the Respondent until the rights were agreed and that solicitors for the Respondent would be corresponding concerning those rights.

60. No correspondence was received from solicitors for the Respondent and Mr Squier subsequently denied having given that advice.

61. The settlement of the Orchard was also on the terms agreed following comprehensive negotiations with Mr Squier of Messrs Bidwells acting on behalf of the Respondent. In addition to a claim for adverse possession the Applicant's claim was also for specific performance. The Applicant denies ever being, "only a licensee" as alleged by the Respondent.

62. There were at least two valid contracts between the Applicant and Mrs Stanton for the sale and purchase of the Orchard, the first, a section 40 memorandum in 1983. The purchase monies were paid to the solicitors Girling Wilson & Harvie. The Applicant's application to the Land Registry for adverse possession was superseded by a High Court action.

63. Girling Wilson & Harvie were instructed by Mrs Stanton on behalf of the sisters to convey the Orchard land to the Applicant in 1983. Having accepted instructions from the Respondent's late father to wrongfully convey part of the same land to the Applicant, Girling Wilson & Harvie in the knowledge that the 1958 conveyance of the land had been removed from Messrs Daniels and Edwards by their client the Respondent's father, Girling Wilson & Harvie suppressed title documents and proceeded to gain registration of the land K570230 in the full knowledge that their vendor client had no title and that the sisters had refused IJC Friend's offer to purchase the land.

64. Being aware that an application for registration of all the land conveyed to the sisters in 1958 would alert the Land Registry to the fact that the same land was being registered twice, Girling Wilson & Harvie applied for registration of a possessory title only for the remaining land in the names of the sisters.

65. Both the Applicant and his guests and visitors have openly enjoyed vehicular rights without any hindrance, interference or objection over the land registered K913678 (Land adjacent to East Northdown House) and K947213 since 1982 and 1983 respectively to gain access to the land registered K570231 and K599525 for purposes associated with the residential use of East Northdown House K570231.

The Applicant therefore applies for the registration of prescriptive rights for vehicular access benefiting K599525 for all purposes.

Livery Yard

66. In 1982 the Applicant contracted to purchase the land known as the Paddock registered K570230 from the late father of the Respondent, Mr IJC Friend. Mr IJC Friend sold the Paddock to the Applicant on the basis that the lawful use was for the keeping of horses and on Livery. Mr IJC Friend

was aware that it was the intention of the Applicant to operate livery stables for the Applicant's horses and those belonging to third parties. Mr IJC Friend, the vendor, represented that the Paddock had previously been used for keeping horses and benefited from a lawful use as such. Indeed the small additional land and building which was included in the sale by Mr Girling of Girling Wilson and Harvie, was an old historic field shelter for horses, which the Applicant estimates was constructed at the turn of the 20th century or earlier.

67. Since 1982 for K570230 and 1983 for K599525 respectively, the Applicant has used the land comprising land registered K570230 and K599525 for the purpose of operating livery stables and paddocks and for the keeping of horses and general equestrian uses, including for the Applicants own horses and those belonging to third parties, together with the use of the land for the storage of horse transportation vehicles.

68. From 1976 until the Applicants purchase, the paddock was let by the Respondent's late father through agents, to various persons not connected with East Northdown House for the keeping of horses.

There is now produced a letter of 10th October 1986 from agents of the Respondent's father confirming the Paddock was let to a Mrs Rigley from 14.2.1976 to 14.2.78 and a Mrs Connell from 29.9.78 to 31.3.80 marked **PRM 20**.

69. On 15th January 1979, the Respondent's father Mr IJC Friend wrote to solicitors for the then tenant of East Northdown House Mr J Bates. In his letter, Mr IJC Friend referred to Mr Bates having sub-let and allowed the keeping of a horse on the land.

70. On October 23rd and 10th November 1986, the Respondent's late father IJC Friend, wrote to Thanet District Council complaining that the Applicant had bulldozed an access through a significant flint wall, and, notwithstanding his own previous use of the land through agents for the keeping of horses, IJC Friend alleged that the use of the Paddock was merely agricultural.

There is now produced the letters of 23rd October and 10th November 1986 from the Late IJC Friend marked **PRM 21**

71. Thanet District Council investigated the allegations submitted by both IJC Friend and the Respondent at that time and found no breach of planning control.

72. In 1991 following the Respondent fostering a close relationship with a local Councillor, he re-submitted to the planning authority the allegations of planning breaches by the Applicant which had been submitted previously in 1986 by both the Respondent and his late father.

73. On this occasion, acquaintances of the Councillor concerned on the planning committee, resolved to take enforcement action against the Applicant, contrary to the planning officer recommendation.

74. At the hearing of the Applicant's appeal against the Enforcement Notice, Council officer's arranged to call a material witness, Mr Raymond Charles Baker, who gave false evidence.

75. Mr Baker gave false evidence that with regards the appeal site, saying, "It was not until Mr Miles (the Claimant) acquired the property that any serious clearing of the site got underway. Starting

with the Northern end of the site the undergrowth and trees were cleared, the land was rotovated and put down to grass to create a paddock. A stable was constructed and sometime after horses were introduced to the site. This occurred approximately one year after Mr Miles moved into East Northdown House (mid 1980's)".

76. Mr Baker subsequently swore an affidavit on 19th January 1994 confirming that the evidence he had given including the written statement that had been prepared for him by Council officers, was false.

77. In his affidavit, Mr Baker confirmed that he was aware of horses being kept on the Paddock in the 1970's whilst Mr Bates occupied East Northdown House. In his affidavit Mr Baker confirmed that he had captured horses which had escaped from the Paddock many years prior to the Applicants purchase and use as a Livery stables and yard.

78. The Claimant therefore rejects the Respondents claim that the use of the land as livery stables was not lawful until the use was authorised by the appeal decision of 1991.

There is now produced the affidavit of Raymond Charles Baker of 19th January 1994 marked **PRM 22**.

79. Both the Applicant and his visitors have driven motor vehicles continuously and without hindrance or interruption over the land registered K913678 (coloured pink on the attached plan) and K947213 (coloured yellow) to gain access to land registered K570230 and K599525 for the operation of a livery yard and paddocks. The Applicant therefore applies for the registration of prescriptive rights of way with or without motor vehicles benefiting both K570230 and K599525.

Storing Building Materials

80. Since 1982 for K570230, the Applicant has used the land comprising and registered K570230 for the purpose of storing building materials and plant and machinery and commercial vehicles.

81. Both the Applicant and his visitors have driven motor vehicles continuously and without hindrance or interference over land registered K913678 (coloured pink on the attached plan) and K947213 (coloured yellow) to gain access to land registered K570230 for the purpose of collecting and depositing building materials and plant and machinery and commercial vehicles. The Applicant therefore applies for the registration of prescriptive rights of way for commercial purposes with or without motor vehicles, benefiting K570230.

Access to caravan

82. Since 1983, the Applicant has used the land registered K599525 for the purpose of the siting and use of a residential type caravan. Both the Applicant and his visitors have driven motor vehicles continuously and without hindrance over land registered K913678 (coloured pink on the attached plan) and K947213 (coloured yellow) to gain access to land registered K599525 for this purpose. The Applicant hereby applies for the registration of a prescriptive right of way benefiting K599525.

83. The Respondent refers to residential use of the caravan which is not claimed.

84. In the alternative to the above, the Applicant hereby applies for the registration of a right of way for all purposes over the land registered K947213 (coloured yellow on the attached plan) and K913678 (coloured pink) to benefit both lands registered K570230 and K599525.

85. The contract for the sale/purchase of K570230 and K570231 provided for the following:- The Vendor will prior to completion of this sale and purchase procure the completion of a Deed of Grant whereby the owners of the adjoin land including the private roadway leading from George Hill Road to the property hereby agreed to be sold as is coloured green on the plan and also land lying to the North East of the property whereby the property shall have the benefit of all the necessary rights of way along the said private road together with the necessary easements for the various services laid over under the said private road and also the right to the continued use of the drainage system leading from the property onto the land lying to the north east of the property with the ancillary right to enter upon such property to maintain and reconstruct such drainage system. The land has the benefit of the rights granted by a Deed dated 29 October 1982 made between (1) Northdown Investments (Jersey) Limited and (2) Irvine James Cowley Friend."

86. For reasons unknown to the Applicant, the solicitors failed to register a right of the way over land now registered K947213 (coloured yellow and hatched on the attached plan) required to access the land the subject of the Deed dated 29th October 1982.

87. The Applicant has exercised the right granted and has arranged for the driving of motor vehicles over the land now registered K947213 for the purpose of exercising the rights contained in the Deed dated 29th October 1982 and registered as benefiting K570231.

88. The Applicant therefore applies for the registration of a right of way over land registered K947213 from East Northdown House to the Northernmost part of that land for the purposes of exercising the right granted in the deed dated 29th October 1982.

Parking in road

89. Since 1982 and for the benefit of K570230 and K570231, and since 1983 for K599525 respectively the Applicant has used parts of the land now registered K947213 and coloured brown on the attached plan marked **PRM1** for the purpose of parking of motor vehicles both for the Applicant and for the Applicant's family visitors and guests and for all purposes.

90. Under normal circumstances that parking is limited to the road directly to the south and front of East Northdown House, however when that part of the road is full or has been occupied by third parties, the Applicant's visitors and guests have parked elsewhere on the road.

91. The Applicant therefore, applies for the registration of a right to park motor vehicles specifically and particularly to the front of East Northdown House on land registered K947213 but elsewhere on the land registered K947213 when the first claimed part is occupied. The right claimed is subject to not causing an obstruction and benefiting land registered K570230, K570231 and K599525.

Refuse containers

92. Since 1982 the Applicant has used the land registered K913678 (coloured pink and hatched on the attached plan and marked PRMXX) for the storage of refuse containers. The Applicant therefore applies for the registration of a right to place and store refuse containers on the land registered K913678 for the benefit of land registered K570230 and K570231 shown hatched on the map marked **PRM 23**

Services to Paddock (water and electricity)

93. Since 1982 for K570231 the Applicant has enjoyed continuously, the use of all drains wires cables and other service pipes wires and conduits laid or passing through or under the land registered K947213 (coloured yellow on the attached plan) and K913678 (coloured pink) for the benefit of land registered K570231.

94. Since 1982 for K570230 and 1983 for K599525 respectively the Applicant has enjoyed continuously, the use of the wires cables and other service pipes wires and conduits laid or passing through or under the land registered K947213 (coloured yellow on the attached plan) and K913678 (coloured pink) and K570231 for the benefit of land registered K570230 and K599525.

95. The Applicant therefore applies for registration of rights to the continued use of services in and under the lands registered K947217 and K913678 for the benefit of the land registered K570230, and K599525 and passing through K570231.

Gate

96. Since 1982 the Applicant has enjoyed continuously the use of land registered K913678 (coloured pink and hatched on the attached plan and marked PRM23 on the attached plan) for the positioning and use of a gate in the Applicant's ownership to open over the land registered K913678. The Applicant therefore applies for registration of a right for the continued use of the said of land registered K913678 for a gate to open over that land benefiting land registered K570231.

There is now produced a map showing the position of the gate marked **PRM 23**.

97. The Applicant confirms that as prescriptive holder over the land titles referred to above, the Applicant does not occupy any such land under lease, licence or tenancy or with the consent of any person. All use referred to in this the applicant's statutory declaration has been without secrecy, without force and without permission.

98. The Applicant is the Legal Owner of the benefiting land. The Respondent claims that express rights have been granted in respect of the three titles in the Applicant's name. With regard to the Paddock the only right granted relates to a Deed of Grant for the use of a drain situated in land to the North of K570230.

99. No rights of way are registered giving access for all purposes as was the subject of a term of the purchase agreement.

Documents upon which the Applicant intends to rely:

1. Plan marked PRM1
2. Deed of Family Arrangement marked PRM2
3. Letter IPC Creasey to PR Miles marked PRM3
4. Letter from Daniel & Edwards to Girling Wilson & Harvie marked PRM4
5. Opinion of Lloyd James marked PRM5
6. Land Survey of Orchard marked PRM6
7. Planning Application of 1965 marked PRM7
8. Letter from Robinson & Allfree marked PRM8
9. Planning Application of 1979 marked PRM9
10. Transcript Mrs Stanton marked PRM10
11. Contract of 1982 marked PRM11
12. Statutory Declaration of IJC Friend marked PRM12
13. Letter signed by Respondent's late father marked PRM13
14. Photograph of Trailer marked PRM14
15. Letter 10th Sep 1986 signed by Respondent marked PRM15
16. Receipt for tiles signed by Respondent marked PRM 16
17. Letter 8th May 1986 signed by IJC Friend marked PRM17
18. Letter 10th November 1986 signed by IJC Friend marked PRM18
19. Letter 1st December 1986 signed by IJC Friend marked PRM19
20. Letter 10th October 1986 from Stewart Gore marker PRM 20
21. Letters 23rd October 1986 and 10th November 1986 signed by IJC Friend marked PRM21
22. Affidavit on Raymond Charles Baker marked PRM 22
23. Plan showing position of gate and refuse containers marked PRM 23

Other documents in the applicant's possession or control which affect the case but upon which the Applicant does not seek to rely:

1. Emails passing between the Applicant and the said Mr Squier representing the Respondent.
2. Emails passing between the Applicant and Mr Hall representing the Respondent.

List of Witnesses the Applicant intends to call:

Lady Creasey

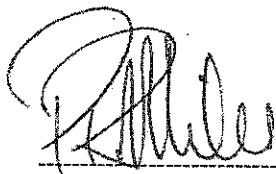
Mr Patrick Creasey

Mrs A Miles

Mr Peter Miles - The Applicant

I believe/the Applicant believes that the facts contained in this Statement are true.

Signed



----- Applicant

27th June 2012