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Date: 11 November 2005

Folkestone

Hythe & Romney Marsh
Shepway District Council



The Owner/Occupier

Dear Sir/Madam

as Coast Protection Authority under 1949 Act

Building on Council Property along Sandgate Seafont

You may be aware that Shepway District Council owns the sea defences (including the sea wall) and a 1 metre (approx) wide access and maintenance strip within the sea wall on the landward side. For many years there has been encroachment by various householders onto both the sea wall and the access strip. This has taken various forms, for example, additional walls built on the sea wall, paving and walls built over the access strip.

In previous years, the Council has taken an inconsistent approach to this encroachment on its land. However, following various complaints raised by a number of residents, a report was commissioned for Cabinet, the governing body of the Council, to make a decision as to the Council's definitive view on the situation. Cabinet met on 2 November and deferred the decision to its next meeting on 30 November at 3pm. The matter was deferred in order to consult with *freeholders* ~~all residents~~ who may be affected by the decision and in order to prepare an addendum report to answer some further questions raised by a local resident at the last meeting.

I therefore enclose for your information, a copy of the original report, the questions raised and the addendum report. You are very welcome to attend the Cabinet meeting on 30 November if you wish. In addition if you have any comments please put them in writing and I will ensure that the Cabinet sees them.

Yours faithfully

Estelle Culligan

Estelle Culligan
Solicitor

Dec 2005

re on the web: www.sandgate-kent.org.uk

Sandgate News

associated with an athlete wielding a knock out punch it would've come in handy on many occasion.

One final thought with Elizabeth Taylor running round the Castle one is minded of Richard Burton, but when I suggested this to Suzie her words were "dream on, the only thing you seem to have in common with him is a proclivity for fine wine". Cheers!

What a hoot!

By Linda René-Martin

Passing along our narrow High Street, a resident recently noticed a man outside Kirby Arcade with some high-tec equipment for monitoring traffic noise levels prior to redevelopment.

Apparently, regulations do not include weekends, commuter traffic morning and evening, or motor bikes tearing off to rallies, and just at a time when heavy trucks are enjoying a midday break. And all this outside a site destined for five cramped one bed, two storey town houses with no frontage which will obviously trap more sound than the present one-storey row of workshops.

We take it he was only monitoring minimum noise levels, the job he was required to do. How nice.

Legalising the illegal?

By Linda René-Martin

Seawall, drainage channel and access strip, rear Coastguard Cottages.

It is a serious matter when Shepways's Director of Democratic Services places Cabinet papers on view the stipulated 5 days before the meeting (2 Nov) but fails to notify affected freeholders on the Coastguard Terrace on matters concerning their rights and amenities (and who are not clairvoyant).

By chance, however, I was present as a member of the public and able to ask questions before the proceedings began. None of the seven members were able to answer (except for one comment) and thankfully the meeting was deferred.

Subsequently, I complained to the Chief Executive that the background papers to the above C/05/66 were deeply flawed, containing errors of material fact and omission of relevant fact conducive to misleading and misdirecting the minds of Cabinet members and Chairman, with possible damage to our rights and amenities on the historic Coastguard

terrace. My family, as sub-leaseholders of the Admiralty in 1932 and as freeholders since 1958, should know.

Originally, 62 frontages were subjects of a Compulsory Purchase Order needed to rebuild the shattered sea defences in the 1950's. The Conveyance of land and covenants therein are attached to every freeholder's title deeds. The CPO was for the purpose of inspection, maintenance, and repair etc. henceforth and at all times hereafter, i.e. in perpetuity (Coast Protection Act 1949 Par. 27). Though the frequency and urgency may be less for the time being, the purpose has not changed.

For too long, certain Council officers have been lax, permissive and evasive especially in regard to enforcement action (adverse possession, breach of planning regulations etc.) and have allowed one 'rogue resident' to go rampant to the detriment of neighbours and the future of our seawall. Now Shepway Council, admitting the wrong, are in a 'twist' and are proposing to legalise the illegal by means of granting 'licences' of some sort.

Equally serious, those papers and appendices C/05/66, have now been circulated to around 300 owner/occupiers many of whom live above ground level, overlook the seawall, have no freehold interest, and may wonder what it's all about.

Every freeholder and frontager is, of course, at liberty to examine the pros and cons of 'licencing' (optional) and form their own views if, indeed, the proposals can be shown to be legal, a matter for the courts as I see it, and Ministerial confirmation as necessary.

We, however, treasure the Coastguard terrace in the Conservation Area, where we live cheek by jowl and where we expect no privacy sideways or seawards. We must not be lumped in the same category of other self-contained freeholds, as hopefully others will agree.

I am on call at 01303 240360 if anybody wishes to discuss or know more, and this goes for our District Councillors who are always happy to help.

Latest update: Doubtless, 300 confused 'frontagers' may be relieved to know that the highly contentious matter of 'licensing' is on hold. No cabinet meeting on 30 Nov.

Kent Messenger
6 July 1957

KM MINISTER'S RULING 7/57 IN SANDGATE SEA WALL DISPUTE

Residents get big cuts in levies after three-year battle

AFTER a legal dispute which has gone on for over three years, 62 residents of Sandgate, Folkestone, and their advisers have partly won a battle which affects every owner of property within reach of the sea round the coasts of England and Wales.

The Minister of Housing and Local Government gave his final decision this week in eight test cases concerning the amounts which property-owners can be called upon to pay towards the cost of new sea defences.

He made a final cut of 20 per cent in the amounts levied on the eight Sandgate owners, making total reductions of between one-third and a half on the amounts first claimed from them.

The outstanding 54 cases are expected to be settled on the same terms. Eventually the owners expect to save £20,000 to £30,000 of the £68,000 they were asked to pay in 1954.

Folkestone Corporation is now studying the effects of the Minister's decision. The ratepayers will have to make up the difference unless the Government will help.

A BLOW

Biggest blow to Folkestone is that the Minister has ruled that a new walk along the sea at Sandgate, which they claimed was of no public benefit and was simply a road for men and vehicles maintaining the sea wall, is, in fact, "clearly of considerable value as a public amenity."

That, together with the fact that the Sandgate residents will have to foot a heavy bill for legal costs, the Minister says, has influenced him in reaching his decision.

Total legal bill for both sides is about £10,000.

The importance to other seaside towns is that these are the first test cases brought under the 1949 Coast Protection Act.

This act made local authorities responsible for building and maintaining sea defences. It also gave them power to collect from owners of houses and property near the sea such a share of the cost of new defences as their property has benefited by.

Sandgate groynes were neglected during the war, when the Army was in possession of the beaches. Soon after the Act was passed it was necessary for Folkestone to spend £200,000 on a new sea wall.

NO CHOICE

In February, 1954, Folkestone Corporation had no choice but to impose levies ranging from a few pounds to £3,000 on the 62 owners of houses near the wall.

The amounts were decided by the District Valuer. After a heated public meeting, a joint appeal was arranged.

For 15 days in June and July, 1955, six counsel argued the matter before the Lands Tribunal. But it was not until January 6th, 1956, that it gave its decision. Reductions of about 20 per cent to 30 per cent were made in the levies. Each side was ordered to pay its own costs.

Continued on page three (not in-filer)

Sandgate's sea wall

Continued from page one

An immediate appeal on the grounds that the charges were still "inequitable and unnecessarily onerous" was made to the Minister.

Further long arguments were heard in private in Folkestone Town Hall last November.

Mr. N. C. Scragg, town clerk, and Mr. H. Worthington-Edridge, who made a four-hour speech, this time bore the brunt of the work.

The Minister's final decision this week is based on that hearing.

About 90 per cent of the Sandgate residents are contributing to a fund which a committee raised to help the eight appellants with their legal costs.

But some householders claim that they are too poor to help.

30 YEARS TO PAY

All will be given up to 30 years to pay the charges if they wish it.

Examples of how some of the properties are affected are:

Seaholme, the Riviera, owned by Mrs. M. E. Horabin, first levy £2,600, cut by Lands Tribunal to £1,500 and now to £1,200. Beacholme, the Riviera, owned by the Holborn Trust Ltd., first levy £3,800, cut to £2,500, now £2,000.

4, Devonshire Place, owned by the exors. of the late H. V. Hamilton, first £450, cut to £375, now £300.

Beach Court, owned by the Friendship Holiday Association, first £3,000, cut to £2,400, now £1,920.

The town clerk briefly announced the result of the appeal at Tuesday's meeting of Folkestone Town Council.

He said all levies had been cut by 20 per cent except in the case of the Hermitage, where because of specially onerous circumstances it had been cut to a maximum of £1,500.

The Highways Committee would now have to study the Minister's announcement and he promised full information at next month's meeting.

SANDGATE SEAWALL 2006 -- Counsel's Advice

Counsel's advice is invaluable in that it confronts serious and unnecessary problems and casts positive light on the 'sorry affair'. However, from certain comments it would appear that Counsel has not been fully or correctly briefed. With all due respects would Counsel please be asked to bear in mind the following points and include in his opinion.

1. Let it be remembered that the Council's 1 metre access strip (brown) includes a common drainage channel with 42 weepholes to drain sea and rain water from terrace to beach.

2. Compulsory Purchase Orders, 1951 and 1958

The Acquisition of Land Act (1946) (Authorisation Procedure) was for the construction of a new sea wall, the rebuilding of existing seawall ... groynes and other works. Works Scheme dated 1951 under sections 6,7 and 8 of the Coast Protection Act 1949, and not being works of maintenance and repair. Now obsolete. ^{irrelevant} (See Par 18 of opinion)

The 1958 CPO under the Coast Protection Act was different. The purpose was for 'inspection maintenance repair rebuilding or the like rights and duties'. Section 14 and 22 Par (2) last four lines, refer. The works are required to be maintained as they have always been. See DEFRA Shoreline Management Plan (2005) South Foreland to Beachy Head (first revue) Section 8 Folkestone and Sandgate. Policy: HOLD THE LINE.

Only 3 years has elapsed into a 50 year projection. NO REDUNDANCY. ^{refer} Par: 19 and 30

LANDS TRIBUNAL 1950's Sandgate seawall

In between CPO's 1951 and 1958 there was a 3-year battle over levies, and privacy culminating in a 15 days Lands Tribunal conducted by Sir William Fitzgerald QC. (See Times 1955 June 15 5c; 17 June 4g; Dec 16 6b)

Briefly the decision was 'two largely incalculable factors -- freedom from risk [storm and flood] and loss of privacy would generally speaking balance one another, subject to some adjustment [in levies] in specific cases for owners involved. (62 including S.O. Gillett)

QUESTION: If 'increased protection offsets loss of privacy' does Counsel agree that Sir William's opinion still holds good (as I do) and if so would Counsel advise as Mrs J.M. Gabbell has done that owners can screen themselves, subject to planning criteria, within their boundaries as shown on Land Registry plans, in red. In this respect, No 20 Castle Road has done so, long ago.

Note I suggest that the CG seawall (pink and brown) is integral to the overall sea defences which have now been extended west, average 2 - 3 foot high, to Hythe. No guarantee of life expectancy for CG seawall, already showing cracks and fissures, and 'staining' probably due to corrosion of reinforcing irons, now leeching. I realise that this is an engineering matter withal. Ragstone footing (old) also showing signs of wear.

SANDGATE SEAWALL - Counsel's Advice - June 2006

This advice, as expected, is most welcome in that it confirms the sorry state

Par 33: Comments on 'puzzling' logic (LR-M)

The present height 2'6", of the CG seawall (pink) or increase in height does not govern its strength to repel the full-frontal force of wind-blown storm water which used to crest the rooftops, flooding properties and the main road. This hazard is ^{hopefully} controlled by the design of the recent Coast Protection Strategy (2004) which consists of raised MG (purple) by 0.7 m. at CG, of beach replenishment (which I advocated in 1976) and strategic location of rock groynes all of which will help to ^{arrest coast erosion,} cushion the force of waves and expected rise in sea levels. In addition, an extension of the CG seawall has now been built from CG to W.Hythe varying between 2 and 3 foot high. This is to prevent overtopping of shingle and obstruction of road in storm conditions. Par 32 the Buttress suggestion on landward side, is very odd -- not a one in the 3 miles from F'stone to Hythe.

Height ^{however,} does affect the view of the sea especially when one lives within close range of the wall, not 50-70 ft from it, as properties to the east. Hence, the unanimous letter (14 March 1953) from CG residents (incl. S.O. Gillett) and engineering consent. See F'stone Borough Council minutes 9 April 1953. This was forwarded to Shepway C.E. and acknowledged. Was it included in 'bundle'.

Errors in SDC Brief Among others, as evidenced in Cabinet papers, Par 4 is partly incorrect. viz: 'In the time since it was established, there had been no need to use the 1 metre access strip'. This is nonsense!

TWICE, at least, the Coastguard seawall and access strip has been seriously breached, adjoining no 157 and approx 137/139. No 127 was nearly undermined if the tide had not turned. Walkway below Devonshire Terrace ripped apart. The wall itself had to be rebuilt -- it had no reinforcing rods -- presently it is showing signs of cracks and fissures; old ragstone footing just above present MG (mauve) showing signs of wear.

While engineering matters do not concern Counsel I feel it necessary that principle as well as practice is brought to his attention and hope that I may do so, without giving offence.

Other comments Can briefing officer explain the relevance of No 4 Devonshire Terrace? Furthermore matters concerning No 145 Coastguard are a 'red herring'. Par. 7
According to Land Registry Plan K 72172 (16 Oct 2001, issued 25 Feb 2003) the red building line is no different to my own, showing 4' council access strip incl. 1' seawall. Mrs Gabbell dealt with owners' breach, successfully. Re 'Right of Way'. Par 15. I would merely point out that access to No 131 has and until recently ~~still was~~ also for social purposes, equally to No 129 until 2004 when a stroke forced the owner to move away. I would also like to mention in passing (though it has no legal force) that for some years my weekend neighbour at No 147 was President of the Kent Federation of Lawyers (Hallett's Ashford) d. 1984. The so-called 'right of way' was never in dispute.

Par 29 If work in front of No 129 and 161 is permitted, beyond their boundaries, it can affect me. There could be a 'knock-on' effect and I would have no rights. This has, I submit, a bearing on the present 'sorry state'.

With thanks for any further consideration of the foregoing points

Linda Rene-Martin
Linda Rene-Martin

12. 06. 06

Additional Note

Of the two existing 'licensees' it is well-known that one is Sandgate Castle converted to residential use in 1999. This is a Scheduled Ancient Monument deserves special protection.