East Dean & Friston
Parish Council

Date: **01 February 2024**

Title: **Report Item 14 – Outdoor dining area adjacent to the café**

By: **Cllr T Bryant**

Purpose: **To receive an update from Cllr Bryant.**

Recommendations: **To review an update regarding the parish-owned land adjacent to Downland Shops and decide on how to proceed.**

The land in question is owned by East Dean and Friston Parish Council, having been registered on 28 September 1998, although we believe was owned for many years prior to this

The land is registered under Land Registry Title Number SX19884 (see attached Office Copy Entries and Title Plan)

The title does need a fair bit of deciphering because of the multitude of transactions over the years and there are some referred to that I have not considered in detail as they do not appear germane to the purpose of this report

The purpose is to establish who has rights over the Parish Council's land and the extent of those rights; it is also to establish whether the Parish Council is able to vary the rights, should it wish to alter access to certain parts of the Public Space

To simplify these rights and obligations, I set out below my conclusions in simple language rather than repeat the legalese in the Title documents

1. EDFPC is obliged to give unrestricted access – vehicular and pedestrian – to the car parking areas, to the owners of the business premises

   EDFPC is also obliged to give unrestricted pedestrian access to the footpaths/paved areas in front of the commercial premises and (somewhat bizarrely) along the west and east flank walls of the shop premises

2. In return for those rights, the owners of the commercial properties are under an obligation to pay their due proportion towards the upkeep and maintenance of the parking and pathways which EDFPC is obligated to maintain

3. The refuse bin area is designated for the use of the owners of the commercial properties

4. There is a rectangle of land adjacent to the Council owned land and Gore Farm Close land which is unregistered (see attached); part of this has been marked up by EDFPC as two car parking spaces and has clearly been managed by it for many years

   It may be possible for EDFPC to apply for registration of this land, given that they have assumed responsibility for its maintenance, management and upkeep for several decades

5. It may be considered that the placing of tables and chairs on the pavement in front of the café, the positioning of various items for display/storage in the passageway adjacent to the shop together with shelves, chillers and planters on the flank wall of the shop are impeding the rights of other owners, but, in the absence of requests from any of the owners, I do not consider this to be anything other than a technical breach which can be quickly remedied

6. With regard to the position regarding moving 2no. car spaces, I believe this is a more fundamental departure from the rights that have been granted to the commercial owners; it could be a fundamental breach if the car spaces were covered over by whatever means chosen and, even if the spaces were relocated nearer the roadway, this would still constitute a breach

7. In order to carry out the work in a satisfactory legal way, EDFPC would have to vary the rights of all parties; this would be an expensive process and success/agreement of all parties is not guaranteed

   There is also a suggestion that there may historically be other parties who might have a right to claim use of the space; due to the complexities and history of EDFPC's Title, it is not guaranteed that such parties do not exist

8. In conclusion, should EDFPC decide to proceed, it would have to do so by way of granting a Lease/Licence and if so, would be doing so in the knowledge that it would be adversely affecting adjoining owners by physical encroachment on their property rights

I suggest therefore, that the above course of action is not something that a Statutory Authority such as EDFPC should be considering.

H. M. LAND REGISTRY GENERAL MAP

SUSSEX SHEET LXXIX.16. SECTION

Scale 1/1250. Enlarged from 1/2500.

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H.M. LAND REGISTRY PLANS BRANCH 3/55

Filed Plan of Title No. SX19884

This is a print of the view of the title plan obtained from HM Land Registry showing the state of the title plan on 27 July 2023 at 15:32:40. This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground.

This title is dealt with by HM Land Registry, Coventry Office.

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THIS TITLE IS DEALT WITH BY HM LAND REGISTRY, COVENTRY OFFICE.

TITLE NUMBER: SX19884

There is no application or official search pending against this title.

A: Property Register

This register describes the land and estate comprised in the title.

EAST SUSSEX : WEALDEN

1 The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land and buildings on the south east side of Michel Dene Road, East Dene, Eastbourne.

2 The Land Tax and Tithe Annuity has been redeemed.

3 The land edged and numbered in green on the filed plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

4 In addition to the land edged and numbered in green on the filed plan the first floor of the part numbered 1 has been removed to title SX69391.

5 The land has the benefit of the rights granted by but is subject to the rights reserved by the Transfer dated 5 November 1954 referred to in the Charges Register.

6 The Transfer dated 5 November 1954 referred to above contains a provision as to light or air.

7 The land has the benefit of the following rights reserved by but is subject to the following rights granted by the Transfer dated 3 June 1965 referred to in the Charges Register:-

"TOGETHER WITH AND EXCEPT AND RESERVED unto the Transferor and his successors in title all such rights and easements or quasi rights and quasi easements as are now used or enjoyed or are intended to be used and enjoyed by the adjoining property of the Transferor or his immediate predecessors in title on the one hand and the property hereby transferred on the other hand the one over the other of them as if such properties respectively had belonged to different owners and such rights and easements or quasi rights and quasi easements had been acquired by prescription PROVIDED THAT no rights easements quasi rights or quasi easements shall be deemed to be excepted and reserved to the Transferor hereunder which might in any way hamper the erection or user of the buildings now erected or in the process of erection on the said land."

8 The land in this title has the benefit of the following rights reserved by a Transfer of the land edged and numbered SX81722 in green on the filed plan dated 14 July 1966 made between (1) Louis Alfred Pyle (Transferor) and (2) Hubert Wilton and Sven Olof Hugo Ulander (Transferees):-

"Except and Reserved unto the Transferor and his successors in Title owners and occupiers of the remaining land comprised in the said Title a right of way at all times and for all purposes over and along that portion of Downlands Way shown on the said plan attached hereto as is included in the land hereby transferred."

9 The land has the benefit of the following rights reserved by but is

A: Property Register continued

subject to the following rights granted by the Transfer dated 22 February 1968 referred to in the Charges Register:-

"TOGETHER WITH and except and reserved unto the Transferor the Company and their successors in title all such rights and easements or quasi rights and quasi easements as are now used or enjoyed or are intended to be used or enjoyed or are intended to be used or enjoyed by the owners of the adjoining property or properties as if such property or properties respectively had belonged to different owners for upwards of twenty years and such rights and easements or quasi rights and quasi easements had been acquired by prescription."

10 The land in this title has the benefit of the following rights reserved by the Transfer dated 16 April 1970 referred to in the Charges Register:-

"(a) all such rights and easements or quasi rights and quasi easements in upon through or over the property hereby transferred as are now used with or are appertaining to any property adjoining the property hereby transferred as if the property hereby transferred and such adjoining property had hitherto belonged to different owners and such rights and easements or quasi rights and quasi easements had been acquired by prescription."

11 The land in this title has the benefit of the following rights reserved by the Transfer dated 17 April 1970 referred to in the Charges Register:-

"All such rights and easements or quasi-rights and quasi-easements unto the Vendor and his successors in title as are now used or enjoyed or are intended to be used or enjoyed by the owners of the adjoining property as if such properties respectively had belonged to different owners for upwards of twenty years and such rights and easements or quasi-rights and quasi-easements had been acquired by prescription."

12 The land in this title has the benefit of the following rights reserved by the Transfer dated 13 January 1971 referred to in the Charges Register:-

"All such rights and easements or quasi rights and quasi easements in upon through or over the property hereby transferred as are now used with or are appertaining to any property adjoining the property hereby transferred as if the property hereby transferred and such adjoining property had hitherto belonged to different owners and such rights and easements or quasi rights and quasi easements had been acquired by prescription."

13 The land in this title has the benefit of the following rights reserved by the Transfer dated 13 January 1971 referred to in the Charges Register:-

"All such rights and easements or quasi rights and quasi easements in upon through or over the property hereby transferred as are now used with or are appertaining to any property adjoining the property hereby transferred as if the property hereby transferred and such adjoining property had hitherto belonged to different owners and such rights and easements or quasi rights and quasi easements had been acquired by prescription."

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title absolute

1 (28.09.1998) Proprietor: EAST DEAN AND FRISTON PARISH COUNCIL of Toad Hall, 38 Elven lane, East Dean, East Sussex BN20 0LG.

C: Charges Register

This register contains any charges and other matters that affect the land.

1 A Conveyance which included the land tinted pink on the filed plan dated 28 February 1945 made between (1) Edward Oliver Hobden (Vendor) (2) Barclays Bank Limited and (3) Fast Dean Downlands Limited (Purchaser) contains the following covenants:-

"Not to use the land hereby conveyed or any part thereof or any buildings erected thereon as a public garage or for the sale of petrol oil milk butter cream eggs PROVIDED ALWAYS that in the event of an Hotel (whether licensed or unlicensed) being erected on the land hereby conveyed or any part thereof the occupier of such Hotel shall be entitled to provide Garage accommodation by way of open or covered yard or lock-up garages for all purposes residing or taking meals at such Hotel but this proviso shall not extend to permit or suffer the sale of petrol and/or oil in or in connection with such Garage accommodation."

2 A Conveyance dated 17 January 1950 which included the land tinted yellow on the filed plan and made between the same parties as the Conveyance dated 28 February 1945 referred to in Entry No. 1 above contains covenants indentical with those contained in that Deed save only that the words "milk butter cream eggs" and the words "hereby conveyed or any part thereof" are omitted.

3 So much of the land as is affected thereby is subject to a right to lay maintian and use a water and soil drain in the position shewn by a broken blue line marked E F on the filed plan and to rights of entry ancillary thereto.

4 A Transfer dated 5 November 1954 made between (1) East Dean Downlands Limited and (2) John Roy Tracy contains restrictive covenants.

NOTE: Copy in Certificate.

5 The Transfer dated 5 November 1954 referred to in Entry No.4 above imposes certain annual sums payable out of the land for the cost and maintenance of sewerage and carriageways for the periods therein mentioned and to which annual sums the remedies for recovering and compelling payment prescribed by Section 121 of the Law of Property Act 1925 are expressed to be applicable.

6 The parts of the land affected thereby are subject to the following rights granted by a Transfer of the land edged and numbered SX69391 in green on the filed plan dated 3 June 1965 made between (1) Louis Alfred Pyle (Transferor) and (2) Courage Barclay & Simonds Limited (Transferee):-

"Together with all necessary rights of support and protection for the buildings now erected or in the process of erection on the land edged red and (at first floor level) coloured blue on the said plan ..... and Together also with a right of way and parking of vehicles at all times and for all purposes (subject to the payment by the Transferee of the prescribed proportion of the cost of upkeep thereof) for the Transferee and its successors in title and its customers and persons authorised by the Transferee with or without vehicles over and along the roads footways and parking and turning spaces coloured yellow and on foot only over the land coloured blue on the said plan."

NOTE: The land edged red referred to is that edged and numbered SX69391 in green on the filed plan. The land coloured blue referred to is numbered 1 on the filed plan. The land coloured yellow referred to is edged yellow on the filed plan.

7 A Transfer of the land edged and numbered SX99142 in green on the filed plan dated 22 February 1968 made between (1) Louis Alfred Pyle by the direction of A.V. Kneller Limited and (2) Michael Robert Wood and others contains the following covenants by the Vendor:-

"THE Transferor and the Company hereby jointly and severally covenant with the Transferees and each of them so as to bind the land remaining in Title Number SX19884 for the benefit of the Transferees and their successors in Title owner or owners for the time being of the land

C: Charges Register continued

hereby transferred or any part thereof than no other shops in the remainder of the said Title shall be used for the purpose of a butchers shop."

8 The land is subject to the following rights granted by the Transfer dated 22 February 1968 referred to above:-

"TOGETHER with a right of way and a right for the parking of vehicles in common with the Transferor the Company and others entitled to the like right at all times and for all purposes (subject to the payment of the prescribed proportion of the cost of upkeep thereof) for the Transferees and their successors in title and persons authorised by them or any of them with or without vehicles over and along the roads footways and parking and turning spaces coloured yellow on the said plan and on foot only over the land coloured green on the said plan."

NOTE: The land coloured yellow referred to is edged yellow and edged blue on the filed plan. The land coloured green referred to is numbered 1 on the filed plan.

9 The land is subject to the following rights granted by a Transfer of the land edged and numbered SX122686 in green on the filed plan dated 16 April 1970 made between (1) Louis Alfred Pyle by the directin of A.V. kneller Limited and (2) Kathleen Alma Miller:-

(a) A right of way and parking of vehicles in common with Louis Alfred Pyle and others likewise entitled at all times and for all purposes (subject to the payment of the prescribed proportion of the cost of upkeep thereof as hereinbefore mentioned) for the Transferee and her successors in title and persons authorised by her with or without vehicles over and along the roads footways and parking and turning spaces coloured Yellow on the plan hereto and on foot only over the land coloured Blue on the said plan.

(b) All such rights and easements or quasi rights and quasi easements in upon through or over any property of Louis Alfred Pyle adjoining the property hereby transferred as are now used with or are appertaining to the property hereby transferred as if the property hereby transferred and such adjoining property had hitherto belonged to different owners and such rights and easements or quasi rights and quasi easements had been acquired by prescription."

NOTE: The land coloured yellow referred to is hatched brown on the filed plan. The land coloured blue referred to is hatched blue on the filed plan.

10 The land is subject to the following rights granted by a Transfer of the land edged and numbered SX123320 in green on the filed plan dated 17 April 1970 made between (1) Louis Alfred Pyle (Vendor) (2) John Roy Tracy (3) A.V. Kneller Limited and (4) Percival William Edward Coss:-

"A right of way and parking of vehicles in common with the Vendor and others likewise entitled at all times and for all purposes (subject to the payment of the prescribed proportion of the cost of upkeep thereof) for the Vendor and his successors in title and persons authorised by him with or without vehicles over and along the roads footways and parking and turning spaces coloured yellow on the said plan and on foot only over the land coloured blue on the said plan TOGETHER ALSO with the Vendor and his successors in title all such rights and easements or quasi-rights and quasi-easements as are now used or enjoyed or are intended to be used or enjoyed by the owners of the adjoining property as if such properties respectively had belonged to different owners for upwards of twenty years and such rights and easements and quasi-rights and quasi-easements had been acquired by prescription."

NOTE: The land coloured yellow referred to is hatched brown on the filed plan. The land coloured blue referred to is hatched blue on the filed plan.

11 The land is subject to the following rights granted by a Transfer of the land edged and numbered SX129447 in green on the filed plan dated 13 January 1971 made between (1) Louis Alfred Pyle (2) A.V. Kneller Limited (3) John Roy Tracy and (4) Laura Marjorie Stern (Transferee):-

C: Charges Register continued

"A right of way and parking of vehicles in common with Louis Alfred Pyle and others likewise entitled at all times and for all purposes (subject to the payment of the prescribed proportion of the cost of upkeep thereof as hereinbefore mentioned) for the Transferee and her successors in title and persons authorised by her with or without vehicles over and along the roads footways and parking and turning spaces coloured blue on the plan hereto and on foot only over the land coloured brown on the said plan.

All such rights and easements or quasi rights and quasi easements in upon through or over any property of Louis Alfred Pyle adjoining the property hereby transferred as are now used with or are appertaining to the property hereby transferred as if the property had hitherto belonged to different owners and such rights and easements or quasi rights and quasi easements had been acquired by prescription."

NOTE: The land coloured blue and coloured brown referred to is hatched brown and hatched blue respectively on the filed plan.

12 The land is subject to the following rights granted by a Transfer of the land edged and numbered SX129490 in green on the filed plan dated 13 January 1971 made between (1) Louis Alfred Pyle and (2) Yvonne Bilmes (Transferee):-

"A right of way and parking of vehicles in common with the said Louis Alfred Pyle and others likewise entitled at all times and for all purposes (subject to the payment of the prescribed proportion of the cost of upkeep thereof as hereinbefore mentioned) for the Transferee and her successors in title and persons authorised by her with or without vehicles over and along the roads (including Downlands Way) footways and parking and turning spaces coloured yellow on the said plan and on foot only over the land coloured blue on the said plan and TOGETHER with the right in common with all others entitled to a like right of the free passage and running of sewerage and water through the common drain shown coloured brown on the said plan annexed hereto which runs from the land hereby transferred until it connects with the drain marked "existing 6" drain" shown on the said plan on the south side of Downlands Way and to enter upon the site of such drain for the purpose of cleaning and repairing the same. .....

AND TOGETHER with the right at all times in common with all others entitled to a like right to place and use dustbins for the disposal of rubbish in the area coloured green on the said plan annexed hereto

AND TOGETHER with all such rights and easements or quasi rights and quasi easements in upon through or over any property of the said LOUIS ALFRED PYLE adjoining the property hereby transferred as are now used with or are appurtaining to the property hereby transferred as if the propety hereby transferred and such adjoining property had hitherto belonged to different owners and such rights and easements or quasi rights and quasi easements had been acquired by prescription."

NOTE: The land coloured blue referred to is hatched blue on the filed plan. the land coloured yellow referred to is edged yellow edged blue and hatched brown on the filed plan. The common drain coloured brown referred to is shown by a broken line on the filed plan so far as it falls within the land remaining in this title. The land coloured green referred to is numbered 2 on the filed plan.

End of register

SX9505
SX81722
SX107911
SX97134
SX95195
SX108257
SX99142
SX95169
SX69391
SX19884
ESX203474
SX74163
SX123320
ESX349395
SX129490
SX17292
SX17194
SX17230
ESX318724
ESX324622
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SX15625
ESX36638