

HASTINGS & ST LEONARDS FORESHORE CHARITABLE TRUST

1. I have been asked to advise Hastings Borough Council as trustee of the Hastings & St Leonards Foreshore Charitable Trust (the Trust) in the matter of the determination of the boundary of the Trust land at Hastings. I have been provided with copies of:-
 - a. The Scheme published by the Charity Commission for England & Wales and dated 13 January 2011.
 - b. The history of the Trust published on the Council's website.
 - c. Report dated 22 September 2011 by David Powell (the Report).
 - d. Letter from land Registry raising issues concerning the boundary line
 - e. Land Registry documents for the various registered titles that adjoin the Trust land.

2. I have been asked to comment generally, rather than answer specific questions, on the basis that the Trust is seeking to establish the true boundary line, based on its beneficial and historical ownership, whilst recognising that in future it may be desirable to "tidy up" the line.

3. In reviewing the papers I have assumed that there is no dispute between HBC and the Trust over any particular point of the boundary line. If there were, then several legal principles might have been relevant in determining such a dispute. In addition, there are many cases reported, to which I would have referred, according to the particular circumstances.

4. Without the specific focus that a dispute sometimes provides, I have discounted the need to consider those principles: to do so, in respect of each of the paragraphs in Mr Powell's report and each discrepancy noted by Land Registry, would have involved considerable time with no obvious benefit. It is however appropriate to put into context the basis on which a boundary line is "fixed" by stating that in the majority of cases, the land either side of the line, be it agreed or disputed, is in separate ownership. Had the Trust land and the HBC land been in separate ownership from the outset, then one might have been able to look at some of the permanent structures built over the past 50 years and show that, despite an historical line following one route, the fact that a building has intruded a few feet beyond the line, might permit an argument that the doctrine of proprietary estoppel has had the

effect of shifting the boundary. Such an argument might have been useful with regard to the promenade, to which I shall return later in this report.

5. Whilst the Trust will maintain that it and not HBC has been the owner of the land at all times, I do not feel sufficiently confident, without further research on the point, that established case law based on separate ownership can be applied in this instance and so my comments must be read in that context.
6. An application was made to Land Registry, following publication of the Charity Commission Scheme, for registration, on behalf of the Trust, of the land that is subject to the Trust. The application was based on plans produced by David Powell, a specialist surveyor instructed on behalf of the Trust. The application was rejected by the Land Registry, as stated in the letter mentioned above. Mr Powell was asked to re-consider the boundary and has done so in the Report.
7. Having looked at the Report I can see that there may be some discrepancies between the Land Registry preferred plan ("the Blue Line Plan") and Mr Powell's plan ("the Green Line Plan") where the correction of the boundary line, to accord with the Blue Line Plan, would require Hastings Borough Council to transfer to the Trust very small parcels of land already registered to Hastings Borough Council but outside what has been regarded as the main foreshore title (title number HT6785). Indeed, similar transfers would be required to accord with the Green Line Plan. Subject to a more detailed consideration of the other titles concerned, it may be relatively easy to make the necessary changes to the boundary line at those points, without prejudicing the position of either the Trust or Hastings Borough Council.
8. At the western end of the boundary line, Mr Powell has suggested a re-alignment to avoid the boundary line crossing the site of a group of beach huts. As with the smaller adjustments just referred to, this should be relatively easy to achieve, although I am told this is not a priority.
9. Mr Powell also comments on the boundary line to the west of the bathing pool/ice rink site. I agree that the true boundary line appears to be as shown in his drawing marked "plan 1" although unfortunately this leaves a section of the Trust land intruding into the ramp leading down to the lower level of the promenade, a photograph of which is appended to his report (photo 224). The larger plans that Mr Powell has produced show the boundary following the green line which is also reproduced on Plan 1, whilst this is the line shown in blue on the Land Registry plan

10. If the red line on Plan 1 is correct for historical reasons, then it may have to be considered whether the boundary at road level should accommodate the line of the ramp wall, consistent with the green and blue lines, even though the red line is correct at lower level. I should add that I have not inspected the lower level. The alternative, leaving the red boundary as the true boundary, would result in the Trust owning a small section of land with maintenance obligations and possible liability (to those using the ramp) that do not appear to be reflected in any obvious benefit accruing from the ownership of the land in question.

11. I have been asked to look in particular at the stretch of the foreshore extending from Carlisle Parade to Sea Road. Mr Powell suggests that where significant structures extend south of the line shown on either of the plans, the boundary should be adjusted to include those structures. Examples are the bases of the chalets, the protruding structures of the upper level promenade and the concrete walls separating the seating areas on the lower promenade. I believe that the Land Registry should be asked to consider a deed between Hastings Borough Council and the Trust whereby both parties acknowledge that where permanent structures extend south of the boundary line shown on either the Blue Line Plan or the Green Line Plan, then the parties agree that the boundary is represented by the southern face of that structure. The only exception to this rule might be where there is a very small structure at upper level that extends over the lower level but without affecting the lower level, an example being a section of concrete approximately 1 square metre that extends from the upper level close to the bottom of London Road. The section of pavement is enclosed with metal railings consistent with the remainder of the upper level but does not link to any steps leading to the lower level, nor is there any obvious reason for its existence at all. I would suggest that this should be acknowledged to be a flying freehold in the Council's ownership.

12. At the several places where parts of the upper level of the promenade overhang the lower level, or where the steps at lower level extend slightly further south than the upper level, it is appropriate to bear in mind that the courts will permit ownership to extend to differing extents at different levels. In other words, it is not inconsistent to show a boundary line representing what might be regarded as the "obvious" boundary, yet still own land that crosses that line. In the case of *Truckell v Stock* [1957] 1 All ER 74, Lord Denning said: "*I am quite satisfied that the conveyance of this house to the plaintiff included not only the walls, but the eaves and footings of*

the house. It did not include the column of air between the footings and the eaves but it included the footings and eaves.". Having said that, the line separating the Trust land from the Council's beneficially owned land is based on legal title that pre-dates the structures that appear today, meaning that when the line was first drawn (or should have been drawn) there were probably no buildings and certainly not the buildings that we see today.

13. What is needed, therefore, is an agreement between the Council and the Trust, acknowledging the principle on which, for practical purposes, the line established by Mr Powell is to be interpreted on the ground. There will be some instances where the line is unlikely ever to lead to dispute. Mr Powell has identified these, for example in para. 13 of his report where he suggests that at the point near East Beach Street, "the precise location of the boundary was of no great concern in areas where the public highway clearly covers/crosses it".
14. The problems arise in areas such as that identified by Mr Powell in para. 15 of his report, where he identifies steps that are on Trust land, whilst the concrete structure is on HBC land. I accept what Mr Powell says, although the position can, I believe, be corrected by a declaration that wherever a permanent structure extends from the main structure on HBC land, south onto Trust land, the boundary shall be taken to extend around the southern surface of that structure. In the example of the steps, this would absolve the Trust of the need to maintain the steps and, potentially more importantly, remove the risk of liability in the case of an accident involving the steps. There is however an equally convincing argument that the Trust may want to retain the steps as they provide access to the Trust's land. This is an example of the situation where proprietary estoppel might have led to the conclusion that the steps already fall north of the boundary line but for the reasons given earlier, I do not think that can be said as the land has been in common ownership. To make this point clear, if indeed the Trust wishes to do so, would need a document incorporating a declaration to that effect.
15. Within the same document, Land Registry could be asked to apply the rule expressed by Lord Denning, and quoted above, in respect of the main part of the promenade between Carlisle Parade and Sea Road.
16. Where the Land Registry have identified discrepancies on the Blue Line Plan that include land owned by parties other than Hastings Borough Council, it will be

necessary to consider whether the Trust should negotiate with those third parties to adjust the boundary lines by agreement.

17. Mr Powell suggests some basic alterations on the boundary line, to reflect the present "lay of the land". I agree that in time, a list of adjustments can be prepared, which may involve the Trust and HBC in a mutually beneficial land swap. By way of example, HBC will probably need to acquire a strip of land adjacent to the new Jerwood Gallery, where the lease grants rights to the tenant to come onto the Council's adjoining land to carry out maintenance. Some of that adjoining land, which is not defined on the lease plan, will be within the Trust's title, as things stand, given that the plans support what Mr Powell says about the boundary running along "the southern and western extremity of the newly constructed building".
18. There are other instances where the boundary cuts through land occupied by leaseholders and my understanding is that rental income is to be split, although I do not know on what basis. I imagine that arrangements are also in place for liabilities to be shared. This is something that may need to be looked into in more detail, on a case-by-case basis, particularly as leases come up for renewal.
19. It is at the western and eastern ends of the boundary that Land Registry have noted the need for major transfers of land from other titles and, in some cases, from unregistered land the ownership of which may be difficult to establish. Mr Powell does not comment of these individual parcels of land and I note that the Green Line Plan and the Blue Line Plan appear consistent in the way they treat these stretches of boundary. Given Mr Powell's long involvement on behalf of the Trust, I have to assume that there are good, agreed, reasons for departing so significantly from the boundaries of the main foreshore title, HT6185.
20. If the Trust is minded to do so, I see no reason why Mr Powell's practical suggestion should not be adopted. A deed will probably need to be produced, in which the Trust and HBC agree the broad principles on which the detailed boundary line is agreed. It may be necessary to involve Land Registry in the drafting of the deed, this being a rather "unique" transaction.

Dated 30th of November 2011

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