

# A costly Christchurch argument which an Ombudsman could have settled quickly

C.T. August 11, 1972

**WHEN Christchurch and Lympington unite in local government, perhaps the new district could afford an Ombudsman. What sort of work would he do? Would there have been any work for him if he had been appointed as long ago as Friday, March 4, 1966?**

Yes, there would! Although the agreement Christchurch Corporation entered into on that very date was made to last 999 years!

Here, in simple language, is the story of a long and costly argument which an Ombudsman would have settled in no time at all, and at very little cost.

## THE LAND IN QUESTION

Mr. Edward Garfield owns land behind his High Street store which runs down to the Mill Stream bounded by the rear of the Congregational premises on the "South" side and the road running past the side entrance to the Town Hall on the "North" (Compass bearings are, of course, approximate).

Anxious to obtain vehicular access to the rear of his store, which also would reduce High Street congestion, Mr. Garfield asked for an 18ft. access to his land from the Council's road in return for which he would give the Council a 3ft. strip of his land to enable them to widen their road by that amount plus the additional width occupied by a buttress protecting his high brick boundary wall.

## THE 1966 AGREEMENT

An agreement was drawn up on these lines with the added proviso that if, at any time, the Corporation deemed it necessary to determine the right and liberty ... in connection with... Town Centre redevelopment, there should be made available an alternatively convenient vehicular access . . ."

Notwithstanding his gift of the land, Mr. Garfield was asked to pay £150 towards the cost of the work. Nevertheless, for a rent of one shilling a year (5p, you will recall) he signed the agreement for 999 years from March 4, 1966.

## IF DISAGREEMENT AROSE

The agreement provided that, if the need ever arose for Mr. Garfield to be given alternative access as promised in his lease, and if disagreement arose as to whether the alternative was equally convenient, the dispute was to be referred after one month to the President for the time being of the Royal Institute of Chartered Surveyors whose decision would bind both parties.

For the Council, the agreement was signed by Coun. Mrs. Irene Stevenson, then Mayor, and Mr. John Macfadyen, Town Clerk.

Came Town Centre development, and the gentleman from Sainsburys.

## A NECESSITY IS DEEMED

The road alongside the Town Hall is envisaged for pedestrianisation. The Sainsbury/Health Centre complex (unlike the Barclays Bank, Tesco and Fine Fare developments) is seen to demand large adjacent parking space. The council decided the time had come to "deem it necessary to make available to Mr. Garfield an alternative convenient vehicular access to his land."

On 28/7/70 the council offers a right of access and right of way from the by-pass in perpetuity. This access is closer to the bottom of his land.

For this offered alternative, Mr. Garfield was asked to pay the sum of £10,000!

## PAUSE FOR REFRESHMENT

At this point, the Ombudsman might well scratch his head and ask for his memory to be refreshed.

"Am I right in understanding that the 4/3/66 contract obligated the council to provide an "alternatively convenient vehicular access if it became necessary to move the agreed access?"

He would be told yes.

"Am I right," he would continue, "in understanding that the procedure for settling and dispute over the location of an alternative access was clearly laid down in 1966 and that a decision in that quarter should be binding on both parties to the dispute?"

He would be told yes.

## THE £10,000 ARGUMENT

From July 1970 arguments continue about the convenience of the offered alternative and about the council's demand for £10,000.

In order to get shot of the matter and to show maximum co-operation, Mr. Garfield eventually agreed early in 1971 to pay £5,000 for the switch of access offered by the council. On 4 February a document was prepared by the Town Clerk on this basis.

The following day, the Town Clerk wrote to Mr. Garfield saying the committee refused to accept his offer of £5,000 without the question of providing a **public** car park on Garfield land being agreed at the same time as settlement of the access question and cancelling the draft agreement supplied to Mr. Garfield the previous day.

## ANOTHER SHOCK

A further shock confronted Mr. Garfield and his lawyers at a meeting with county planning officials in the Town Hall on 19 November 1971. This was that, contrary to an understanding Mr. Garfield had that certain planning applications relating to his and council land would be considered together, consent to the council's application had in fact been given already (on 9/7/71).

In spite of being advised that the changed circumstances justified his withdrawing all his offers and standing on his rights under the 1966 contract, Mr. Garfield said he would agree to make some of his land available for a car park (not a public car park).

## WHAT IS ACCESS?

But then the Town Clerk claimed the agreement made by the council to provide a route to Mr. Garfield's land merely committed them to provide it to the boundary fence without agreeing to any opening through the fence.

We are informed that the county solicitor contradicted him.

At this point, our imaginary Ombudsman might well be showing some signs of impatience.

"Gentlemen," he might interject. "Access to land can mean only one thing. It means access to land. There is no doubt, in my opinion, that the 1966 lease was to provide access to Mr. Garfield's land (of a specified standard of convenience) for 999 years. But if (contrary to my opinion) anyone had any vestige of doubt about such a provision, no one at all could have any doubt whatsoever that it was the intention of the agreement to provide such access. That was the 'consensus ad idem'."

It is unfortunately a fact, that we have no Ombudsman in Christchurch. But couldn't all parties in this dispute act as if we had?