

Objection to the Proposed Fare Increase February 2020 by  
The Bournemouth – Swanage Motor Road and Ferry Company

13<sup>th</sup> November 2020

This is an objection to the Application to Increase Certain Toll Charges February 2020. The fare is already very high and there was a thorough Public Inquiry in September 2020. To simply re-submit applications until the required result is obtained by attrition smacks of gaming the system and a contempt for the process. There is no requirement for any “reasonable return on investment” in any of the Acts and the assets of the Company on which the Application and much of their financial arguments are based are over-valued by an order of magnitude.

The more one looks into this Application: the road, the lack of land deeds and title, the statutory impossibility of selling or acquiring land, the fictitious “reasonable return on investment”, the excess profits and the metetricious Gerald Eve valuation the more fatally flawed and lacking in merit the Company’s application seems.

While this submission runs to some pages it is essential to back these assertions with solid evidence and arguments which I hope will become clear.

Andrew Parsons Bsc(eng), CEng, LLB

The Return on Investment

The Application (1.3) states that the Transport Charges &c (Miscellaneous Provisions) Act 1954 and the Bournemouth Swanage Motor Road and Ferry Act 1986 provide for a “reasonable return on the investment”. They do not at all. The 1986 Act makes no reference to any return - the word does not exist in the Act. Similarly the 1954 Act makes no reference to this imagined “reasonable return on investment” but it does allow s6(3) for “a reasonable return upon the paid up share capital of the undertaking”. From the latest Company accounts the called up share capital is £61,000. There is no figure for the paid up capital so it is reasonable to assume there is none.

There is no statutory provision, express or implied for a “reasonable return on investment”. This is a fiction.

At 1.4.10 of the Application the Company lists the accumulated investment the Company has made in the undertaking over the past 37 years as £7.5m. It will have been expended on the construction of the new ferry buildings, the maintenance of the

road and slipways and the purchase and scheduled maintenance of the ferry. This sum over 37 years does not seem particularly onerous for an enterprise that returned an annual profit of £1.48m in 2018. One can only speculate on the original investment to buy the previous ferry company since no figure is listed but given the parlous state of ferry company, as described in the Application, it cannot have been high. The ferry itself had been stopped from operating by the Health and Safety Executive, the equipment was dangerous and unsafe, the buildings were vermin-infested wooden huts, the whole of the ferry undertaking was in a badly run-down condition and a Closure Notice had been served on the then Company.

The Application bases its figures not on this actual investment (an accountant may split some of this off as operating costs) but on an asset valuation of £14.2m. Simply visiting the Ferry and looking around will call into serious question the credibility of this figure. The valuation on which this application is based is, to put it kindly, grossly inaccurate on several counts:

- 1) There is a real doubt about to what land the Ferry Company holds title, and according to the 1923 Act any land it does hold cannot be leased or sold (apart from possibly any acquired after 1986). There is evidence to show that the original company did not register the freehold of any land, despite a clear opportunity to do so, when the Ferry Company was set up. With the statutory prohibition (1923 Act s97(1)) against acquiring any land from the Bankes Estate it is difficult to see how the Company can hold title or ownership to any land.
- 2) From time to time the current Ferry Company floats the idea that it owns the road. It does not, the 1923 Act is clear on this, the Company simply has an easement and is prohibited by this Act from acquiring any land from the owners. See below for details.
- 3) The Gerald Eve valuation dated 31<sup>st</sup> March 2015 is deeply flawed and founded on completely erroneous or no information. Despite preparing a valuation of £14.27m for the assets of the company it has to admit, “We have not been provided with and have not inspected the deeds from which this information is derived.” Anyone can say they own anything. Anyone can also enquiry of the Land Registry online for details of the ownership of any property. This is supposed to be a professional valuation. See below for details.

### Ownership and Valuation of the Ferry Road and Ferry Company Land

#### Overview

In 1923 the Ferry Company was set up to operate a ferry across the entrance to Poole Harbour from the Studland side (South Haven Point at Shell Bay) to the Bournemouth side (Sandbanks) and charge travellers as a profit making business. This saves a 25 mile road journey around the

Harbour, is a much more direct, convenient route to Bournemouth for the residents of Studland and Swanage and was and has been shown to be a solid, very profitable business proposition.

In order to reach the slipway at the Studland side of the ferry a completely new road had to be constructed over 2.7 miles of heathland owned by the Bankes Estates. Mr Aman of the Ferry Company wrote to the trustees of the Bankes Estates on several occasions pressing them to sell the land for the road but the trustees were adamant that they would not sell the land and thus create a private road, but would support a scheme that would provide a public road. The Bankes Estates gave to the Ferry Company free of charge the land required for the ferry undertaking and also free of charge an easement to construct a road over the heathland and the right of passage over this road for 65 years (1923 Act s55(3)). This road easement (1923 Act s53(1)) ran from Studland village to the ferry slipway, with the right of passage over this road for 65 years from the enactment of the 1923 Act, after which it “shall become a public highway vested in and repairable by the highway authority for the district..”

This land, an area of up to 4 acres at the ferry end of the road and of 1 acre at the Studland village end, and the easement was given free of charge. The location of the land had to be agreed between the parties and the freehold would then be conveyed to the Ferry Company. Any differences to be resolved by arbitration (1923 Act s97(1)(a)).

This land and the road easement, given free of charge, to to ferry company could by law only be used for the ferry undertaking and could not be sold, leased or otherwise disposed of (1923 Act s97(16)). This is stated unambiguously in the 1923 Ferry Act. The road had to be completed within 5 years of the passing of the 1923 Act or the right of passage over the uncompleted road would cease.

The 1923 Act specifically prevents the ferry company from acquiring any land, easements or rights from or over Bankes Estates land – apart from the road easement and the lands at either end of the road given free of charge as stated in the Act.

## Summary

In short, the Ferry Company has an easement or right of passage and an obligation to maintain the road, but does not, cannot and has never owned it. It is specifically prevented from owning or acquiring any lands belonging to the Bankes Estate (now National Trust), including the road, by statute (1923 Act s97(1)). The land on which the Ferry Company offices and workshops are built was offered to the Ferry Company free of charge in 1923 for the purposes of the ferry undertaking (1923 Act s97(1)) but cannot be sold, leased or otherwise disposed of (1923 Act s97(16)). There is no record of the Ferry Company having negotiated, conveyed and registered this land so there is serious doubt about their holding title to any land.

## Easements

An easement is a right enjoyed by one landowner over the land of another, both plots usually being in close proximity. A positive easement allows a landowner to go onto or make use of some installation on his or her neighbour's land. This could be a right of way providing access (vehicular or pedestrian).

For there to be an easement four conditions must be satisfied:

**1) There must be a dominant and servient tenement.**

This means that every easement is linked with two parcels of land, its benefit being attached to the dominant land (in this case the ferry offices and slipway) and its burden being asserted against the servient land (in this case the Bankes Estate land over which the road runs). It has been said that it is:

.. an essential element of any easement is that it is annexed to land and that no person can possess an easement otherwise than in respect of and in amplification of his enjoyment of some estate or interest in a piece of land.

This means that an easement cannot exist on its own – it is always attached to a parcel of land.

**2) The easement must accommodate the dominant tenement.**

This means that the right claimed (the easement) must be reasonably necessary for the normal enjoyment of that dominant tenement (the ferry offices and slipway) and only benefits the owner of the land in his capacity of owner of the land, not personally. Here the easement is essential for the operation of the ferry and so definitely benefits the dominant tenement (the ferry office and slipway). However the easement cannot exist as a separate entity only as part of the dominant tenement.

**3) The dominant and servient tenements must be owned by different persons.**

In other words, “a man cannot have an easement over his own land”. Not only does this mean that an easement cannot be created where the dominant and servient estates are in common ownership, it also results in automatic extinguishment of the easement in the event of the estates coming into common ownership. This cannot happen in the case of the Ferry Company as the land over which the road runs is owned by the Bankes Estates (now National Trust) and the ferry slipway is owned by the Ferry Company.

**4) The easement must be capable of forming the subject matter of a grant.**

The easement must be clear and not too vague nor must it be capricious or trivial. In the case the easement is clearly drawn in the statute and is essential to the operation of the ferry undertaking.

These four requirements are the cornerstones of easement law (*Re Ellenborough Park* [1956]) and not only is it clearly stated in the 1923 Act that the Ferry Company has an only an easement for the road but the basic legal requirements for an easement are easily met.

Easements and Exclusive Use

The Law Commission paper says (3.34-36):

“It is important to distinguish lesser interests in land, like easements, from rights in land that are possessory in nature such as leasehold and freehold estates in land. This follows from the nature of an easement, as a right that one landowner has over the land of another: whilst the

dominant owner exercises rights over the servient land, the servient land continues to belong to the servient owner. It is implicit in this definition that if the dominant owner is entitled to treat the servient land as his own property – that is, as if he has a possessory estate in that land – his right cannot be an easement. In our view, easements and possessory interests in land must be mutually exclusive.

In particular, it would be deeply unsatisfactory if a particular interest could be characterised both as an easement and as a lease. A lease (or tenancy) arises where exclusive possession is granted for a term, usually although not necessarily for a rent. It is clear that where a person has exclusive possession of land, he or she is likely to be a tenant of the land. It is also clear that such a person cannot have an easement over the land being exclusively possessed.

[While] it is generally accepted that an easement cannot give to the dominant owner “exclusive and unrestricted use of a piece of land” ...

### **Summary**

In short not only is the right to construct the road and to pass over the owners land clearly stated as an easement in the 1923 Act, all the current requirements for an easement are met and there can be no doubt (it is plainly stated in the 1923 Act) that what the Ferry Company has is an easement. The possessor of an easement can only use it for the purpose for which it was granted and can do nothing which would amount to “exclusive and unrestricted use ...” nor can he do anything e.g put up a fence that would exclude the servient owner from the land.

### **Bibliography**

The Law Commission Consultation Paper 186 “Easements, Covenants and Profits a Prendre”

### **The Bournemouth-Swanage Motor Road and Ferry Act 1923**

This section will explain in detail those parts of the Act relevant to the grant of the road easement and lands by the owners (the Bankes Estate).

### **Lands and Easement given Free of Charge**

A good starting point is s97(1) which states:

(1) The Company shall not acquire any part of the estates of the owners or any easements or rights in or over the same other than:-

(a) Such lands as may be required by the Company for purposes connected with the undertaking extending in all to five acres of which four acres or thereabouts shall be situate at or near the commencement of the motor road and one acre or thereabouts shall be situate at or near the point where the motor road joins the Knowle Hill Road and in the event of any difference arising between the Company and the owners as to the situation of such lands such difference shall be determined by arbitration as hereinafter provided;

(b) An easement in or over or right of user of the lands required for the purposes of making and maintaining the motor road and the landing stage (Work No. 3); and for those purposes the owners shall convey and grant to the Company free of charge the freehold of the lands referred to in the paragraph (a) hereof and the said easement or right of user in perpetuity of the lands referred to in paragraph (b) hereof:

This says that the Ferry Company will be granted the easement for the motor road and the freehold of any land that it requires for the ferry undertaking at the slipway and the Studland ends of the road will be conveyed to the company when the situation of this land is agreed with the owners. Both the easement and the freehold will be granted free of charge. This free of charge grant of potentially some five acres of freehold comes with the legal condition that these lands cannot be sold, leased or otherwise disposed of. This is stated at s97(16) which states:

(16) The sections of this Act of which the marginal notes respectively are "As to private rights of way over lands taken compulsorily " and "Power to retain sell &c lands" shall not apply to any lands of the owners over or in respect of which the owners shall have granted to the Company merely an easement or right of user as aforesaid nor shall the last-mentioned section apply to any lands conveyed by the owners as hereinbefore provided:

The sections to which the marginal notes apply are s41 (As to private rights of way...) and s42 (Power to retain sell &c lands).

41. All private rights of way over any lands which shall under the powers of this Act be acquired compulsorily shall as from the date of such acquisition be extinguished:

Providing the Company shall make full compensation to all parties interested in respect of any such rights and such compensation shall be settled in manner provided by the Land Clauses Acts with reference to the taking of lands otherwise than by agreement

42. Notwithstanding anything in the Lands Clauses Acts or in any other Act or Acts the Company may retain hold and use for such time as they may think fit and may from time to time sell, lease or otherwise dispose of in such manner for such consideration and on such terms and conditions as they think fit and in case of sale either in consideration of a gross sum or of an annual rent or of any payment in any other form any lands acquired or purchased by them under this Act and not required for the purposes of the undertaking and may execute and do any deed act or thing proper for effectuating any such sale lease or other disposition.

The key part of s97(16) is "any lands conveyed by the owners as hereinbefore provided". These are the lands conveyed to the Company free of charge at s97(1)(a), ie the four acres at the slipway and one acre at the Studland end of the road. While s42 says that the Company may "sell, lease or otherwise dispose of ... any lands acquired or purchased under this Act..." s97(16) expressly states that this does not apply to the lands that have been conveyed to the Ferry Company free of charge. They are given the land they need for the ferry enterprise free of charge but can never sell, lease or otherwise dispose of this land.

Similarly, it is clear that "any lands of the owners over or in respect of which the owners shall have granted to the Company merely and easement or right of user as aforesaid" applies to the road and the Company cannot sell, lease or dispose of any of these rights or extinguish any existing rights of way.

## Company Cannot Acquire any Bankes Estate Land

This is stated at s97(1) above, so any claim by the Company to road or other land ownership is spurious and, under the provisions of this Act, illegal.

## Acquisition of Road by Highway Authority

There are a few sections that concern the take over of the road by the highways authority (s55(2)) and the ferry by the Poole Harbour commissioners (s62(19)) in the case of default by the company in either the maintenance of the road or the running of the ferry. While the paragraph (s62(19)) regarding the acquisition of the assets of the Ferry Company by the commissioners relate to the running of the ferry has details of how the Company will be paid for these assets there is nothing about any compensation for the road. This is not an omission, the Company does not own the road, suffers no loss and no compensation is due.

## The Bournemouth-Swanage Motor Road and Ferry Act 1986

The 1923 Act s55(3) hands the “rights powers and obligations of the Company in relation to the motor road” over to the district highway authority as a public highway after 65 years. This would have occurred at midnight on 31<sup>st</sup> July 1988 and the statutory obligation of the Company to maintain the road would cease from then. This 1986 Act s4 provides that “the motor road shall continue continue to be vested in the Company on and after 31<sup>st</sup> July 1988 as part of their undertaking ...”.

The obligations of the Company to maintain and regulate the road therefore continue as before, nothing changes. The ownership of the land remains with the successors to the Bankes Estates, the National Trust, the road easement remains unchanged and the Company still has the expense and statutory duty to maintain the road. The reason given for this in the preamble to the 1986 Act simply says “And whereas it s expedient to provide for the motor road to remain vested in the Company as part of their undertaking:”. So effectively no reason was given at all. Since this Act was eventually unopposed, the objections from the Harbour Authority and nature groups falling away, it was not examined or queried and was passed as a private bill.

## The Gerald Eve 31<sup>st</sup> March 2015 Valuation

The purpose of this valuation is to ascertain the capital value of the assets of the Ferry Company for incorporation into its company accounts. This value is also used to justify the profits of the Company as a percentage return on investment.

## Basis of Valuation

The valuation is based on the “estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller” and section 9 on page 9 assumes that the Company has freehold title to the properties or a perpetual interest vested by statute.

We know from the statute that the lands and the easement were given free of charge and cannot be sold or otherwise traded. So the basis of this valuation is entirely false – there can never

be a willing seller or a willing buyer and the investment in the lands is zero – they were given free of charge. The easement is appurtenant (attached) to this free of charge land, it cannot exist by itself and the statute provides only an easement over the road and prohibits any actual ownership.

### Assets to be Valued

These are listed in section 3 Description page 8 as:

1. the Northern slipway located at Sandbanks
2. the Southern slipway and causeway located in Studland
3. the company office, flat and storage building located in Studland and
4. the road between the Causeway and the National Trust Knoll Car Park entrance, located in Studland.

However when the valuation figures are presented on page 12 the assets are listed as:

Site Works	£5,120,000
Causeway	£2,400,000
Buildings	£850,000
Land associated with above	£200,000
Land, including the rights to operate the ferry and miscellaneous property income	£3,800,000
Ferry	£1,900,000
<b>Existing Use Value of Freehold Interest</b>	<b>£14,270,000</b>

There is no breakdown of these items that bear scant resemblance to those that the valuation set out to value at 3 above. Nor is there any indication of to what exactly these items refer or how these figures were derived. While the floor areas of the buildings are given in detail there is absolutely no area, plan or any indication of the location or size of the claimed freehold land. The deeds to this land have never been produced to the valuer but that does not seem to concern or impede in any way their arrival at this extraordinary figure upon which so much of the Company's financial justification rests.

For lands that cannot be sold, are probably not owned and for a road easement this does seem extremely high.

### Lack of Title Deeds

There is real doubt whether the Ferry Company does in fact have any title or documents. A letter (attached) dated 29<sup>th</sup> Feb 1974 to H. R. Bankes' London lawyer from his local agent regarding the land owned by the Ferry Company contains the paragraph:

“It seems extraordinary that from the early days after the Act of 1923 that the Company never took a Conveyance of any land and presumably Mr. Bankes has never been paid ...”

This letter is attached and while the details of the Act (land given free of charge and land could not be acquired from the Bankes Estate) appear to have eluded the local agent at that time it does indicate that the paperwork and the legal ownership of the land the Ferry Company is



claiming is in a parlous state. It appears that the original Ferry Company in 1923 did not get around to having the land it required conveyed to it – Bankes could not refuse, that Act gives them some 5 acres with arbitration in case of a dispute. Transactions in land must be in writing and it seems that the Ferry Company resorted to registering a possessory title (DT14826) in 1964 (without consulting Bankes) even for the land on which its office stands. This of course is illegal under the 1923 Act and the Land Registry appears to have no record of DT14826 and a detailed query on this matter is pending with them.

Indeed the evidence is that the Ferry Company has the title to very little land and this makes this £14m valuation even more unbelievable and tenuous.

KL. /EHP

B/C/RHH

29th February, 1974

F. Porteus Brickdale, Esq.,  
Messrs. Gregory, Rowcliffe & Co.,  
1 Bedford Row,  
London, WC1R 4BZ.

Dear Mr. Brickdale,

H.J. R. Bankes Esq., - Kingston Lacy &  
Corfe Castle Estates - Bournemouth-Swanage  
Motor Road and Ferry Company.

Further to your letter of the 21st February and our telephone conversation earlier this week, I would in the first place confirm that I was approached on the telephone by Mr. R.W. Cass of Messrs. Rawlin Davy & Wells, 24 Oxford Road, Bournemouth, the Solicitors acting for the Ferry Company.

It so happens that Mr. R.W. Cass is well known to me having for many years been the Deputy Town Clerk, Poole, but owing to Local Government reorganisation he has retired from Local Government service and joined the abovementioned firm.

Having reported to you I duly saw Mr. Cass on Wednesday and arising from a fairly long discussion the following points arose:-

(a) The Ferry Company apparently registered a Possessory Title in 1964 for the land as coloured pink on the enclosed plan and Mr. Cass had a copy of the Land Registry Plan itself and allowed me to see it, from which I was able to colour up the enclosed plan, and he also gave me the Title Number DT 14826.

(b) The Ferry Company were concerned that their planning application had been refused whereas the proposals for the redevelopment of Mr. Lovell's Cafe, as coloured blue on the plan enclosed, were being considered; these proposals after consultation with the Estate are to include an extension at the rear to incorporate certain public conveniences which are urgently required in that area.

(c) Mr. Cass also showed me <sup>the</sup> plans that the Ferry Company had submitted which were similar to those put before Mr. Bankes some time ago and the whole scheme was far too extensive and was not liked by Mr. Bankes and as in (a) above the plans were rejected by the appropriate Planning Authority.

(d) Mr. Cass agreed with me that from a personal point of view he thought the Ferry Company had been over ambitious and that it was obvious that there should be some co-operation with the Estate on the whole question of redevelopment or rebuilding to take place in that area. I would mention for your information that all the

F. Fortescue Brickdale, Esq.

29th February, 1974

buildings, both Mr. Lovell's Cafe and the Ferry Company buildings, are unsatisfactory and dilapidated and require rebuilding whatever happens.

(e) On a point of detail the Ferry Company do in fact occupy a building on the West side which I have marked 'A' on the plan and, indeed, have some of their gear spread on the land between that building and the road. I pointed this out to Mr. Cass, i.e. they did not have any direct access on to the road, and he suggested that they had a right of access "as of necessity".

(f) Mr. Cass has to report to the Ferry Company's Board in the course of the next week or so and I believe that if he has anything to do with the matter we will be approached again with the hope that there can be some compromise which was suggested might be on the basis of some form of exchange of land. As against this I had to point out that the matter was in your hands and there might well be some dispute with regard to the Title which they had registered in 1964.

So much for my meeting with Mr. Cass in broad outline only, from which you will see that the Ferry Company have taken action and have succeeded in registering a Possessory Title. Now I do not think Mr. Bankes will dispute their ownership of the land on the East side of the road, that is O.S.No.5646 - 0.60 acres, but would hotly dispute their ownership of the site on the West side on which is situated their building Marked 'A'.

It seems extraordinary that from the early days after the Act of 1923 that the Company never took a Conveyance of any land and presumably Mr. Bankes has never been paid, even for the area O.S.No.5646. At the same time I seem to recall that you mentioned that in your opinion that a Statutory Company could not acquire a Title as a "squatter", i.e. a Possessory Title.

Leaving aside any future possibility of co-operation with the Ferry Company or exchange of land, I think Mr. Bankes would like to have your opinion as to the validity of the 1964 registration made by the Company and whether there is any possibility of applying to the Court and having the Title amended or struck off altogether.

I may or may not be approached by Mr. Cass again, but as far as you are concerned I told him that I would be duly reporting to you as to the details he had given me with regard to their registered Possessory Title and that you might be writing to them direct in due course. Before you do so, however, I think Mr. Bankes would like to have your general opinion as to the Ferry Company's claim to ownership.

Yours sincerely,

E.H.PRATT.

