

## Boundary Disputes

### Obtaining Advice

Often triggered by the replacement of a hedge or fence, boundaries are a common source of disputes between neighbours.

There are numerous misconceptions among the legal profession, surveyors and the public as to where boundaries lie, which if not remedied at an early stage can lead to acrimony and protracted disputes.

We understand the often competing desire to protect your home against encroachment and the need to resolve matters in a cost effective fashion. Disputes with neighbours must be revealed when a property is sold and will often devalue or even put off potential purchasers. It is crucial that disputes are handled carefully to protect your investment.

Our expertise lies not only in providing cogent advice on the legal basis for your boundary, but also resolving the dispute with your neighbour.

“I do not... accept that the days are gone when a party can litigate over a tiny strip of land, although I would certainly agree that it is usually economic madness so to do, but a person remains entitled in law to protect and preserve that which is his or hers.”

Judge Simon Barker QC in  
*Acco Properties Ltd v Severn*

### Determining the Boundary

Determining where the boundary lies is not simply a question of drawing a straight line from the front of your property or checking the Land Registry plan. We can assist you in analysing the evidence to determine the boundary's true location.

- 1 Where possible, determine the original legal boundary from the deeds.
- 2 If not possible, consider other evidence such as **topographical features on the land that existed when the land was divided** such as hedgerows and fences.
- 3 Consider whether the boundary has shifted either through an informal agreement or adverse possession.

### Locating the Original Legal Boundary

“An Ordnance Survey map on a scale of 1:2500 is worse than useless”

Lord Justice  
Cummin-Bruce in  
*Scarfe v Adams*.

The original legal boundary for a property is determined by the deeds. The conveyance deed that divided the property may have measurements, a description of the boundary in question or ‘T’ marks showing who owns a boundary feature.

The deeds however are not always available. Since registration at the Land Registry for all transfers of land was made compulsory in 2003, many mortgage companies who traditionally held the deeds of the property have disposed of them.

In the absence of other evidence, presumptions regarding the boundary can often be made from the facing of fences or the situation of hedges and ditches.

### Moving the Boundary Line Over Time

#### Informal Boundary Agreements

Transfers of land usually must be evidenced by signed deed. This does not always apply to trivial dispositions of land following an informal agreement between neighbours.

The history of the boundary and agreements made by neighbours or former neighbours, whether informally over the garden fence or formally in writing, can also have a bearing on the position of the boundary. In certain circumstances boundary agreements can even be inferred by the neighbour's conduct.

#### Adverse Possession

The legal boundary can be altered by adverse possession, colloquially known as squatter's rights. Where a person occupies their neighbour's land without their permission, demonstrates that ownership (such as erecting fencing) with the necessary intention to exclude the true owner, the Land Registry may recognise their right to be registered as the owner.

This often applies in boundary disputes where a boundary has historically been moved from the original legal boundary and a number of years have passed. The position of the existing boundary and the length of time it has been there often becomes more relevant than the original legal boundary shown by the deeds.

Traditionally 12 years were required to establish adverse possession and this remains the case for unregistered land. The rules for adverse possession are complex and we can advise you if this applies.

### Next Steps

**Expert Evidence** In most boundary disputes it will be necessary to engage the services of an expert surveyor; either to provide evidence of where the boundary should be or draw up detailed plans for any litigation or settlement. We can assist you in choosing a surveyor with expertise of boundary disputes.

**Negotiation** The court places strong emphasis on disputes being resolved by mediation, negotiation or by other alternative dispute resolution.

**Remedies** Where matters cannot be resolved a declaration can be sought from the court as to the true position of the boundary together with damages for trespass, these are often only nominal. Alternatively a determination of the boundary or adverse possession can be sought at the Land Registry.

Where a boundary is in dispute, it is important to bring certainty to the determination by proclaiming the boundary and not leaving the plot "fuzzy at the edges"

Judge Simon Barker QC  
in *Acco Properties Ltd v Severn*

### Common Misconceptions

**Land Registry Plan** Unless previously determined this only indicates the general location of a boundary and cannot be relied upon for its accuracy.

**The Ordnance Survey** OS plans tend to mark features such as hedges and fences rather than legal boundaries. The scale means features may be out by as much as 2.3 metres.

**Planning Permission** The local planning board is only concerned with public planning issues not private law rights. It is possible to obtain planning permission over land which you do not own and the grant of permission does not have any bearing on the ownership of the land in question.

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