

Who owns the boundary?

Barely a week passes without an enquiry regarding ownership of a boundary. The ownership of property is central in our society and, despite a general desire for neighbours to coexist peacefully, questions over the ownership or position of boundaries often lead parties into disputes. As a Solicitor, it is not always clear why a disagreement over a boundary escalates so quickly. It is often the case that the dispute is an expression of other disagreements or feelings between neighbours. What is absolutely clear, however, is that boundary disputes are often expensive to resolve and can permanently damage relations between neighbours.

Whenever I am instructed to act on a boundary dispute, my first step is always to visit the site so that I can understand the position on the ground. Regardless of the perceived rights or wrongs of the dispute I always advise my clients to contact their neighbour and invite them to meet and discuss how they might resolve the matter between them, without my involvement. This often proves not to be possible and the clients return to me saying that they want me to write a letter setting out their position in relation to the dispute.

In writing the pre-action letter there are a number of factors that may be persuasive in relation to establishing the position or ownership of the boundary. The best evidence of ownership are the title deeds, the documents registered at H M Land Registry (if the property is registered) and the pre-registration deeds of available. In modern properties, built on recent developments, the deeds often make a boundary ownership clear. In older properties it is possible that the property will be described with sufficient certainty to identify boundary ownership. It is common practice for the verbal description of land to be supplemented by reference to a plan. However, the function of such a plan is usually to show where the land is located and not to define its boundaries.

If the deeds do not assist, then some established legal presumptions may help decide who owns a boundary. For example, where a bank or hedge adjoins an artificial ditch, the presumption is that the boundary is on the edge of the ditch furthest from the feature. The presumption is that nobody constructing a ditch would intentionally commit a trespass by piling the earth on the adjoining land. If the boundary feature is a fence or wall, supported by upright posts or wall supports on one side, there is a presumption that the fence or wall belongs to the owner on that side. There are other presumptions relating to land adjoining a public highway, where a property joins a river or stream and where it adjoins the seashore. Any presumption can be refuted if there is evidence to the contrary, but such presumptions remain a good place to begin.

It is possible to get a Court to make a declaration about where a boundary lies, about who owns a piece of land or about whether one party is entitled to use a right of way. However, rather than using the Courts, it may be advisable to submit neighbour and boundary disputers to mediation. Mediation is a without prejudice process aimed at bringing parties to a position of settlement that both parties can live with, even though neither of them may like it. A mediator is not a judge and will not make decisions on who is right and who is wrong. It is advisable to engage in mediation at an early stage before costs rise to a level where they become a barrier to any potential settlement.

It is very important for individuals to realise that a dispute over a boundary or other issue in land is disclosable on the sale of a property and could significantly impact on the ability to sell that property or obtain the value sought. If you become involved in a dispute with your neighbour that you are unable to solve between you and the situation begins to escalate, you should seek advice immediately. Early intervention and a pragmatic approach often prevents disputes growing in size and cost.

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Saul specialises in Litigation and Property Law. He is always happy to have an initial conversation to discuss how he might assist in any neighbour or boundary dispute that you might be involved in. He can be contacted on 01308 422313 or saul.kelleher@nantes.co.uk



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