

information sheet

Boundary disputes

Boundary disputes often occur where a boundary is not well defined or building work is undertaken. Before any matter can be settled the position of the boundary has to be established.

The first document that should be reviewed is the land registry plan. It is important to note the land registry plans normally show the general position of the boundary and do not show the exact line of the boundary. A disclaimer is printed on each Land Registry plan. The record of the boundary at the highway is often different from the original deeds for older properties.

The next step is to review the title deeds and associated conveyance plans. Errors during conveyance did occur in the past although with land now being registered this problem has been considerably reduced. The title plans along with subsequent conveyance documents should establish the boundary position.

To avoid lengthy and expensive court proceedings it is essential to refer any boundary matters to a suitable expert as soon as possible.

Legal presumptions, such as the hedge and ditch rule or the fence post rule, can mislead owners and lead to neighbour disputes.

Some title documents use hedges or fences as

boundaries which can be moved since the plans were originally drafted. As hedges grow they can be maintained more on one side than the other resulting in distortions to boundaries. When fences are replaced boundary disputes often arise in relation to ownership of the fence and the position of the fence in relation to the boundary.

Fence posts are normally considered to be on the side of the fence owner however during fence replacement this situation can change. The title deeds normally show a "T" symbol indicating the side of the fence owner who normally has the responsibility for maintenance of the fence.

Many properties have easements included in the title deeds which often relate to drains or other services. There may also be historic easements as a result of overhanging gutters or projections from houses. Easements are difficult to extinguish and they should generally be considered as permanent.

The accuracy of measurements on site and the accuracy of the historic measurements used when the deeds were created can lead to boundary disputes. The locations measurements were made from can also change.

Many deeds include measurements from the road verge but these have often

altered when road kerbs are replaced or roads widened.

Similarly when parts of land plots are sold for development the subsequent title deed plans may not match the original deed or the actual site and the intention of the sale has to be considered.

If the two neighbors title deeds do not match it is important to agree a deed of rectification as neither property will be able to be sold until the title deeds are corrected.

If the documents are inconclusive aerial photographs can be obtained. The most useful aerial photograph for settling boundary disputes would be either 10 years old (for registered land) or 12 years old (for unregistered land).

The two parties to the dispute may have photographs which show the boundary or disputed fence from when the property was purchased as well as other historic photographs.

Photographs showing children growing are often useful as the age of the child, and hence the age of the photographs, can be estimated more accurately than the age of an adult. Dates on digital photographs can be misleading if the camera clock is not set correctly.

Witness evidence from nearby long term residents, milkmen or postmen can often be useful

for establishing historic rights of way or fence and gate positions.

Reviewing similar properties along the same street can often indicate the original intended boundary position where a single builder has developed a number of houses.

It should be noted that a right of way is not normally a right to park and many disputes over drives result from this misconception.

The Land Registration Act 2002 (amended 2008) has clarified the position regarding adverse possession. If the disputed land has been in possession of the neighbour for 10 years and it can be shown that there was an intention to possess the land without the owners consent then adverse possession is likely to be granted.

Where agreement can be reached a detailed and accurate plan is lodged with the title deeds and Land Registry to avoid any future dispute. The measurements and plans have to be prepared so that all dimensions are accurate to within 10mm (just under 1/2 inch).

Stuart Allen has been positioning boundaries since 1978 and has successfully settled many boundary disputes before court action was required.

CONSULTING CIVIL, STRUCTURAL AND GEOTECHNICAL ENGINEERS

Hadleigh : 01473 825300
Cambridge : 01223 314794
Norwich : 01603 230240
London : 020 7448 9910

richardjackson
intelligent engineering