

- **Land Registry does not define property boundaries but is required by law to show only the general position of the boundary.** (section 60 of the Land Registration Act 2002)
- **Land Registry is required by regulations to use an Ordnance Survey map on which to show the general line of the boundary.** (section 5 of the Land Registration Rules, 2003)
- **That Ordnance Survey map is prevented by law from ascertaining, altering, or affecting property boundaries.** (section 12 of the Ordnance Survey Act, 1841)

HOW AND BY WHOM ARE BOUNDARIES CREATED AND DESCRIBED?

Boundaries are created when an owner of a large piece of land divides that land into smaller pieces, or parcels of land, and offers the smaller parcels for sale. It is the owner of the larger piece of land who is responsible for describing (or defining, if you prefer) the newly created boundaries of the smaller parcel/s of land that he offers for sale.

Boundaries are described in the earliest title deed (be it a conveyance or a transfer deed) that describes the parcel of land in question. The description may be expressed as words in the parcels clause of the deed, in a plan drawn upon or attached to the deed, or a combination of both.

Ambiguities in boundary descriptions found in conveyances are not the exception but the norm. This is because the descriptions were written by people who did not know how to measure land, nor how to draw accurate plans, and who lacked the understanding of either geometry or trigonometry that is necessary to prevent errors when making maps and plans. These people operated under the ethos of caveat emptor - let the buyer beware - and simply coloured up copies of Ordnance Survey maps even though Ordnance Survey is prevented by law from showing property boundaries on its maps.

Dimensions found on conveyance plans should not be considered legally binding: they come with no statements of measurement method, quality control used, or from exactly where to exactly where each dimension was measured.

Developer's plans form the basis of many conveyance plans and transfer plans dating from the mid-twentieth century onwards. Developer's plans tell you what the

architect intended to be built and where - and this can be significantly different from what was actually built and where it was built. In these cases it is important to recognise that **it is the original fences erected by the developer or his contractors that define your boundaries - and not the lines on the conveyance plan or transfer plan.**

The intentions of the vendor who created the boundary. When the information contained in the deeds and the deed plans leaves the position of the boundary unclear, then it is worth considering the question: "**What did the vendor intend by the description and plan to the deed that created the piece of land** whose boundary is now in question?"

THE LIMITATIONS OF TITLE PLANS

Land Registry does not define property boundaries. This is so important that I will repeat it. **LAND REGISTRY DOES NOT DEFINE PROPERTY BOUNDARIES.** Land Registry compiles and maintains a register of titles to land. That register is, to put it at its simplest, a selection of some of the information submitted to Land Registry by applicants who are obliged to register their titles to land. Land Registry has traditionally exercised little or no control over the accuracy of the information submitted to them, insofar as it affects the positions of boundaries.

Land Registry will not define property boundaries. Even when applying for Registration of the Exact Line of the Boundary, it is the applicant (or their professional or legal adviser) who has to tell Land Registry exactly where the boundary is located.

Title plans show only the general positions of boundaries - title plans do not show the exact line of the boundary. Land Registry bases its title plans

on Ordnance Survey maps that by law do not show property boundaries but which depict physical features. **Ordnance Survey maps and the title plans based upon them are subject to accuracy limitations.**

Scaling from Ordnance Survey maps or from title plans will not tell you the position of your boundary. Ordnance Survey makes its maps without any enquiry as to the positions of property boundaries: those maps show the physical features of the land but not the property boundaries. Moreover, there are accuracy limitations that make it dangerous to try to scale exact distances from Ordnance Survey maps: at best they are good to about 400 mm in urban areas and to about 1 metre in rural areas, and larger errors are not uncommon.

WHEN TO GET PROFESSIONAL ADVICE

Professional advice, from a surveyor specialising in **Boundary Demarcation and Disputes**, may (or may not) establish exactly where your boundary is. Even when it is 100% correct, such professional advice has no legal force and enjoys the status only of a **professional opinion**, and opinions (even professional opinions) are always open to challenge. If the question that needs resolving starts with the word "where" (e.g. "Where is my boundary?") then you should seek professional advice before you consider going to a solicitor.

Boundary disputes are a specialised practice area. If you need professional help then you need specialist professionals. Too many chartered surveyors take the view that a boundary dispute is a property matter and that they, as a property professional, can deal with it. What the landowner in a boundary dispute needs is a **surveyor who specialises in boundary demarcation and disputes** to advise on the true position of the boundary and to offer advice as to how to resolve the dispute (expert determination, adjudication, mediation, litigation), and to act as an expert witness should the matter proceed to litigation.

The boundary according to paper title is based on its description in the title deeds and its position may be established by a good boundary demarcation and disputes surveyor in a well-researched and analysed expert witness report.

WHEN TO GET LEGAL ADVICE

Legal advice from a solicitor who specialises in **property law** or **property litigation** is essential if the question that needs answering revolves around the legal rights or obligations of yourself or of your neighbour.

Again, the landowner will not necessarily be well served by a generalist solicitor but needs a **solicitor specialising in property litigation**.

MISCELLANEOUS BOUNDARY ISSUES

Unlike the NHS, with the surveying and legal professions you cannot expect a general practitioner to diagnose your problem and refer you to the appropriate specialist: it is up to you to identify the appropriate specialist yourself.

Adverse possession of another person's land requires both **actual possession** and **exclusive enjoyment** of the disputed land for a period of at least twelve years if relying on legislation that pre-dates the Land Registration Act 2002. This Act came into force on 13 October 2003 and allows applicants to register their possessory title to neighbouring land after a period of ten years possession. On receipt of an application, Land Registry will alert the registered proprietor of the affected land, who has two years in which to evict the squatter. A squatter still in possession two years after his initial application to Land Registry may re-apply and will automatically be granted possessory title.

Adverse possession is not a criminal act. Whatever a landowner might think, the law does not recognise the concept of "theft of land" or such language as "My neighbour has stolen my land".

A paper title boundary is defeated by a successful adverse possession claim. It may also be defeated if the legal principle of **proprietary estoppel** comes into play. These are both matters for legal advice.

RESOLVING BOUNDARY DISPUTES USING ALTERNATIVE DISPUTE RESOLUTION METHODS

Your solicitor may try, with the best of intentions, to settle a dispute amicably through correspondence with your neighbour's solicitor. But rather than using the correspondence as a means of making offers that narrow the gap between them, the parties all too often turn the correspondence into an escalating series of accusations and demands that only widen the gap and make the dispute ever less resolvable.

Boundary agreements. Given that the courts encourage adjoining landowners to agree the exact line of the boundary for the purpose of clarifying the ambiguous description in the title deeds, it would make sense for such landowners to settle their dispute by means either of a boundary agreement or of an application to Land Registry to register the exact line of the boundary.

Mediation is effectively, a meeting facilitated by a mediator who encourages the disputants to negotiate with each other a settlement agreeable to both, which settlement is recorded by the mediator. Mediation is a successful method of resolving disputes between parties who have a contractual relationship with each other, which relationship is breaking down. It is increasingly used (inappropriately in this author's opinion) to resolve boundary disputes.

Expert Determination is a form of dispute resolution used when both parties are in agreement that there is a need for an evaluation of a specialized but disputed factual issue. The parties appoint an independent expert in the subject matter of the dispute to resolve the matter. The expert's decision is - by prior agreement of the parties - legally binding on the parties.

WHAT A JUDGE CONSIDERS WHEN TRYING A BOUNDARY DISPUTE

COURTS: When neighbours are otherwise unable to resolve their dispute then they may refer the matter to a court of law. The available courts are:

- Land Registration Division of the Property Chamber (First-tier Tribunal);
- The County Court;
- The High Court.

The Ministry of Justice recognises that **boundary disputes "can too often be unduly bitter, expensive and time-consuming"**. The County Court will usually encourage the litigants to mediate their dispute and will hear the case put before it only if mediation fails to settle the dispute.

The courts will consider:

- such limited **statute law** as relates to boundaries;
- **legal precedent**, being careful to ensure that the circumstances of the present case are consistent with the circumstances of the precedent;
- expert opinion as to the position of the **paper title boundary**;
- in the case of an ambiguous boundary description, the **vendor's intentions** when the boundary was first created;
- in the case of an ambiguous boundary description, whether a **boundary agreement** has been made by the parties or their respective predecessors in title;
- whether the boundary has been altered by **adverse possession**;
- whether the boundary has been altered by **proprietary estoppel**.

In the course of a trial, the court will try to resolve a civil dispute between neighbours by handing down a decision or judgment. The trial is not a criminal proceeding and the litigants should view the court process as a means of settling the dispute and not as a means of pursuing justice.