

BOUNDARY DISPUTE RESOLUTION IN ENGLAND AND WALES

The Stresses and Strains of Legal Liason

Approximately 21,000,000 properties exist in England and Wales, ranging from small houses with tiny gardens to large rural estates. Boundary disputes are relatively rare and involve an average of 100mm - about the width of a fence post - yet cost each party around £25,000 to settle in court. The author describes the stressful role of the surveyor, co-operation with lawyers and a possible cadastral system of boundary records.

The root of the problem in a boundary dispute often lies with the personalities of the parties involved. Many people live side by side, with indistinct and ill-defined boundaries, yet without experiencing any problems with their neighbours. But where different types of people live side by side problems can easily flare up. Differences do not actually matter in racial group, sexual gender, class; differences in personality type cross all such categories. Surveyors and lawyers specialised in this field must be well aware of the *people* factor. This is because in a court of law, conduct of the dispute and the professional's part in it will come under very close scrutiny. Surveyors should remain calm and relaxed and acquire the skill of nodding their heads in understanding rather than necessarily in agreement. Only by listening to often aggravated and even abusive parties will the surveyor hear about *the old iron post in the hedge or the remains of the base of the brick wall* so vital to finding a solution.

Deeds and Land Registry

In England and Wales, two systems of land ownership records exist. The first is the rather old-fashioned *deed* system, which involves conveyances, indentures, deeds of gift, et cetera: bits of paper that describe legal ownership of a property. Every property has such a document, which may often include measurements and detailed descriptions. The measurements are usually qualified by phrases such as *"a little more, a little less", "or thereabouts" or "approximately"*. This throws another form of vagueness into the problem. Of the 21,000,000 properties in England and Wales, about 17,000,000 are also registered with Her Majesty's Land Registry (LR). The LR Title Plans are based on Ordnance Survey (OS) maps. Such maps are not intended to offer a basis for scale, and measurements taken from them are accurate to one metre at best; they are thus useful only as a plan of location. The object of LR is to create and maintain a "register" and the plan or map that comes with it is for general identification purposes only. A judge does not therefore usually consider LR data. It is the legal boundary, and not the extent of registered title, that the boundary surveyor must look for. A lawyer has to interpret the text of a deed, but it is quite in order for a surveyor to flag-up various parts of the text for a lawyer to add an interpretation to. The deed plan, however, lies within the realm of the surveyor and must first be compared with what exists on the ground.

Metric and Imperial

An extremely high degree of detail will be required, including:

- shape and size of every individual fencepost
- size and type of all walls; descriptions of brickwork and construction methods; locations of buttresses
- size and location of overhanging eaves and branches of trees
- details of hedges, trunk lines and extent of canopy
- widths and depths of streams and ditches
- details of footings where visible; all changes in surface materials, however minor
- details of all other features that may influence location of boundary, or demonstrate errors, or confirm facts in witness statements.

Measurements should be shown in both metric and imperial values. Most deed plans still have dimensions in feet and inches, whilst surveyors should work within the metric system at all times. Since the deeds may, for example, specify only '66ft', a court will be helped by showing a distance on a plan as being 66 feet 2 inches as well as 20.168m. A judge can then easily see that the distance is two inches greater, without having to convert and reconvert it. Deeds may also contain measurements in other units and it is useful to know, for example, that 1 rood equals 0.25 acre, 1 perch equals 0.00625 acre and that 2.471 acres go into one Hectare.

Steel Tape Best

Modern electronic methods of measurement should always be used, for reasons of speed and economy. However, relying on GPS can be dangerous because critical points are often buried within a thick hedge or under an overhanging roof. When neighbours are arguing over less than 25mm, which frequently happens, then the steel measuring-tape is often the best instrument in confined or congested areas.

Digital plans are essential, as it may be necessary to produce plots at differing scales for the court at very short notice. The information on the plans must be identical in every respect, except for the change of scale. This author commonly uses 1:50 and 1:100, sometimes even 1:20.

Teamwork

Independent surveyor's reports are not prepared for their clients - the parties or their lawyers - but for the court and should be prepared in a completely independent manner with this in mind. Boundary dispute resolution is one of the few areas where surveyors and lawyers regularly work together as a team. The lawyer relies upon good, independent expert advice from a surveyor, and the surveyor relies upon the lawyer to provide the deeds and other helpful documents. Surveyors must realise and understand their place in a team that may well include other experts. An overview of the usual stages of liaison with lawyers is to be found in the infobox.

Single Joint Expert

Where there are two experts, one representing each party, the court usually orders them to meet. They have to prepare a schedule of agreed and disagreed points, together with an agreed plan showing the respective lines in different colours. A surveyor should not adopt an adversarial pose, but should rather try to resolve the matter in the way that two people might try to solve a jigsaw puzzle; one with no picture on the lid of the box, some pieces missing and other pieces not belonging to it! It is not an easy or exact science. Since the advent of the Civil Procedure Rules in 1998, the court frequently appoints a Single Joint Expert (SJE) to provide one all-encompassing report instead of having two experts. The surveyor has to visit and interview each party, then carry out comprehensive measurements of both properties and write a "joint" report for the court. Each party, normally through their solicitor and counsel, is then allowed to ask one set of written questions. These questions and the surveyor's answers to them then form an addition to the original report. The idea behind the SJE method was to eliminate the cost of experts going to court. In practice, this has not been the case.

The Courts

Boundary disputes go before the County Court or the High Court, depending upon the value of the properties. Thus a dispute involving a few centimetres in the City of London may go to the High Court, whilst in a rural part of Cornwall such a dispute may go to the local County Court. For the surveyor it makes no real difference; the sequence of giving evidence is always the same:

- examination in chief (counsel for your instructing party)
- cross-examination (counsel for the other party)
- re-examination (counsel for your instructing party)
- questioning by the judge.

Giving evidence is a solemn and serious business and can be very stressful, particularly when under cross-examination. If a surveyor finds he cannot stand the strain of cross-examination he should avoid working in the field of boundary demarcation. The surveyor normally liaises with lawyers and the court to ensure that a new fence or wall is constructed in accordance with court judgement. Finally, the surveyor will need to draw up a plan showing the new boundary location and forward this to his instructing solicitor for notification to LR for record purposes.

Boundary Cadastre

Boundary disputes occur even where a full and efficient cadastral system exists. However, these disputes seem to occur infrequently and do not involve the cost and intensity of those in England and Wales. The introduction of a cadastral system of boundary records in England and Wales would thus eliminate many boundary disputes. Cost is the main problem preventing the installation of a blanket cadastral system; installing such a system would cost around £2,000 per property. After initial installation, of course, its operation would be simpler and cheap to update as time went on. The initial projected cost (21,000,000 x £2,000 = £42 billion), which would presumably have to be met by the UK taxpayer, is such that no politician is likely to campaign for it! A better way of introducing such a cadastral system would be to make it mandatory on new housing estates. This would involve a cost of around £200 per property. Since the average cost of a house on a new housing estate is £180,000, this amounts to 0.1%.

The usual stages of liaison with lawyers are as follows.

- *The solicitor meets and formally instructs the surveyor.*
- *The surveyor carries out measurements and investigations and writes a report.*
- *The solicitor meets the surveyor to discuss the report.*
- *The report is exchanged with the "opposing" solicitor's surveyor.*
- *The solicitor instructs Counsel (a barrister) and a conference is held attended by Counsel, the solicitor, the surveyor and the client(s). The merits of the dispute are discussed, together with likely costs. It is usually at this stage that legal proceedings are issued.*
- *If the matter continues (i.e. is not by now settled between the parties), a meeting of experts and then a court hearing follows at which a judge will determine the line of the disputed boundary.*
- *A great deal of liaison and communication between Counsel, the solicitor and the surveyor will take place in the run-up to any court hearing.*

It typically takes eighteen months for a case to come to court after proceedings have been issued.