

# Whose fence is it?

A little guide to avoiding boundary disputes.....

One of the most frequent thing we are asked “out of the blue” by people is “can you check to see whether I own this fence?”

So this little guide explains what we can and cannot do, and why. It also sets out some rules which might save you from a boundary dispute.

## **Why not have a boundary dispute. Surely it could be fun!**

Fun for lawyers perhaps. If a dispute gets to court, it can cost the parties £100,000 each. With close boarded fences @ £25 per metre, this is more or less enough money to fence the City of London.

So you should do everything you can to avoid a dispute. It will always be cheaper to put up your own boundary fence and leave the question of where the actual boundary is to someone else to worry about.

It will also blight your house sale, as your buyer will be very interested to find out that you have a “difficult” neighbour, or might even conclude that you were the difficult one....

**So, believe me, you do not want a boundary dispute.**

## **The Deeds have the answer: true or false?**

Surely they must be there somewhere! Well, no. The standard Land Registry plan is to a scale of 1:1250 and so the line around the property represents just under a metre “on the ground”. Boundaries are therefore approximate. Sometimes there are dimensions on the plans which help, but these are increasingly rare.

Sometimes the Deeds refer to fencing responsibilities. Often boundaries to be maintained are marked with a “T” on a plan, which will never be the Land Registry plan, but can be a plan attached to an old document, which may or may not be available.

And then there is one other little point. Not so little actually. All this Deeds related information is old, sometimes very old. Maybe in 1895, or 1933, or

1957, when your house was actually built, the fencing responsibilities were clear, and everyone cared for their boundaries, lovingly parading around them on a tour of inspection every Midsummer Day. But after a while things begin to change.....

### **The march of time.**

Imagine that the fences around your house are 30 years old. The fence on the right is falling down. You think it is your neighbours' fence. You speak to them. Or maybe you try to speak to them and fail. They have let their property and gone to live in Paraguay. Or they can't be bothered. Maybe they don't like fences.

After a while you give up and erect your own fence. You sell your house and the buyer is told that this is your fence. "Hey presto", the ownership of the fences has changed, and the Deeds are irrelevant.

### **Some principles**

So an important principle is that the ownership of fences is not conclusively determined by the Deeds, although if there is an indication from the Deeds, and there is no evidence of any change since then, this indication will probably prevail.

The second principle is that the ownership of fences is not conclusive evidence of where the boundary is, as people tend to put fences up "on their side", and so the boundary may be one side or the other of a fence, or even down the middle.

### **Party Walls and fences**

A party wall or fence is one where the ownership and responsibility really are shared. Some people think that a party wall just means a dividing wall. But a party wall is more than that. Party fences are quite rare, as apart from anything else the "march of time" (see above) means that they tend to be superseded by individual fences. However party walls are very common, and the walls between terrace-houses are nearly always party walls, and often they extend into a garden. Where there is a party wall, both owners are responsible for maintenance and neither can remove the wall without agreement from the other.

## Clues on the ground

So the legal paperwork is not that much use. You might have asked to start with how 100 year old documents drafted by lawyers who probably never visited the property, and then interpreted by some more of them could really assist you in deciding whether the neighbours' trellis is in the right place.

It is important to have a close look, and from this you may well be able to draw some useful inferences.

### Where to start....

If your house is joined to the neighbours' house – being terraced or semi-detached, it should be quite easy to see the mid point. If you draw out a line on the ground from this mid point, you should be tracing the actual boundary line with some accuracy. This will only be of use if the garden boundary is a straight line, but in most cases it is.

Once you have established the boundary line, it should be possible to work out whether the fence or other feature you are interested in falls inside or outside your land.

Of course, this does not always work....

It must always be remembered that inferences are not proof. They are clues, indications only.

## Other Clues

Fences at the end of your garden are often easy to identify. If the property at the rear overlaps with yours, so the corners of your garden are not the same as



the corners of their garden, then you may be able to infer the ownership from the "overlapping" end.

In this diagram (which is a good example of a Land Registry plan), if your property is the "pink" one, then if the green fence is the same along the whole of the left hand boundary of the house at the rear, or even a good portion of it bounding more than one

of the houses neighbouring yours, then it's a good bet that the fence belongs to that house.

If that boundary is made up of fences provided by the houses on your street, then they probably belong to those houses.

The design of fences is another clue. Most people erect the posts first, and then attach the boarding or wires to their side.

It is also worth asking people. You could even ask your neighbours if they have lived there longer than you.

### **Expert advice**

Surveyors, particularly surveyors experienced in boundary questions, will be much better at applying these suggestions and may have others of their own pertinent to your circumstances. Normally, the question of where the boundary is must be dealt with before any other boundary issue is considered.

#### **What happens once you have found out?**

People have various reasons for wanting to know who owns a particular fence or where the boundary is. The fence may be damaged and needs replacing. Or they may want to alter it, add trellis to it, or build an extension which will involve their wall being the boundary feature instead. Or they might have similar plans. What you do next in all cases is to talk to the neighbours. Be nice to them. Remember that if you get this wrong only lawyers will benefit.

### **The neighbours will not fix their fence.**

There is no general legal obligation to fix fences unless you keep livestock. That means sheep, cows, goats, etc. Your options are:

1. Come to an arrangement with them about it. Sharing the cost may be a good way of dealing with this.
2. Erect your own fence just inside the fence line.

There may be a specific obligation to fix fences in the deeds, but most of them are not enforceable. If there is local management company or the property is leasehold, then the management company or freeholder may be able to

enforce the obligation, but you will usually have to pay their costs. Again, it is cheaper to build your own fence.

### **The neighbours' fence has fallen on to my land.**

The neighbour is responsible for the costs of removal, but it is always best to talk to them about repairing it. Your options are the same as the above, but you can ask them to remove the fence from your land and charge them with the cost of doing it if they will not. However if you do then you will certainly wind them up.

### **I really don't know whose fence it is, but I want it fixed.**

It is normally best to assume the fence is your neighbours' fence unless they have confirmed in writing that they don't own it. In that case the remedy is the same as "The neighbours will not fix their fence".

### **I want to put trellis on the fence or replace the fence.**

If this is your fence, you can do this. Remember that rear fences over 2m in height, including trellis, need planning permission. If the fence belongs your neighbour, get agreement, preferably in writing.

### **My neighbour has taken my fence away and put up something awful....**

You do have a claim against them, but bear in mind that settling this sort of claim is a good idea as the costs are usually horrendous. If there is work in progress, you may get an injunction.

### **How can we or other solicitors help you with this?**

The true answer is by doing as little as possible, as the costs of litigation are enormous, and we would advise you to do almost anything to avoid this. However we can of course interpret the available information and may be able to propose strategies to protect your interests. In all cases, it is better to seek to negotiate or mediate a consensual arrangement between you and your neighbours. But that does not mean you should allow yourself to be browbeaten into being prejudiced. It is nevertheless important to maintain a sense of perspective.

## **Warning to the reader**

This leaflet is not intended as a definitive guide to the law, nor as formal advice, and your individual circumstances may result in a different outcome from that anticipated by applying the principles set out here. No responsibility is assumed to anyone reading it or following its suggestions. It is written in good faith and no charge is made for it. Before taking any step which might be prejudicial, formal advice should be sought.

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