

IT'S THE LAW: Boundaries



The Chinese Government says that the Great Wall of China is probably about 8,850km long – but that they're not entirely certain about that. That's not that dissimilar to the Land Registry's attitude to the precise location of the boundary wall at the end of your garden.

Plan to be right

Developers spend quite a bit of their lives poring over Land Registry plans to check the boundaries of what is being bought, sold or developed. This is normally pretty important because the buyer wants to know what they are getting. On development transactions it's usually critical – a discrepancy of a few centimetres can be disastrous if it means your new building encroaches next door.

Wasted lives?

We aren't about to say that that time spent has been wasted. Nor that we won't carefully check Land Registry plans in the future. But the 'red lines' might not be quite as important as you think they are. In the majority of cases, the red lines show what are euphemistically called 'general boundaries'. S60(2) Land Registration Act 2002 puts the point succinctly: "A general boundary does not determine the exact line of the boundary".

Establishing precise boundaries is tricky. So the Land Registry has decided that, as a rule, it won't bother. When someone

applies to register land, the Land Registry won't seek to establish the precise boundaries. Instead, it will show what it concludes is a "reasonable interpretation of the land". In the 2011 case of *Drake v Fripp* – the difference between where the red line was shown and where the actual boundary lay was more than 4 metres!

Roads, hedges and rivers

In the absence of evidence to the contrary, a number of legal presumptions have evolved.

Roadways: the owner of a property that abuts a road is presumed to own to the middle of the road. That doesn't mean you can start charging your neighbours a toll – because the surface vests in the highways authority. But it's still an important presumption as it reduces the risk of small slivers of land existing between the edge of your title and the edge of the road.

Hedges and ditches: where two fields are divided by a hedge and manmade ditch, the boundary is presumed to run along the edge of the ditch furthest from the hedge. The



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theory is that the farmer stood just inside their land and dug the ditch – throwing the soil onto their own land (rather than dumping it in an unneighbourly fashion next door). It's then assumed that they planted the hedge on the pile of earth.

Non tidal rivers: if you have two properties separated by a natural non tidal river or stream you can presume that the boundary follows the centre line of the water – like a road, only with water instead of tarmac. For those of you who successfully endured geography at school you will realise that, over time, the course of a river naturally changes. The legal boundary changes also – remaining at the centre point of the water even though that is gradually moving. That means that one person's title is getting larger whilst the person on the opposite bank sees their title gently wash away. The property world can be cruel.

Foreshore and tidal rivers: the first presumption is that the foreshore is owned by the Crown. Not Elizabeth Windsor (or her fancy hat) – but a statutory body called The Crown Estate. The foreshore is the land lying between the high and low water marks of the mean average tide between the spring and neap tides. That means that if a common person (that's you and me) is lucky enough to own a house on the coast, then they own their garden down to the foreshore but not beyond.

The above are only presumptions. They can be rebutted by actual evidence to the contrary which is specific to a particular piece of land.

Could do better

That's all quite unsatisfactory if you need certainty. The Land Registry line is little more than a guesstimate and the legal rules are just presumptions – so you're at risk of a neighbour popping up with a 1798 deed proving that the precise boundary isn't where you thought it was.

So what can you do? There are two options.

You could enter into an agreement with your neighbour agreeing exactly where the boundary is. If done properly, this can be registered at the Land Registry. Technically the general boundaries rule still applies, but Courts have a tendency to accept boundary agreements as persuasive evidence in a dispute and also to hold that boundary agreements can, sometimes, bind future owners. However, note that boundary agreements should only be used where you are agreeing where the boundary already is. If you are trying to change the boundary – which effectively will involve one or both of you transferring strips of land to the other - you ought to use a formal transfer.

Alternatively, you could ask the Land Registry to 'determine' the boundary. That means that the Land Registry will actually go to the bother of working out precisely where the boundary

is and record that on the title. The general boundaries rule then no longer applies. The Land Registry will rarely do this off its own bat – but you can, subject to jumping through some hoops, ask them to do it.

High 'n' low

Once you've ascertained your boundary line you might ask: How high and how low? You are deemed to own to the centre of the earth and up to the sky – so you can build as high as you want – just look at the Shard. But you still need to get planning, you are not allowed to stop planes and your neighbours may have rights to light that you will interfere with if you start building the Burj Khalifa II in your back garden.

What's it got to do with you?

1. Since most Land Registry plans do not guarantee the exact boundary line, you need to carefully check any site before you buy. We'd suggest you literally walk the boundaries. Look for any signs that the boundaries on the plan might not reflect reality. This can be as little as slightly different tarmac used on a strip between the building and the pavement. If in doubt, let us know.
2. Don't just assume that a boundary structure does or doesn't belong to the property – regardless of what it looks like on the title plan. If the point is important to you – ask us.
3. You may own up to the sky – but your neighbour does also. Don't design your impressive cantilevered balconies such that they project beyond your boundary line and into someone else's property. You can trespass without touching the ground.
4. Given all the uncertainties, there are advantages to designing your developments so that buildings are not built up to the very edge of the title.

The tiny print

This is one of a series of leaflets published by Devonshires Solicitors' Real Estate & Projects Department aimed at our developer clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

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