

Is you is, or is you ain't, my boundary

It is important for owners and occupiers of land to know the physical extent of their property. This means understanding where, and what, the boundaries are whether horizontal or vertical. Why? The answer will have an impact on the rights and liabilities attached to a property and its owners.

Numerous examples can be given about the relevance of knowing the full extent of a property. To identify just two: You might be surprised to find a ransom strip you do not own between your land and the public highway when selling land; or maybe there is an area of land deemed part of your property under implied rules, where someone has fallen on rough ground and injured themselves, and it turns out you own the land?

There will often be evidence to support the case for the position of a boundary, both physically 'on the ground' and in title documents. But this is not always the end of the story. Despite the Land Registry tightening its requirements in the last few years for plans accompanying applications to register new titles, it often comes as a surprise to find out that the title plan forming part of a registered title is not conclusive*. Registered title plans are usually only issued on a 'general boundaries rule' basis, rather than showing fixed boundaries. This is the case unless the Property Register of the title says the boundaries are fixed. Therefore the title plan may not be the last word.

Here is some outline guidance, and a few of the principles, about boundaries to bear in mind:

- Compare the actual property with the deeds. Sometimes it can be useful to look back over preregistration deeds, where available;
- Watch out for discrepancies between plans attached to deeds and words used in deeds, and see if words say a plan shows the property for 'identification only',
- If you are involved with a property on its first registration, check the title plan is accurate as errors are more easily corrected at that time;
- Remember implied, but rebuttable, boundary rules can affect a property, for example:
- The 'middle line' rule may mean a property includes up to the middle point of an adjacent road even if the plan on a deed might suggest otherwise. Sometimes the Land Registry will add the highway area to a title, subject to public rights, which can be useful in anticipation of development where stopping-up may be needed later;
- A similar 'middle line' presumption may apply where there is a non-tidal river adjacent to a property;
- The position of ditches in relation to hedges or banks can be indicators of the position of a boundary, and the position of support piers/posts in walls or fences, or "T" symbols on plans can
- sometimes help as indicators of boundary ownership or responsibility;
- If Ordnance Survey maps are used to help establish boundaries, boundary features on the map are usually taken at the middle line of the feature in question;

- If part of a property is laid out as a forecourt which is generally accessible to the public, it is important to ensure the boundary is marked, such as by inset brass strips, and that other steps are taken to stop the land becoming deemed subject to public rights of way under the Highways Acts. If not, over time the extent of the property may be 'forgotten' and future opportunities lost. But if implied rights do arise under the Highways Acts, this does not remove liability for the land from the express or implied title owner;
- If the property is the interior of a larger building, it is important to know height limitations. If there are no words of limitation, then the demise may extend to the loft area over a flat, or the airspace over a roof. Also, if there are no words 'enveloping' a leasehold site, for example, where a demise may be of a whole building and its surrounding parking, then irrespective of restrictions in the lease preventing the tenant adding new buildings, a tenant may be able to exercise its statutory rights to carry out improvements and get round a restriction on alterations.

This article only touches the surface of a wide ranging topic, but is hopefully a useful reminder of some of the principles and pitfalls that can arise or opportunities that may be there to be exploited.

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