



Boundary Disputes



England and Wales

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1 Property Boundaries

The positioning of property boundaries is often difficult to detect and frequently gives rise to disputes and issues between neighbours. This is not helped by the reluctance of the Land Registry to record and register precise boundary positions, although their reasoning for this is quite understandable. It is thought this would likely cause disputes where they do not already exist.

There is no single document that specifies a property's boundaries and the available plans do not show them with precision. All the registered documents for each adjoining property should be read together, and consideration given to Common Law Presumptions where appropriate. In 90% of disputes reading and understanding these documents is all that is required.

Chapter Contents

General Boundary Rule
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General Boundary Rule

Since 1925 (Rule 278 Land Registration Rules 1925) the Land Registry have followed the General Boundary Rule, i.e. boundary positions are not recorded with precision but in a general way only. They are reasonably accurate until one starts to examine the boundary positions in feet and inches. The General Boundary Rule has now been encapsulated in section 60 (1) of the Land Registration Act 2002. Section 60 (1) reads:

- (1) The boundary of a registered estate as shown for the purposes of the register is a general boundary, unless shown as determined under this section.
- (2) A general boundary does not determine the exact line of the boundary.
- (3) Rules may make provision enabling or requiring the exact line of the boundary of a registered estate to be determined and may, in particular, make provision about—
 - (a) the circumstances in which the exact line of a boundary may or must be determined,
 - (b) how the exact line of a boundary may be determined,
 - (c) procedure in relation to applications for determination, and



(d) the recording of the fact of determination in the register or the index maintained under section 68.

If precise boundary positions have already been noted, however, in the deeds and documents from which the registered ownership documents have been created, then these boundary positions will remain, despite section 60.

Defining a Property's Boundaries

There are several ways to define a property boundary and once this is understood at least you will know what to look for in determining the boundary positions.

Each property has a legal boundary and a physical boundary. The legal boundary is a notional boundary line drawn between the adjoining properties, a line that has no thickness and that is used by Ordnance Survey to denote the division between the properties. The Land Registry will place a red line along the inside perimeter of the legal boundary to illustrate the general extent of the property owned.

The physical boundary is identified by using surface features such as hedgerows, ditches, rivers, fences and walls. Sometimes the physical boundary is described as running along the centre of a ground-based feature, and sometimes as being on its left or right.



Determining Your Boundary Positions

In determining your own boundary positions the exercise is rarely straight forward. Having said that, having access to all of the available documents registered at the Land Registry will provide sufficient information in the vast majority of cases, if you know what to look for, without taking the matter further. Litigation to resolve boundary disputes is very expensive and time-consuming and will in any event begin by looking at the Land Registry documents. Therefore you should always start by obtaining a Boundary Search; in most cases this will save you a lot of money.



If you are reading this guide you will have already obtained these documents from us and will be able to use this guide to assist you.

The following documents need to be looked at:

- Title Register for each adjoining property
- Title Plan for each adjoining property
- The Deeds and Deed Plans that have been copied by the Land Registry for each adjoining property
- Deeds that have not been copied by the Land Registry if you have them
- Lease and Lease Plan for one of the properties if either are leasehold (the Lease Plan is usually attached to the Lease)
- Common Law Boundary Presumption Guide



2 The Boundary Search

Chapter Contents

- Title Register
- Title Plan
- Deeds and Deed Plans
- Lease and Lease Plans
- Common Law Boundary Presumptions

Our Boundary Search includes all of the available documents held by the Land Registry referred to in the preceding chapter.

Briefly, these documents are:

Title Register

The Title Register for each property is included. They often contain different information to each other, including significant differences in the property descriptions and the Deeds that have been copied into the Register.

The Register is divided into 3 sections:

→ A Section

This section of the Register describes the property, i.e. it contains its address (where it has one), describes it by reference to the Title Plan, states its tenure, and describes matters that benefit the land such as easements, covenants and party wall declarations. If the property is leasehold there will also be a brief description of the lease.

Sample address from a Title Register:

1 (19.08.1999) The freehold land shown edged with red on the plan of the above Title filed at the Registry and being The Loft, Village Road, Ashbourne, Staffordshire DE4 9JJ.

→ B Section

This is where the class of Title is described, i.e. whether the title is an absolute title, possessory or qualified. The name and address of the owner also appear here, together with any restrictions on their ownership, notices, purchase price and positive covenants.

→ C Section

The C section of the Register provides details of mortgages and charges, leases and other matters that encumber the Title, such as restrictive covenants.

The Title Register is certainly an important document to examine in any boundary dispute, as it contains a description, a précis from any important Deed clauses that may affect the property (and a note to say whether the document has been retained as a digital copy by the Land Registry).

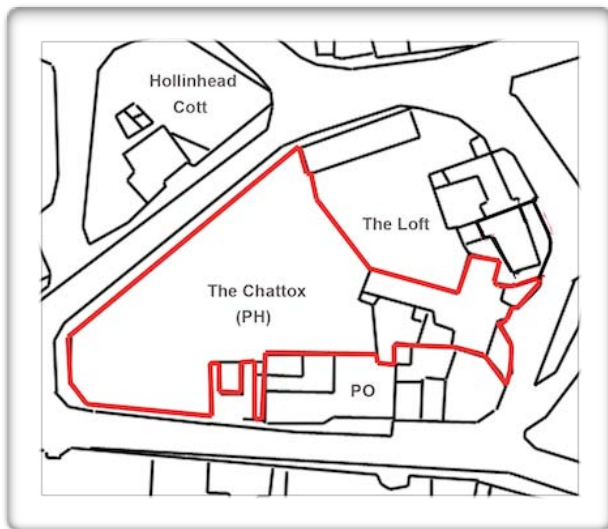


There will sometimes be a note that a Boundary Structure provision has been made in one of the Deeds.

Where there is considerable covenant, lease and other detail in the Register it is often placed into a schedule at the end of the relevant section for ease of reference.

Title Plan

The Title Plan for each property is included. The Title Plan is a large scale plan based on the Ordnance Survey. The general boundary lines are marked in red edging as in the sample below. In urban areas the plans are provided at a scale of 1:1250 and in rural areas at a scale of 1:2500.



The Title Plan often contains coloured markings, either as tints, edging or hatching. The purpose of the coloured markings is to describe different areas of the property that are affected by rights such as rights of way, rights of access and rights of drainage, and to show covenants affecting the use of a limited part of the land.

T and H marks do not usually appear on the Title Plan, although the Title Register often refers to them. References to them seen in the Title Register are usually contained in a cited Deed extract and the reference is actually to a Deed Plan and not the Title Plan. Deed Plans are usually attached to a Deed.

Deeds and Deed Plans

The digitally held Deeds and Deed Plans for each property are included with our search. These may include the Deeds from which the Title Register has been created, the purchase Deeds, Agreements, Licences, Deeds of Variation, Deed Plans, Abstracts, Mortgages, etc. The Deeds usually contain the most information for helping resolve Boundary Disputes. There are often many Deeds and they may be quite large, containing a wealth of information.

Not all Deeds are held digitally by the Land Registry, and we are unable to obtain copies of those that are not. You may, however, have them yourself, or they may be with your solicitor or mortgagee. As a general rule the Land Registry will have retained digital copies of the most helpful Deeds, and so they will form part of our Search.

Of particular benefit are the Deed Plans, i.e. Plans which have been drawn onto the Deeds. They will often contain T and H marks, which immediately resolve ownership and/or maintenance of the boundary. Not being affected by the General Boundary Rule, Deed Plans often contain measurements, angles and dimensions.

Lease and Lease Plan

Where one property is leasehold it is likely that both are, and usually each Lease will be identical save for the address. Where the properties are leasehold we provide one of these leases, usually the lease for your own property.



The Lease will contain enormous detail and will define the boundary positions quite accurately. The Lease will often have a Lease Plan attached, which again will show the property boundaries in more detail than the Title plan.

Common Law Boundary Presumptions

Where the above documents are silent on boundary positions and you are unable to obtain any indication of boundary positions it may be necessary to rely on Common Law presumptions. These will apply unless there is evidence to the contrary, and such evidence, if there is any, will usually appear in the above documents. So if you are having to rely on these presumptions it is unlikely that there will be any evidence to the contrary. They are listed and described in the following chapter.



3 Common Law Boundary Presumptions

Chapter Contents

- Ditch and Hedge Rule
- High Hedges
- Fences
- Walls
- Trees, Shrubs, Overhanging Branches and Roots
- Flats
- Highways
- Non-Tidal Rivers
- Canals
- Islands
- Lakes
- Seashore
- T and H Marks
- Horizontal Boundaries
- Projections

The Common Law of England and Wales comprises law built up from the judgments of decided cases in the higher courts, as opposed to Acts of Parliament. There are hundreds of cases relating to property boundaries and so it is safe to rely on these presumptions unless there is evidence to the contrary.

Ditch and Hedge Rule



Where two or more properties are separated from each other by a hedge and a ditch it is assumed that the landowner dug a drainage ditch, creating a bank upon which to plant his hedge and that the ditch would therefore be on the edge of his land, so that he would be shovelling the earth onto his own land.

High Hedges

Local authorities have statutory power to handle complaints relating to high hedges under Part 8 of the Anti-Social Behaviour Act 2003. Before the local authority will act, however, you must first try every other reasonable method to resolve your dispute. The hedge must be so high as to adversely affect your enjoyment of the property.

This may result in a formal notice to the owner of the hedge advising what steps need to be taken to remedy the situation. The maximum penalty for failing to comply is a £1,000 fine.



Fences

If the fence has posts or struts on one of its sides there is a presumption that the land owner on the side with the posts or struts is the owner of the fence.

Sometimes fences are supported by upright posts on one side. In such a case it is presumed that the owner of the fence is the one that faces the uprights posts.

Fences that adversely affect a neighbouring property can be removed after first obtaining an order from the court under the Property Law Act 1952

Walls

Where the Title Register or Deeds do not state where the boundary lies and the boundary consists of a garden wall it is presumed to be immediately on the side of the wall furthest from the garden of the owner who erected the wall. This is based on the surmise that a builder would ensure to build it with its outer face on the edge of his own land.

The Access to Neighbouring Land Act 1992 allows for the right to carry out basic preservation work to the exterior walls of a house where they cannot be accessed from the owner's property, although written notice of an intention so to do must be provided to the neighbour, enforceable by court injunction where he will not allow access.

Rights in relation to partly solid built walls (brick, stone, breeze block, concrete) are governed by the Party Wall Etc Act 1996. Party walls separate semi-detached and terraced houses. The Act provides that it should be assumed, unless there is contrary agreement, that the division of ownership is centred down the middle of the wall. Thus the expense of repair and maintenance is a joint one.

With regard to the height of garden walls and fences it often happens that the Title Register or Deeds create restrictions thereon, and the same would be enforceable by injunction if the height were to be exceeded.

Trees, Shrubs, Overhanging Branches and Roots

Where trees or shrubs form the boundary or part thereof they belong to the owner of the land upon which they are growing. Even where the branches, roots, fruit or leaves overhang, they still belong to the owner of the land upon which the tree is growing, subject to the right of the adjoining land owner to cut them back (and to pass them, including the fruit) to the owner. Cutting back beyond the boundary is not allowed.

Poison cannot be used to kill protruding tree roots as this may kill the tree.

Flats

There is a presumption that a flat includes the external walls even though the landlord would normally be legally responsible to carry out work to the exterior.

Highways



Where a road is unadopted the boundary of a property, in the absence of contrary agreement, will extend to the centre point of the road, passing and including any grass verges and pavements. If the road is adopted by the local authority, the adoption applies only to the surface thereof, and the airspace above and ground beneath still belongs to the frontager, i.e. the person whose house abuts that part of the road. Where valuable minerals lie beneath normally the mines and minerals therein will have been excluded from ownership, and a statement to this effect will appear in Section A of the Title Register.

Land Registry Title Plans display only the curtilage of the property, edged in red ink and not the land outside of the curtilage and extending to the centre point of the road. This is simply the best practice rule of the Land Registry, to avoid confusion, and does not override the legal presumption of ownership.

Non-Tidal Rivers



Similarly to public highways, the boundary of land adjoining a non-tidal river is presumed to extend to the centre point of the river, and as the river changes course over time, then so does the boundary (save where the course of the river is changed by design).

Canals

Boundaries abutting a canal exclude the canal and its tow path.

River islands

Islands in a non-tidal river belong to the adjoining land owners. The proportion owned will depend on where the mid point of the river bisects the island. Where the island lies to one side of the mid point it is owned by the owner of the land nearest it. Islands in tidal rivers or an estuary belong to the Crown.





Lakes

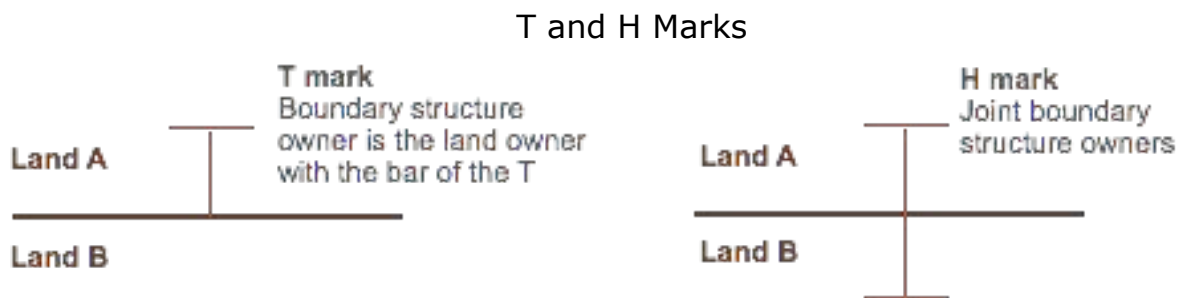
Unless the lake lies entirely within the grounds of the property owner there is no presumption of ownership.

Seashore

The foreshore is the land that lies between the high and low water marks of an ordinary tide , i.e.. between spring and neap tides, and is owned by the Crown, subject to any lettings. Boundaries adjoining the foreshore extend only to the very top of the foreshore and may move over time as the foreshore extends or withdraws due to rising or lowering sea levels.

T and H Marks

Although Title Plans rarely contain T and H marks there is often a reference to them in the Title Register, which is frequently mistaken for a reference to the Title Plan. Usually this reference appears in a citation of a clause from a Deed and actually refers to a Plan attached to the Deed. This is certainly worthwhile looking at. Such a Deed and its Plan will usually be held digitally by the Land Registry and is supplied with our Boundary Search.



A T mark contains one bar. The land upon which the bar is shown is the owner of the boundary structure. An H mark denotes joint ownership, there being a bar on each side of the boundary structure. There is often a reference in the Title Register to a Boundary Structure Notice, which would be part of a Deed containing a Deed Plan.

Horizontal Boundaries

There are 4 specific instances where boundaries may appear horizontally:

1 Underground Workings

Where there are underground mines, minerals or caves which have been sold separately. The A section of the Title Register would contain a statement to the effect that the same are excluded from ownership.

2 Flats

Where a property is divided into flats there will be a detailed plan attached to the lease which will show the horizontal (and other) boundaries of the flats. A copy of the Lease is provided with our Boundary Search where one or more of the properties is a flat.



3 Creeping Freeholds (Cellars)

Where a cellar extends below another property there is a presumption that the same is owned by the owner of the house that has use of the cellar. In such cases the Land Registry will generally include a note in the Register for the flat above the cellar to the effect that the cellar is excluded from its ownership. There will also be a statement in the Register for the owner of the cellar to say that it is included.

4 Flying Freeholds

A flying freehold may be created where properties adjoin and the upper part of one of them contains one or more rooms that project above the adjoining property. As with creeping freeholds the Land Registry will make a note on the title of each Register.

Projections

The eaves and/or foundations of a property that project beyond the property boundary are not likely to appear in the Title Plan or any Deed Plans, as these will show the boundaries at ground level. Where this is the case the property ownership will include them, but will not include the air space projecting down from the eaves or up from the foundations, where the same projects beyond the boundaries of the property.



4 What to Look for in the Boundary Search

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- Title Register and Title Plan
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 - Revisions and Amendments to Title Plan
 - Party Wall Declaration
 - Implied Boundaries
 - Boundary Structure Notices
 - Land Added to the Title
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 - Deed of Rectification
 - Boundary Location Covenants
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- Deeds
 - Property Description in an Old Deed
 - References to Deed Plans
 - Party Wall Declarations
 - Acreage Sizes and Field Parcel ID Numbers
 - Boundary Divisions
 - T and H Marks
- Deed Plans
 - T Marks and H Marks
 - Measurements

Title Register and Title Plan

Address Description

The A section of the Title Register will state the address of the property, or if there is no full postal address it will describe the property, and it will refer to the area of land edged red on the Title Plan for a more precise address or description. The red edging on the Title Plan is the general boundary of the property.

Neither the description in the Title Register nor the red edging on the Title Plan will extend beyond the garden, although in actuality you own up to the mid-point of the road outside, unless there is a contrary agreement. It is the Land Registry's general practice not to show the extended border. In practice the local authority will have adopted, in most cases, the surface of the road, but you will still own the land beneath and the space above, but subject to any exceptions or restrictions that may appear in the Title Register. For example, it is common for minerals and mines to be excluded.

Sample address from a Title Register:

1 (19.08.1999) The freehold land shown edged with red on the plan of the above Title filed at the Registry and being The Loft, Village Road, Ashbourne, Staffordshire DE4 9JJ.



Revisions and Amendments to the Title Plan

Changes made to the Ordnance Survey Map will often result in a revision of the Title Plan, or the Title Plan may be amended to show a Determined Boundary, a note of an Agreed Boundary or for some other reason. Whenever the Title Plan is changed a note will appear in the A section of the Title Register to state as much.

Sample revision note of an amendment to a Title Plan:

1 (19.08.1999) A new filed plan showing an amended extent has been prepared.

Party Wall Declarations

The A section of the Title Register often contains declarations as to boundary walls and fences within the property that are declared to be, or are declared not to be party walls. Party walls would be maintainable jointly with the adjoining land owner. Where such boundaries are declared not to be party walls or fences the declaration will go on to say who they belong to.

Sample extract from Section A of a Title Register relating to a Party Wall Declaration:

3 The wall separating the building on the property from the building on the said retained land is a party wall withing the meaning of the Party Walls etc Act 1996 and shall be upheld and maintained accordingly at the joint expense of the owners for the time being of the properties on either side of it.

Implied Boundaries

The location of a boundary may be implied from a covenant or easement in the Title Register. In the example below, the burden of an easement to lay pipes and a sewer on the land shown with a black line drawn over brown and yellow tints on the Title Plan, implies that the owner's boundary includes the said land.

The said covenant is cited from a Deed that has been copied by the Land Registry and will be included with our Boundary Search. The Deed will provide further details and will also contain a Deed Plan that may contain measurements and show the exact line of the nearby boundary.

2 The land is subject to the following rights granted by a Deed dated 12 May 1970 made between (1) Brook Limited and (2) Jesse Properties Limited (Grantee):

"FIRST the right to enter upon the brown land for the purpose of laying and constructing a sewer or drain between the points marked "X" and "Y" along the approximate position of the line coloured black on the said plan the Grantee making good all damage occasioned thereby SECONDLY free right and liberty for the Grantee and its successors in title to use the said sewer or drain for the passage and conveyance of sewage from the said land and the land edged yellow on the said plan THIRDLY full right and liberty for the Grantee and its successors in



title and the owner or owners for the time being of the land edged yellow at all reasonable times to enter upon the brown land for the purpose of repairing maintaining renewing and relaying so often as may be required the said sewer or drain the person exercising such right making good at this own expense for damage or disturbance which may be caused thereby to the surface of the brown land."

NOTE: Copy plan filed under ESX96741212343

Boundary Structure Notice

Provisions as to Boundary Structures will often appear in the Title Register, and usually the Deed citing the provision is mentioned together with a statement that a copy has been made. Where copy Deeds are made they will be included with our Boundary Search. Boundary Structure Notices could provide important information as to the positioning and maintaining of particular boundaries.

Sample statement as to a Boundary Structure Notice:

2 (14.07.2009) The Conveyance dated 12 March 1925 referred to in the Charges Register contains a provision as to boundary structures.

NOTE: Copy filed.

The description of the Notice may be more detailed than the above, e.g.

"The Transfer dated 18 December 2003 referred to above contains provisions as to light and air and boundary structures and easements and the exclusion of the operation of rule 251 of the Land Registration Rules 1925 as therein mentioned."

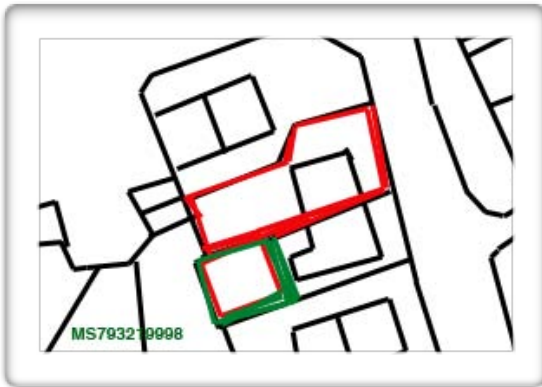
Land Added to the Title

Where further land is acquired by a property owner he will often apply to the Land Registry for the title to it to be merged with his existing title. Where this occurs the Title Register will state as much and will also state that the Title Plan has been amended to include the additional land. The Title Plan will be revised to show the additional land as included within the red edging identifying the property owned.

14 (30.12.2002) The land edged and lettered G and H in red on the title plan was added to the title on 30 January 2002.



Land Removed from the Title



Where a property owner disposes of part of his land but also retains part then his Title Register will make reference to this and will describe the land being sold as having been removed from his property and as having its own Title and Title Number, and will also state that the Title Plan has been changed to show the removed land as edged in green with its own Title Number, also in green.

Deed of Rectification

Following the registration of a property the extent of the property purchased may be wrongly drafted in the documents. Where this is so a Deed of Rectification in the form of a Transfer will be drawn and registered, and the Title Register and Title Plan will be amended accordingly. The Transfer Deed will contain a Deed Plan that will describe the rectification and this will usually be copied by the Land Registry, and will therefore be included with our Boundary Search.

Extract from Title Register relating to a Deed of Rectification:

4 (24.06.2005) By a Deed of Rectification dated 19 June 2005 made between (1) John Doe (2) North West Bank plc and (3) Meadows Group Limited the extent of the land transferred by the Transfer dated 25 August 1997 shown edged and numbered 7 in blue on supplementary plan number 1 was amended.

Boundary Location Covenants

Looking through the list of covenants in a Title Register can be rewarding if you know what you are looking for, e.g. there may be a covenant that would have been binding on the builder of the property not to erect a wall or fence within a certain distance from a physical structure. This would imply that the boundary wall of the property does not encroach within that said distance.

Extract from covenant details in the C section of a Title Register:

"... And that no building or erection other than a garden wall should at any time be erected on said three pieces of land within (1) 20 feet to back edge of footway in Earlton Road (2) 15 feet to back edge of footway of Rose Mount Drive (3) that no boundary wall or fence should be of greater height above the footwalk level than 3 feet 6 inches and (4) that no more than one third of net site area or curtilage of any dwellinghouse to be erected on said three pieces of land should be covered with buildings ..."



Again, a purchaser may covenant, when buying a property, to erect a boundary fence along a route marked "A" to "B" on a plan. This would have been a personal covenant entered into by the purchaser, and the document creating the covenant, together with a Deed Plan, may have been copied and therefore part of our search.

Extract from B section of a Title Register referring to a Personal Covenant to erect a boundary fence as specified on a marked plan:

SCHEDULE OF PERSONAL COVENANTS

1 The following are details of the personal covenants contained in the Transfer dated 10 march 1994 referred to in the Proprietorship Register:

"The Transferees hereby jointly and severally covenant to erect a fence between the points marked 'A' and 'B' on the plan annexed hereto WITHIN one month from the date hereof to such specification as the Transferees may reasonably require and thereafter to maintain the same in good repair."

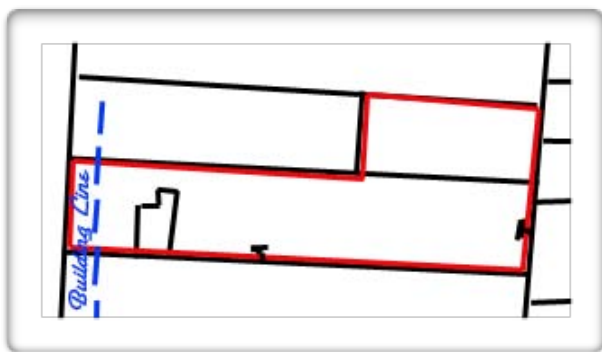
NOTE: Copy plan filed

The plan referred to is a Deed Plan and the note that it has been copied means that it is available and would have been included with our Boundary Search.

Building Line and T Marks

Although it is unusual for a Title Plan to contain T marks they sometimes do, as in this sample, where there is a covenant to erect a fence next to the roads abutting a property, on the sides of the owner's boundary marked with a T. A further reference to a Building Line and the frontages of roads defines the boundary even more.

Sample Title Plan extract showing T marks and building line:



Extract from the accompanying Title Register referring to the T marks and building line:

THE SECOND SCHEDULE

1 The Purchaser is forthwith to make if not already in existence and afterwards to maintain a good and sufficient fence to the approval of the Vendors or their Surveyors next



the roads and on the sides of his plot marked "T" within the boundary.

2 No building shall be erected between the building line and the frontages to the various roads as shown on the plan. Not more than one house shall be erected on plots 1 to 86 inclusive.

Deeds

Property Description in an Old Deed

An old Deed will sometimes contain a description of the property address that will provide more precise details of the property boundaries, as in the following sample that provides land measurements and OS references.

1. IN pursuance of the said agreement and in consideration of the sum of FIFTY TWO THOUSAND POUNDS now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor as beneficial owner hereby conveys unto the Purchasers ALL THAT dwellinghouse (part of which was formerly used as a shop) known as "The Gables" situate adjoining The George Hotel at Alstonfield in the County of Stafford TOGETHER WITH the yard garden and outbuildings thereto belonging which said property contains an area of 9 perches or thereabouts and forms part of Ordnance No 468 on the ORDNANCE SURVEY MAP (Staffordshire Sheet 1X-12 Edition

References to Deed Plans

1922) and was delineated for identification purposes only on the plan annexed to a Conveyance dated the Fifteenth day of October One thousand nine hundred and fifty one and made between Henry Wright Whitaker John Digby Mills and James Richard Sancroft Grimwood-Taylor of the one part and Wilfred John Adams of the other part and thereon edged pink SUBJECT TO the exception and reservation of all veins

The property description is sometimes defined more clearly in a Deed Plan, i.e. a plan attached to a conveyance or transfer. When a copy of the Deed is available then usually the Deed Plan will be also, as it is usually attached to the Deed. This sample refers to the Deed Plan.



Walls that are Not Party Walls

Sample from a Deed declaring ownership of walls that are not party walls:

"IT IS hereby agreed and declared that such of the boundary walls and fences as are not party walls and fences shall belong to the Purchaser as indicated on the plan and be maintainable and repairable by him and his successors in title."

Acreage Sizes and Field Parcel ID Numbers

In the following Deed extract a Schedule provides field sizes in acres and their location on the Ordnance Survey Map.

THE FIRST SCHEDULE before referred to

<u>No. on Ordnance Plan</u>	<u>Description</u>	<u>Area Acres</u>
90	Lower Burnham's Ground	50.005
92	Upper Burnham's Ground	8.966
93		13.463
✓128	Field	3.313
129	"	4.075
131	"	.475
132	Farmhouse, homestead, etc	.995
133	Field	2.025
134	Croats and Croats Grubbing	23.283
522	Orchard	2.161
524	Little Grubbing	4.512
529	Ridings	4.557
✓530	Field	6.699
✓531	"	3.065
✓Part 535	Butcher's Close	<u>7.441</u>
		135.035
	Less given up for road-widening	<u>2.450</u>
		132.585
Part 130	Field, late Coombe's Farm	1.476
95	Cottage and garden (Tenants)	
	Fleet and Turner)	
	Ditto (Tenant A. Butler) }	.296
Part 528	Little Shaw Wood	1.250
521	Wood	<u>1.814</u>
		<u>A137.421</u>

Boundary Divisions

Divisions in walls, fences and other structures that divide the property from an adjoining one may contain declarations as to ownership as in the following Deed extract:



13.2.5 Such of the division walls, fences or structures as divide the Property from other premises shall be deemed to be party structures and to belong in equal halves (considered as divided vertically down or along the middle throughout the whole length) to the premises on either side and the provisions of Section 38 of the Law of Property Act 1925 shall apply to them.

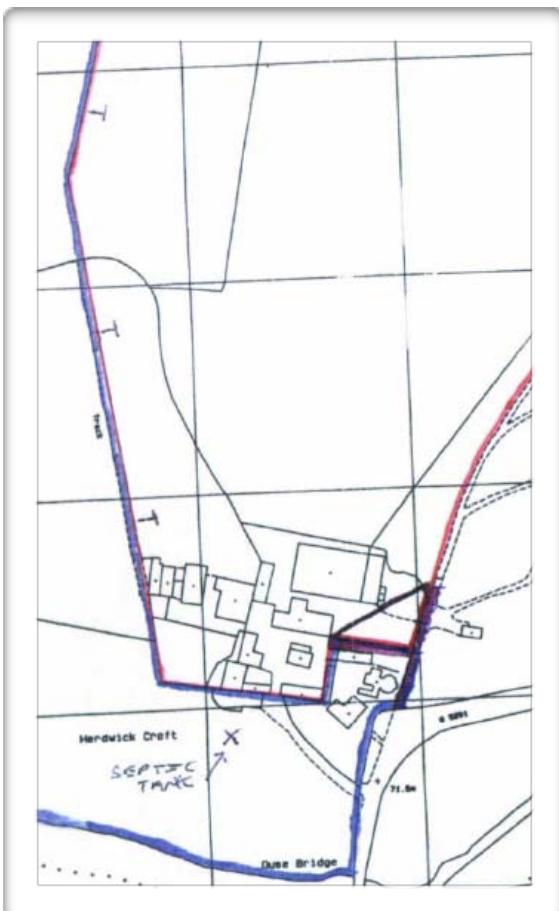
T and H Marks

Deeds often describe ownership of a fence or other boundary structure with T or H marks, as this example.

5.2 FENCES: To maintain repair and (if necessary) renew walls fences or hedges on or within the boundary of boundaries of the Property in the position marked with an inwards "T" on the Plan. If there are no such "T" marks on the Plan this clause does not apply

Deed Plans

T and H Marks



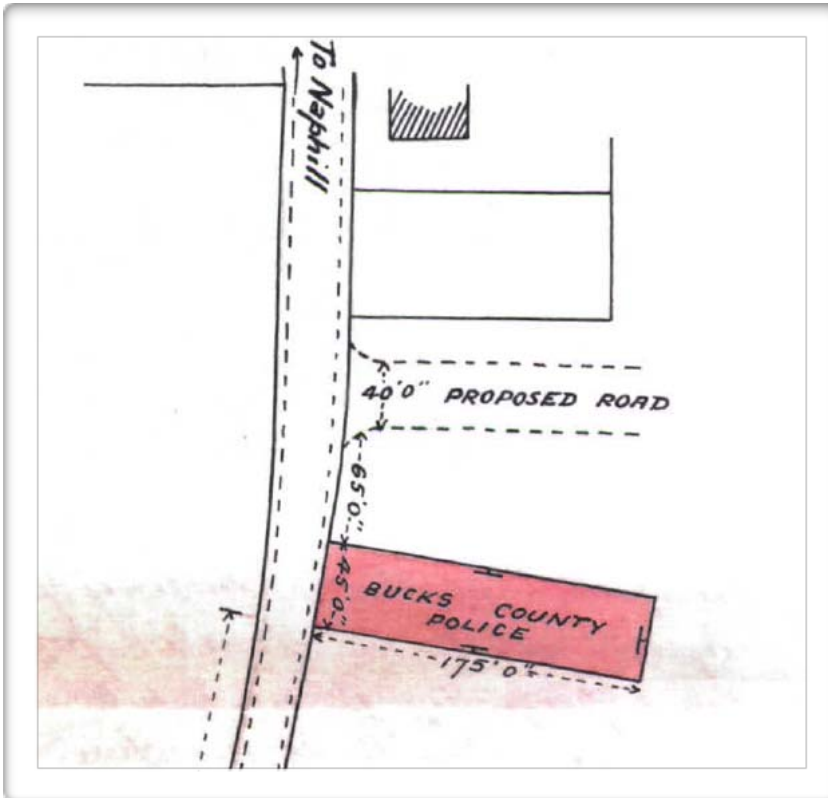
In this copy Deed Plan The T marks along the western boundary fence are apparent, and indicate that ownership belongs to the landowner of the parcel of land on the eastern boundary.



Measurements

Deed Plans often contain measurements, angles and dimensions, which can be very helpful in determining precise boundary positions. They almost never appear in Title Plans.

Sample Deed Plan containing measurements:





5 Boundary Opinion (including Boundary Search)

Our Boundary Opinion is an informal one, not intended to have the same evidential and technical quality as that provided by chancery counsel, and accordingly costs a lot less. It is prepared by members of our staff who are experienced in Land Registry matters but who do not have the technical qualifications to provide an opinion of a more evidential nature.

The fee includes the cost of our Boundary Search and includes annotated documents with highlighted text for ease of reference. The opinion is an informal one and is prepared by our boundary search team based on 20 years of Land Registry document and search experience. It should be regarded as of persuasive authority only.

The cost of the included Boundary search is built into the price of the Opinion. If we discover that further helpful documents are available that would not normally be included with our Boundary Search we will contact you and ask whether you wish us to obtain them and will advise you of the additional cost.

In preparing the Opinion we will look at all the documents included with the Boundary Search.

After paying for the search you will be given the option of uploading a draft plan to further describe the boundary problem, if you think that it will help.



6 Boundary Agreements

Chapter Contents

- Informal Boundary Agreement
- Formal Boundary Agreement (Determined Boundary)
- Boundary Agreement Service

There are 2 types of Boundary Agreements:

- 1 Informal Boundary Agreement
- 2 Formal Boundary Agreement

Informal Boundary Agreement

Adjoining property owners may agree between them where the line of a legal boundary should run, and may record this in the form of a written memorandum and an attached detailed plan. No part of either property is actually conveyed or transferred to either party, but the parties merely agree between themselves where the boundary should be. Such a memorandum is sufficient so long as the agreement is consistent with the available evidence.

In the leading case of *Yeates and another v Line and another* 2012 it was held that as no property is conveyed or transferred an informal boundary agreement does not have to be in the form of a contract or Deed. Therefore it can be prepared in the form of a memorandum attaching a detailed map. The map does not have to be prepared by a Land Registry proficient surveyor, although it should be as clear and accurate as possible. This means that it is a lot cheaper to resolve a boundary issue in this manner rather than by more formal means.

Thus an informal boundary agreement is usually a written document. Although the case of *Yeates* tells us it does not have to be in writing, if it is to be noted on the Land Registry Titles, it should be, and is in any event more logical to prepare it in writing and to sign it. It is prepared with the consent of each adjoining neighbour, and usually takes the form of a memorandum with an attached detailed plan. The Agreement makes it clear that no property is to be conveyed or transferred but that the parties are merely agreeing between themselves where the boundary lies (as “an act of peace, quieting strife and averting litigation” (*Megarry J in Neilson v Poole* 1969)). The memo and plan are signed by each party and sent to the Land Registry for them to note on the Title Register of each property.

Although the memo is not legally binding it is strongly persuasive authority for a subsequent purchaser. The Agreement can always be formalised at a later date, if required, e.g. by applying to the Land Registry for a Determined boundary.

Examples of when to use an Informal Boundary Agreement

This is a non-exhaustive list of examples. You will most likely think of many others.

- To show that the boundary passes along the centre line of a hedge
- To show that it passes on the side opposite the supports of a wooden fence (rather than the presumptive case of the same side)



- To show that the boundary runs along an old wire fence as opposed to a more modern wooden fence running close to it.

Once the memorandum has been completed and signed by the parties it should then be sent to the Land Registry for noting on the respective Title Registers in accordance with paragraph 5 of Schedule 4 to the Land Registration Act 2002, to bring the Register up to date. In addition to noting the register a copy of the agreed plan will be retained by the Land Registry and made available for anyone to obtain a copy should they wish to do so, e.g. the solicitors acting for a subsequent purchaser.

Formal Boundary Agreement

Once a boundary position has been agreed between the parties, whether recorded by memorandum or not, if it is desired to formalise the agreement and to make it legally binding then an application should be made to the Land Registry for a Determined Boundary. The application is submitted on Land Registry Form DB.

With your application you will need to include a plan identifying the exact line of the boundary. The plan should show sufficient surrounding physical features to allow the general position of the boundary to be drawn on an Ordnance Survey map. You should also include, in the plan, where the plan itself is not sufficient, a verbal description of the boundary.

The Land Registry have clear guidelines for the format of a plan supporting an application for a Determined Boundary. It is unlikely that a layman will be able to prepare a plan with these requirements, and with the further requirements of precision in measurements, i.e. accuracy to $\pm 10\text{mm}$, taken horizontally (not along a slope) and taken from at least 2 defined points on surrounding physical features such as the corners of buildings. As per Land Registry Practice Guide 40:

The plan supporting an application to determine a boundary:

- must clearly show the extent of the boundary to be determined by suitable reference such as colouring or edging
- must identify the start, end and any turning points of the determined boundary, preferably by way of lettered points
- must clearly show sufficient surrounding detail to allow the general position of the boundary to be identified on the Ordnance Survey map, and show its orientation, for example, a north point
- must be drawn to a stated scale - the preferred scale is no smaller than 1:200 and ideally no larger than A3 size (and if necessary more than one plan can be used)
- must describe the relationship with physical features where the boundary coincides with them - for example, on which side of the physical feature the boundary runs, or through which point of the physical feature the boundary passes
- should describe those features used as points of reference in relation to the determined boundary, for example, "corner of the building" in the plan legend
- must only include information and detail that is relevant - any superfluous information that could clutter the plan or possibly contradict the relevant information should be left off, and any co-ordinates shown on the plan that are not National Grid co-ordinates must be removed
- must be signed by other owners where they have completed panel 9 of form DB, and
- must not bear any statement of disclaimer or endorsement which casts doubt on the accuracy of the plan such as 'for identification purposes only'

In practice, therefore, a chartered surveyor will usually be required to complete it.

It might also be necessary to include other documents, e.g. a Deed Plan, a statutory declaration or a survey report.



The Land Registry will require both parties to agree the boundary position before they will visit the property to see it for themselves. Form DB allows for both parties to sign their consent.

Once the Land Registry determine the boundary it becomes fixed, i.e. legally binding, and is no longer a “general boundary” within the meaning of Section 60 of the Land Registration Act 2002.

Boundary Agreement Service

We offer only the Informal Boundary Agreement. This service includes the following:

- Boundary Search
 - Title Register and Title Plan for each property
 - Title Deeds for each property
 - Lease for one of the properties (where appropriate)
 - Boundary Guidebook
- Draft Informal Boundary Agreement memorandum
- Blank Informal Boundary Agreement memorandum (for your use if you think it should be different from the above)
- Draft Informal Boundary Plan based on your own Title Plan, and ready for you to complete the boundary detail
- Blank Informal Boundary Plan (for your use if you wish to change anything on the above)
- Completed form AP1 for signature by you.