



Land registration – Land Registration Act 2002, section 60 – Land Registration Rules 2003, rules 118 – 120 – application to First-tier Tribunal for determination of exact line of boundary – First-tier Tribunal holding that application plan inaccurate and directing Chief Land Registrar to cancel application – First-tier Tribunal making findings as to location of the boundary – appeal to Upper Tribunal - jurisdiction of First-tier Tribunal to make findings on the location of the boundary in such a case - whether First-tier Tribunal’s findings as to location of boundary correct – appeal as to costs order made by First-tier Tribunal

[2018] UKUT 206 (TCC)

**UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

Appeal No: UT/2017/0046

BETWEEN:

**(1) GRAHAM LESLIE LOWE
(2) MARILYN ELIZABETH LOWE**

Appellants

and

WILLIAM DAVIS LIMITED

Respondent

Tribunal: Hon Mr Justice Morgan

Sitting in public in London on 8 and 9 May 2018

**Mr John Small, instructed by Josiah Hincks Solicitors LLP, for the Appellants
Ms Stephanie Tozer, instructed by Moss Solicitors LLP, for the Respondent**

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DECISION

Introduction

1. In this case, William Davis Ltd applied pursuant to section 60(3) of the Land Registration Act 2002 and rule 118 of the Land Registration Rules 2003 for the determination of the exact line of the boundary between its land and adjoining land owned by Mr and Mrs Lowe. Mr and Mrs Lowe succeeded in resisting the application in that the First-tier Tribunal (Mr Thorowgood) (“the FTT”) made an order directing the Chief Land Registrar to cancel the application. The FTT released a decision which gave its reasons for the direction which it made and also made findings as to the location of the boundary. Those findings were in favour of William Davis Ltd and adverse to Mr and Mrs Lowe.
2. William Davis Ltd has not sought to appeal the direction given by the FTT as to the cancellation of the application. Mr and Mrs Lowe also do not wish to appeal against that direction, which was favourable to them. However, Mr and Mrs Lowe have been given permission to appeal against the findings of the FTT as to the location of the boundary. They submit that the FTT did not have jurisdiction to make those findings in view of the direction it had given as to the cancellation of the application. Mr and Mrs Lowe further appeal those findings on the basis that they were wrong in fact and in law. Mr and Mrs Lowe also challenge an order for costs made by the FTT. By that order, Mr and Mrs Lowe were ordered to pay 70% of the costs incurred by William Davis Ltd. When making that order, the FTT took account of the fact that it had made findings as to the location to the boundary which findings were adverse to Mr and Mrs Lowe.

The registered titles

3. Mr and Mrs Lowe are the registered proprietors of the property known as 10 Fishpond Way, Woodthorpe, Loughborough, Leicestershire, LE11 2SF, which is registered at the Land Registry under title no. LT314291. The property is shown edged red on the plan to the title. The plan is an extract from an Ordnance Survey plan. In the ordinary way, the plan shows only the general boundaries of the property.
4. William Davis Ltd is the registered proprietor of a large area of land at Woodthorpe, Loughborough, Leicestershire, which is registered at the Land Registry under title no. LT301726. The property is shown edged red on the plan to the title. The plan is an extract from an Ordnance Survey plan. In the ordinary way, the plan shows only the general boundaries of the property. The land which is the subject of this title has a boundary with the land registered under title no. LT314291.

The statutory provisions and rules

5. All references to sections of an Act of Parliament are to the sections of the Land Registration Act 2002, save where the contrary is stated.
6. Section 60 provides:

“60 Boundaries

(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.

(4) Rules under this section must provide for applications for determination to be made to the registrar.”

7. The rules contemplated by section 60 include rules 118 to 120 of the Land Registration Rules 2003 which provide:

“118.— Application for the determination of the exact line of a boundary

(1) A proprietor of a registered estate may apply to the registrar for the exact line of the boundary of that registered estate to be determined.

(2) An application under paragraph (1) must be made in Form DB and be accompanied by—

(a) a plan, or a plan and a verbal description, identifying the exact line of the boundary claimed and showing sufficient surrounding physical features to allow the general position of the boundary to be drawn on the Ordnance Survey map, and

(b) evidence to establish the exact line of the boundary.

119.— Procedure on an application for the determination of the exact line of a boundary

(1) Subject to paragraph (2), where the registrar is satisfied that—

(a) the plan, or plan and verbal description, supplied in accordance with rule 118(2)(a) identifies the exact line of the boundary claimed,

(b) the applicant has shown an arguable case that the exact line of the boundary is in the position shown on the plan, or plan and verbal description, supplied in accordance with rule 118(2)(a), and

(c) he can identify all the owners of the land adjoining the boundary to be determined and has an address at which each owner may be given notice,

he must give the owners of the land adjoining the boundary to be determined (except the applicant) notice of the application ... and of the effect of paragraph (6).

(2) The registrar need not give notice of the application to an owner of the land adjoining the boundary to be determined where the evidence supplied in accordance with rule 118(2)(b) includes—

(a) an agreement in writing with that owner as to the line of the boundary, or

(b) a court order determining the line of the boundary.

...

(6) Unless any recipient of the notice objects to the application to determine the exact line of the boundary within the time fixed by the notice (as extended under paragraph (5), if applicable), the registrar must complete the application.

(7) Where the registrar is not satisfied as to paragraph (1)(a), (b) and (c), he must cancel the application.

(8) In this rule, the “*owner of the land*” means—

(a) a person entitled to apply to be registered as the proprietor of an unregistered legal estate in land under section 3 of the Act,

(b) the proprietor of any registered estate or charge affecting the land, or

(c) if the land is demesne land, Her Majesty.

120.— Completion of application for the exact line of a boundary to be determined

(1) Where the registrar completes an application under rule 118, he must—

(a) make an entry in the individual register of the applicant's registered title and, if appropriate, in the individual register of any superior or inferior registered title, and any registered title affecting the other land adjoining the determined boundary, stating that the exact line of the boundary is determined under section 60 of the Act, and

(b) subject to paragraph (2), add to the title plan of the applicant's registered title and, if appropriate, to the title plan of any superior or inferior registered title, and any registered title affecting the other land adjoining the determined boundary, such particulars of the exact line of the boundary as he considers appropriate.

(2) Instead of, or as well as, adding particulars of the exact line of the boundary to the title plans mentioned in paragraph (1)(b), the registrar may make an entry in the individual registers mentioned in paragraph (1)(a) referring to any other plan showing the exact line of the boundary.”

8. The Land Registry publishes a number of Practice Guides. Practice Guide 40 is a detailed guide dealing with land registry plans. Supplement 2 gives guidance as to preparing plans for land registry applications. Supplement 4 deals with boundary agreements and determined boundaries. I was provided with the version of Supplement 4 updated as at 10 July 2017 but I understand that the relevant paragraph, to which I will refer below, was also current at the time of the application in this case. Paragraph 4.4.1 of Supplement 4 states that where the application to fix an exact boundary is by reference to a plan using measurements, then the measurements must be accurate to +/- 10 mm.

9. Section 73(1) provides that, subject to certain exceptions which are not material, anyone may object to an application to the registrar. Section 73(4) provides that the right to object is subject to rules. Section 73(4) and (5) provide that unless the registrar is satisfied that the objection is groundless, he must give notice of the objection to the application. Section 73(7) then provides:

“(7) If it is not possible to dispose by agreement of an objection to which subsection (5) applies, the registrar must refer the matter to the First-tier Tribunal.”

Section 73(8) provides that rules may make provision about references under section 73(7).

10. The Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003 lay down the procedure to be followed for a referral to the FTT. The operative provisions of these rules have been amended to refer to the FTT, in place of the Adjudicator, but the title of the rules still refers to the Adjudicator and not to the FTT. Under rule 3, the registrar is required to prepare a case summary which contains certain information including details of the disputed application and details of the objection to that application. Rule 5(2) provides:

“(2) The registrar must as soon as practicable—

- (a) send to the First-tier Tribunal a written notice, accompanied by the documents set out in paragraph (3), stating that the matter is referred to the First-tier Tribunal under section 73(7) of the Act,
 - (b) inform the parties in writing that the matter has been referred to the First-tier Tribunal, and
 - (c) send the parties a copy of the case summary prepared under rule 3 in the form sent to the First-tier Tribunal.”
11. By section 108(1), the FTT has the function of determining matters referred to it under section 73(7). By section 110(1), the FTT may, instead of deciding a matter, direct a party to the proceedings to commence proceedings within a specified time in the court for the purpose of obtaining the court’s decision on the matter. Section 110(3) provides that Tribunal Procedure Rules may make provision about the functions of the FTT in consequence of a decision on a reference under section 73(7) and may make provision enabling the FTT to determine or give directions about the determination of the application to which the reference relates.
12. In the present context, the procedural rules which govern the procedure of the FTT on a reference under section 73(7) are the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Rule 40 of these Rules provides:

“40.— Requirements directed to the registrar

- (1) The Tribunal must send written notice to the registrar of any direction which requires the registrar to take action.
- (2) Where the Tribunal has made a decision, that decision may include a direction to the registrar to—
 - (a) give effect to the original application in whole or in part as if the objection to that original application had not been made; or
 - (b) cancel the original application in whole or in part.
- (3) A direction to the registrar under paragraph (2) must be in writing, must be sent or delivered to the registrar and may include—
 - (a) a condition that a specified entry be made on the register of any title affected; or
 - (b) a direction to reject any future application of a specified kind by a named party to the proceedings—
 - (i) unconditionally; or
 - (ii) unless that party satisfies specified conditions.”

13. By section 111(1) and (2C), “a person aggrieved” by a decision of the FTT under the 2002 Act may appeal, with permission, to the Upper Tribunal save that where the appeal is on a point of law arising from the decision of the FTT it may not be brought under section 111(1) but may instead be brought, with permission, under section 11 of the Tribunals, Courts and Enforcement Act 2007 by “any party to a case”.

The procedural history

14. On or about 30 December 2013, William Davis Ltd applied to the Land Registry in Form DB for the determination of the exact line of the boundary between the two registered titles, LT301726 and LT314291. William Davis Ltd lodged a plan with the form and the plan was said to identify the exact line of the relevant boundary. There were also lodged with the application some earlier conveyancing documents in support of the application as to the exact line of the boundary.
15. Mr and Mrs Lowe were duly given notice of the application for the determination of the exact line of the boundary and on 2 April 2014 they wrote to the Land Registry with their formal objection to the application. Mr and Mrs Lowe made a number of points in their letter. Their essential contention was that the true boundary between the two titles was in a different place from that shown on the plan lodged with the application.
16. On 29 July 2014, the Land Registry notified William Davis Ltd and Mr and Mrs Lowe that as it had not been possible to dispose of the objection by agreement the matter in dispute was referred to the FTT in accordance with section 73(7). This notification was accompanied by a case summary which stated that Mr and Mrs Lowe had objected to the application on the grounds that they did not agree with the line of the boundary as shown on the plan lodged with the application.
17. The parties to the reference to the FTT served Statements of Case. William Davis Ltd contended in its Statement of Case that the boundary was along the middle of the hedge which had existed for some years behind 10 Fishpond Way. It relied on the plan lodged with the application which showed the hedge. In their Statement of Case, Mr and Mrs Lowe contended that there was insufficient evidence to confirm the boundary as sought by William Davis Ltd. They disagreed with the assertion that the boundary was the centre line of the hedge. They contended that on the far side of the hedge furthest from 10 Fishpond Way (i.e. to the east of the hedge) there had been and was a ditch and that the boundary was on the far side of the ditch. They relied on the hedge and ditch presumption.
18. The FTT gave directions in relation to the reference on 9 February 2015, 20 March 2015 and 31 July 2015. The directions dealt with matters such as amending Statements of Case, disclosure, exchange of witness statements and expert evidence. The parties gave disclosure and exchanged witness statements. Both sides wished to rely on expert evidence. William Davis Ltd served a report prepared by a surveyor, Mr Maynard. Mr and Mrs Lowe served a report by a surveyor, Mr Carpenter. Mr Maynard replied to Mr Carpenter’s report and Mr Carpenter then replied to Mr Maynard.

19. The reference to the FTT was heard over four days, with three days in November 2015 and a fourth day on 3 May 2016. The FTT judge went on a view of the relevant land. The parties provided skeleton arguments in advance of the hearing. The skeleton argument for William Davis Ltd defined the issue as: where is the boundary? The skeleton argument for Mr and Mrs Lowe referred to the assertion by William Davis Ltd that the boundary was at the centre of the hedge. It was then contended that the boundary was 4 feet from the edge of the hedge furthest from 10 Fishpond Way. It was submitted that given the evidential dispute between the parties, the application for the determination of a fixed boundary should be dismissed.

20. What happened at the hearing before the FTT was described in its decision at 2.12 in these terms:

“As I have already intimated, when the matter first came before me in November of 2015 the argument focussed upon the Applicant’s claim, on the one hand, that the boundary was the mid-line of the hedge which formerly divided the land which is now the rear of the Respondents’ property from the Applicant’s land, as set out in the Applicant’s Statement of Case, and the Respondents’ various counterclaims as to the true position of the boundary the high point of which was the easternmost edge of the ditch which they allege was formed beyond that hedge. It was only in the course of Mr Maynard’s answers to questions from me about the accuracy of the Application Plan, after he had been cross examined by Mr Small, that Mr Maynard conceded that the line of the boundary shown on the plan did not exactly coincide with the notional mid-line of hedge as marked on the Application Plan. He estimated that the discrepancy at point X was approximately 50mm but much smaller at point W. That evidence is uncontested but it is right also to note that Mr Maynard also said that the pecked line which depicts the centre line or mid-point of the hedge was subject to a considerable degree of imprecision arising from the depth of the hedge and consequent difficulty and approximation of the original surveyors in identifying points from which to plot that mid-point. I have no reason whatever to doubt Mr Maynard’s evidence on either of these points. I would also note that part of the problem here arises from the curvature of the line of the hedge which means that the apparent discrepancy between the claimed line and the centre of the hedge is greater in the middle of the line than at either end. However, given the inherent inaccuracy of the plotting of the centre line of the hedge it also seems to me to be possible that the line claimed could, theoretically at least, be the correct one.”

21. In the interval between the 3 days of hearing in November 2015 and the last day of the hearing on 3 May 2016, the Upper Tribunal decided the case of Murdoch v Amesbury [2016] UKUT 3 and that decision was the subject of submissions

to the FTT on 3 May 2006. The FTT summarised this part of the closing submissions in paragraphs 2.13 and 2.14 of its decision, as follows:

“2.13 These circumstances, in light of the decisions to which I have referred above, give rise to two starkly opposing submissions. Miss Tozer, for the Applicant, contends that, “the matter,” referred is defined by the scope of the Respondents’ objection. She says that the Respondents had the opportunity to object to the accuracy of the plan when they filed their objection, that they did not do so and that it is too late for them to do so now. She maintains that I have no jurisdiction even to consider the accuracy of the plan because no objection to her client’s application has been made on that account. She says that I must decide simply whether the true line of the boundary is that now claimed by the Applicant, that is to say, the centre line of the hedge, or not.

2.14 Mr Small, for the Respondents, on the other hand, maintains, in reliance upon *Murdoch v Amesbury*, that Mr Maynard’s concession that the plan is not accurate to the 10 mm tolerance prescribed by the Land Registry’s guidance means that the application must inexorably fail and that I am, as Judge Dight held, unable either to investigate or make any findings in relation to the position of the boundary.”

The findings of the FTT

22. In its decision, the FTT first considered the approach which it should adopt in response to the submissions as to its jurisdiction. The FTT analysed the decision in *Murdoch v Amesbury* and the later decision of the Upper Tribunal in *Bean v Katz* [2016] UKUT 168. The FTT also considered *Silkstone v Tatnall* [2012] 1 WLR 400 and the relevant statutory provisions and rules. The FTT concluded that it had jurisdiction to determine the underlying merits of the claim which led to the application. This involved the FTT in a consideration of the accuracy of the plan lodged with the application and the extent to which the boundary line shown on that plan was consistent with the true position of the boundary.
23. The FTT then considered the factual evidence and the expert evidence and analysed the conveyancing documents. The FTT reached the conclusion that the boundary between the properties ran along the centre line of the hedge. It accepted the case which had been put forward by William Davis Ltd and rejected the case put forward by Mr and Mrs Lowe.
24. The FTT then addressed the question as to the accuracy of the plan lodged with the application. It commented on the difficulty of precisely representing a natural feature such as a hedge on a plan and the further difficulty of plotting the centre line of an old overgrown hedge such as the hedge in question, particularly to a tolerance of +/- 10 mm. The FTT then held at paragraph 7.5:

“It follows from my conclusions that: i) the true line of the boundary is the centre line of the hedge; and ii) that the

Application Plan accurately identifies that centre line, that the boundary line as it is depicted on the Application Plan does not correctly identify either the true boundary line or the line of the boundary for which the Applicant has contended in its arguments on this reference; albeit the inaccuracy amounts to a small number of (almost certainly insignificant) centimetres.”

25. The FTT also held that it was unnecessary for it to address the alternative claim by William Davis Ltd that it and its predecessors had been in adverse possession of the land to the east of the hedge (i.e. on the other side from 10 Fishpond Way) but if that had been necessary, the FTT would have held that it and its predecessors in title had been in adverse possession of that land since 1947.
26. The FTT then stated that it would direct the Chief Land Registrar to cancel the application to determine an exact boundary and commented that it would be a matter for William Davis Ltd to consider whether a fresh application to determine an exact boundary would be capable of satisfying the Land Registry’s requirements as to the accuracy of the plan to be relied upon. The FTT then made an order directing the Chief Land Registrar to cancel the application which had been made.
27. Following the FTT’s decision on the application, the FTT received written submissions as to costs and on 13 January 2017 it released its decision dealing with the costs of the application. It ordered Mr and Mrs Lowe to pay 70% of the costs of William Davis Ltd. In its decision on costs, the FTT referred to the following matters:
 - (1) the application to determine an exact boundary had been prompted by the unprincipled attempt of Mr and Mrs Lowe to encroach upon the land of William Davis Ltd;
 - (2) the FTT had accepted the case of William Davis Ltd and rejected the case of Mr and Mrs Lowe in relation to the location of the boundary;
 - (3) the FTT’s reasons for rejecting the application were not ones which had been identified by Mr and Mrs Lowe in their statement of case and only emerged in the course of the FTT asking questions from Mr Maynard after he had been cross-examined by Mr Small for Mr and Mrs Lowe;
 - (4) the FTT was critical of the evidence given by Mr Lowe;
 - (5) William Davis Ltd ought to have realised that the line of the boundary had not been correctly plotted on the plan;
 - (6) in retrospect, it might have been better if William Davis Ltd had applied to define the boundary with greater precision or brought an action in trespass;
 - (7) overall, William Davis Ltd was the substantially successful party, the costs had been principally expended on matters on which it had succeeded and it should recover the bulk of its costs;

- (8) it would not be right to award Mr and Mrs Lowe the costs of the jurisdiction issue but they should pay only a proportion of the costs of William Davis Ltd.

The appeal

28. The FTT gave Mr and Mrs Lowe permission to appeal on the following three grounds:
- (1) that the FTT was wrong to find that it had jurisdiction to find the true position of the boundary;
 - (2) that the FTT was wrong to find that the true boundary was along the centre line of the hedge; and
 - (3) that the FTT was wrong to order Mr and Mrs Lowe to pay 70% of the costs of William Davis Ltd.

The jurisdiction of the FTT: the submissions

29. Mr and Mrs Lowe have appealed the decision of the FTT in so far as it decided that the boundary was the centre line of the hedge. They submit that the FTT did not have jurisdiction to make that decision. This submission is irrespective of whether the FTT was right or wrong as to its conclusion. They submit that even if the FTT was correct in this part of this decision, it was a decision reached without jurisdiction and the Upper Tribunal should so determine.
30. Before addressing the detail of the argument on the question of jurisdiction, I point out that the FTT did not make any order to give effect to its decision as to the location of the boundary. So far as relevant to this point, the only order made by the FTT was to direct the Chief Land Registrar to cancel the application made by William Davis Ltd. Mr and Mrs Lowe do not of course wish to appeal against that order but they do wish to appeal against the FTT's findings as to the location of the boundary. Even though Mr and Mrs Lowe have appealed against the decision of the FTT in relation to the boundary, Mr Small submitted to me that even if the FTT had jurisdiction to make that decision, its decision was not in any way binding on Mr and Mrs Lowe and, in particular, that decision would not create an issue estoppel in any subsequent court proceedings which raised an issue as to the location of the boundary. Conversely, Mr Small submitted that Mr and Mrs Lowe had standing to appeal the FTT's decision as to the location of the boundary but he then went on to submit that even if the Upper Tribunal determined that appeal against Mr and Mrs Lowe then, again, they would not be bound by that determination and, in particular, it would not create an issue estoppel in any subsequent court proceedings which raised an issue as to the location of the boundary.
31. I found the various legal conclusions contended for by Mr Small to be quite remarkable. If he is right that Mr and Mrs Lowe are not bound by the decision of the FTT (even if it had jurisdiction to make that decision), then why is he appealing that decision? Further, is it appropriate for the Upper Tribunal to hear an appeal against the decision of the FTT which is not binding on Mr and Mrs

Lowe and to produce its own decision which will not be binding on either Mr and Mrs Lowe or William Davis Ltd?

32. It seemed to me that in order to address the case as put by Mr Small it might be desirable for the Upper Tribunal to determine whether Mr and Mrs Lowe are bound by the decision of the FTT as to the location of the boundary and/or whether they have standing to appeal that decision. However, Ms Tozer who appeared for William Davis Ltd accepted that Mr and Mrs Lowe had standing to appeal on all of the grounds which they put forward and she further submitted that it was not necessary for me to determine whether the decision of the FTT as to the location of the boundary gave rise to an issue estoppel.
33. With some hesitation, I have decided that I should consider the arguments as to the jurisdiction of the FTT and having reached my conclusion on that question then to decide what to do.
34. In their grounds of appeal relating to the jurisdiction of the FTT, Mr and Mrs Lowe pointed out that where there is an application for the determination of a fixed boundary, the relevant rules do not provide for the respondent to that application to put forward its own plan showing the boundary. They also contended that the “matter” referred to the FTT was the application for the determination of a fixed boundary and not the various issues raised by their statement of case in response. Then they contended that once Mr Maynard told the FTT that his plan was inaccurate the FTT “ceased to have jurisdiction” to make a decision as to the location of the boundary.
35. Mr Small submitted that once the FTT became aware that the plan lodged with the application was defective, “its jurisdiction ends” and it did not have jurisdiction to go on to decide on the location of the boundary. It was said that the FTT did not need to go further than find that the plan was defective and it did not have to make a finding as to the location of the boundary. It was contended that Mr Maynard had conceded that the plan was defective which meant that the FTT then lacked jurisdiction to determine the location of the boundary and even if Mr Maynard had not conceded that point the only decision was to that effect and a decision as to the location of the boundary was academic. Mr Small submitted that the case was covered by the decision in Murdoch v Amesbury and that I should determine that in the present case the FTT did not have jurisdiction to make any decision as to the location of the boundary.
36. Ms Tozer for William Davis Ltd submitted that the FTT had jurisdiction to decide upon both the location of the boundary and whether the line shown on the plan accorded with that location. Further, the FTT was right in all the circumstances of this case to make its findings as to the location of the boundary even though it also concluded that the right disposal of the application was to direct the Chief Land Registrar to cancel the application. William Davis Ltd did not challenge the FTT’s decision to give that direction and did not submit that the FTT should have taken some other course which would have resulted in a revised plan being used to determine the exact boundary.

The jurisdiction of the FTT: discussion and conclusions

37. I have set out the relevant statutory provisions and the rules earlier in this decision. It is possible to discuss the jurisdiction of the FTT in this case by reference to those provisions and rules before considering whether that discussion ought to be affected by what has been decided in other cases.
38. In this case, William Davis Ltd applied for the determination of the exact line of the boundary pursuant to section 60. Under rule 118(2) of the Land Registration Rules 2003 that application had to conform to certain requirements. Rule 118(2)(a) required there to be a plan “identifying the exact line of the boundary claimed” and rule 118(2)(b) required there to be supporting evidence to establish “the exact line of the boundary”. William Davis Ltd claimed that the exact line of the boundary was the centre of the hedge and they lodged a plan which they said was intended to show the centre line of the hedge. Therefore, William Davis Ltd had made an application for the purposes of section 60 and rule 118 of the Land Registration Rules 2003.
39. The matter then fell to be considered under rule 119 of the Land Registration Rules 2003. Pursuant to rule 119(1), the registrar was satisfied that the plan identified the exact line of the boundary which was claimed and that William Davis Ltd had shown an arguable case that the exact line of the boundary was in the position shown on the plan. It was not said that the registrar could not have made that decision. I consider that it was permissible for the registrar to be satisfied of those matters in this case. This meant that the next steps in the procedure were taken and that led to Mr and Mrs Lowe objecting to the application which had been made. In their objection, they denied that the boundary ran along the centre line of the hedge and they contended for a different boundary line. “The matter” was then referred to the FTT for determination. “The matter” included a dispute as to the location of the boundary. At that stage no issue had been raised as to the accuracy of the plan if it should turn out that William Davis Ltd was right in contending that the boundary ran along the centre line of the hedge.
40. The parties then prepared for a hearing before the FTT. At that stage the dispute concerned the location of the boundary and there was no separate issue as to the accuracy of the plan. On that basis, both parties were seeking the determination of the FTT as to the location of the boundary.
41. At the hearing before the FTT, both parties continued to seek the determination of the FTT as to the location of the boundary. Mr Small cross-examined Mr Maynard the expert witness for William Davis Ltd on his evidence as to the location of the boundary. Mr Small did not raise with Mr Maynard any separate issue as to the accuracy of his plan.
42. As the FTT explained in its decision, the FTT itself asked Mr Maynard questions as to the accuracy of his plan. That led to closing submissions as recorded in the FTT decision. William Davis Ltd continued to contend that the only issue before the FTT was the location of the boundary and Mr and Mrs Lowe contended that in view of Mr Maynard’s answers the application should be dismissed and the location of the boundary left undetermined.

43. If the FTT had not taken the initiative of asking Mr Maynard about the accuracy of the plan, there could be no suggestion that the FTT lacked jurisdiction to determine the location of the boundary. That was the very thing which both parties were asking the FTT to do and it plainly had power to do it. The parties obviously envisaged that the FTT would determine the location of the boundary and if Mr and Mrs Lowe succeeded in their case as to where the boundary was, the application would be dismissed; conversely, if William Davis Ltd's case prevailed then the FTT would determine the exact boundary in accordance with the plan.
44. When the FTT raised the question as to the accuracy of the plan and when it went on to hold that the plan was inaccurate, even on the basis that the boundary ran along the centre line of the hedge, the FTT had a case management decision to make. It could decide where the boundary was and then, having done so, it could go on to hold that the plan was not accurate as to the location of the boundary. Or the FTT could have said that even on the assumption that William Davis Ltd's case as to the boundary was correct, the plan was inaccurate and, on that ground, the Chief Land Registrar should be directed to cancel the application. I see no reason to hold that the FTT lacked jurisdiction to make this case management decision in either of these possible ways.
45. Mr Small's submission appeared to be that initially the FTT had jurisdiction to determine the location of the boundary but when there was a question as to the accuracy of the plan, the FTT was then constrained to decide that point as a preliminary issue and having decided that the plan was inaccurate the FTT lost a jurisdiction which it previously enjoyed to determine the location of the boundary. I do not agree. The decision for the FTT was a case management decision as to how it would address and dispose of the matters which had been argued before it. The case management question for the FTT was of a fairly usual character. Speaking generally, a tribunal may often find that a respondent to an application argues that an application should fail on various grounds. Some of the grounds involve fact finding and/or the exercise of a discretion. Other grounds may involve more technical lines of defence. A tribunal may decide to take a technical line of defence as a preliminary issue and then, if the respondent succeeds on that issue, the tribunal may decide not to consider the other lines of defence. Conversely, a tribunal may decide not to go down the route of a preliminary issue but instead to decide all of the issues which have been argued making all necessary findings of fact and addressing all relevant matters of discretion.
46. So far, I have considered the question as to the jurisdiction of the FTT by reference to the statutory provisions and the rules and without reference to any authority. The parties referred to Jayasinghe v Liyanage [2010] 1 WLR 2106, Silkstone v Tatnall [2012] 1 WLR 400 and Inhenagwa v Onyeneho [2018] 1 P&CR 10. Those cases are helpful in so far as they give guidance as to how to identify "the matter" which is referred to the FTT for its decision pursuant to section 73(7) and section 108(1)(a). The above discussion as to "the matter" which was referred to the FTT in this case is in accordance with the guidance given in those authorities.

47. The parties also referred to Murdoch v Amesbury [2016] UKUT 3 (TCC) and Bean v Katz [2016] UKUT 168 (TCC), both decisions of the Upper Tribunal. Mr Small submitted that I should follow the decision in Murdoch v Amesbury and, if I did so, I should hold that the FTT had no jurisdiction in the present case to determine the location of the boundary.
48. In Murdoch v Amesbury, the appellants had applied for the determination of the exact line of a boundary. In the result, the application was dismissed on the ground that the plan was not sufficiently accurate as to the exact boundary. Nonetheless, the FTT went on to make a determination as to the location of the boundary. Its determination was adverse to the case which had been presented by the appellants. The appellants appealed that determination making two points; the first was that the FTT did not have jurisdiction to determine the location of the boundary and the second point was to submit that the determination was wrong. The respondents accepted that the FTT was right to dismiss the application to determine the exact line of the boundary. They submitted that the FTT had jurisdiction to determine the location of the boundary and that its determination had been a correct one. They also submitted that the appellants did not have standing to appeal because their appeal did not involve a challenge to the FTT's direction that the application for an exact boundary should be dismissed. However, the respondents went on to submit that the FTT's determination of the location of the boundary would give rise to an issue estoppel in any further proceedings.
49. In the event, the Upper Tribunal:
- (1) held that the appellants had standing to appeal the decision as to the location of the boundary;
 - (2) declined to rule on the question whether the decision of the FTT as to the location of the boundary gave rise to an issue estoppel;
 - (3) held that the FTT lacked jurisdiction to determine the location of the boundary;
 - (4) discussed the contentions as to the location of the boundary and held that the FTT had been wrong in its determination of the boundary in so far as its determination was based on the conveyancing history but an alternative finding in favour of the respondents based on adverse possession by the respondents was not incorrect.
50. The Upper Tribunal's decision in Murdoch v Amesbury considered the jurisdiction question in a detailed section at paragraphs [54] to [83]. I will not set out long passages from that part of the decision but I note the following parts of the reasoning in that case:
- (1) the jurisdiction of the FTT is a jurisdiction conferred by statute and the FTT has no inherent jurisdiction;

- (2) the focus of an application under section 60 is the accuracy of the identification of the exact line of the boundary and not questions as to title;
 - (3) for the purpose of rules 118 and 119, the registrar is not required to undertake a detailed investigation into questions of title;
 - (4) there are other provisions in the Land Registration Act 2002 which are better suited to the resolution of boundary disputes between neighbours, for example, sections 65 and 97;
 - (5) section 108 indicated that the FTT was to have limited powers;
 - (6) in the case before the Upper Tribunal, the appellants had not applied for the resolution of a general boundary dispute and the issue for the FTT was the accuracy of the plan lodged with the application;
 - (7) the decision for the FTT was a binary one to direct the registrar either to give effect to the application or to cancel it; there was no power to give a direction to give effect to the respondents' position;
 - (8) the FTT had a different power under section 110 to direct a party to commence court proceedings to decide a matter; that section informed the FTT as to what it ought to do where there was a general boundary dispute; the FTT should direct the parties to commence court proceedings.
51. Murdoch v Amesbury was considered by the Upper Tribunal in Bean v Katz. In that case, the applicants had applied for the determination of a fixed boundary. The application plan showed a straight line save in relation to one small section where the plan showed a curved line. The FTT held that the straight line was correctly shown but in relation to the small section the boundary ran at a right angle and was not the curved line shown on the application plan. The applicant appealed to the Upper Tribunal in relation to the small section. The Upper Tribunal held that the FTT was wrong in law to reject the curved line shown on the plan and directed the Chief Land Registrar to give effect to the application as if the objection to it had not been made.
52. The Upper Tribunal in Bean v Katz considered the decision in Murdoch v Amesbury and made the following points:
- (1) the FTT has jurisdiction to disposed of determined boundary references where the objection is not to the quality of the plan but involved disputes as to title and as to the location of the boundary;
 - (2) it is inevitable that the FTT will make findings about the position of the boundary in order to give reasons for its decision, whether the application for a determined boundary succeeds or fails;
 - (3) rule 40(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 permits the FTT to include a direction to the

registrar to give effect to the application “in whole or in part” and rule 40(3) allows the FTT to add a condition to its direction.

53. Mr Small submitted that I should follow the decision in Murdoch v Amesbury. He pointed out, correctly, that a single judge in the Upper Tribunal normally follows the decision of another judge in the Upper Tribunal: see Dorset Healthcare NHS Foundation Trust v MH [2009] PTSR 1112 at [38] and 4-6 Trinity Church Square Freehold Ltd v Corporation of the Trinity House [2017] L&TR 25 at [32]. However, Murdoch v Amesbury and Bean v Katz are both decisions of the Upper Tribunal and are to a considerable extent inconsistent as to the jurisdiction of the FTT. In these circumstances I have to form my own view as to the scope of the jurisdiction of the FTT on an application to determine a fixed boundary in the light of the reasoning in both of these decisions.
54. I am not persuaded by the decision in Murdoch v Amesbury to reach a different conclusion from that which I have expressed above namely that, in the present case, the FTT did have jurisdiction to make the decision which it made. I find the decision in Bean v Katz to be altogether more persuasive as to the jurisdiction of the FTT.
55. I make the following comments on the question of jurisdiction:
- (1) the FTT has jurisdiction to determine the matter referred to it;
 - (2) the FTT does not have an inherent jurisdiction;
 - (3) the procedure of an application for the determination of an exact line of a boundary is plainly available in a case where there is no wider boundary dispute but it is desirable to identify more precisely the exact line of the boundary;
 - (4) however, the procedure for the determination of an exact line of a boundary can also be used where there is a general boundary dispute and where there is no separate question as to the accuracy of the applicant’s plan if the applicant’s case as to the general boundary were to be accepted; indeed, this was accepted (I think correctly) by Mr and Mrs Lowe at all stages in this matter until it emerged in the course of questions from the FTT that there was a separate question as to the accuracy of the plan;
 - (5) further, this procedure can also be used where there is an issue as to the location of the boundary and an issue as to the accuracy of the application plan;
 - (6) in a case where there is an issue as to the location of the boundary and also an issue as to the accuracy of the application plan, it is open to the FTT to decide all of the matters in dispute before it but it is also open to it to decide only the issue as to the accuracy of the application plan if that can be determined separately and might dispose of the entire application; it is for the FTT to decide as a matter of case management which course to take; it has jurisdiction to take either course;

- (7) although the right order to make on an application for the determination of an exact line of a boundary will normally be either a direction to give effect to the application or to cancel the application, that does not limit the jurisdiction of the FTT to make findings and decisions; further, pursuant to rule 40 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the FTT may include a direction to the registrar to give effect to the application “in whole or in part” and may add a condition to its direction;
- (8) in a case where the issue between the parties is as to which of them is right as to the location of the boundary and there is no separate issue as to the accuracy of the application plan, the FTT’s direction as to whether the registrar should give effect to the application or cancel the application will be the means of resolving the dispute as to the location of the boundary;
- (9) the power under section 110 allows the FTT to decide “the matter” or to direct the parties to commence court proceedings to decide “the matter”; the FTT is not compelled to direct the parties to commence court proceedings but it has a genuine discretion as to which course to adopt; the wording of section 110(1) shows that the FTT has jurisdiction to decide the same matter as it can direct should be the subject of court proceedings;
- (10) in some circumstances, the FTT may well take the view that a general boundary dispute would be better litigated in the courts rather than before the FTT but it is not obliged to take that view in every case;
- (11) if it were the case that it was foreseeable that the FTT’s decision as to a general boundary would not give rise to an issue estoppel because the application might fail on a separate point as to the accuracy of a plan (a point which I do not decide), that might be a consideration which would militate in favour of the FTT directing that the parties commence court proceedings where the decision of the court on the location of the boundary would, or at least would be more likely to, give rise to an issue estoppel.
56. In the present case, so far as I can tell, the parties do not agree as to whether the FTT’s decision in this case as to the location of the boundary gives rise to an issue estoppel. I understand William Davis Ltd to take the stance that that decision did give rise to an issue estoppel and Mr and Mrs Lowe to take the stance that it did not. Although I encouraged the parties to make submissions to me on that question, they both preferred not to do so. However, neither of them appeared to disagree with the decision in Inhenagwa v Onyeneho [2018] 1 P&CR 10 which shows that not every finding of a court or a tribunal which is within its jurisdiction gives rise to an issue estoppel.
57. I also wish to comment on Mr and Mrs Lowe’s standing to appeal in this case. The FTT gave them permission to appeal and that decision was no doubt influenced by the part of the decision in Murdoch v Amesbury which dealt with the standing of the appellant in that case. In Murdoch v Amesbury, the appeal

was brought by appellants who had successfully resisted the application for the determination of a fixed boundary but who wished to challenge certain findings of the FTT as to the location of the boundary. The appellants wished to submit that the FTT had no jurisdiction to make those findings. The Upper Tribunal held that the appellants had standing to appeal on that ground. The Upper Tribunal was influenced by the decision of the Court of Appeal in Secretary of State of Work and Pensions v Morina [2007] 1 WLR 3033. In the present case, my conclusions mean that the appeal by Mr and Mrs Lowe on the ground that the FTT did not have jurisdiction to make findings as to the location of the boundary must fail and it is therefore not strictly necessary to comment on whether Murdoch v Amesbury was right to hold that an appellant who has succeeded below can bring an appeal which raises issues as to jurisdiction. I comment however that the position of Mr and Mrs Lowe in this case is very different from the position of the Department in the Morina case as the issue as to jurisdiction in that case was of considerable general importance to the Department in relation to the operation of the system of appeals.

58. In addition, I will comment on the ability of Mr and Mrs Lowe to appeal the findings of the FTT as to the location of the boundary on the further ground they put forward, namely, that the FTT was wrong to make those findings. If the FTT makes findings which are within its jurisdiction and those findings will give rise to an issue estoppel in other proceedings, then it may be that the Upper Tribunal will be prepared to hear an appeal against those findings of the FTT. However, if the relevant findings do not affect the order made by the FTT and could not themselves be the subject of an order of the FTT and do not give rise to an issue estoppel, then I would question whether those findings could, or should, be made the subject of an appeal to the Upper Tribunal. I referred earlier to the submission made by Mr Small that the findings of the FTT as to the location of the boundary did not give rise to an issue estoppel and indeed the decision of the Upper Tribunal on appeal as to the location of the boundary would also not give rise to an issue estoppel but yet Mr and Mrs Lowe had standing to appeal. If that were the position, then it would be a most undesirable one. In Maslyukov v Diageo Distilling Ltd [2010] RPC 21 at [55]-[57], it was held, in relation to a statutory scheme which had many similarities to the scheme with which I am concerned, that certain findings of fact by the lower tribunal did not give rise to an issue estoppel and there was no ability to appeal against those findings when the ultimate decision in the case went in favour of the intended appellant. I consider that that authority should be followed in an ordinary case of a proposed appeal to the Upper Tribunal where the proposed appeal related to a finding which was not binding on the appellant. The position might be different if the case involved some special feature which justified the Upper Tribunal hearing an appeal in relation to that finding. My qualification in relation to a case with special features is meant to accommodate the fact that the Court of Appeal has recognised that it may be appropriate to allow an appeal to be brought in order to avoid unfairness: see Re W (A Child) [2017] 1 WLR 2415.
59. Further, even if Mr and Mrs Lowe had standing to bring such an appeal, there must be powerful arguments as to why they should not be granted permission to bring such an appeal, if it had the consequences described by Mr Small as to issue estoppel. It therefore appears to me that the question whether the findings

of the FTT in this case would give rise to an issue estoppel should have had great significance on the question of standing to appeal and/or permission to appeal.

60. To show that I have not overlooked the point, I draw attention to the specific feature of the present case that Mr and Mrs Lowe were granted permission to appeal against the FTT's order for costs and the FTT's findings as to the location of the boundary were material to its decision on costs. In the event, since there was no argument before me as to Mr and Mrs Lowe's standing to appeal the FTT's findings as to the location of the boundary I will now deal with that appeal.

The location of the boundary

61. I will now describe the relevant history of the matter. Prior to 1947, the land owned by William Davis Ltd and the land at 10 Fishpond Way were in common ownership, being part of the Beaumanor Estate. Although all of the relevant land had a common owner, the land was the subject of two agricultural tenancies of two adjoining farms, the two tenants being Mr Moss (Parks Grange Farm) and Mr Shuttlewood (Grange Farm). William Davis Ltd says that the land which it claims was let to Mr Shuttlewood and the adjoining land which is now 10 Fishpond Way was let to Mr Moss. In 1946, the Beaumanor Estate offered a large area of land in the vicinity, including these two farms, for sale by auction. Mr Moss bought Parks Grange Farm and Mr Shuttlewood bought Grange Farm. On 14 April 1947, the Beaumanor Estate conveyed Parks Grange Farm to Mr Moss and, on 16 April 1947, it conveyed Grange Farm to Mr Shuttlewood. Thus, the relevant title was split by the first conveyance on 14 April 1947 and the relevant boundary was created by that conveyance. Mr and Mrs Lowe are the successors in title to Mr Moss and William Davis Ltd is the successor in title to Mr Shuttlewood.
62. The FTT heard evidence of fact and expert evidence and the FTT judge also went on a view of the relevant land. In its decision, the FTT made findings as to whether there was, or had been, a ditch which ran on the eastern side of the hedge at the rear of 10 Fishpond Way. The FTT held that there had not been a ditch along that part of the hedge and rejected the contention of Mr and Mrs Lowe to the contrary. The FTT relied on a drainage plan prepared in 2002, on the expert evidence of Mr Maynard, on the fact that a ditch was not shown on the OS plans and on what could be seen on the FTT's view of the land. The FTT specifically rejected the reliability of evidence given by Mr Lowe insofar as it related to this issue. The FTT also questioned the suggestion that a ditch had been dug by whoever owned the land that was later transferred to Mr Moss. The FTT suggested that the ditches which did exist to the north and to the south of the relevant boundary (but not along the relevant boundary) had been dug by whoever was the owner or the occupier of Grange Farm.
63. The FTT then considered the conveyancing history. It held that the plan to the conveyance of 14 April 1947 to Mr Moss appeared clearly to show that the hedge was the boundary although it pointed out that the description of the parcels by reference to the OS field numbers contradicted that conclusion. The FTT then held that other conveyances including the conveyance to Mr and Mrs

Lowe clearly indicated that the boundary was the centre line of the hedge. The FTT also held that the plan to the conveyance of 16 April 1947 to Mr Shuttlewood clearly showed that the hedge was the boundary but that impression was contradicted by the description referring to OS field numbers. The FTT then held that as there was no ditch alongside the hedge in 1947, if a person had been on the ground with the conveyancing plan in their hand in 1947, they would conclude that the hedge was the boundary. The FTT then held that the later conveyance from Mr Shuttlewood to William Davis Ltd showed the hedge as the boundary. Having reviewed the conveyancing history, the FTT held that the boundary was at all times the centre line of the hedge.

64. For good measure, the FTT stated that if it had held that the conveyances had conveyed to the predecessors in title of Mr and Mrs Lowe some land to the east of the hedge, William Davis Ltd and its predecessors in title had been in adverse possession of the land to the east of the hedge since 1947.
65. Mr and Mrs Lowe have appealed the FTT's decision as to the location of the boundary. They make two principal points. The first concerns the question of a possible ditch alongside the hedge along the boundary. The second relates to the true construction of the two conveyances in April 1947.
66. As to the suggested ditch, Mr and Mrs Lowe submit that the correct finding was that there had been a ditch alongside the hedge along the relevant boundary. They then wish to argue that the hedge and ditch presumption applied so that the relevant boundary was on the eastern side of the ditch. In support of their contention that there was a ditch, they say:
- (1) the fact that there was no ditch marked on the OS plans did not prove anything;
 - (2) there was originally a ditch which was filled in by William Davis Ltd;
 - (3) a letter from the District Council in December 2004 supports the case that there was a ditch;
 - (4) it was not sensible to think that the owner or occupier of Grange Farm had created the ditches to the north and to the south of the relevant boundary;
 - (5) the fact that there was a gap between the centre of the hedge and the parish boundary could be explained by the presence of a ditch.
67. Mr and Mrs Lowe do not contend that the FTT made any error of law in relation to the finding that there was no ditch along the relevant boundary. The appeal is therefore an appeal on fact. The limitations on the role of an appeal court or tribunal when considering the findings of fact made by a trial judge or a fact-finding tribunal are well known. They were recently restated by the Supreme Court in McGraddie v McGraddie [2013] 1 WLR 2477 and again in Henderson v Foxworth Investments Ltd [2014] 1 WLR 2600, in particular at [67]. In the present case, there was no error of law, no making of a critical fact which had no basis in the evidence, no demonstrable misunderstanding of the evidence and

no demonstrable failure to consider relevant evidence. This was a case where the decision of the FTT can reasonably be explained and justified. The FTT considered all of the points raised by both sides, had expert evidence in support of its conclusion and conducted a view of the relevant boundary. This is not a case in which there is any basis on which the Upper Tribunal could reach a conclusion of fact different from that reached by the FTT. Accordingly, I will proceed on the basis that there had not been a ditch along the hedge along the relevant boundary.

68. The second ground of challenge to the FTT's findings as to the location of the boundary was based upon the location of the parish boundary as shown on certain OS maps. The FTT had before it a number of OS maps, in particular the editions for 1884, 1903, 1921 and 1938. Mr Maynard, the expert witness for William Davis Ltd, gave evidence as to some of the markings on these maps. The 1884 map showed a continuous line which separated field no 37 to the west from field no 20 to the east. This line is the line of the hedge. To the east of that line is a dotted line which showed a parish boundary. The parish boundary is therefore a different line from the line separating the two fields. There is no explanation on the 1884 map as to why the parish boundary is a little to the east of the continuous line. The 1884 map shows an acreage of 14.802 for field no 37. Mr Maynard said that a bracing symbol on the map showed that this area included land to the east of the continuous line up to the parish boundary.
69. The 1903 map also shows the line separating the fields and a separate line of the parish boundary. Field no 37 has become field no 239. This time the acreage of 14.802 acres for field no 239 does not include any land to the east of the continuous line. The acreage of field no 20 is given as 9.602 acres.
70. The 1921 map contains an explanation for the distance between the continuous line separating the fields and the dotted line of the parish boundary. The map says that the parish boundary is 4 feet from the root of the hedge. As I understand it, the witnesses before the FTT did not explain why there was a 4 foot difference. It does not appear to have been suggested that the distance was to do with the width of the hedge. Based on the evidence as a whole, the FTT had rejected the suggestion that there was a ditch to the east of the root of the hedge.
71. The 1938 map does not appear to give an explanation for the distance between the continuous line and the parish boundary. Although the documents did not include the 1955 map, Mr Maynard said that there was no parish boundary in the vicinity in 1955. It is not known if there was a parish boundary in 1947 along the lines shown on the earlier OS maps.
72. The conveyance of 14 April 1947 to Mr Moss describes the land conveyed as being Lot 143 in the auction particulars. The description of Lot 143 sets out the acreages which are repeated in the conveyance. The conveyance also states that the land conveyed was in the occupation of Mr Moss. It is at least arguable that Mr Moss was not in occupation of land on the eastern side of the hedge (although the width of the hedge might conceivably have taken up the full width of 4 feet from the root of the hedge). The acreage for field no 239 is given as 14.802. If one had regard to the 1903 OS map, this acreage would not have

included land to the east of the centre line of the hedge. Other OS maps might have suggested otherwise. The conveyance states that the land conveyed is “(by way of identification only) more particularly delineated in the plan annexed to this Deed”. The plan appears to show the land conveyed extending to the continuous line which separated the fields and as not extending to the dotted line of the parish boundary.

73. The conveyance of 16 April 1947 to Mr Shuttlewood states that the land conveyed is “more particularly delineated in the map or plan annexed”. On the copy plan before the FTT, the colouring of the relevant line is too thick to be of much assistance as to precisely where the boundary was. For some reason which was not explained, the conveyance of field no 20 is given as 9.572 acres whereas the OS maps had given its acreage as 9.602.
74. Mr Small, for Mr and Mrs Lowe, submitted that the 1947 conveyances and their plans were of no real help. Instead he submitted that the property boundary in 1947 was the same as the property boundary in 1884 and that it should be assumed that the parish boundary was plotted in 1884 to follow the property boundary. I am not able to accept that submission. It has not been shown that there was a property boundary in 1884 as it is likely that all of the land was then in common ownership. Further, I do not accept the submission that the 1947 conveyances and their plans are of no assistance. I agree with the FTT that if a person had been on the ground in 1947 with those conveyances and plans, it would have been fairly obvious to them that the hedge was the boundary and that there was no reason to take any line other than the centre line of the hedge as the boundary.
75. Accordingly, I would reject the challenges to the FTT’s findings as to the location of the boundary.

The appeal as to costs

76. I have upheld the decision of the FTT as to its jurisdiction and as to the location of the boundary. I have set out earlier the reasons which the FTT gave for its decision as to costs, whereby it ordered Mr and Mrs Lowe to pay 70% of the costs of William Davis Ltd.
77. The FTT did not commit any error of principle in its approach to the question of costs. Further, its decision as to costs was well within the permissible range of the decisions it could have made to reflect the competing considerations which it properly took into account. The appeal against its decision as to costs will therefore be dismissed.

The overall result

78. The appeal is dismissed.

DATE OF RELEASE 26 June 2018

SIGNED

MR JUSTICE MORGAN