



[2017] UKFTT 0885 (PC)

REF/2016/0864

**PROPERTY CHAMBER, LAND REGISTRATION  
FIRST-TIER TRIBUNAL**

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**Neville Taylor**

**APPLICANT**

**and**

**Anulika Chikodili Ifezue & David Izuchukwu Ifezue**

**RESPONDENTS**

**Property Address: 2 & 3 Gibsmere Close, Timperley Altrincham WA15 7LL  
Title Number: (1)GM517412 &(2) GM618396**

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**ORDER**

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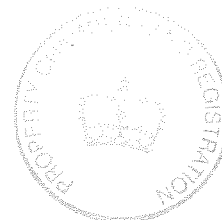
IT IS ORDERED as follows:

The Chief Land Registrar is to cancel the Applicant's application dated 29 February 2016 for a determined boundary.

Dated this 3 November 2017

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL







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**DECISION**

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1. The Applicant, Mr Taylor, is the registered proprietor of Number 2 Gibsmere Close, Timperley, Cheshire. He has applied to HM Land Registry for a determined boundary to his property, between Numbers 2 and 3 Gibsmere Close. The registered proprietors of Number 3, the Respondents Mr and Mrs Ifezue, have objected to his application because they do not agree that the boundary is where he says it is.
2. I conducted a site visit on 11<sup>th</sup> October 2017, and am grateful to the parties for allowing me access to their properties. I heard the parties on 12<sup>th</sup> October in Manchester; they were not legally represented, and I am grateful to them for

presenting their cases in an organised and restrained manner. Each had with them a surveyor expert witness; the Applicant called Mr Jonathan Davies, of Jonathan V. Davies Chartered Surveyors, and the Respondent called Mr John Kershaw FRICS, MFWPS of John Kershaw Chartered Surveyors.

3. In the paragraphs that follow I explain the law, and then the relevant evidence in this case, and finally my conclusion that the registrar must be directed to cancel the Applicant's application because the boundary is, I find, where the Respondents say it is and not in accordance with the applicant's application and plan.

#### **The law**

4. Boundaries are shown on title plans at HM Land Registry by a red line, which indicates a general boundary and not a precise one. The red line, scaled up, may represent a strip of land a metre wide or more. It is possible to have a precise boundary registered instead, known as a determined boundary, by following the procedure set out in section 60 of the Land Registration Act 2002.
5. Where a determined boundary is applied for, the neighbouring registered proprietor will be notified by Land Registry and has the opportunity to object, as the Respondents did in this case. Where a dispute cannot be resolved by agreement the matter must be referred to the Land Registration Division of the First-tier Tribunal pursuant to section 73 of the Land Registration Act 2002; in adjudicating on the dispute the tribunal will examine the title to the properties and decide whether the boundary lies where the Applicant says it does: *Bean v Katz* [2016] UKUT 168 (TCC). In most cases, as in this one, that can only be done by deciding where the boundary is.
6. In deciding whether the boundary lies where the Applicant says it does I must apply the legal principles set out by the higher courts over the years. In *Alan Wibberley Building Ltd v Insley* [199] UKHL 15 Lord Hoffmann, giving the judgment of the House of Lords, said  
"The first resort in the event of a boundary dispute is to look at the deeds.  
Under the old system of unregistered conveyancing, this means the chain of conveyances and other instruments, going back beyond the period of limitation, which demonstrates that the owner's title is in practical terms secure against adverse claims. These conveyances will each identify the subject matter in a clause known as the parcels which contains the description of the land. ... The parcels may refer to a plan attached to the conveyance, but this is

usually said to be for the purposes of identification only. It cannot therefore be relied upon as delineating the precise boundaries and in any case the scale is often so small and the lines marking the boundaries so thick as to be useless for any purpose except general identification. It follows that if it becomes necessary to establish the exact boundary, the deeds will almost invariably have to be supplemented by such inferences as may be drawn from topographical features which existed, or may be supposed to have existed, when the conveyances were executed.”

7. In *Pennock v Hodgson* [2010] EWCA Civ 873 Mummery LJ at paragraph 12 said:

“Looking at evidence of the actual and known physical condition of the relevant land at the date of the conveyance and having the attached plan in your hand on the spot when you do this are permitted as an exercise in construing the conveyance against the background of its surrounding circumstances. They include knowledge of the objective facts reasonably available to the parties at the relevant date.”

8. However, he went on to say at paragraph 13:

“...the parties' subjective beliefs about the position of the disputed boundary in this case ... were extrinsic evidence that was inadmissible in the construction of the relevant conveyance... The effect of the conveyance is not determined by evidence of what the parties to it believed it means, but what, against the relevant objective factual background, they would reasonably have understood it to mean.”

That is important in this case because Mr Taylor was a party to the original conveyance from the builder, in 1989; he has, very properly, not sought to give evidence of what he thought about the boundary at the time – and indeed it may be that he gave no thought to the matter. I have to decide where the boundary lies by looking at the deeds, looking at the physical features, and considering what the parties whose deed created the boundary would reasonably have understood or intended in the light of the physical features of the land at the time.

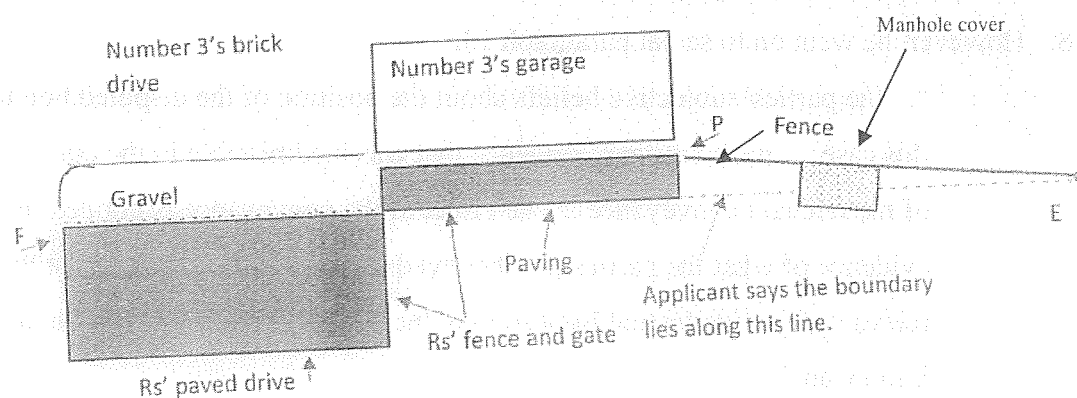
### **The evidence**

9. With those legal principles in mind, I have to look at the evidence. I begin by explaining the position of the boundary for which the Applicant contends, using a couple of diagrams and referring to the evidence the parties gave themselves by way of explanation. Next I consider the registered titles and the pre-registration deeds to

Numbers 2 and 3. In the absence of anything on the register or in the deeds that assists, in accordance with the principles set out at paragraphs 6 to 8 above I look at the physical features on the ground for evidence of the intentions of the parties to the deed that originally created the boundary. The parties each called evidence from a surveyor, as an expert witness, and I consider that evidence insofar as it is relevant and helpful in casting light on the title documents and physical evidence.

*The position of the determined boundary for which the Applicant has applied, and the evidence of the parties about the boundary*

10. The plan attached to the Applicant's determined boundary application is to a large scale and shows in detail the measurements between the proposed boundary line E - F and the buildings – houses and garage – that surround it. The following diagram is a rough sketch, not to scale, showing physical features along the dotted line of the boundary for which the Applicant contends. The left hand side of the diagram is the front of the properties, the back is on the right.



11. As the diagram indicates, between the parties' houses at Numbers 2 and 3 are the drives of the two properties, paved in the case of Number 2 and with a brick surface in the case of Number 3. Between the paving and the brickwork is a gravelled area a few inches across. The parties agree that the boundary is a straight line, and that at the back of the houses it starts at a point marked E on the Applicant's plan which represents the far end of the fence between the two back gardens. But whereas the Applicant says that at the front the boundary ends where the paved drive of Number 2 meets the kerb (so as to include the gravelled area within his title), the Respondents say that the boundary must clear a manhole cover at the back of the properties, and

therefore must follow the line of the current fence. They say that a straight line produced from point E, along the fence and clearing the manhole, will follow the edge of the applicant's brickwork at the front rather than their paving, and that between the Applicant's garage and their fence the line runs about 200mm away from the garage.

12. Accordingly the parties agree that the boundary is a straight line starting at point E, and they agree where point E is. Their two alternative boundaries pivot at point E; the Applicant's line ends at his point F where the Respondents' paving meets the kerb, whereas the Respondents' line follows the edge of the Applicant's brickwork but ends on the bricks because of the curve of the brickwork towards Number 2.
13. The Applicant and the Respondents each gave evidence to explain their respective positions as to the boundary. I am satisfied that they all gave their honest view of the facts; no-one was lying, although inevitably each has a different point of view about the boundary.
14. The Applicant bought Number 3 in 1989 from the builder. I have not seen a copy of that transfer, although the Applicant has put in evidence the builder's plot identification plan which pre-dates the conveyance. His evidence was that the boundary between Numbers 2 and 3 was open when he bought, and that all the builders left was a single line of paving stones around each house (which therefore did not mark the boundary). There was no fence at the back between point E (the end of the current fence) and the fence-post at point P on my diagram. The garage was there when he bought, positioned by agreement with him; the Applicant put in a shed behind the garage, and as a result of the fact that the shed obscured his view of Number 2 he cannot say when the fence, from E to P, was put in. Nor can he recall when he became aware of the fence.
15. The Applicant explained that in 1995 his then neighbours, Mick and Jean, wanted to build a lean-to structure which was going to adjoin his garage at roof level. In his Statement of Case he says:

"After comparing our deeds we agreed on a general boundary line that would accommodate this structure and give me access to my garage wall for maintenance purposes."
16. The applicant goes on to say that Mick and Jean laid the paving stones at the front of their house so that the edge lay along the agreed boundary.

17. Mick and Jean sold their house in 2000 and it was bought by a Mr Hilton. The Applicant says that Mr Hilton installed the paving stones between the garage and Number 2's fence.
18. Much later, after the Respondents bought the house in 2007, the Applicant asked them to remove the lean-to structure. He says that they had replaced or re-built the lean-to with a structure that adjoined his garage more fully than did the lean-to; they say that they simply installed a garage door and put in some surrounds, which adjoined the Applicant's garage as can be seen on photographs. I do not think that that issue has to be resolved as it makes no difference to where the boundary lies. At any rate they removed the structure and there is now a gap between Number 3's garage and Number 2's fence.
19. I accept the truth of the Applicant's evidence save for his description of his agreement with Mick and Jean. I accept that he agreed with them where they would lay their flagstones on their front drive. In the absence of any further evidence of what was said I do not accept that that agreement amounted, on Mick and Jean's part, to an agreement that there lay the boundary. That would be an odd agreement to make in the absence of discussion of what lay to the back of the house. I understand that the Applicant now sees their agreement as having been about the boundary, but I take the view that in reality it was a less precise arrangement, made in friendliness and without legal effect. There was a practical and neighbourly agreement as to where Mick and Jean could install their structure, in general terms, but nothing more precise than that.
20. The Respondents of course do not have the Applicant's long memory of the property. They can therefore give me only limited assistance. They say, and it is not in dispute, that the paving stones at the front were in place when they bought. They give their opinion that the Applicant's brickwork at the front marks the boundary between the two properties, and that he must have installed it along what he thought to be the boundary line, but that is opinion evidence and they are entitled only to give evidence of fact. They have tried to highlight inconsistencies in the Applicant's evidence, which I found unhelpful and irrelevant.

*The registered title and the deeds*

21. The registered title plans to the two properties, Numbers 2 and 3, show the boundary as a straight line. It is a general boundary and is of no assistance in deciding precisely where the boundary is. Scaling it up is pointless because of the thickness of the red line. What it does indicate is that there is space between Number 3's garage and the



boundary, as the parties agree there is; on the Applicant's case the distance between the front corner of the garage and the boundary is 510mm whereas the Respondents say it is about 200mm.

22. The properties were built in the late 1980s. The Applicant bought his house in 1989 from the builder, as I said above, and the builder's plan of the plot is available but not the conveyance. We do however have a copy of the conveyance from the builder to the first purchasers of Number 2. It describes the property as "the land edged red on the Plan", and the plan shows the boundary as a thick line, again with space between the boundary and Number 3's garage.
23. The plan is of no assistance. It indicates that the boundary runs in a straight line. It appears to have been followed by Land Registry in drawing the title plan. But no further assistance can be derived from it because it does not include precise measurement.

*The physical features around the boundary, and the surveyors' evidence*

24. The only original physical features that can now be seen around the boundary are the manhole cover and the garage. The fence and all the paving stones post-date the creation of the boundary.
25. At the site visit the Respondents showed me the manhole cover on the other side of their back garden beside the boundary with Number 1; the fence lies alongside the manhole cover, leaving all of it in Number 2's back garden. On their account, the covers on each edge of their garden lie within their property. On the other hand, no one is suggesting that the manhole cover should lie wholly within the Applicant's property.
26. The 1989 conveyance requires the purchaser not to cover or obstruct any sewers or manhole covers. It seems therefore inconceivable that the original parties would have intended the boundary to do just that – or, alternatively, would have intended a boundary which, in accordance with the covenants in the deed, could not be fenced. As Mr Ifezue put it at the hearing, that would be out of keeping with the spirit of the 1989 conveyance; I agree that for the manhole cover to be bisected by the boundary would be inconsistent with the parties' clear intention that the manhole cover should not be obstructed, since it would have been obvious that at some stage the boundary would be fenced. The Applicant says that a fence could be moved to allow inspection of the drain, but that would be at the very least inconvenient.
27. With that in mind I turn to the parties' expert witnesses.

28. The plan attached to the Applicant's determined boundary application was drawn by Mr Jonathan Davies. He has not made any formal report or witness statement, but no objection was made to his giving evidence at the hearing. I asked him how he came upon the boundary line in the application, and he explained that he drew the application plan and derived the dimensions set out on it by using the builder's plan that preceded the 1989 conveyance of Number 3 to Mr Taylor – which shows a thick red line for the boundary and, as Mr Davies agreed, is not precise enough to be of assistance, the builder's plan of Number 2 (which is of rather better quality), and the title plan at HM Land Registry.
29. He went on to explain that he derived his measurements by scaling up Land Registry's plan and measuring the position of the buildings; in that way he derived the line E to F; he says that it is coincidence that point E is at the end of the fence and that point F is at the meeting of the paving and the kerb.
30. I questioned Mr Davies at some length about his method of drawing the boundary line. He placed great emphasis on having measured the position of the buildings (using laser measurements for those he was not able to access, on Number 2's land) and matched his measurements with Land Registry's plan. He said that he received detailed advice from Land Registry staff as to how to do this, although that advice was not disclosed in the litigation. But for him to have produced a boundary line from Land Registry's plan, he must be working on the basis that at least one point on that plan precisely matches a physical feature on the ground; moreover he must have been working on the basis that Land Registry's plan indicates precisely where the boundary lies in relation to at least one physical feature. Otherwise I do not see how the position of the buildings, even if exactly plotted, could indicate where the boundary lies. Yet Land Registry's red line is only a general boundary and – as the parties agree - scaling it up is pointless.
31. In the end Mr Davies was not able to explain to me how his line was derived if not from the general boundary on Land Registry's plan, and I am not assisted by his evidence.
32. Mr Kershaw for the Respondents had written a report, but he said very frankly that he had produced it before the litigation began and that his report was written as advice for the Respondents rather than to assist the tribunal. He had not looked at the title plan. Instead he looked at the builder's plan of Number 2. He said that the architect's red line would have been placed inside the boundary, and therefore made the assumption

that the thick line on the plan lay inside Number 2's property, so that in effect Number 2 would have the benefit of the thickness of the line. He noted that the boundary lay some way away from the garage. He noted that the manhole cover needed to be cleared. He reckoned that the boundary must lie far enough away from the garage to clear the gutters, and came therefore to the conclusion that it would lie about 200 mm from the garage wall. On that basis he concluded that the position of the fence from E to P was "about right".

33. I asked Mr Davies why he thought the original parties would have intended to bisect the manhole cover, and he was unable to give an answer save that he felt the original parties would not have been aware of where the boundary lay. I find that implausible. Given the attention given in the 1989 conveyance to the sewers and manhole covers it is unlikely that no thought was given to the relationship between the manhole cover and the boundary.

#### **Conclusion**

34. I take the view that the Respondents are right about the manhole cover; the intention of the original parties who created the boundary must have been that the boundary would run along one side of the manhole cover rather than across it, and therefore on Number 2's side of the cover (even though that leaves Number 2 with two manholes inside their garden).
35. I therefore find that the boundary starts at point E, as agreed between the parties, and runs in a straight line from back to front, as also agreed, so as to clear the manhole cover on Number 2's side of the boundary.
36. It follows that Mr Taylor's application must be rejected; his plan does not indicate the line of the boundary. I have directed the registrar to cancel his application.

#### **Costs**

37. In this tribunal costs follow the event, which means that the Respondents are entitled to have their costs incurred since the date of the reference paid by Mr Taylor. If they wish to apply for an order for costs they should do so within 28 days of the date of this decision; Mr Taylor will then have 28 days to comment, and the Respondents will be able to reply to his comments.

Dated this 3 November 2017

BY ORDER OF THE TRIBUNAL

**Elizabeth Cooke**



