

# Boundaries



## ► Inside

Identifying extent, ownership and responsibility of boundaries

Statutory procedures available regarding building and excavating near a boundary

Gaining access to neighbouring land



## Introduction

The purpose this guide is to help you should you need to identify the extent of a site or ownership and responsibility of boundaries.

You may need to identify ownership of a boundary feature because you wish to build on or near to a boundary, or for instance because you are carrying repair works to a fence or wall.

This guide also explains what statutory procedures are available to you should you need to build or excavate near to a boundary or gain access to neighbouring land to repair a wall or fence on your land.

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## What is a boundary?

A boundary is more complex than you might think. You have to distinguish between a hedge, fence or garden wall, which is a physical boundary feature and the legal boundary of land which relates to ownership.

- A legal boundary dividing two properties is an invisible line which is unlikely to be precisely identified on the ground.

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## Can you rely on the Land Registry filed plan to identify the boundaries of registered land?

The Land Registry filed plan is not conclusive evidence as to the extent of boundaries on a site.

Whilst every title has an individual plan, the majority of titles only establish the general boundaries of the title in question.

The reason for this is that Land Registry filed plans are based upon Ordnance Survey maps, which presume that the boundary of a parcel of land is down the centre line of any boundary feature.

That means that the ownership of hedges, fences and walls are in the absence of contrary intention, presumed by the Land Registry to be divided down the middle.

The general nature of Land Registry plans means that there may be a conflict between the Land Registry plan and what is actually happening on the ground.

Therefore you should check the earliest available document transferring or leasing the site to establish the site boundaries.

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## How do you identify the boundaries of unregistered land?

As with registered land, you should inspect the earliest available conveyance or lease to identify the extent of a site. A conveyance or lease may contain a description and a scaled plan showing the measurements of the boundaries.

In some cases, documents of title may contain a clear description of the site as well as a

plan, but there may be a conflict between the description and the plan. If there is a conflict between the description and the plan, you should check whether the plan is expressed to be "for identification purposes only". If it is, then the description will take precedence over the plan.

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## "T" marks

It is customary to indicate the ownership and responsibility for a boundary fence or wall on a plan by drawing an inward facing "T" mark on the boundary in question. However, "T" marks which are only shown on a plan have no special force in law. "T" marks will only be considered to be evidence of ownership where the "T" marks on the plan are specifically referred to in the transfer or lease itself.

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## Can we establish boundaries on the ground?

As a Land Registry plan only shows the general line of boundaries, it is wise to visit a site prior to acquisition, because whatever the description of the land on paper, a developer still needs to make sense of the boundaries on site.

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## Inferences

Once you carry out a site inspection, you may be able to draw inferences as to the responsibility and extent of boundaries.

For example, the owner of a large house with a large garden may reasonably be expected to erect a wall or plant a hedge around his garden, in which case although the Land Registry plan may show the registered boundary to be in the middle of such wall or hedge, the actual boundary might well be the outer face of the wall or hedge.

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## Fences and walls

Fences and walls may delineate the boundary of land, but not always. For example a wall may have been built in accordance with a building line (in an urban context) and a fence may



have been built (in a rural context) to control livestock.

If a fence or wall does delineate the boundary of land, then the legal boundary is normally the outer edge of the fence or wall in question.

## Buildings

Where a boundary follows the wall of a building then it can normally be assumed that the boundary follows the outer edge of the building.

This is usually the case where the owner of the wall or building has the right to retain foundations and footings and eaves which may protrude underneath or overhang neighbouring land. Where there are no such rights granted, it is possible that the boundary lies at the outer edge of the foundations or the eaves.

## Site bounded by highway

You cannot without the consent of the highway authority erect a building over a highway. This will prevent balconies or other structures being built which overhang the highway, without the highway authority's consent. If you are proposing to construct balconies on a site adjoining the highway, you should always check whether the balconies will overhang the highway. If they will you should contact the Local Highways Authority to obtain a Licence under Section 177 of the Highways Act 1980.

## What to do if you have difficulties identifying the boundaries

Given the scope for disputes over boundaries, we would strongly recommend that if you are in doubt about the extent of a site that you consult a chartered land surveyor.

A land surveyor will not only inspect the site, but also inspect deeds, documents, historical plans and aerial photographs to help determine the exact extent of the boundaries. If nothing else, a surveyor provides an independent third party opinion of a situation which may assist in negotiations with neighbours.

## Adverse possession

The position of boundaries can change over time through adverse possession. This is where someone who is not the owner of land has taken possession in a way which is inconsistent with the rights of the true owner. An example of this is where a neighbour replaces a wooden fence on what he thinks is his own land, but in fact is land belonging to his neighbour.

Under the Land Registration Act 2002, such a person may make a claim after ten years of continuous possession of registered land to register himself as proprietor. Normally, if a claim for possession is opposed, the Land Registry will automatically reject the application. However in the case of neighbours, where the owner of the fence (in the example given above) reasonably believed that he owned the disputed land for at least ten years, he has a right to be registered as owner of that land.

Given the draconian effects of adverse possession, it is wise to ensure nobody is encroaching on your land. If you think that somebody is encroaching on your land you should not use self help remedies, because these may be evidence of adverse possession in favour of your neighbour. Self help remedies, such as taking back possession of your land, could result in the police becoming involved. If you think that someone is encroaching on your land you should seek legal advice immediately as you may need to apply for an order for possession.

## Who is liable to repair the boundary?

In the absence of any agreement relating to repairs, (such as an express covenant in the owner's favour coupled with "T" marks showing the fence in question) an owner cannot force his neighbour to repair a fence or wall unless it is dangerous or is causing a nuisance.

Where a fence or wall is a party fence or wall, (meaning in this context that ownership of the fence or wall is shared) you cannot force your neighbour to contribute to the costs of repairing the wall or fence.

In the absence of agreement, you may have to repair a party wall or fence at your own expense, but you should not do so without first consulting with your neighbour.

## Party Walls

Given that you cannot compel your neighbour to repair his wall, you can see that where the wall in question does not merely mark out the boundaries of the site, but is actually an integral part of the adjoining owners property, for example in the case of a terraced or semi detached house, the situation can be serious.

The Party Wall etc. Act 1996 was passed in an attempt to deal with the practical problems associated with party walls i.e. walls which straddle land belonging to two (or more) different owners.

The main aim of the Party Wall etc. Act 1996 is to ensure that disputes and inconvenience are minimised by ensuring that the parties use a qualified surveyor to determine the timing of works and to regulate the way in which those works are carried out.

## Building or tying into a Party Wall

The Party Wall etc. Act 1996 enables you to:

- Build a wall astride a boundary (where no wall exists);
- Build on to an existing boundary wall; and
- Build a wall on your own land (with the footings projecting into the adjoining land).

In each case the statutory procedures must be followed before commencing work. Although your statutory rights and responsibilities differ depending on the type of work you intend to do, you must always serve a notice on the adjoining owner prior to starting work.

Where you intend to build on to an existing wall, you must serve a notice at least two months before works are due to commence. If there are tenants or other occupiers in the neighbouring building you must ensure that notice is served on them as well.

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## **Adjacent excavation and construction**

The Party Wall etc. Act 1996 prohibits you from excavating below foundation level within three metres of an adjoining owner's building, or within six metres of deeper foundations, without first serving notice of the intended works on the adjoining owner.

The Act does not cover the common situation where a building is built right up to the boundary of the adjoining owners land, but there is no corresponding party structure on the other side, in which case the Party Wall etc. Act 1996 will not assist.

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## **Practical tips**

Before you serve a notice, you should always speak to the adjoining owners prior to formally serving a notice as you are far more likely to gain their agreement to any works.

Given the potential for delay to your building programme, you should try to inspect the site to identify any party walls prior to site acquisition and ensure that this information is provided to your employer's agent at the earliest opportunity.

### **For further information on this subject please contact:**

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