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## **Property supplement: The edge of reason**

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*Stuart Johnston & Simon Rutman offer some practical advice relating to plans and boundaries*

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### ***In Brief***

- The Land Registry has a number of requirements that relate to plans submitted for first registration and states that, in general, referencing a plan as "for identification purposes only" should be avoided.
- The Land Registry's registered plan is not definitive as to the legal boundaries of a property, as illustrated in *Derbyshire County Council v Fallon*.

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Property owners have a fixed idea of what they assume is the physical extent of their property. However, this notion may not reflect the legal situation and when disputes arise between neighbours over land that they both claim to own, in the words of Lord Hoff man in *Alan Wibberley Building Limited v Insley* [1999] 1 WLR 894: "Feelings run high and disproportionate amounts of money are spent. Claims to small and valueless pieces of land are pressed with the zeal of Fortinbras's army. It is therefore important that the law on boundaries should be as clear as possible."

### **Plans**

Land Registry's requirements In the case of registered land, the first point of reference when trying to establish the extent of a property will be the Land Registry's official copy of the registered title plan.

The Land Registry's Practice Guide 40 provides comprehensive guidance on their requirements for plans at first registration. The following is a brief summary:

- Plans must be drawn to and show an appropriate metric scale and show orientation.
- Dimensions must be in metric units, to two decimal places.
- The plan must show sufficient detail to enable the land to be identified on the Ordnance Survey map and, where appropriate, the landlord's title plan.
- The property must be clearly identified by suitable colouring, edging or hatching.
- Edgings should not be so wide as to obscure any other detail on the plan.
- Different floor levels must be identified both on the plan as well as in the verbal description in the lease.
- Colour references on the plan must match the text of the deed.
- The plan must be signed by the landlord.

### ***Annexed plan***

Conveyances, transfers and leases often describe the relevant property by reference to an annexed plan, using phrases such as "for the purposes of identification only" or "as more particularly described". The meaning of these phrases is quite different and will determine the extent to which a court relies on the annexed plan to identify the property. Where the first phrase is used, the verbal description of the property will be relied on to determine the property. However, in the case of the second phrase, it is the plan that will be relied on above the description.

It is worth noting that the Land Registry Practice Guide 40 states at para 7.4 that "plans described as 'for identification purposes only' are not satisfactory for land registration purposes". However, the Land Registry has given informal guidance that the use of the phrase may be appropriate when the written definition of the property is very detailed, as is often the case in the lease of a floor in an office block. In such situations the Land Registry has said that they would be unlikely to reject such a lease, providing that the plan attached to the document can be accurately related to the Ordnance Survey map and the verbal description of the property in the deed is consistent with the Ordnance Survey map and the plan attached to the lease.

## **Determining boundaries**

### ***The general boundaries rule***

Whilst the Land Registry's Register of Title is definite as to legal ownership of property, in the majority of cases the registered plan accompanying such title is not definitive as to the extent of the property but merely shows "general boundaries". Indeed, most Land Registry plans come with the health warning: "This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries."

This point was clearly illustrated in the recent case of *Derbyshire County Council v Fallon* [2007] EWHC 1326. The case concerned the ownership of a strip of land that formed the boundary between the Fallons' registered land and the council's unregistered land, and was shown on the registered plan to the Fallons' title as being included in part of the Fallons' property. In 2002, following a dispute, the Fallons informed the council that unless the council applied to the Land Registry to rectify the Fallons' title, the Fallons would build on the disputed strip. Following such building, in the summer of 2003, the council applied to the Land Registry's adjudicator to alter the Fallons' title. The adjudicator concluded that the council's paper title did include the disputed strip and that, following the Court of Appeal in *Lee v Barrey* [1957] Ch 251 the general boundaries rule meant that the Fallons could not rely on the registered plan of their property to conclusively establish the

extent of their property. However, the adjudicator refused the council's application to rectify the register and the council appealed.

On appeal the court held that the adjudicator had correctly decided that the council had paper title to the disputed strip. However, he had also been correct in finding that there were exceptional circumstances as there was a real question as to whether the council could actually recover the disputed land (and this was an issue for the court to decide). Therefore the adjudicator was within his powers to refuse to amend the boundaries on the registered plan as in the circumstances substituting one general boundary for another would not affect ownership or possession of the disputed property and would simply confuse the issue.

### ***Land Registry's determination process***

The Land Registry does have a procedure for determining the exact line of a boundary and recording it on the registered title as a "determined boundary". The Land Registry Practice Guide 40 contains full guidance on the procedure for boundary determination and on the accuracy and detail required of the plans to be submitted. The process will generally involve a chartered surveyor and the adjoining land owner and as such can be protracted and expensive.

In the absence of a registered title plan with determined boundaries, in order to determine the boundaries of a property, a court will have to review background evidence such as title documentation and physical attributes of the property.

### ***Construing the document as a whole***

Sometimes neither the description nor the plan in or annexed to a document contains sufficient detail to enable the boundary in question to be determined. In such cases, as in *Strachey v Ramage* [2008] EWCA Civ 384 the court will construe the documents concerned. *Strachey v Ramage* concerned two adjacent properties that had initially been in common ownership. In 1988 the former owner of both parcels sold one parcel of land including the farmhouse called Trenawin to Ramage's predecessor in title and later another parcel comprising fields and a couple of barns to Strachey's predecessor in title. Prior to the disposals a fence had been erected with the intention of marking the boundary of the parcels. The main concern when the fence was erected was to allow access to Strachey's predecessor in title access to the two barns.

Strachey applied to the court for a declaration that the fence marked the boundary of her property. However, Ramage sought to rely on the initial 1988 conveyance of the buildings, which included a plan that appeared to show that the boundary did not follow the fence line and that Strachey's land included the fence. On appeal the court considered the 1988 conveyance and concluded that the written description of the property was too vague to identify the boundary and in addition the plan could not be relied on as it was referred to for "the purpose of identification only". In order to determine the boundaries of the property it was necessary to consider the conveyance as a whole.

In the 1988 conveyance the initial vendor (Strachey's predecessor in title) had covenanted to maintain the fence that had been erected. The court concluded that this provision made no sense if the fence was wholly on the land he was selling. Furthermore the fence was referred to as the "boundary fence".

On this basis the court concluded that the fence did mark the boundary of the property, and whilst amending the registered plan would do nothing more than produce "another general boundary in a more accurate position than the current general boundary" (as per the Deputy Adjudicator in *Derbyshire County Council v Fallon*), the absence of any exceptional circumstances meant that the Land Registry title plans should be altered accordingly.

### ***The hedge and ditch rule***

The court may also examine the physical attributes of the property itself. The hedge and ditch rule is a method derived from case law for determining the location of a boundary. It is based on the presumption that

a land owner digging a ditch on the perimeter of his property would dig the ditch just in from the boundary of the property and deposit the excavated soil right at the boundary, upon which a hedge would be planted.

Should a dispute occur as to the location of the boundary between two properties, the hedge and ditch rule means that the boundary will be presumed to be on the side of the hedge furthest from the ditch.

There are of course situations where the presumption cannot be applied, for instance where there are two hedges on either side of a ditch, and case law dictates that the rule does not apply if the ditch is natural (*Marshall v Taylor* [1985] 1 Ch 641) or if the land is conveyed by express reference to the Ordnance Survey plan (*Rouse v Gravel Works Limited* [1940] 1 KB 489). The presumption can be rebutted in a number of circumstances including where the boundary was created after the earthworks (*Falkingham v Howard*, Times, 11 March 1991).

Many unfortunate boundary disputes would be avoided if the Land Registry's title plan was definitive as to the legal extent of property ownership. However, the scale of the exercise required to survey all property boundaries to establish their true position is so enormous that it is inconceivable that, in general, the Land Registry's plans will be definitive as to the extent of legal title. Until such a time, practitioners should continue to bear in mind the importance of surveys, inspections and investigations of title and the need for precise drafting.