

# Beware red line boundaries

For obvious reasons, a housebuilder will want to know exactly where the legal boundary of a site is. It will want to maximise use of its site and, if possible, build up to the boundary. It may also have to carry out works to features on or near the boundary, such as trees and hedges. The trouble is, if it gets the boundary location wrong, it may end up trespassing on neighbours' land, and pay the price of doing so, in the form of a boundary dispute.

## The general boundary rule

The first place that many people will look when trying to ascertain the boundary of a site is the Land Registry title plan. However, although the red lines that denote boundaries on title plans may look definitive, they are not. In fact, they are only **general** boundaries. Section 60(1) of the Land Registration Act makes this clear: '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.' Section 60(2) goes on to provide that: 'A general boundary does not determine the exact line of the boundary.'

What this means is that the red line on a Land Registry title plan does not show the exact boundary, and so it cannot be relied on to ascertain the boundary. This, of course, is of little use to a housebuilder. So the question is how can you establish the exact line of a boundary, and avoid costly boundary disputes with neighbours?

## The deeds

The first port of call is the original deeds for the property. If you do not have them, you can usually order them from the Land Registry. Within the deeds there will be a so-called 'parcels clause', and this will usually refer to a plan. If the clause says that the property is 'more particularly delineated in the plan', then look to the plan. If, however, the plan is stated to be 'for identification purposes only', then the plan will not be of much help, and you will have to look at the clause.

Unfortunately, however, the deeds will not always be sufficient to establish the exact boundary, as the plans may not be detailed enough, or may be outdated, showing features that no longer exist. Where the deeds are not clear as to the boundary, then you will have to look for other evidence.

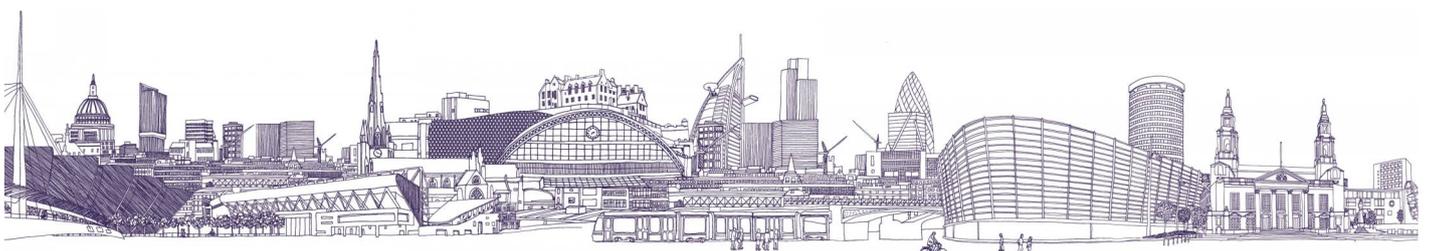
## Boundary features

Historically, boundaries were set using boundary features, such as fences, hedges, banks, streams and such like. So if there is such a feature, which has been in situ for a long time, in the area where the boundary line runs, then that feature is likely to represent the true boundary.

The trouble is, the feature may no longer exist, or may have moved (for example, a fence may have been removed, or a bank may have been eroded). If that is likely to have been the case, you will have to try and find evidence of where that feature was. This is most commonly done by way of aerial photography archive material, which can often be very useful in identifying where a feature was. You can also use old, large scale maps that may also identify the relevant feature.

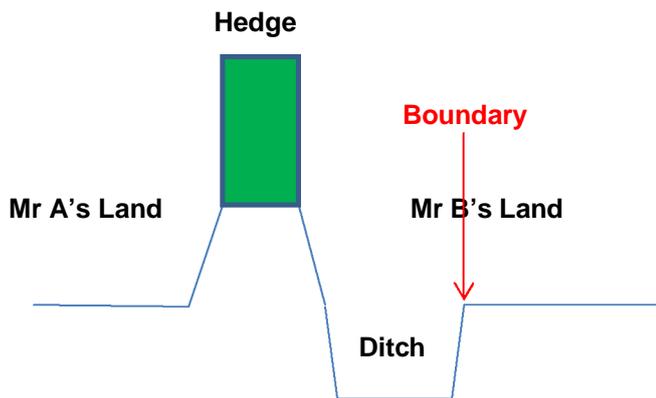
## The hedge and ditch rule

Once you have located the position of the feature, it is important to remember that certain legal presumptions may apply to where the boundary lies in relation to that feature. The most common of these presumptions is the 'hedge and ditch presumption'. Where two properties are divided by a hedge and ditch (or bank and ditch), there is a presumption that the boundary is along the opposite edge of the ditch from the hedge or bank (see diagram over page), and not through the centre of the hedge (note that this presumption does not apply where the land is transferred by express reference to the Ordnance Survey plan).



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The 'hedge and ditch' presumption is particularly important to housebuilders because, as part of planning permission, it may have to carry out works to hedges and trees along the boundary of a site. The hedge and ditch rule may mean that the hedge and trees actually belong to the neighbour, in which case their permission will be needed before any works are done.

## Roads and rivers

There is also a legal presumption in relation to roads. Plans will often show that the boundary runs up to the edge of the road. In fact, there is a presumption that the boundary runs down the middle of the road. If the road is a public highway, then the Highways Authority owns the surface and the necessary amount of airspace above it, but the adjoining landowner still owns the land underneath, up to the middle of the road.

Similarly, where a property abuts a river or stream, there is a presumption that the boundary runs to the centre line of the river or stream.

These 'presumptions' are not hard and fast rules, and can be rebutted by evidence to the contrary, but you will need very clear evidence to be able to do so.

## Considerations for housebuilders

It is important to remember that the boundaries as shown on Land Registry plans are only general, and cannot be used to establish the exact position of a boundary. In order to do so you will have to look back at the original

deeds, and probably investigate the position on the ground, and this may extend to investigating where old boundary features were located. On top of that, you will have to bear in mind the legal presumptions that apply to those boundary features.

The Land Registry has a procedure for 'fixing' boundaries, but if you make an application to fix the boundary, the Land Registry will have to notify all adjoining owners, and this may well lead to boundary claims coming out of the woodwork.

Overall, it is best to take a common sense approach, including:

1. Check whether the red-line boundary accords with any long-standing boundary features on site (if it does, then it is likely to be accurate);
2. If there are no boundary features, is there evidence that there were?;
3. If there is a hedge with a ditch on the boundary, remember the hedge and ditch presumption; and
4. If the boundary is still unclear, you should refer the matter to your lawyers **before** carrying out any works in the vicinity of the boundary.

If you would like to discuss any of the issues raised in this update, please contact:



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