



[2017] UKFTT 0606 (PC)

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

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2016/0264

BETWEEN

RICHARD DUNSFORD

Applicant

and

**(1) LOUISE PRAGNELL
(2) COLLETTE PRAGNELL**

Respondents

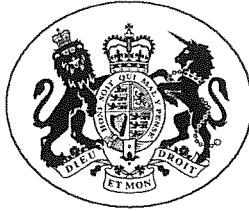
Property Address: 16 Staple, West Quantoxhead, Taunton

Title number: ST215937

The Chief Land Registrar is ordered to cancel the application dated 12 March 2015

BY ORDER OF THE TRIBUNAL
Ann McAllister

Dated this 22nd day of June 2017



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Property Address: 16 Staple, West Quantoxhead, Taunton

Title number: ST215937

**Before: Judge McAllister
Sitting at Exeter Magistrates Court
6 June 2017**

Representation: Both parties appeared in person.

DECISION

Introduction

1. The Applicant, Mr Dunsford, is the registered owner of 17 Staple, West Quantoxhead ('Number 17'). Number 17 was first registered on 22 October 2014 with title number ST316403. By an application dated 12 March 2015 Mr Dunsford applied to alter the title plan to the adjoining property (16 Staple, 'Number 16') registered with title number

ST251937 pursuant to paragraph 5 of Schedule 4 to the Land Registration Act 2002 ('the 2002 Act') on the grounds that this plan is inaccurate. The area identified by Land Registry as being in dispute is shown on an illustrative plan as a pink strip ('the Pink Land') forming part (on the title plan) of the back garden of Number 16.

2. Numbers 16 and 17 are two of a row of four terraced cottages which once formed part of the St Audries Estate. There is a further row of three terraced houses to the west of Number 17, divided by a driveway (Numbers 18 to 20). Looked at from the road, Number 17 is at the western or left end of the row of four, and Number 16 is to its immediate east, or right. It is perhaps an unusual feature of the cottages that there is no physical barrier of any kind between the four gardens to the rear, which occupy a considerable area of land.
3. Each of the cottages has a front garden. To the rear of the properties is a middle garden, behind which is a row of outbuildings. The rear gardens are behind the outbuildings. The outbuildings consist of four pigsties, four outbuildings and one communal washhouse. There is no dispute as to the front or middle gardens. The width of each cottage is 19.6' or a total of 78.4ft. The total width of the gardens can be calculated by looking at the original conveyances of each. It is difficult to make out the width of Number 14 on the poor copy in the papers, but I believe I am right in saying that the total width of the gardens of Numbers 15,16 and 17 is 82'. The width of Number 14 will take the total width well over 100ft.
4. Mr Dunsford's ground for making his application is that, in essence, the boundary line between Numbers 16 and 17 runs in a straight line north westwards from the middle of the two properties. This is clear, on his case, from the conveyance dated 24 April 1925 and a conveyance dated 3 November 1947 which (on his case) are the roots of title for Number 17 and Number 16 respectively. If this is right, he submits, the title plan appears to omit a sliver of land running from the back of the out houses behind the row of cottages along the length of his back garden, and to place this in the filed plan of Number 16. As I have said, the Land Registry have identified this sliver as the Pink Land.

5. Number 16 is owned by the Respondent, Louise Pragnell, and her sister, Collette Pragnell. Collette has taken no part in the proceedings, but was joined as Respondent by order dated 7 September 2016 to ensure that she would be bound by the outcome. Number 16 was first registered in their joint names on 28 April 2003.
6. Louise Pragnell objected to the application on the grounds that, by reference to the dimensions on the respective conveyance plans, the plot of Number 17 is not parallel to the Number 16, and that the middle of Numbers 16 and 15 should be taken as the correct starting point to determine the area of land owned by Number 16. The conveyance plans, it was said, are not sufficiently clear.
7. However, by letter dated 16 May 2017 the solicitors acting for Louise Pragnell accepted that the title plan for Number 16 is incorrect, and proposed that the title plans should be replaced with the plans to the respective conveyances referred to above. The Respondents do not, however, accept that the plan proposed by Land Registry, removing the Pink Land from their title, should be used for the title plan to Number 16.
8. There is also an issue as to the construction of the Conveyances: the Respondents do not accept that the boundary runs in a straight line from the party wall between Numbers 16 and 17. In short, although the parties were close to reaching an agreement, they were not able to do so. I should also add that this dispute has not arisen because either Mr Dunsford or the Respondents are seeking to fence off their land: the land has remained open for almost 100 years, and, so far as I am aware, there is no imminent proposal to change this.
9. The mistake in the registration of Number 16 occurred in 2003 when the title was first registered. I do not know what plan was submitted on behalf of the Respondents (it would, as I understand it, have been necessary to provide a plan based on an Ordnance Survey plan). A survey was carried out (a month after registration) by Ordnance Survey to establish the extent to which the rear and front gardens were occupied. The surveyor would not have had, nor be expected to examine, the title deeds. The surveyor divided the area comprising the rear gardens to the four cottages into four equal parts.

10. In any event, and for whatever ever reason, the title plan to Number 16 shows that the rear garden of Number 16 lies to the west of the centre line between the two properties.
11. The Respondents' complaint is that, if the application is given effect to, their own title plan will, at least 'pictorially' appear to deprive them of the some of their rear garden. The problem can be seen with the filed plan to Number 15. The width of the rear garden of this property is 30' (and it seems, 24' at the front). The filed plan shows the garden width as considerably less than Number 16.
12. I had the benefit of a site visit on 5 June 2017, and heard the case on the following day. Both parties clearly and ably presented their cases. No expert evidence was adduced because the Tribunal took the view that it would not assist as this was not an application for a determined boundary.

General boundaries and determined boundaries

13. Before considering the conveyances in this case, it is necessary to say something about the way in which Land Registry maps boundaries on its filed plans.
14. The property register of all registered titles must contain a description of the land and must refer to a plan based on the Ordnance Survey map and known as the title plan (Rule 5 (a) of the Land Registration Rules 2003). Section 60 of the 2002 Act provides as follows:
 - (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.
15. There is no definition of a 'general boundary'. But it is clear that the 2002 Act intended that the general boundaries legislation under the Land Registration Act 1925 was to remain unchanged (see Law Com 271, at paragraphs 9.9 and 9.11). Rule 278 of the Land Registration Rules 1925 provided a clearer definition:
 - (1) Except in cases in which it is noted in the Property Register that the boundaries have been fixed, the filed plan shall be deemed to indicate the general boundaries only

- (2) In such cases the exact line of the boundary will be left undetermined – as, for instance, whether it includes a hedge or wall and ditch, or runs along the centre of a wall or fence, or its inner or outer face, or how far it runs within or beyond it; or whether or not the land registered includes the whole or any portion of an adjoining road or strea.

16. This means that the boundaries shown on the title plan are indicative only. Removal of land from a title plan does not, therefore, necessarily mean that any land is being removed from the registered title. In some cases, on the other hand, the removal of land will amount to a ‘property dispute’ rather than a ‘boundary dispute’ in that the removal will involve rectifying the title to the land. The distinction between a property dispute and a boundary dispute is not always easy to make.
17. The issue is illustrated in the case of *Derbyshire County Council v Fallon* [2007] EWHC 1326. The Council applied to alter the register of the title owned by Mr and Mrs Fallon on the grounds that the filed plan showed the boundary between the Council’s (unregistered) land and the Fallons’ land in the wrong place. Part of the land in the Fallon’s title belonged, it was said, to the Council. The Adjudicator (the predecessor to the Property Tribunal) first established where the true boundary lay (the paper title issue) and then considered whether, on the particular facts of that case, the title plan should be altered. He concluded that it would not be right to alter the plan (part of the land in dispute had been built on, and the property was occupied by the Fallons). Altering the plan was not the appropriate way of resolving that particular dispute: the courts would have to decide whether or not part of the building should be pulled down. But the dispute was a boundary dispute, not a property dispute.
18. The point of relevance, however, was the conclusion that if the title plan was altered it would still show a general boundary, albeit in a more accurate place. In *Drake v Fripp* [2011] EWCA Civ 1279 land was sold, creating a new boundary. An issue arose between the successors in title to the vendor and purchaser as to the position of the boundary. The claimant claimed it was a Cornish hedge. The Defendant claimed it was a fence. The hedge and fence were parallel, and about 4 to 5 metres apart. Both parcels were registered. The title plans showed the hedge as the boundary. It was held that the fence was the boundary, and that correcting the title plans would not amount to rectification. Although the title plans had shown the hedge as the boundary, the precise

position of the boundary was not determined. Correction of title plans did not mean that one person lost land and another gained land: it merely recorded more accurately the position of a general boundary. The question whether or not a particular correction to the position of the general boundary was sufficient to amount to an alteration outside the general boundaries rule was a question of fact in each case. In this case, although the disputed area amounted to 1.5 acres, it was a long thin strip alongside the boundary, and the dispute in question was clearly a boundary dispute.

19. By contrast, a *determined boundary* fixes the boundary between the properties. The relevant provisions are set out in Section 60(3) of the Act, and, in particular, in Rules 118 to 123 of the Land Registration Rules 2013, and Practice Direction 40. A boundary fixed or determined in this way must, amongst other things, be accurate to +or- 10mm and taken from at least two defined physical features. The requirements are strict. A surveyor will need to be involved in preparing the plan.

20. It is also open to the parties to reach a boundary agreement. This does not need to meet the strict requirements of a determined boundary. The parties will agree the position of the legal boundary and record this in writing. Typically, the parties will agree that the boundary is between points A and B (or A B C D or as the case may be if the boundary is a particularly long one, with a number of features) on a plan signed by the parties. The better the quality of the plan and the more precisely it shows the position of the legal boundary the more helpful it will be to the parties and their successors. Land Registry provides helpful guidelines. The boundary agreement will be noted on the titles of the properties involved. An entry will be made along the following lines: *'A deed dated... made between relates to the boundary [describe which boundary] of the land in this title. Copy filed.'*

21. Unless determined under Section 60, the boundary agreed by the deed will remain a general boundary, but it will be, as far as possible, an accurate general boundary.

Construction of conveyances generally

25. The approach to construing conveyances is well established. As was stated by Lord Hoffman in *Alan Wibberley Building Limited v Insley* [1999] 1 WLR 894:
- (1) The construction process starts with the conveyance which contains the parcels clause describing the relevant land...
 - (2) An attached plan stated to be 'for the purposes of identification only' does not define precise or exact boundaries. An attached plan based upon the Ordnance Survey, though usually very accurate, will not fix precise private boundaries nor will it always show every physical feature of the land
 - (3) Precise boundaries must be established by other evidence. That includes inferences from evidence of relevant physical features of the land existing and known at the time of the conveyance
 - (4) In principle there is no reason for preferring a line drawn on a plan based on the Ordnance Survey as evidence of the boundary to other relevant evidence that may lead the court to reject the plan as evidence of the boundary.
26. Where there is no ambiguity in the parcels clause or the plan, it is not appropriate to have regard to extrinsic evidence. If the plan is not 'for identification only' the plan will (generally) prevail, even if there is a mismatch between a clear plan and topographical features on the ground (see *Partridge v Lawrence* [2003] EWCA Civ 1121, *Beale v Harvey* [2003] EWCA Civ 1883 and *Pennock v Hodgson* [2010] EWCA Civ 873.)
27. As appears below, the difficulties in this case are that a) whilst it is clear that the boundary between each cottage runs down the party walls, the width of the cottages is less than the width of the gardens with the result that it is not possible to simply draw a straight line from each party wall to the back of the rear garden and b) the gardens are themselves of differing widths.

The relevant Conveyances

28. On 24 April 1925 three conveyances were entered into for the sale of what are now Numbers 14 to 17. The conveyance of Number 17 was made between Baron St

Audries and a Mr Creech [it is not altogether easy to read the name of the purchaser, but I believe this is right]. The parcels clause of the 1925 Conveyance is as follows:

'ALL THAT piece or parcel of land situate in the village of Staple in the Parish of West Quantoxhead aforesaid together with the cottage and outbuildings erected thereon being number 17 in Staple aforesaid and now in the occupation of Mr Creech as tenant thereof which said premises are part of Number 103 on the Ordnance Survey map (second edition 104) and form part of the St Audries Estate and are delineated on the plan drawn herein and thereon coloured pink....'

29. The plan is on a scale of 1/1250. It shows the front garden as measuring 29' and the rear garden measuring 26'. The rear garden is shown as rectangular.
30. By an agreement dated 2 October 1924 between William Abel Towler and James Davey Mr Towler agreed to sell Number 16 to Mr Davey on 25 March 1925. Mr Towler had in turn agreed to purchase a portion of the St Audries Estate from Lord St Audries.
31. By a conveyance also dated 24 April 1925 made between Lord St Audries as Trustee, Mr Towler as vendor and Mr Davey as purchaser, it was agreed that Lord St Audries would convey direct to the Mr Davey the properties known as Numbers 15 and 16. The parcels clause is in the same terms as that set out above, namely: *'ALL THAT piece or parcel of land site in the village of Staple in the Parish of West Quantoxhead aforesaid together with the two cottages and outbuildings erected thereon being Nos 15 and 16 Staple aforesaid in the respective occupation of AJ Lewis and E Western tenants thereof respectively which said premises were part of No 103 on the Ordnance Map (second edition 1904) and formed part of the St Audries Estate and were delineated in the plan drawn thereon and thereon coloured pink and green...'*
32. The plan to this conveyance shows the measurements of Number 16 as 24' at the front and 24' at the rear. Number 15 is wider at the rear (30'). In each case, the boundary runs, as one would expect, through the party wall of the cottages. Clearly, though, the rear gardens are not the same width, and the gardens are wider than the cottages, so that the boundaries must therefore be adjusted as they run to the end of

the respective gardens where they differ. The width of the gardens at the rear of Numbers 17 and 16 is the same, 26'.

33. On 29 September 1947 Mrs Alice Western became the owner of Numbers 15 and 16 by assent as the personal representative of Mr M B Davey. On 3 November 1947 she sold Number 16 to Mr William and Mary Trickery, the great-grandparents of the Respondents. The parcels clause is in the same terms as those set out above. The plan to this conveyance shares the feature of showing the boundary between Number 16 and 17 along the centre lines of the cottage and outbuilding.
34. On 4 November 1947 Number 15 was sold by Mrs Western to her grandson, Ernest John Western. The plan to the 1947 Conveyance is precisely co-terminous with that of Number 16.
35. It is to be noticed that on the plans the garden between the cottage of Number 15 and the outbuildings is not shown as parallel to the garden of Number 14. In other words the boundary between Number 15 and Number 14 is not a straight line running north-west from the properties, but is offset. It is narrower in the middle garden than the back garden.
36. Number 14 was also sold by Baron St Audries on 24 April 1925. The conveyance plan clearly shows the offset referred to above.
37. I therefore do not agree with Mr Dunsford when he argues that the conveyance of Number 17 must take precedence over the conveyances of the other cottages. They were all conveyed on the same day (albeit that Numbers 16 and 15 remained in common ownership until 1947).
38. If no conveyance takes precedence over the others, as I explained above, the difficulties in construing the plans are obvious. The boundaries of the back gardens cannot simply follow the line of the party walls. An element of off setting is inevitable. The Respondents argue that the datum is the centre line of the four cottages, that is to say the boundary between 16 and 15.

39. I am hesitant to reach this conclusion, not least because the owners of Number 15 are not parties to this litigation, and because it might in any event be helpful to have the benefit of a surveyor, experienced in boundary disputes, to plot the various gardens.

Other evidence

40. A dispute over rights of way over the driveway between Number 17 and 18 was resolved by a court order in December 1981. I do not consider that this assists in any way in determining the issues before me.
41. On 26 October 1984 Mr Dunsford purchased Number 17, but did not register his title. The Respondents registered their title in April 2003. As mentioned above, Land Registry surveyed the property prior to registration. It was noted that there was nothing on the ground to show who owned what of the back gardens to all 4 cottages, and it seems that the surveyor was told by the owner of Number 15 and the tenant of Number 16 that the area was divided into four segments.
42. In 2011 a further survey was carried out in relation to Number 15. I have not seen a copy of this. A further survey was undertaken by Land Registry in January 2015 in relation to Number 17. The survey notes that the land 'tinted pink' falls within Number 17 but it had been registered as part of Number 16. In correspondence with Mr Dunsford, Land Registry appeared to accept that there has been an error in the mapping of the filed plans, and advised him to make this application. Mr Dunsford was not charged a fee for this application.
43. As mentioned above the Respondents now accept that the plan of Number 16, albeit only showing general boundaries, is not accurate. Ms Pagnell also wrote, it seems, to Land Registry suggesting that a surveyor attend to correct the filed plans of the two properties. I do not know whether this suggestion was considered by Land Registry.

Discussion and Conclusion

44. It is common ground that the filed plan to Number 16 is incorrect, albeit that it shows general boundaries only. This is also the view of Land Registry. The effect of making the alteration sought would be to show the general boundary in a more accurate place.
45. However, as explained above, I am not persuaded, on the basis of the information and material before me, that simply taking the centre line of Numbers 17 and 16 is the correct starting point. As I have said, the plans for Numbers 16, 15 and 14 also show the centre line as the boundary. Given that the gardens are larger than the cottages, and that the gardens are not the same width, it is not possible to simply say that each parcel of land is in line with the centre of the properties.
46. Moreover, and even if I were satisfied that the boundary with Number 16 is incorrectly drawn on the filed plan, the Tribunal has a discretion as to whether or not to make the alteration sought. The alteration will not be made if there are exceptional circumstances which justify not making the alteration. This point was considered at length on appeal in the case of *Fallon* referred to above.
47. It seems to me that if I were simply to give effect to the application as it stands, by removing the Pink Land from the title of Number 16 (and thereby, at some point, incorporating this land into the filed plan of Number 17), I would be creating another, and also plainly inaccurate, general boundary, namely that of Number 16. This in turn is very likely to raise the question of the correct boundary between Number 16 and 15, and between 15 and 14.
48. The problem which needs to be resolved in this case is the boundary between all four cottages. They were all sold in 1925, by reference to similar plans, which, diagrammatically, show each rear garden as a rectangle, parallel to the others, and following the centre line of the boundary between each cottage, but which, in view of the measurements on the plan, cannot follow those lines.

49. It is a matter for Land Registry, the parties to this action, and the owners of Numbers 14 and 15 whether or not the boundaries between the four properties are agreed and, if so minded, alterations made to the four filed plans.
50. In view of all the circumstances of this case, I will not make any costs order. It would not be right to award costs against Mr Dunsford in circumstances where he was encouraged to make this application by Land Registry, and where Land Registry take the view that a mistake has been made.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 22nd day of June 2017