



[2017] UKFTT 0812 (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 2017/ 0068

BETWEEN

RAY TABB
HILARY LOUISE TABB

Applicants

and

GALINA STOYKOVA
ELENA STOYKOVA

Respondents

Property Address: Evenley Lawn, Church Lane, Evenley

Title number: NN117369

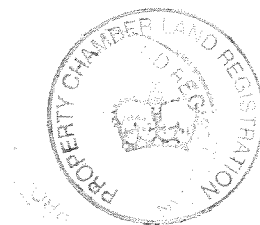
ORDER

The Chief Land Registrar is ordered to give effect to the application dated 14 March 2016

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 3rd day of October 2017





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Applicants

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Respondents

Property Address: Evenley Lawn, Church Lane, Evenley NN13 5SG

Title number: NN117369

**Before: Judge McAllister
Alfred Place, London
19 September 2017**

Representation: The Applicants appeared in person. The Respondents were represented by Paul Simms of Citilegal International Ltd

DECISION

Introduction

1. The Applicants, Mr and Mrs Tabb, are the registered owners of The Barn, Church Lane, Evenley ('the Barn'). The Respondents, who are mother and daughter, are the registered owners of the neighbouring property, Evenley Lawn. The Barn is registered with title number NN139973; Evenley Lawn with title number NN117369.

2. By an application dated 14 March 2016 Mr and Mrs Tabb applied for a determined boundary along part of the boundary between the two properties. The Respondents objected by letter dated 24 June 2016 and the matter was referred to the Tribunal on 16 January 2017.
3. Both properties include a large pond or lake, divided by a causeway at the northern end of the Evenley Lawn lake, and the southern end of the lake in the Barn. The disputed boundary follows the contours of the lake in Evenley Lawn on the western side of its lake, and along the causeway. The causeway leads to a five bar gate, giving onto fields not forming part of either property.
4. I had the benefit of a site view on 18 September 2017, and heard evidence from Elena Stoykova, Mr Tabb, Mr Ormerod (one of the previous owner of both The Barn and Evenley Lawn) and from a surveyor appointed by the Respondents, Mr Selby.
5. For the reasons set out below I will order the Chief Land Registrar to give effect to the application made by Mr and Mrs Tabb.
6. The application is made under section 60(3) of the Land Registration Act 2002. The boundary marked in red on the filed plans of the respective titles is a 'general boundary' which 'does not determine the exact line of the boundary' (Section 60(1) and 60(2) of the Act). Rules 118 and 119 of the Land Registration Rules 2003 set out in detail how such an application must be made. In the event that there is an objection to the application, which is not groundless, the matter will be referred to this Tribunal. The jurisdiction of the Tribunal has been authoritatively considered in the recent decision of the Upper Tribunal in *Bean v Katz* (2016) UKUT 168 (TCC).

Background and evidence

The sale of The Barn in 1990

7. Mr and Mrs Tabb purchased the Barn by a Transfer of Part dated 27 July 1990 from Jeremy and Patricia Ormerod ('the 1990 Transfer'). The Transfer describes the Barn as '*the land shown and edged red on the plan bound within and known as The Barn*

Church Lane Evenley Brackley Northamptonshire being part of the land in the title above mentioned. The plan attached to the Transfer bears the stamp of Lane Fox, the estate agents having conduct of the sale. It is on a scale of 1/1250. The boundaries are drawn with a thick black line and edged in red. The figure of 30' has been written on the plan at a point between the western edge of the Evenley Lawn lake and the red line, and a figure of 20' has been written in at a point on the northern edge of the same lake.

8. The evidence of Mr Selby (and agreed by all the parties) is that the shape of the Evenley Lawn lake on the Lane Fox plan does not match the shape of the lake on the filed plan to this title (which is also shown inaccurately) or its actual shape. Moreover, the manuscript dimensions do not scale to the distance between the edge of the lake and the boundary shown on the Lane Fox plan. That said, it is also clear that the 1990 Transfer plan depicted the boundary following the western contours of the Evenley Lawn lake. The boundary contended for by the Respondents does not do so, but draws the boundary a considerable distance from the western edge, the furthest distance being at the south western corner.
9. At the time of the 1990 Transfer to Mr and Mrs Tabb there was no fence or any physical boundary between the two properties along the disputed boundary. Shortly after the sale to Mr and Mrs Tabb a post and rail fence was erected running across the grounds of the properties to a point three metres away from the edge of the Evenley Lawn lake. This remained in position until the sale of Evenley Lawn to the Respondents. The disputed boundary, as I have said, starts at the lake end of the fence point and follows the contours of the lake, and continues along the causeway dividing the two lakes.
10. Mr and Mrs Ormerod moved from The Barn to Evenley Lawn (then known as The Stables). The two couples were friends, and were content to keep this boundary unmarked by any physical feature. However, in late 1990, an agreement was reached regarding this boundary ('the 1990 Agreement').

11. The 1990 Agreement took the form of a letter signed by both Mr and Mrs Tabb and Mr and Mrs Ormerod on 1 December 1990 and witnessed. I will set out this letter in full.

Dear Roy and Hilary,

As you know we are delighted that our friends have become our neighbours with your purchase of our old home The Barn.

We agree that we should at least record our joint understanding reached during your purchase of the Barn concerning the new boundaries that separate our respective houses where we have already established the post and rail fence separating our Eastern boundary in the position we discussed.

This is to clarify the position of the remaining open boundary at the north eastern position to gable end (furthest from the road) of The Barn. We both accept that it is best for both properties that we agree that in order to maintain this non-fenced open aspect a descriptive boundary position should be identified.

The open edge of the lake that remains with our new house (Evenley Lawn) that is closest to The Barn has been a concern for us both due to the constant edge erosion caused by Canada geese. The result of this has been we have gained several square meters of your front garden due to the expanding area of our lake with no reciprocal benefit to you.

It is agreed that in recognition for us receiving your agreement to the let the new boundary become the existing lake edge we agree to describe this 'open' boundary as the best solution. That description being a fixed distance of 10 feet from the waters edge will remain owned by us.

It is also agreed that we divide the causeway that separates our two lakes equally starting from the 10 foot boundary across to the centre of the 5 bar gate on the far boundary for both properties. As this causeway also provides the underground water connection that we rely upon to feed our lake you have agreed to maintain this whilst this agreement exists

It is in our best interest to ensure that no further erosion otherwise our right of passage will negatively affected due to there being no available 10 feet to walk on. We will ensure some form of bank protection will be installed to prevent this being a future issue between us.

12. In short, the agreement was that the boundary was 3 metres (10 feet) from the western side of the lake in Evenley Lawn, and along a line drawn from the end of the 3 metre boundary to the middle of the 5 bar gate. The Applicants' case is that the causeway boundary in any event accords with the 1990 Transfer plan, properly interpreted.

13. Sleepers were duly installed along the Evelyn Lawn lake edge, which have remained in place to this day. The disputed boundary remained open, and did not cause any difficulties. I accept the evidence of Mr Tabb that he constructed two benches more or less 3 metres from edge of the lake and that he occupied and maintained his property up to the 3 metre mark around the Evenley Lawn lake. Mr Ormerod and Mr Tabb both

stated that the agreement did not purport to establish a new boundary but rather was intended to define the boundary.

The transfer of Evenley Lawn to the Respondents in 2011

14. In early 2011 the Respondents were looking for a property, and in April 2011 they viewed Evenley Lawn. Contracts were exchanged on 11 August 2011, and completion took place on 6 September 2011.
15. Solicitors were instructed: Manches LLP acted for the Ormerods, and HCLS acted for the Respondents. The extracts from the Respondents' conveyancing files start with the Property Information Form which was completed by the vendors on 4 May 2011 (the form stated May 2010, but this was clearly an error). The relevant questions and answers (as relied upon by the Respondents) are as follows. Question 1.3 asked if during the seller's ownership any land previously forming part of the property had been sold: the answer was that the land had been split in 1989. Question 2.2 asked if the seller knew anything which might have led to a dispute about the property; the answer was no. Question 8.2 asked if the property benefited from any formal or informal arrangements over the neighbouring property: the answer was no.
16. An extract from the building surveyors report for Evenley Lawn stated this: *'the property occupies a plot of irregular plan shape. A prospective purchaser should obtain a suitably scaled copy of the proposed transfer plan and check this on site before entering into a legal commitment to buy the property, to ensure that there are no significant discrepancies or other problems.'* The report also noted: *'The line of the boundary adjacent to part of the pond is not delineated by fencing. The present owner should be asked to insert suitable markers, into the ground, to reduce the likelihood of future disputes. When this has been done it would be wise to check that the neighbouring property owner agrees with the locations of the markers.'*
17. By letter dated 3 June 2011 HCLS asked Manches to provide details of the 1990 Transfer with details of any rights which the transferred part has in respect of this property and vice versa. Manches replied that with effect from 1989 any rights would be on the property registers, and stated that there had been no disputes between the

respective owners. The letter suggested that the purchasers should contact the Land Registry if they wished for a copy of the transfer deed.

18. By a further letter dated 13 July 2011 HCLS asked again for a copy of and the date of the 1990 Transfer deed and the filed plan of title NN139973 (the Barn). The letter also stated as follows: *'The Report [the Building Survey Report] states that 'the line of the boundary adjacent to part of the pond is not delineated by fencing. Please ask your client to insert suitable markers, into the ground to reduce the likelihood with the neighbouring owner in consent [sic] with the location of markers.'*
19. The reply to this letter is dated 19 July 2011. On the transfer point, the letter stated that the transfer took place in 1990, and that they did not have a copy of the deed. In relation to the point raised by the building surveyor report, the letter stated: *'Our client is arranging for steel rods to be placed 3 metres in from the boundary edge of the pond/lake following the length of the unfenced line. This has been agreed by the neighbouring property. These will be sunken below the height of the grass but can be identified by investigation or use of a metal detector.'*
20. HCLS in turn responded on 27 July 2011, but no reference was made to the issue as to the boundary, and there is no further correspondence on this subject.
21. As I have said, contracts were exchanged on 11 August 2011. The property was defined as 'the freehold property at Evenley Lawn, Church Lane, Evenley', and the title number was given. The TRI defined the property in the same way.
22. I should add that the 1990 Agreement was not disclosed to the Respondents until a copy was enclosed with a letter sent by Mr Tabb on 13 January 2015. The reason for the delay was that this letter, and other documentation, was held by Mr and Mrs Tabb's Spanish lawyer. Mr Ormerod, in evidence, stated that he saw no reason to disclose this letter because in any event the description of the disputed boundary accorded with what was being sold to the Respondents.

The placing of the markers

23. Mr Ormerod's evidence is that he instructed a contractor to position a tied group of three steel rods at 12 location points along the open boundary 3 metres from the western edge of the lake, as stated in the letter dated 19 July 2011. Two markers were placed along the causeway: one at the western end, the other at the eastern end. I have seen a letter from Mr Kevin Wild (a gardener) which states that he also assisted in installing the rods. These were approximately 1 metre long and were driven into the ground leaving a small section exposed. The steel rods were inserted before exchange of contracts. It is Mr Ormerod's and Mr Tabb's evidence that they were still visible on one of the pre-sale visits by the Respondents, and that the position of the rods was pointed out to the Respondents. The rods were then driven into the ground below surface level to avoid any unsightliness or risk of tripping, and to prevent any difficulty mowing the grass.
24. Mr Ormerod stated that, at the time he walked around the lake with Elena Stoykova before exchange of contracts, the fence stopped three metres before the lake. He was clear in his evidence that he showed the Respondents the steel rods and left them exposed by 4 inches so that Mr Tabb could see them and take the coordinates. Mr Tabb took the coordinates with a hand held GPS device which he then plotted on Google Earth and sent to Mr Ormerod on 9 September 2011. The markers were then re-plotted with a more accurate device, a Leika Disto and triangulated by fixed points. I should add that Mr Tabb is a chartered engineer, with experience in surveying techniques.
25. Mr Tabb's evidence is that the markers were intended to enable the owners of the respective properties to locate the boundary as agreed in correspondence between Mr and Mrs Ormerod's solicitors and the Respondents, and which in turn reflected the 1990 Agreement. In the event that the lake sleepers should disappear or be damaged, the rods would assist in locating the boundary.
26. Elena Stoykova's evidence on this point is as follows. She recalls walking around the grounds with Mr and Mrs Ormerod and having a conversation about the boundary, but stated that she was concentrating on the house itself and believed in any event that the

boundary was defined by the sales particulars, and the filed plan. Asked about the steel rods, her reply was that she believed that the markers would be placed in accordance with the filed plan, but that in any event she did not see the markers at any time. She was also asked about the existing fence running down towards the lake, and stopping 3 metres before the lake. She stated that she did not relate the fence to the filed plan, and did not believe it had any bearing to the boundary.

27. The markers have not been located. Mr Selby did not use a metal detector. Ms Stoykova says that she did use a detector, but did not use qualified people. Mr Selby accepted in evidence that it is hard to find such rods once they have been hammered into the earth.

28. The issue of the location of the markers was raised on a number of occasions by Ms Stoykova prior of the issue of this application. In January 2012 Mr Ormerod replied to a request made by Ms Stoykova by saying that the steel rods were placed in accordance with the instructions through solicitors, and that Mr Tabb took satellite positions. On 8 August 2014 he wrote an email to Ms Stoykova in reply to a request from her in which she asked where he had obtained the coordinates to insert the metal rods. Mr Ormerod replied that he did not obtain the coordinates first, then placed the rods. The process was the other way round. In terms he stated: *'the known boundary line was set at 2 metres from the physical waters edge of the lake and the rods were inserted on that basis. The 2 metres identification is the definition that was included in our respective sales documents. Roy took satellite coordinates of the rods positions after they were correctly positioned into the ground which was to facilitate finding them if there should ever be a need to as they were kept below the ground surface level for safety reasons. You will recall that the need to identify the boundary in this was due to the historic water bank edge erosion which had taken some of Roy and Hilary's garden so I had oak beams placed around the bank edge to prevent further incursion into Roy and Hilary's land then added the extra insurance of defining the boundary with the steel rods'*.

29. Mr Ormerod explained in the course of his evidence that the reference to 2 metres was plainly a mistake: he was clear that the extent of the land sold to the Respondents was the same as that provided for by the 1990 Agreement, and corresponded to the

information he had given to Manches. The Respondents knew that the boundary would be 3 metres from the western edge of the lake, and along the middle of the causeway.

30. In essence, this is the Applicants' case: the boundary agreement made in 1990 was confirmed in correspondence by the Ormerods' solicitor by reference to the 3 metre distance between the western edge of the lake and the boundary, and by the positioning of the rods.
31. The Respondents' rely on the evidence of Mr Selby, a senior surveyor with On Centre Surveys Limited. In 2014 he was instructed in relation to this matter. He was supplied with the filed plans for the respective properties, and met Elena Stoykova in October 2014. Her intention, at this stage, was to erect the boundary fence. He plotted the boundary by reference to the filed plans. He was also given the first set of coordinates made by Mr Tabb, and plotted these. His view was that these had been obtained by holding a hand held GPS device and accordingly have an accuracy of a few metres.
32. Mr Selby was also given a copy of the plan attached to the 1990 Transfer. Mr Selby believed that the manuscript shows 20' (rather than, as I think is the case, 20' and 30') but either way the Lane Fox plan does not scale to 20'.
33. Mr Selby's plan therefore is based solely on the Land Registry plans, save that, at where the boundary meets the 5 bar gate on the causeway, he drew the line in such a way that it does not cut across the bottom of the Barn's lake. This line matches the line drawn on the determined boundary plan. Mr Tabb's case is that the fence as erected along the causeway is, on any footing, in the wrong place. When supplied with the further coordinates used by Mr Tabb to prepare the determined boundary, Mr Selby prepared a new plan which matches the determined boundary plan.

Subsequent events

34. Though not relevant to the issue I have to decide, matters became fraught between the Applicants and the Respondents because, on the Respondents' case, friends and visitors to the Barn did not respect the (invisible) boundary between the two properties

by their lake's western edge, and frequently wandered into their grounds. On 17 November 2014 Elena Stoykova put the Tabbs on notice that she intended to erect a fence along the line shown on the title plan to her property. As the Land Registry plan showed the north eastern boundary cutting across the south eastern corner of the Tabbs' lake it was proposed to put the fence in a straight line.

35. Mr Tabb responded with the letter of 13 January 2015 (referred to above) which included a copy of the 1990 Agreement. Ms Stoykova replied saying that the agreement was not binding on her, and that she had been assured by Mr Ormerod at the time of purchase that the boundary markers had been placed in accordance with the Land Registry plan. This was not her evidence at trial, however.

36. A 2 metre wooden fence was erected by the Respondents along the boundary line as shown on their filed plan along the western edge of the lake to the causeway, and thereafter a 1 metre link fence has been erected along the causeway itself. The Tabbs were not in the country when the fences were erected.

37. In May 2015 the Applicants applied to the Tribunal rectify the register. The Tribunal has no jurisdiction to do so unless the matter is referred by Land Registry. The present application was made on 14 March 2016.

Findings of fact

38. I have no hesitation in finding that the markers were placed 3 metres from the western edge of the Evenley Lawn lake and that two markers were placed along the causeway. I also find that the markers were pointed out to the Respondents (and certainly to Elena Stoykova) before exchange of contracts, although I fully accept that she may not have a clear recollection of this, and that her primary focus was on the house itself. Mr Tabb took the coordinates on two occasions. For the avoidance of doubt, I accept the evidence of Mr Ormerod that the reference to 2 metres in his email dated 8 August 2014 was a mistake.

Construction of conveyances generally

39. The starting point when construing any conveyance is the parcels clause. In this case the 1990 Transfer describes the property as The Barn, Church Lane, Evenley, Brackely, Northamptonshire by reference to an annexed plan. If the boundaries are not adequately defined by the parcels clause or the plan extrinsic evidence is admissible to establish the true intention of the parties.
40. In *Cook v JD Weatherspoon Plc* [2006] EWCA Civ 330, the problem was that the scale plan (1/1250) attached to a transfer of part of the land in a registered title noted that the retained land had a width of 40' whereas the width should have been 30', according to a scaling up of the plan. The Court of Appeal rejected the argument that either the scaled off measurements, or the written dimensions, should prevail. There was an ambiguity in the plan in that there was a conflict between the two measurements. The way to resolve the conflict was to have regard to established principles affecting the construction of documents conveying or transferring interests in land.
41. These principles, as set out in *Alan Wibberley Building v Insley* [1999] 1 WLR 894,896, include the consideration of inferences to be drawn from the topographical features on the ground, if any, and, as set out in *Ali v Lane* [2006] EWCA Civ 1532, evidence of subsequent conduct, subject always to this evidence '*being of probative value in determining what the parties intended*'.
42. In *Haycocks v Neville* [2007] EWCA Civ 78, it was held that the judge at first instance was entitled, because the information contained in the relevant conveyances was unclear or ambiguous, to have regard to a subsequently drawn plan as well as to subsequently created topographical features including trees planted to help identify the boundary.
43. In short, the court in determining the location of the boundary where this is not clear from the conveyance itself is entitled to have regard to extrinsic evidence, including, importantly, the subsequent conduct of the parties.

Boundary agreements

44. An express agreement to be bound by a particular boundary will bind the party agreeing and successors in title. In *Neilson v Poole* (1969) 20 P&CR 909 Megarry J distinguished between two types of agreement: a contract to convey land or, alternatively, an agreement which ‘*does no more than identify on the ground what the documents describe in words or delineate on the plans. Nothing is transferred, at any rate, not consciously; the agreement is to identify, not convey... In general, I think that a boundary agreement will be presumed to fall into this latter category.*’ This decision was approved by the Court of Appeal in *Joyce v Rigolli* [2004] EWCA Civ 79.
45. Such an agreement is binding on successors in title without the need for it to be protected by registration: see *Haycocks v Neville*, where Collins LJ, citing earlier authority, stated that an agreement to demarcate an unclear boundary is binding on the parties and binds successors in title without the need for a written agreement. On the facts he held that the evidence was that a particular plan had been drawn up to clarify the boundary following discussions between the original owners.
46. In *Nata Lee Ltd v Abid and another* [2014] EWCA Civ 1652, Briggs LJ said this:’
There is to my mind a real difference between an agreement, the purpose of which is to move a boundary so as to transfer land from one neighbour to another, and an agreement the purpose of which is to define a previously unclear or uncertain boundary, even if that agreement may involve a conscious transfer of a trivial amount of land.... In a true boundary agreement, the consideration is provided, each way, by the substitution of certainty for uncertainty as to the boundary and the relief of both neighbours from the risk of further dispute.’
47. Whether there is such an agreement, is, of course, a matter of fact: *Charalambous v Welding* [2009] EWCA Civ 1578 at paragraph 6, and *Bean v Katz* [UT/2015/0042]. A boundary agreement may also be inferred from conduct: see *Charalambous* at paragraph 6.

48. So the scope of the inquiry where the parcels clause and the plan is ambiguous is wide enough to encompass boundary agreements (so long as they do not amount to a transfer of land from one party to another) and which do not need to be made by the original parties to the conveyance) and the subsequent conduct of the original parties (and possibly subsequent parties: see *Ali v Lane*) to the conveyance, which itself may take the form of a clarification of the boundary. An informally agreed boundary alteration or clarification may be difficult for a conveyancer to discover by enquiry. That does not, however, make it any less binding.

The parties' respective submissions

49. The Applicants' case has been summarised above. In essence, it is their case that the relevant conveyancing plan is the 1990 Transfer plan, as subsequently interpreted by the written boundary agreement made in December 1990, confirmed in the exchange of solicitors' letters, and marked in the ground by the steel rods referred to above. Moreover, until the new fence was erected by the Respondents, they (and the Ormerods) conducted themselves on the basis that the Barn included all the land to the boundary as agreed in December 1990.

50. Whether or not open and peaceable occupation of land of itself can give rise to a presumption of ownership is considered in *Adverse Possession* (2011) by Stephen Jourdan QC and Oliver Radley-Gardner, 2nd Ed at para 4.08. The authors refer to a principle which may apply to unregistered land. The principle was developed at a time when the limitation period was 20 years, and it is not clear whether the presumption now applies to 12 years only, or indeed whether it applies to registered land. In view of my conclusion on the construction of the 1990 Transfer and the 1990 Agreement I do not need to reach a concluded view on this point, although I accept, on the facts, that both the Tabbs and the Ormerods conducted themselves from 1990 onwards on the basis that the boundary was the unmarked boundary three metres from the lake's edge, and halfway along the causeway to the centre of the 5 bar gate.

51. The Respondents' case, simply put, is that the July 1990 transfer plan cannot be of any assistance in determining the disputed boundary since it demonstrably shows the Evenley Lawn lake in the wrong place, and since the scale measurements between the

lake and the boundary line do not correspond with the figures written on the plan. The Land Registry mapped the line shown on that plan and accordingly it is the filed plan which determines the boundaries. The 1990 Agreement is not binding because it was not acted upon: no wall or fence was erected thereafter. A purchaser cannot be bound by an undisclosed and concealed agreement. In any event, this agreement was not, properly construed, a clarification of an existing boundary but an attempt to create a new boundary.

52. As for the exchange of solicitors letters, it was submitted that by using the words ‘ the line of the boundary adjacent to part of the pond is not delineated’ the writer meant ‘not delineated in accordance with the filed plan’ and therefore the writer was not in a position to know whether or not 3 metres was the correct distance from the lake. The Respondents’ solicitors did not have the 1990 Transfer at the time: if they had, the solicitors would have noticed the discrepancy. Moreover, there was no response to Manches’ letter, and the following points show that 3 metres was not the correct boundary.
53. The points relied on are a) the site visit made by the Respondents during which, on Elena Stoykova’s evidence, she did not clearly understand the position of the boundary b) Mr Ormerod in later correspondence referred to 2 metres c) the original coordinates given by Mr Tabb do not correspond with those now relied upon in the determined boundary plan d) it is unsatisfactory that the rods have not been located and no reliance should be placed on a drawing without any evidence to prove that it corresponds with what is in the ground. The point is also made that the amount of land in issue is not inconsiderable: the Respondents are being asked to give away up to 10 metres.
54. Finally, it was submitted that if I am not satisfied that the determined boundary applied for is not sufficiently accurate I should dismiss the application, and find that the filed plan accurately reflects the land sold in 1990.

Conclusions

55. I have no hesitation in rejecting the submissions on behalf of the Respondents. The filed plan is, as is well known, a general boundary only. It cannot of itself determine the true position of the boundary unless it accords with the original conveyance plan, as supplemented, if the boundary is unclear, by admissible extrinsic evidence.
56. In the present case, given the deficiencies of the 1990 Transfer plan, it is clearly permissible to have regard to the subsequent conduct of the original parties as demonstrated by the 1990 Agreement and the way in which they acted thereafter.
57. It is said that the agreement cannot bind successors in title because it was not acted upon, that is to say, no physical feature was erected to identify the boundary agreed upon. I do not accept this proposition: it is not the feature of itself which determines the boundary. The boundary is determined by agreement and may, or may not, be made visible by a physical feature.
58. It may be said that the 1990 Agreement does no more than to help in the construction of the 1990 Transfer in so far as it consists of admissible subsequent conduct by the original parties to the transfer, or, alternatively, that the 1990 Agreement amounts to a boundary agreement. The outcome, by either route, is the same. The parties to the agreement were not transferring land from one title to another, but were defining a previously unclear boundary.
59. But in any event, on the facts of this case, the Respondents were made aware of the position of the boundary contended for by the Applicant. The solicitors for the Respondents sensibly and prudently asked for the unmarked boundary to be identified. This was done by letter and by positioning of physical markers in the ground. Those markers were, as I find, pointed out to Elena Stoykova by Mr Ormerod before exchange of contracts. In the circumstances the effect of the 1990 Agreement, (whether it should be treated as an aid to the construction of the 1990 transfer or whether it amounts to a boundary agreement) was pointed out to the Respondents.
60. Accordingly I will order the Chief Land Registrar to give effect to the application.

Costs

61. In principle the Applicants, as the successful parties, are entitled to their costs. As they are litigants in person, the costs are limited to disbursements, and to a fixed sum of £19.00 per hour for work done, subject to an assessment. If costs are to be pursued, a schedule is to be filed with the Tribunal and served on the Respondents, annexing copies of receipts if relevant. This is to be done by 20 October 2017. The Respondents may reply, raising any points or objections, within 14 days of receipt of this schedule. I will then consider what costs order, if any, to make.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 3rd day of October 2017.

