

Neighbours at War (Boundary Disputes)

David J POWELL, United Kingdom

Key words: Dispute, boundary, neighbour, expert, court

SUMMARY

This paper describes the causes and possible remedies for property boundary disputes, based on the speaker's experience of over 3,000 such disputes in England and Wales. The psychology of the participants, the variety of paper evidence, the need to look for details on the ground, the preparation of an expert report and the giving of evidence in a Court of law are all described in detail.

Neighbours at War (Boundary Disputes)

David J POWELL, United Kingdom

1. NEIGHBOURS AT WAR

All over the World, at this very moment, neighbours are arguing over their boundaries. Such disputes are not confined to England & Wales but the Land Registry's General Boundaries Rule does not help when property owners are particularly pedantic by nature. Other countries have, arguably, better systems (i.e. Cadastral) than that used in England & Wales.

1.1 An Analysis of the Type of Person most Likely to have a Boundary Dispute?

A data base has been built up over the past 18 years, including over 3,200 boundary disputes and, by reference to this data base, the speaker will demonstrate that there are certain traits that can be spotted in advance by the experienced practitioner. Whilst this does not help to solve a dispute it can be helpful in learning how to deal with the attitudes that may be encountered.

2. WHAT IS THE PURPOSE OF AN EXPERT?

To help the Court or Tribunal to arrive at the correct answer by the use of independent and professional expertise.

The expert is not a barrack-room lawyer but can be considered to be a wise owl standing aside from the fray.

The expert's evidence may well be the only reliable source of information available to the Judge Mediator or Arbitrator.

3. WHERE DOES THE DUTY OF THE EXPERT LIE?

To the Court (or appropriate legal forum).

In the past many experts thought that their duty was to their client(s) and some experts have been heard to utter the words "*he who pays the piper....*" but nothing could be further from the truth.

A good expert, carrying out his or her duty correctly, is in fact serving the client in the best possible way, by truthfully and independently considering the problem as if solving a jigsaw puzzle. The jigsaw puzzle may have some pieces missing, others that belong to different puzzles and there may be no picture on the lid of the box.

4. WHAT PAPER EVIDENCE CAN A BOUNDARY EXPERT OBTAIN?

- LR (Land Registry) data.
- The deeds.
- Aerial photographs.

4.1 What features on the ground should a boundary expert look for?

Fences, walls, hedges, old tree stumps, changes of surface and cultivation, as well as looking at similar nearby properties. Old boundary markers may also exist.

5. THE MEASUREMENTS AND ANALYSIS

It is essential that a boundary expert prepares an accurate and clear map of the area of dispute. The map must be free of unnecessary clutter and easy for a non-expert to understand. Measurements should be taken and recorded in both metric and imperial systems. Colour photographs, preferably digital, should be taken of all important features. Aerial photographs should be examined using a mirror-stereoscope. All maps should be saved as computer files for easy reference and reproduction.

6. THE REPORT

The report must be a stand-alone document and should contain:-

- A title page
- Expert's declaration
- A contents page
- A potted cv
- A description of the instruction process (i.e. who and when?)
- A list of all data (deeds, photographs, etc) that has been supplied by instructing solicitors and which will be discussed in the report
- A (concise) description of the measurement process
- A general description of the problem itself
- A detailed analysis
- A conclusion with a summary of a range of opinion
- Statement of truth
- Colour photographs
- Maps (in maximum A3 format)

7. MEETING OF EXPERTS

No lawyers, clients or advisers should be present.

The meeting should not be before the reports have been prepared and exchanged, for reasons of open-mindedness.

A neutral venue should be found.

Meetings can now be carried out by email and telephone.

The result of a meeting of experts should be recorded as follows, and signed by both experts:-

- A Schedule of points that are agreed and disagreed with reasons for disagreement
- An agreed map

8. CONFERENCE WITH COUNSEL

Experts should, once more, be in *wise owl* mode and be prepared to give advice to Counsel, the solicitor and to the participants.

Plans, maps, photographs should all be readily available

9. GIVING ORAL EVIDENCE IN COURT

Many experts are very good at assembling written evidence and thinking quietly to themselves. It is a completely different matter when being cross-examined and those experts frequently mess-up good evidence by becoming flustered when probed by a skilled barrister. Experience is really the only way to learn.

Some tips and examples of disasters will be given by the speaker.

10. AFTER THE JUDGMENT

- Costs
- Preparing the final plan for LR
- Marking out the boundary
- Liaising with lawyers, LR, builders and fencing contractors

REFERENCES

Anstey's Boundary Disputes. RICS Books. ISBN 1-84219-189-6

BIOGRAPHICAL NOTES

David Powell qualified as a Land Surveyor in the (British) Royal Engineers in 1967. Since then he has travelled to many parts of the World carrying out land surveying and mapping, including, Italy, Germany, France, Mallorca, Gran Canaria, Iraq, Antigua, Barbados and Trinidad & Tobago where he acted as a consultant to the government of T&T regarding the "Land Surveying Act".

Since 1989, David has concentrated on Boundary Dispute matters and has been instructed in over 3,200 such cases, appearing in the County and High Courts 84 times. He has re-written the current edition of *Anstey's Boundary Disputes* (2004 RICS Books), was a contributor to *Nuisances*, (1998 Sweet & Maxwell) and the author of *Guide to Boundary Demarcation in England & Wales* (1993 RICS Books). He is a contributor to Radio and TV programmes and has appeared regularly on BBC TV's *Neighbours at War*, GMTV and the ill-fated *Kilroy*. David is the current Chairman of the Geomatics (Land Surveying) Faculty Board of the R.I.C.S., a member of council of the Academy of Experts and a member of the Land Registration Act Rule Committee.

CONTACTS

David J Powell FRICS MAE
Orchard House
37-39 Christchurch Road
RINGWOOD
Hampshire
BH24 1DG
England
UNITED KINGDOM
Tel. + 44 1425 476287
Fax + 44 1425 471325
Email: davidjpowell@btinternet.com
Web site: www.boundaries.net