

# **BOUNDARY SEARCHES**

## **Information Guide**

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## 1 Property Boundaries

[\(Link to Search\)](#)

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One of the most frequently asked questions received by us relates to property boundaries. Our customers are expecting to see them clearly defined on their Title Plan and are disappointed to see that they are not. Ascertaining boundary positions is a gathering and gleaning exercise, utilising all of the available documents. Ninety five percent of the time this is sufficient; for the remaining five percent it may be necessary to either employ a surveyor, litigate in court, or agree something with your neighbour and either formalise it in a document or purchase part of your neighbour's land.

This guide will strive to help you gather sufficient information to resolve your dispute without embarking on one of the most costly alternatives.

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## 2 Definition of a Boundary

There is both a legal definition of a boundary and a physical definition, and the two are not necessarily the same.

The legal definition uses a notional dividing line between two abutting properties. This line is reasonably accurate but when it comes to measuring in centimetres the precision is lost. Determining the precise measurements and precise boundary locations, however, are often what is required in a boundary dispute as most disputes pertain to small narrow stretches of land, usually a garden.

The physical definition requires an "on the soil" inspection, using physical geographical features where available, such as hedgerows, ditches, streams, walls, etc. When a boundary is defined by using physical features, best practice dictates that the boundary should pass either along the centre of the physical boundary, or along one side or the other of it. This is because some boundaries change in size and may even move. For example a hedgerow will grow outwards and a river may change its course.

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## Land Registration Act 2002 section 60 (1)

This Act of Parliament brought up to date the convention with regard to property boundaries. Their role has never been the defining of property boundaries; their main purpose is to provide an efficient and reliable means of record keeping with regard to the ownership of property and the terms upon which it is owned. They do this very well and in fact are the world leaders in doing so, utilising their expertise in helping many other countries to do the same.

Previous to the Act the Land Registry were following the General Boundary Rule, as defined by the Land Registration Rules of 1925, Rule 278. Section 60 of the 2002 Act embodies this in statute. The boundary of a registered property shown on the title plan and title register is shown and described in a general way, unless the exact line of a boundary has been determined by the Land Registry following an application to them by one of the adjoining owners. The Land Registry will only proceed with this if you have already agreed the boundaries with your neighbour, and will not involve themselves in disputed boundary matters.

A general boundary is one that is not shown with precision and does not contain measurements, angles or dimensions. The Land Registry try to be as accurate as possible, but obviously this falls down with small, narrow parcels of land, which most disputes involve.

## 3 What is a Boundary Search?

Of all the methods available to resolve boundary dispute issues the speediest and most economical method is to look at the available paperwork. Most of this is held at the Land Registry. These documents must be sifted through carefully, looking for specific particulars relating to the boundaries, and also looking for indirect information that will provide salient pointers. We will show you how to do this in one of the following sections of this chapter.

The boundary search can be obtained from us for any number of property boundaries that are disputed. It is not necessary that the properties have a postal address. Every method of settling a boundary dispute will commence with a look at the available paperwork, so obtaining the search will never be a waste of time or money.

The paperwork will consist of the title registers and title plans for each adjoining property, the scanned conveyancing deeds and deed plans for each property, one of the leases and lease plans (if one of the properties is registered), and the common law presumptions relating to boundaries.

## 4 The Common Law and Boundary Presumptions

The common law is law that is made, not by statute, but by decisions of the higher courts (Divisional Court, Court of Appeal and House of Lords) and which have been built up over the years. Courts of lower jurisdiction are bound by law to follow these decisions (known as decided cases, or case law).

Over time, cases involving land law have resulted in decisions relating to property boundaries, where presumptions can now be made as to the legal position where there is no rebuttable evidence opposing them. Rebuttable evidence would normally be apparent from the written documentation, i.e. the documents we procure for you in the boundary search. This is another reason why you must carefully sift through the documents.

We have collated a list of the leading boundary presumptions with details of what they relate to.

### Leading Boundary Presumptions

#### Fences

There is no presumption in England and Wales that the boundaries of a fence on the left side of the garden belong to one neighbour and the fence on the right to the other. This is a common misconception.

Where a fence has struts on one of its sides it is presumed that the owner whose sides they strut out to is the owner of the fence. Where a fence is supported by upright posts on one side it is likewise presumed that the upright posts face towards the owner of the fence.

The Law of Property Act 1952 provides a statutory provision enabling a court order to be acquired where a fence adversely affects the adjoining property.

#### Walls

Where the boundary is a garden wall, ownership of that boundary is presumed to be on the side of the wall farthest from the garden of the owner who erected the wall. It is presumed that the owner would make certain to build with the external face on the edge of his own land.

Where the wall is a wall separating one house from another, e.g. where the house is terraced or semi-detached, ownership of it is dictated by the Party Walls Act 1996. There is a legal presumption that a party wall is jointly owned by each house owner, with the centre line being the boundary. This

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presumption can be rebutted where a Party Wall Notice has been agreed indicating a different ownership arrangement.

Where there is a dispute as to the height of a garden wall or fence there may be a restriction in the title register or the conveyancing deeds, which would be enforceable by applying to the county court for an injunction, should the height restriction be exceeded.

## **Flats**

It is presumed that ownership of a flat includes the external walls even though the landlord is usually required to maintain the exterior.

## **Overhanging Branches and Roots**

Ownership of trees and shrubs belong to the owner of the land upon which they are growing. This applies to roots and branches that protrude onto the adjoining property. The adjoining owner has the right to cut them back and should return them (and any fruit) to the owner. Only that part protruding can be cut back. It is illegal for the owner of an adjoining property to use poison to kill off roots growing onto his land as doing so would kill the tree.

## **Ditches and Hedgerows**

Where a hedge and a ditch separate properties there is a presumption that the boundary lies on the farthest side of the ditch from the hedge. This is based on the surmise that a person would dig the ditch on this own land and pile the soil at the side of the ditch, on his own land, using it for the planting of the hedgerow.

## **Unadopted Roads**

It is presumed that the legal boundary will extend to the centre point of the road immediately facing the property opposite, so that each house owner along the road will own the relevant section of the road facing their house up to the centre of it. The Land Registry documents do not indicate ownership extending beyond the curtilage of the property, but that is an administrative convenience and does not affect the actual ownership.

## **Non-Tidal Rivers**

The boundary of land that adjoins a non-tidal river is presumed to reach out to the centre point of the river. The boundary will change whenever the natural course of the river changes, as it usually does over time.

## **River Islands**

Where a non-tidal river has an island within it, unless it has been sold off by the adjoining land owners at an earlier time, will be presumed to be owned by the adjoining land owners as if there were no island, i.e. the centre of the river would be the dividing line.

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This presumption does not apply to an island in a tidal estuary, as the Crown would own this.

## Lakes

There is no presumption as to ownership of a lake, save where it lies entirely within the boundary of a property, in which case it is owned by that property owner.

## Seashore

Land that stretches between the high tide and low tide of an ordinary tide, i.e. not a spring tide or a neap tide, is owned by the Crown, although the Crown may let the property.

A boundary adjoining the foreshore reaches only to the very top of the foreshore and may change over time as the foreshore extends or withdraws due to rising or lowering of sea levels.

## Canals

The presumptions relating to rivers does not apply to a canal or its towpath, which remain outside the ownership of the adjoining land owners.

## Projections

Where the eaves or foundations of a property project beyond the boundary they will not be shown in the title plan or in any deed plans as so extending, because these plans usually provide the view at ground level. In such instances although the projected parts of the property will be included within the property ownership, ownership of the airspace downwards from the projecting section of the eaves or upwards from the projecting section of the foundations will not be included.

## Horizontal Boundaries

Boundaries may project horizontally where there are underground workings, where the property consists of flats, where there are cellars or where there are flying freeholds.

### Underground Workings

The title register will refer to mines or minerals where these have been excluded from the title because the rights have been sold off separately, or belong to the Crown.

### Flats

The lease plan will show flat boundaries, whether vertical or horizontal.

### Creeping Freeholds

A cellar that extends beneath another property is known as a creeping freehold. There is a presumption that the cellar is owned by the person

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having use of and access to it. As a general rule the Land Registry will make a note in the title register for the property above the cellar that the cellar is excluded from ownership, and a statement in the register for the owner of the cellar to say that it is included.

## **Flying Freeholds**

Where properties adjoin and the upper part of one extends above the lower part of the other this is known as a flying freehold. Again, the Land Registry will note the two title registers accordingly.

## 5 Boundary Agreements

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### Informal Boundary Agreement

Where there is uncertainty of the precise line of a boundary the adjoining owners can agree between themselves as to where they think the boundary is. Their agreement can be noted in a memorandum, and a detailed plan or drawing can be attached to it. No part of the property will actually be conveyed or transferred to either party, they simply agree where the boundary should be, and are noting their agreement in the form of a memorandum.

Provided the memorandum is consistent with the available evidence (the Land Registry documents) this will be acceptable to the Land Registry who will normally agree to note the memorandum on the respective title registers.

In 2012, in the case of *Yeates and another -v- Line and another* the Court of Appeal held that as no property was conveyed or transferred, an informal boundary agreement did not have to comply with the provisions of the Law of Property (Miscellaneous Provisions) Act 1989, which meant the memorandum did not have to be prepared as an executed deed or in the form of a contract. There are no formal requirements for its preparation and so there is no need to employ the services of a surveyor. The memo and plan must, however, be as clear and as accurate as possible.

Although the agreement does not necessarily need to be in writing it is certainly wise to do so, and would, in any event, be a requirement of the Land Registry if it were to be noted on the Registers.

Each neighbour should consent to the agreement, and it therefore makes sense for the agreement and the plan to be signed by each party. The written agreement should make it clear that no property is to be transferred or conveyed, but that the agreement is made to confirm what they believe to be the boundary, as “an act of peace, quieting strife and averting litigation”, as Megarry J said in *Neilson -v- Poole* 1969.

Once the agreement and plan are signed by each party it can then be forwarded to the Land Registry with an application to note it on the title registers. The agreement will not be legally binding but it is persuasive evidence that would be difficult to overturn.

The agreement can be formalised at a later date, if required, on application to the Land Registry for a determined boundary.

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## When to use an Informal Boundary Agreement

The following are some examples:

- To confirm the boundary passes along the centre line of a hedgerow
- To confirm it passes on the side opposite the supports of a wooden fence (the legal presumption is that it would pass on the side that does contain the supports)
- To confirm that the boundary runs along an old wire fence rather than a new wooden fence running alongside it.
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## Noting the Agreement at the Land Registry

When the memo and plan are signed an application on Land Registry form AP1 is made pursuant to Paragraph 5 of Schedule 4 of the Land Registration Act 2002, to bring the Register up to date. The Land Registry fee of £40 must be paid by each applicant (each neighbour).

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## Formal Boundary Agreement

Before an application can be made to the Land Registry for a Determined Boundary, i.e. a formal boundary agreement, it is necessary that the boundary position be already agreed and not in any way contrary to the contents of any of the documents registered at the Land Registry. Once it is then an application is made to the Land Registry on Form DB.

You will need to provide a detailed plan with your application, identifying the exact line of the boundary. The plan must show sufficient physical features to allow the general position of the boundary to be drawn on an OS map. There should also be an accurate verbal description of the boundary, to assist with the plan identification.

The plan should be prepared by a surveyor proficient in Land Registry practice, who should follow their requirements as set out in Practice Guide 40.

Following a successful application the Land Registry will determine the boundary and update the Register and Plan accordingly. The boundary will no longer be a general boundary as defined in section 60 Land Registration Act 2002, but a fixed and determined boundary.

## 6 Sample Boundary Information found in Registered and Unregistered Documents

### SECTION CONTENTS

1	Property Address and Description	2	Deed Plans
3	Land Added or Removed	4	Express and Implied Boundaries
5	Party Walls	6	Correction of Errors
7	Vegetation and Fence Boundaries		

### 1 Property Address and Description

A description of the property is given in the A section of the title register. This will normally be the postal address, with a direction to refer to the area of land edged in red on the title plan (or filed plan, which is the same thing). The Title Plan always shows the property outlined in red edging within the black edging of the OS map, upon which it is overlaid.

#### a) Address Description in the Title Register and Title Plan, and Revisions

Sample A section of Title Register where the property has a postal address:

1 (20.07.1979) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being Hazel Dene, Wilmslow, Manchester (SK9 1HL).

Sample A section of Title Register where the property does not have a postal address

1 (19.8.1969). The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being land on the west side of Heddington Hall Farm, Plough Lane, Wilmslow (SK7 3EF).

#### b) Revisions and Amendments to the Title Plan

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The Ordnance Survey map is periodically updated with amendments and when it is the Land Registry will follow suit by updating the title plan, which is in any event, overlaid on the OS map. If there is a successful application to the Land Registry to determine a boundary this will also result in a title plan revision. Where the title plan is amended or revised a note to this effect will be made in the A section of the title register.

## Sample Revision Note of a Title Plan Revision

1 (19.07.2008). A new title plan based on the latest revision of the Ordnance Survey Map has been prepared

## c) Extended Property Description in Conveyancing Deed

The conveyancing deeds often contain very detailed property descriptions, often providing the acreage and dimensions.

### Sample Conveyance extract providing more detail of a property description

1. IN pursuance of the said agreement and in consideration of the sum of FIFTY TWO THOUSAND POUNDS now paid by the Purchaser to the Vendor (the receipt of which sum the Vendor hereby acknowledges) the Vendor as beneficial owner hereby conveys unto the Purchasers ALL THAT dwellinghouse (part of which was formerly used as a shop) known as "The Gables" situate adjoining The George Hotel at Alstonfield in the County of Stafford TOGETHER WITH the yard garden and outbuildings thereto belonging which said property contains an area of 9 perches or thereabouts and forms part of Ordnance No 468 on the ORDNANCE SURVEY MAP (Staffordshire Sheet 1X-12 Edition

## d) Additional Descriptions for Leasehold Properties, contained in the Lease and Lease Plan

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Following is an extract from a Schedule of Notices and Leases in the title register of a modern leasehold apartment building property. The property description is as follows:

17.01.1995 15d China Wharf, Mill Street (fourth, fifth and sixth floor flat) 16.12.1994. 125 years less 7 days from 15.12.1994

The description in the Lease itself reads as follows (punctuation is often excluded in Deed details, so as not to provide an incorrect interpretation of meaning):

## **The First Schedule above referred to The Property**

All that property known as Chine Wharf Mill Street in the Borough of Southwark as the same is registered with Absolute title at HM Land Registry under Title Numbers SGL311100012, SGL 311100132 and SGL33338812.

## **The Second Schedule above referred to The Reserved Property**

FIRST ALL those the entrances courtyards access decks lobbies and other areas forming part of the property and the halls staircases steps landings passages escape corridors and bin storage spaces and other parts of the property which are used in common by the owners or occupiers of any two or more of the flats and the office suite SECONDLY those parts of the property comprising respectively the halls staircases landings lift motor rooms lift shafts lifts the rooms housing the electricity meters and ancillary facilities THIRDLY ALL that the structural parts of the building forming part of the property including any roofs foundations and external parts thereof (but not the glass in the windows of the flats nor the interior faces of such walls as bound the flats) and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one flat AND FOURTHLY ALL that the embankment wall belonging to and forming part of the property

## **The Third Schedule above referred to The Premises**

ALL THAT flat on the fourth, fifth and sixth floors of the building forming part of the property and known as flat number 15D China Wharf aforesaid (which flat is for the purpose of identification delineated on the floor plans annexed hereto and coloured pink including one half of the non-structural walls bounding the flat severed medially and the ceilings and floors of the said flat (but excluding the structural supports on which such floors are laid and to which such ceilings are

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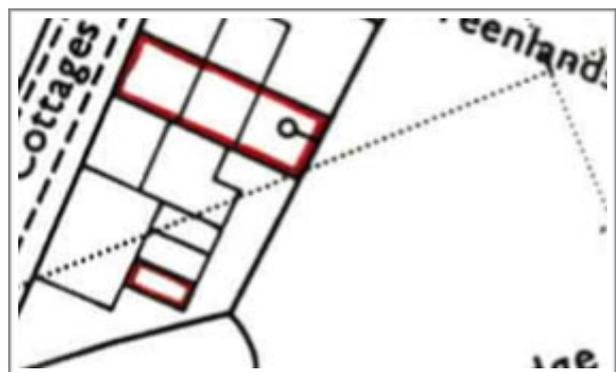
attached) AND ALSO all cisterns tanks sewers drains pipes wires ducts and conduits used solely for the purposes of the said flat EXCEPT AND RESERVING out of this demise the service ventilation ducts and the pipes wires and apparatus therein the structural parts of the buildings of which the said flat forms part including where appropriate the roof foundations and external parts thereof (but excluding the glass of the windows of the said flats and the interior faces of such part of any walls as bound the said flat) all of which excluded matters for part of the Reserved Property.

It can easily be seen the additional property description provided by the lease is so descriptive and precise it would be difficult to not understand the precise boundaries of the property, the responsibility for maintenance thereof, etc. The Lease Plan attached to the lease consists of 3 different floor drawings of the flat, containing even more detail.

## e) Property Appendages

Where ownership of a property includes a garden or garage that is unattached to the main property, e.g. it is located on the far side of an adjoining road, this may be shown on the title plan as an “island” from the main property. In such a case both the main property and the garden or garage will be edged in red, the garage or garden being completely separated from the main property outline. The title register will sometimes describe in words the garage or garden’s location from the property, but other times will not mention it at all, although it will still be shown as edged in red on the title plan.

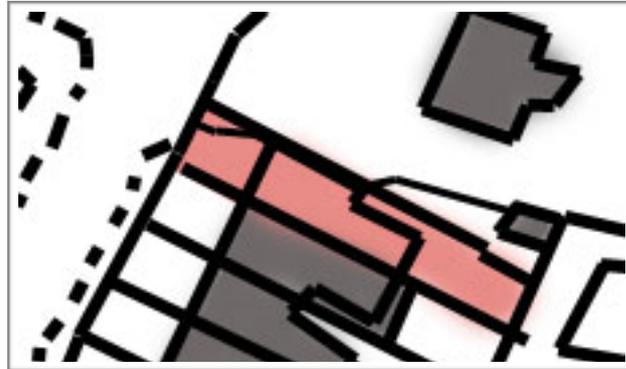
**Sample Title Plans and Register showing a garage separated from the main property, and appearing as outlined appendages to the main property. The Title Register extract does not refer to the garage.**



1 (19.01.1985) The Freehold land shown edged with red on the plan of the above Title filed at the Registry and being 16 Ingleborough Road, Settle (LA1 7CF)

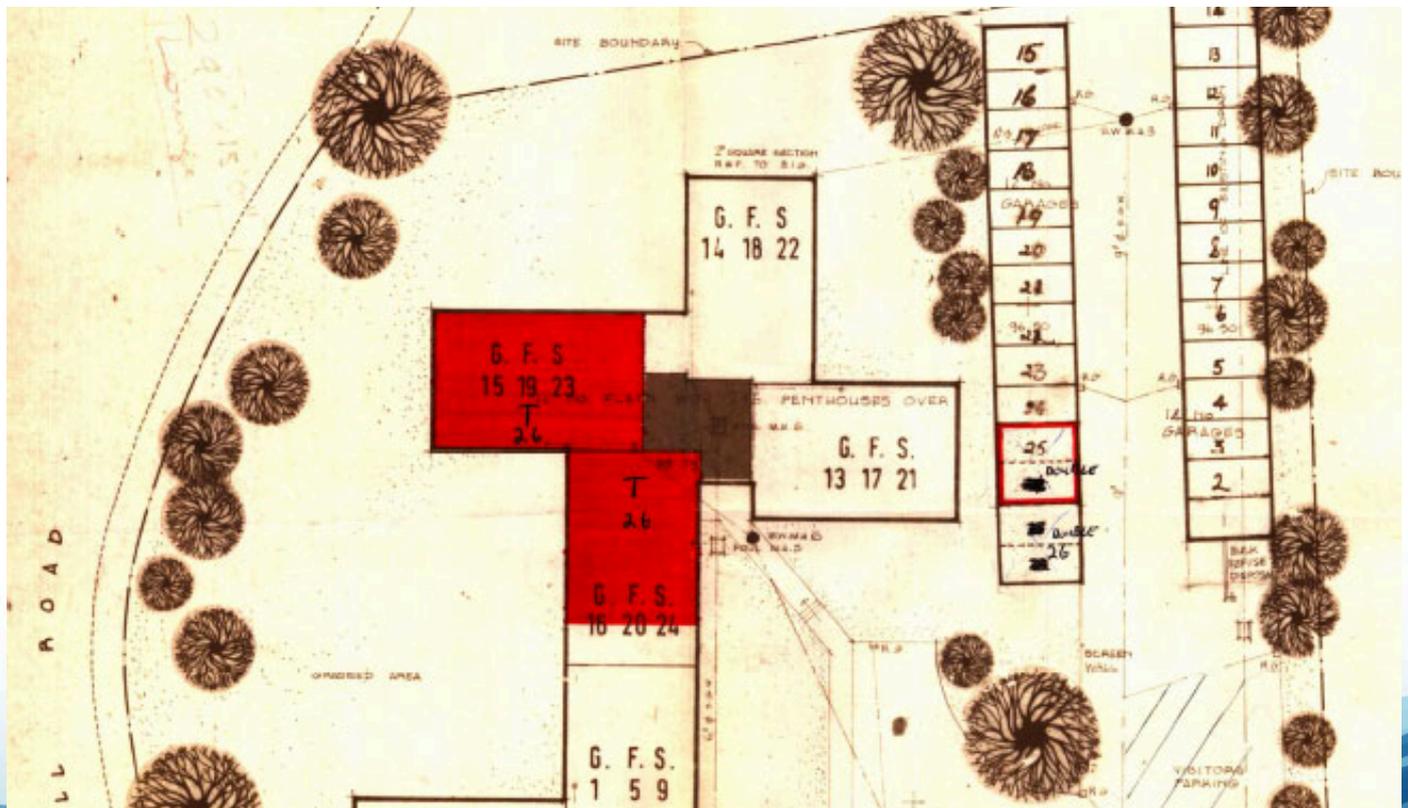
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The Deed Plan of one of the Conveyancing Deeds may also show a separated garage, as in the sample below. In this instance the garage is indicated as a grey shape above the property (shaded red), and does not form part of the ownership. The owner of the main property has been given a right by the Deed to rent the garage.



Leasehold properties will have, in addition to the title register and title plan, a lease and lease plan. As a general rule both of these documents are very detailed. One issue that many leasehold properties have relates to car parking spaces. Modern leases will contain details of car parking spaces, often in a schedule at the end of the lease, and the lease plan will almost always highlight the parking space attributable that particular property.

**Sample Lease Plan extract showing the allocated parking space edged in red and marked as a double parking space.**



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## f) Acreage and Field Parcel Numbers

The conveyancing deeds may provide a schedule of field sizes and acreages, confirming their location by OS field numbers and by a description of their use. This information can be useful in defining property boundaries on larger areas of land.

Sample Deed extract showing part of a schedule defining Land by its Acreage, Use and Field Numbers.

<u>OS Plan</u>	<u>Description</u>	<u>Area Acres</u>
90	Lower Burnham's Ground	50.005
92	Upper Burnham's Ground	8.966
93		13.463
128	Field	3.313
129	"	4.075
131	"	.475
132	Farmhouse, homestead, etc	.995
133	Field	2.025
134	Croats and Croats Grubbing.	23.283
522	Orchard	2.161
524	Little Grubbing	4.512
529	Ridings	4.557
530	Field	6.699
531	"	3.065
part 535	Butcher's Close	<u>7.441</u>
		135.035
	Less given up for road-widening	<u>2.450</u>
		132.585
part 130	Field, late Coombe's Farm	1.476
95	Cottage and garden (Tenants } Fleet and Turner) }	
	Ditto (Tenant A. Butler) }	.296
part 528	Little Shaw Wood	1.250
521	Wood	<u>1.814</u>
		<u>A137.421</u>

## 2 Deed Plans

### a) References in the Title Register to Deed Plans

Where a conveyancing deed makes reference to a deed plan this will often contain the most useful information of all the documents in resolving boundary disputes. This is because deed plans will frequently contain measurements, angles and/or T and H marks. Deed plans are sometimes professionally drawn, and sometimes little more than a sketch, but useful nevertheless.

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More often than not the title register will cite part of the deed, identifying the nature and date of the deed, and a footnote at the end of the clause making reference to it will state that a copy has been made (which means that it is available to purchase and will be included in our Boundary Search).

In the following title register extract the Conveyance referred to is noted as copied.

## Sample Title Register extract with Deed reference and noting at the foot thereof:

The land has the benefit of the rights granted by a Conveyance of the land in this title dated 15 October 1951 made between (1) Henry Wright Whittaker, John Digby Mills, and James Richard Sancroft Grimwood-Taylor (the Vendors) and (2) Wilfred John Adams (the Purchaser).

NOTE: Copy filed

## Sample deed extract referred to above, itself referring to an attached deed plan

1922) and was delineated for identification purposes only on the plan annexed to a Conveyance dated the Fifteenth day of October One thousand nine hundred and fifty one and made between Henry Wright Whitaker John Digby Mills and James Richard Sancroft Grimwood-Taylor of the one part and Wilfred John Adams of the other part and thereon edged pink SUBJECT TO the exception and reservation of all veins

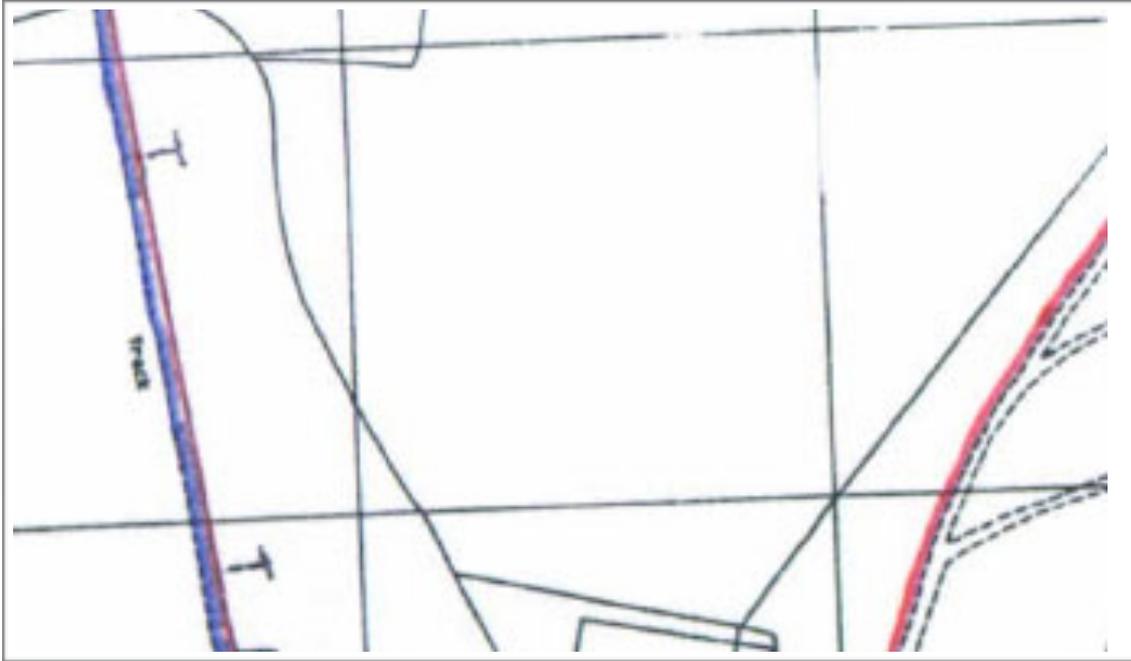
## b) T and H Marks in Conveyancing Deeds

Conveyancing deeds and deed plans, unlike the title register and title plan, usually do contain T and H marks to identify ownership of the boundaries. H marks denote equal ownership whilst T marks denote ownership of the boundary on the side containing the horizontal bar of the T. The deed plan attached to the conveyance below displays the T marks along the fence orders.

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Sample Deed and Deed Plan extracts containing identification of boundary ownership with T marks.

5.2 FENCES: To maintain repair and (if necessary) renew walls fences or hedges on or within the boundary of boundaries of the Property in the position marked with an inwards "T" on the Plan. If there are no such "T" marks on the Plan this clause does not apply

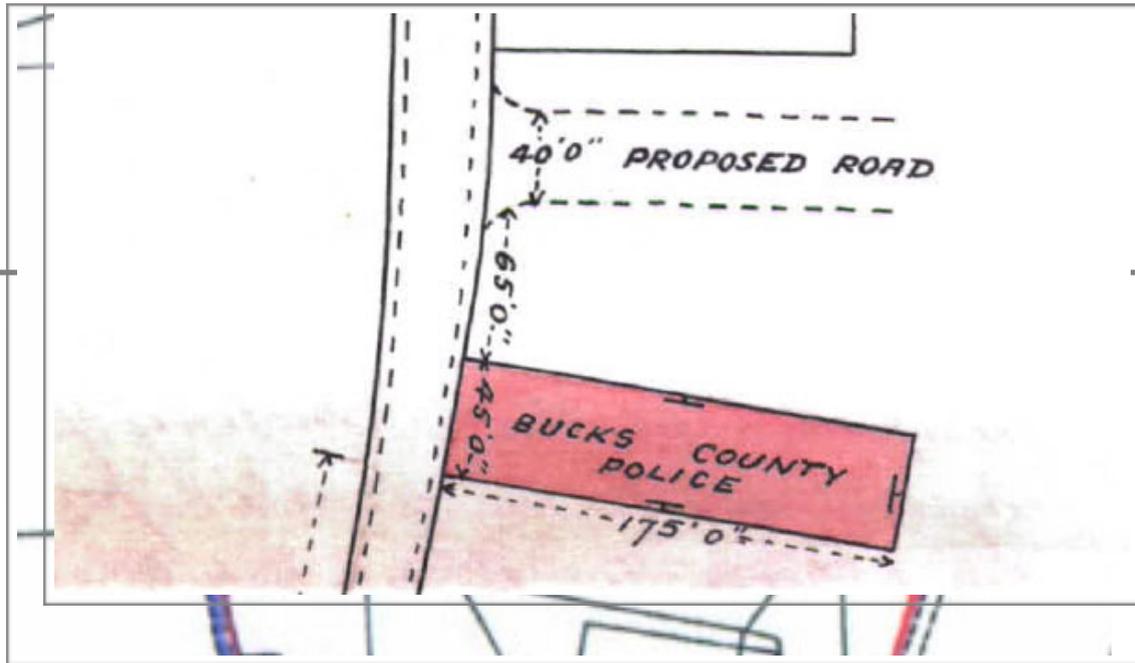


## c) Measurements, Angles and Dimensions on Deed Plans

Although precise measurements, dimensions and angles are seldom shown on title plans, they are frequently shown on deed plans, i.e. the plans attached to one or more of the conveyancing deeds.

Sample Deed Plan showing precise measurements

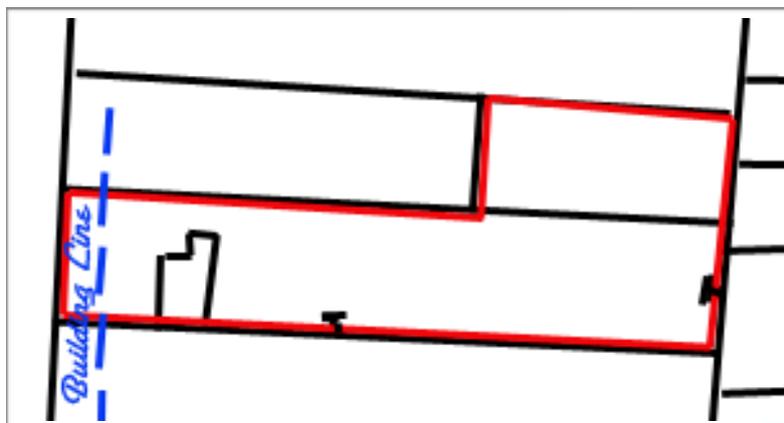
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## d) Building Line and T Marks

Title Plans do not normally contain T marks, but they do sometimes, as in the sample below. They were included because of a covenant to erect a fence adjoining two roads abutting the property. The covenant was made in a Conveyance which is cited in the title register. The extracted section of the plan below makes reference to a Building Line and the frontages of roads, which defines the boundary positions with further precision.

Sample title plan extract showing the two T marks



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## Extract from the accompanying Title Register which refers to T marks and the Building Line

1 The Purchaser is forthwith to make if not already in existence and afterwards to maintain a good and sufficient fence to the approval of the Vendors or their Surveyors next the roads and on the sides of his plot marked "T" within the boundary.

2 No building shall be erected between the building line and the frontages to the various roads as shown on the plan.

## Sample of another title register extract, this time with a leasehold tenure, states, in the Schedule of Restrictive Covenants:

.... and further that the then boundary line adjoining Whitley Lane and being the west boundary of the said premises as shewn on the plan should be set back 10 feet in order that the intervening space might be used for the purpose of widening and forming part of Whitley Lane aforesaid ....

## and continuing

.... And further that the Purchaser his heirs or assigns would appropriate the portions of the premises thereby conveyed which were marked "back Street 20 feet wide" and "ground to be given up into roadway" respectively on the said plan as and for a public street and part of a public street or road respectively , , , , ,

The reference to a plan is a Deed Plan attached to the Conveyance

Title registers sometimes refer to agreed building schemes, details of which are contained in a Transfer Deed when the property is conveyed from one party to another. In the sample below an extract from the c section (charges) of the title register refers to a building scheme as being detailed in a Transfer Deed. A footnote confirms that a copy of the Transfer has been copied and is therefore available for purchase. The transfer deed provides much detail about the building scheme, and some of the provisions are particularly useful to determine boundary locations and responsibility for maintenance (marked with T marks on the deed plan), as in the further examples below.

## Sample Title Register referring to Building Scheme

The land in this title falls within the area covered by a building scheme constituted under the provisions of transfers by Welcome Construction Limited. The Transfer of the land in this title is dated 28 July 1990 in favour of RCM Properties

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Limited and the extent of the area affected by the scheme is described in that Transfer.

Note: Copy filed

Sample Deed extract referred to above refers to a Deed Plan containing T marks.

## THE FOURTH SCHEDULE

### (Restrictions and obligations incidental to ownership)

(a) The Purchaser will forever hereafter maintain the fence or fences along the side or sides of the land hereby transferred where marked with the symbol "T" on plan No. 1.

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## 3 Land Added or Removed from the Title

### a) Land that has been Added to the Title

A property owner may purchase land adjoining his own and have the land title merged with his existing title. In such instances the Land Registry will enter a statement to this effect in the A section of the title register. In addition the title plan will be revised to show the added land.

Sample extract from the A section of a Title Register showing additional land added to the title.

8 (23.2.1978). The land edged and lettered C and D in red on the title plan was added to the title on 7 January 1978.

### b) Land Removed from the Title

Some people sell off parts of their land and retain the rest. In such cases the Land Registry remove the sold parcel of land from the vendor's title and create a new title with its own title number, register and plan. The register to the land retained will state in the A section that part of the title has been removed, that it has been allocated its own title number, register and plan and that his title plan has been amended to show the change.

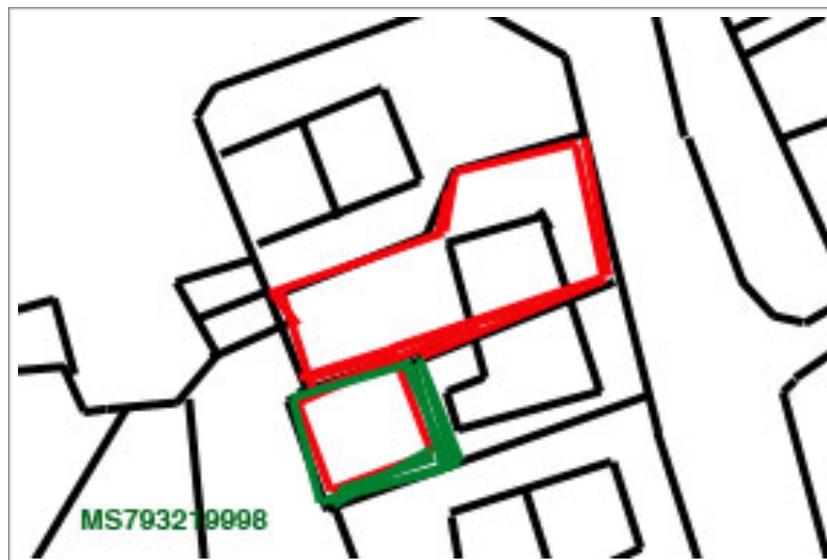
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The title plan will identify the land removed by edging it in green and printing its new title number in green alongside the removed land.

## Sample Title Register extract relating to the Removed Land (A section of the Register)

The land edged and numbered in green on the title plan has been removed from this title and registered under the title number or numbers shown in green on the said plan.

## Sample title plan extract showing removed land edged in green



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## 4 Express and Implied Boundaries

### a) Implied Boundaries in the Title Register and Conveyancing Deeds

The property boundary may be indirectly referred to, i.e. implied by a statement relating to another matter such as an easement or a restrictive covenant. In the sample below the title register refers to a conveyancing deed that created an easement. The relevant extract has been copied into the register and the Land Registry have retained a scanned copy of the deed, which would be automatically provided with our Boundary Search.

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## Sample Implied Boundary location

3 The land is subject to the following rights granted by a Deed dated 17 June 1979 made between (1) Elsie Brooks and (2) Andrew Hendre and Jean Hendre (Grantee):

"The right to enter upon the land tinted brown for the purpose of laying and constructing a sewer or drain between the points marked "A" and "B" along the position of the black line drawn on the said plan the Grantee making good all damage occasioned thereby ....

NOTE: Copy plan filed under SK38973331"

The sewer or drain that was built as a result of this easement is impliedly on the other side of the property border. The deed plan attached to the above deed will show the black line and the points running from points A to B.

## b) Boundary Structure Notices

Boundary Structure Notices are usually part of a conveyancing deed dealing with many matters. The Land Registry often make a note in the Register that a particular deed contains a boundary structure notice and that a copy of it has been filed, which means it is available to purchase (and automatically included with a Boundary Search).

Boundary Structure Notices will provide specific information pertaining to a boundary.

### Sample extract from the A section of a Title Register relating to a Boundary Structure Notice

"The Conveyance dated 22 November 2001 referred to in the Charges Register contains a provision as to boundary structurees.

NOTE: Copy filed."

## c) Boundary Covenants

There may be restrictive covenants and/or personal covenants that provide clues as to boundary positions, e.g. a covenant that the owner should not erect a wall or fence within a certain distance of a physical structure such as a house. This was the case with the following restrictive covenant:

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## Sample of Restrictive Covenant in the C section of the Register, providing clues as to the boundary positions

" .... that no building or erection other than a garden wall should at any time be erected on the said parcels of land within (1) 30 feet to the back edge of the footway in July Street (2) 10 feet to the back edge of the footway to Earls Road (3) that no boundary wall or fence should be of greater height above the footwalk level than 3 feet 9 inches and (4) that no more than one quarter of the net site area or curtilage of any dwellinghouse to be erected on the said parcels of land should be covered with buildings ...."

A purchaser may make a personal covenant (binding on him only, and not on subsequent purchasers) to erect a boundary fence along a route marked with points A and B on a plan, as in the sample below.

## Sample of a personal covenant referred to in the B section of the Register, again providing boundary position clues

1 The following are details of the personal covenants contained in the Transfer dated 1 March 1993 referred to in the Proprietorship Register:

"The Transferees hereby jointly and severally covenant to erect a fence between the points marked A and B on the plan annexed hereto within one month from the date hereof to such specification as the Transferees may reasonably require and thereafter to maintain the same in good repair."

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## 5 Party Walls and Fences

### a) Party Wall and Fence Declarations

Declarations as to boundary walls within the house itself as to whether or not they are party walls are often contained in the A section of the title register. A party wall is presumed to be in the equal ownership of the adjoining neighbours, unless there is evidence that says otherwise.

#### Sample Party Wall Declaration in the A section of the Title Register

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4 The wall separating the building on the property from the building on the said retained land is a party wall within the meaning of the Party Walls etc Act 1996 and shall be upheld and maintained accordingly at the joint expense of the owners for the time being of the properties on either side of it.

**Similar party wall declarations may be found in one or more of the conveyancing deeds, as in the sample Deed extract below.**

9. IT is hereby agreed and declared that any wall or walls separating any building upon the land hereby transferred from any adjoining building shall be deemed to be a party wall or walls within the meaning of Section 38 (1) of the Law of Property Act 1925 and shall be used and repaired accordingly and in relation to the spouts fallpipes and gutters which serve such buildings in common the cost of maintenance and repair thereof shall be borne by the users thereof in equal shares

**In the following title register extract there is a declaration that some of the walls and fences are to be party walls and fences**

(18.06.2007) A Conveyance of the land in this title dated 18 July 1953 made between (1) Seamus Addington and (2) Gwenda Smith contains the following provision:

"the walls and/or fences on the Northerly and Southerly sides being party walls and/or fences".

## **b) Provisions affecting Non-Party Walls and Fences**

Where walls are not party walls there are sometimes provisions in the title register relating to ownership and maintenance of them.

### **Sample Title Register relating to Ownership of Walls that are Not Party Walls**

"It is hereby agreed and declared that such of the boundary walls and fences as are not party walls and fences shall belong to the Purchaser as indicated on the plan and be

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maintainable and repairable by him and his successors in title.”

## 15 Party Wall Ownership Provisions in the Conveyancing Deeds

There are frequently clauses in the conveyancing deeds that do not appear in the title register that contain provisions as to ownership of the party walls, as in the following sample.

### Sample Party Wall Provisions in a Conveyancing Deed

13.2.5 Such of the division walls, fences or structures as divide the Property from other premises shall be deemed to be party structures and to belong in equal halves (considered as divided vertically down or along the middle throughout the whole length) to the premises on either side and the provisions of Section 38 of the Law of Property Act 1925 shall apply to them.

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## 6 Correction of Errors

### a) Deed of Rectification

Where an error is made in the drafting of documents, as they sometimes are, it will be necessary to prepare a Deed of Rectification, to correct the error. Such errors need to be corrected by Deed in order to comply with the Law of Property (Miscellaneous) Provisions Act 1989. Upon receipt of the Deed of Rectification the Land Registry will create a new title register and title plan.

### Sample extract from the A section of a Title Register referring to Deed of Rectification

3 (20.01.2001). By a Deed of Rectification dated 13.01.2001 made between (1) James Arkwright (2) Nidsell Lane Ltd and (3) Francis Cuttingsby the extent of the land transferred by the Transfer dated 21 July 1999 shown edged and numbered 5 in blue on supplementary plan number 1 was amended.

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## 7 Vegetation and Fence Boundaries

The following examples are in fact common law legal presumptions and are referred to in the chapter dealing with boundary presumptions. They are repeated here for your convenience:

### a) Hedges and Ditches

Where a hedge and a ditch separate properties there is a presumption that the boundary lies on the farthest side of the ditch from the hedge. This is based on the surmise that a person would dig the ditch on his own land and pile the soil at the side of the ditch, on his own land, using it for the planting of the hedgerow.

### b) Overhanging Tree Branches and Roots

Ownership of trees and shrubs belong to the owner of the land upon which they are growing. This applies to roots and branches that protrude onto the adjoining property. The adjoining owner has the right to cut them back and should return them (and any fruit) to the owner. Only that part protruding can be cut back. It is illegal for the owner of an adjoining property to use poison to kill off roots growing onto his land as doing so would kill the tree.

### c) Boundaries adjoining a Non-Tidal River or Stream

The boundary of land that adjoins a non-tidal river is presumed to reach out to the centre point of the river. The boundary will change whenever the natural course of the river changes, as it usually does over time.

### d) Boundaries adjoining a Non-Tidal River Island

Where a non-tidal river has an island within it, unless it has been sold off by the adjoining land owners at an earlier time, it will be presumed to be owned by the adjoining land owners as if there were no island, i.e. the centre of the river would be the dividing line.