



[2017] UKFTT 0636 (PC)

REF/2016/0101

PROPERTY CHAMBER, LAND REGISTRATION
FIRST-TIER TRIBUNAL

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY
LAND REGISTRATION ACT 2002

BETWEEN

(1) RONALD DOUGLASS
(2) SHIRLEY ANNE DOUGLASS

Applicants

- and -

KEITH PRITCHARD

Respondent

Property Address: 20 Gwynant Street, Beddgelert
Title Number: CYM567923

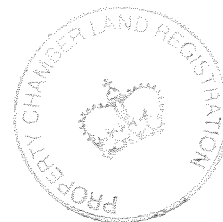
SUBSTANTIVE ORDER

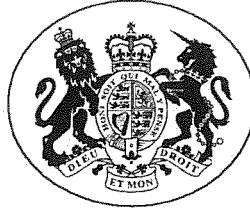
The Chief Land Registrar is directed to reject the Applicants' application to alter the register.

Dated this 19th day of July 2017

Timothy Cowen

BY ORDER OF THE TRIBUNAL





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SUBSTANTIVE DECISION

Outline of the dispute

1. This is a boundary dispute between two residential properties in North Wales. The Applicants applied to HM Land Registry (“HMLR”) on 12 June 2015 to alter the register of the Respondent’s title to remove from it a piece of land – the land coloured blue on the notice plan prepared by HMLR (“the Disputed Land”). The Respondent objected to that application by letter dated 26 November 2015 and the matter was referred to this tribunal on 15 February 2016 under section 73(7) of the Land Registration Act 2002.
2. I have been told that there is an application pending under section 60 of the 2002 Act for the determination of a fixed boundary, but that application is not before me and neither of the parties invited me to consider it.

3. I visited the site on 8 May 2017 in the presence of the parties and viewed it from both sides of the boundary between the parties' properties. The parties had the opportunity to show me whatever features they wanted me to see.
4. The Respondent's land, which is the subject of this dispute, is 20 Gwynant Street, a mid-terrace house with a yard behind and an outbuilding at the rear of the yard. At the back of the outbuilding, there is a small gap between the rear wall of the outbuilding and the higher ground of the land behind the Respondent's land. This small gap is the Disputed Land. The land behind the Respondent's land, which includes that higher ground, is part of Bedw Arian, the Applicants' land.
5. Prior to 2012, Bedw Arian and 20 Gwynant Street were both unregistered. 20 Gwynant Street was first registered on 10 September 2012 with the inclusion of the Disputed Land. Bedw Arian was first registered on 10 November 2014. It did not include the Disputed Land, partly because the Disputed Land had already been registered as part of 20 Gwynant Street.
6. It is worth noting that the relevant section of Bedw Arian's registered general boundary runs in a straight uninterrupted line across the rears of Is-y-Graig, 20 Gwynant Street and 21 Gwynant Street. So, on the face of the registered title of Bedw Arian, there is no obvious discrepancy where Bedw Arian meets 20 Gwynant Street as compared with Bedw Arian's boundary with other neighbouring properties. Other boundaries may or may not be the subject of future applications (or current applications I am not aware of), but those are not my present concern. The state of the whole of that boundary was, however, the subject of evidence and argument before me and is part of the relevant context.

Legal Framework

Alteration

7. The conclusiveness of the register is subject to the power of the registrar and the court to alter the register on the grounds and applying the criteria set out in Schedule 4 to the Land Registration Act 2002. For the purposes of this application, it is the registrar's power (under paragraph 5(a)) to alter the register for the purposes of correcting a mistake which is the basis of the Applicants' case. Since the alteration claimed would prejudicially affect the title of a registered proprietor, the Respondent, the claim is one

for rectification under paragraph 1. This means that in order to succeed, the Applicants will need to show:

- (i) That there is a mistake which requires correction; and
- (ii) (because the Respondent has not consented to the application) one of the two following criteria:
 - (a) That the Respondent has caused or substantially contributed to the mistake by fraud or lack of proper care (para 6(2)(a)); or
 - (b) That it would for any other reason be unjust for the alteration not to be made (para 6(2)(b)); and
- (iii) That there are no exceptional circumstances which justify not making the alteration (para 6(3))

Mistake

8. The mistake alleged in this case is that the general boundary is shown in the wrong place on the HMLR filed plan. A general boundary (according to section 60(2) of the 2002 Act) “does not determine the exact line of the boundary”.
9. The true line of the boundary can be determined primarily by interpretation of the deeds which created the boundary. This will usually be the conveyance or transfer effecting the transaction by which the two relevant plots of land were first separated from each other. If that is not available or no satisfactory conclusion can be reached from that document, then there are judicially approved methods for determining the boundary by reference to other evidence.
10. It is important to note that the lines on Ordnance Survey maps do not mark boundaries (which are invisible legal lines); they mark physical topographical features. See *Alan Wibberley Building Ltd v Insley* [1999] 1 WLR 894, 901H in which Lord Hope also said:

“No map can reproduce to anything like the same scale of detail every feature which is found on the ground...Even the most detailed Ordnance Survey map may not show every feature on the ground which can be used to identify the extent of the owner's land. In the present case the Ordnance Survey map shows the hedge, but it does not show the ditch.”

11. Ordnance survey maps may therefore be used as evidence of what was on the ground at the time of the survey on which that edition of the map was based, but even then their accuracy must be approached with caution.
12. It is important to keep in mind that the purpose of considering the boundary is not for me to determine the exact line of the boundary (because this is not an application under section 60 of the Land Registration Act 2002), rather I am making findings of fact necessary to decide whether the general boundary shown on the HMLR filed plan is a mistake which needs correcting.

The Deeds

13. The conveyance by which the two relevant parcels were divided into separate ownership is no longer available. The earliest conveyance available is conveyance of Bedw Arian (with other land on the other side of the road) dated 2 February 1938 and is expressed to convey a parcel which is identified by reference to the plots surrounding it (but not with sufficient detail to cast any light on the ownership of the Disputed Land) and “for the purpose of identification only and not of limitation more particularly delineated and described on the on the map or plan drawn hereon and thereon edged pink”. The pink/red line on the plan (which is drawn to a very large scale) shows the boundary in the area of the Disputed Land as a straight line running on the Bedw Arian side parallel to a black line which runs along the back of the outhouse at the rear of 20 Gwynant Street and Is y Graig. There is a question what weight to give to a plan which is described as being both for identification only and also “more particularly delineated”, but that question is not necessary to decide because the plan is not detailed enough to draw any detailed conclusions about the ownership of the Disputed Land. And, in any event, it is not the conveyance which created the boundary in the first place. If anything, it is no more than evidence which supports the contention that the boundary in the area of the Disputed Land is a straight line.
14. There is a further conveyance of Bedw Arian available dated 2 December 1971 which is in the same terms with a similar plan (in respect of the disputed boundary). The only notable difference (apart from the fact that significant areas of land have been removed from other parts of Bedw Arian in the meantime) is that the shape of the boundary next to the driveway at the side of 21 Gwynant Street has changed and is the subject of a statutory declaration. It is also notable that that driveway itself is not included in either

the registered title to Bedw Arian or 21 Gwynant Street but the parties referred to it as the “shared driveway” even though there is no evidence of any grant of an easement over it in favour of either of them.

15. This last observation leads me to treat with caution all of the evidence given about the steps and retaining wall and other features around the boundary between Bedw Arian and the driveway.

The Evidence

16. I have considered all of the evidence given. The most significant features of the evidence given and seen on the site view and in photographs, in my judgment, were as follows:

- a) There is a gap of lower level land between the back of the outbuilding on 20 Gwynant Street and the higher ground which makes up the vast bulk of the Bedw Arian land in that vicinity. The same feature appears at the rear of Is y Graig, where it looks like more of a ditch, which both parties agreed is likely to have been there since the 1950s, if not earlier. The First Applicant also conceded in cross examination that the ditch behind Is y Graig only benefits and serves Is y Graig and not the Bedw Arian land.
- b) There was a dispute of fact whether the difference in levels has changed shape or location over the years. The Respondent’s case was that the land originally sloped gradually down from within the Bedw Arian land towards the level of some protruding stones which are embedded into the rear wall of the 20 Gwynant Street outbuilding and which probably formed part of an earlier iteration of that building and that the current appearance of the land as having a more pronounced sharp drop came later, when the land was infilled by the owners of Bedw Arian. The First Applicant’s evidence was that the land had since the early 1970s (when he moved in) the sharp drop presenting a near vertical face of earth which was only about 12 inches from the window at the rear of the 20 Gwynant Street outbuilding. He denied that he had ever infilled the land by dumping earth into a gap. He said that he did not even know that there was a window there when he first walked the boundary in 1971. When asked why he thought there would be a window in a building which was 12 inches away from a steep earthen wall, the First Applicant answered that installing a window would save on the cost of bricks. I found this answer to be completely lacking in credibility

and gave the impression of a witness desperately thinking of something to say to support his case, rather than a genuine attempt to give a truthful and factual account. There were other similar incidents during his evidence which makes me treat his evidence with less weight than that of other witnesses. For example, he was forced to concede that his description of the rear boundary of the rest of the houses on that side of Gwynant Street (especially No.s 1-12) in his Statement of Case was exaggerated to suit his case. In my judgment, it is more likely that the First Applicant never really paid any attention to the Disputed Boundary until very recently, which would be natural considering where it is in relation to the rest of his land and buildings.

- c) I found the evidence of the Respondent's son - Ian David Pritchard - particularly persuasive. He used to visit 20 Gwynant Street as a child, because his grandparents lived there at the time. He remembers that his grandfather kept "metal clutter", corrugated sheets and bicycles "scattered about" in the area at the rear of what was then a garage (now the 20 Gwynant Street rear outbuilding). In particular, he described a vivid memory of sitting as a child inside a his grandfather's Mini inside the garage "and pretended to drive it". He remembers clearly that from the inside of the car, he could see through the rear window "into Bedw Arian and up the mountain". That would not have been possible if there was an earthen wall 12 inches away from that window. Ian Pritchard was not challenged on that evidence and it was not put to him that he was lying or mistaken. He seemed to me to be giving an honestly remembered and clear recollection.
- d) The Respondent himself lived in 20 Gwynant Street from 1945 (when he was born) until 1965. He then went to sea in the merchant navy from 1965 to 1981 and worked abroad until 2009 when he returned to live on the site. He gave a clear and detailed account of his recollection of the disputed area from his earliest memories until 1965, which supports his case, that the disputed boundary runs in a line projected from the north-western edge of the Is-y-Graig ditch, thereby creating a straight line boundary between Bedw Arian and the Gwynant Street properties in that section. He gave a believable account of how the levels of the land had changed over the years as a result of natural erosion and building works, which contrasted with the First Applicant's inflexible insistence that nothing had changed since 1971.

- e) The Applicants applied for first registration of Bedw Arian after the Respondent's land had already been registered. The Applicants' solicitors (presumably on instructions) submitted plans which led to the registration as it is currently. There is no evidence that they tried to register the Disputed Land and had the application rejected. This dispute arose after registration. It is therefore possible to reach the conclusion, and I do, that any mistake in the register of Bedw Arian was caused substantially by the lack of care of the Applicants and their solicitors.

Reasoning

17. I begin my analysis by looking at the registered title as the starting point for deciding whether there is a mistake in the general boundary which needs to be altered. There are four titles in particular which are relevant to this section of boundary:
- a) Is-y-Graig: CYM92062 - first registered on 25 April 1990. Owned by an unrelated third party not involved in this dispute.
 - b) 21 Gwynant Street: WA978108 - first registered on 8 August 2000. Registered in the name of the Respondent since 28 October 2009, but not subject to this dispute
 - c) 20 Gwynant Street: CYM567923 – first registered on 10 September 2012 by the Respondent and still owned by him.
 - d) Bedw Arian : CYM632954 – first registered on 10 November 2014 by the Applicants and still owned by them.
18. Over the course of the time in which the four properties affected by this boundary have been registered, the OS map version upon which their HMLR filed plans have been based has been through two noticeable changes as follows:
- a) The registered title for Is-y-Graig (first registered in 1990) and the registered title for 21 Gwynant Street (first registered in 2000) are marked on a filed plan which is based on an OS map version showing one continuous black line across the backs of the four properties. The continuous black line extends from the west along the backs of 1-16/17 Gwynant Street. It is not perfectly straight because it curves and bends very slightly as it follows the backs of those other properties, but it does not have any noticeable kinks or doglegs in it. It is not entirely clear which physical features are marked by the continuous black line on that plan in the area behind Is-y-Graig and 20-

21 Gwynant Street. It is in the region of the walls of the buildings and other free-standing walls. There is certainly no gap between the continuous black line and the location of any buildings, so it is fair to infer (from looking solely at that plan) that the boundary follows the line of the rear wall of Is-y-Graig and the outbuilding at the rear of 20 Gwynant Street. The red line denoting the general boundary for Is-y-Graig and 21 Gwynant Street runs along that continuous black line. This appears to suggest that the boundary itself runs along the rear wall of Is-y-Graig.

- b) The OS map version on which the filed plan for 20 Gwynant Street was based, in September 2012, has a major difference. The continuous black line described above remains roughly in the same place, but now the Is-y-Graig building and its extension into the rear of 20 Gwynant Street are shown as being slightly set back from the continuous black line. The red line denoting the rear boundary of 20 Gwynant Street runs along the continuous black line, not along the rear wall of the extension to Is-y-Graig. This implies that there is a gap between the rear wall of that extension and the boundary with Bedw Arian. It is this difference which effectively gives rise to this dispute.
 - c) By the time Bedw Arian itself is registered in November 2014, there have been some other changes to the OS map version in the relevant area. I heard evidence that these changes were prompted by a request at the time by the Applicants for a new OS survey to be carried out. The differences are that:
 - i) Dotted line. Difference between defined ditch behind Is-y-Graig and less defined features of land behind 20-21 GS.
 - ii) Change of angle of area of shared driveway between 21 Gwynant Street and Bedw Arian.
19. It is common ground between the parties that the Is-y-Graig building itself was not replaced by another building in a slightly different location between the dates of the first two OS map versions recorded above. It is also common ground that the ditch behind Is-y-Graig has been there for many decades. So if the location of that building and its ditch has not changed on the ground, then what is the explanation for the appearance of two parallel black lines in the 2012 filed plan in place of a single black line in the earlier filed plans?

20. One obvious explanation is simply that the new OS plan is more accurate and detailed than the old one. For whatever reason (I heard no expert evidence on how the surveys were taken), more detailed features are noted on the more recent filed plans. This begs the following question: if there was, at all material times, a defined ditch and building on Is-y-Graig on the ground, then what feature was represented by the single continuous black line on the earlier filed plans?
21. That question seems to me to be answered by the fact that the filed plans show only a general boundary (see s60) and are based on a map drawn to a scale of 1:2,500. In other words, it is not possible to tell what was represented as being the boundary at that time: the wall or the edge of the ditch.
22. It follows that it is not clear that the red line drawn on the filed plan of 20 Gwynant Street is a mistake on the register merely from looking at the filed plans. In order for me to direct the registrar to alter the register, the Applicants need to prove that there is a mistake on the register.
23. I bear in mind the comments of Lord Hope in *Wibberley* (quoted above) about treating OS plans with caution and I do so. I also keep in mind the dictum of Carnwath LJ in *Ali v Lane* [2007] 1 EGLR 71 [paras 36-37]:

“In the context of a conveyance of land, where the information contained in the conveyance is unclear or ambiguous, it is permissible to have regard to extraneous evidence, including evidence of subsequent conduct, subject always to that evidence being of probative value in determining what the parties intended.

“The qualification is crucial. When one speaks of “probative value” it is important to be clear what needs to be proved. In this case the issue concerns the line of a boundary which was fixed not later than 1947. Evidence of physical features which were in existence in the 1970s is of no relevance to that unless there is some reason to think that they were in existence in 1947, or they are replacements of, or otherwise related, to physical features which were in existence in 1947.”

24. The present case has strong similarities. The conveyancing deeds we have are inconclusive. The boundary was fixed some time before 1938 and the recent history of the land is therefore of very little probative value. Doing the best I can with the evidence I have and the findings I have made, it seems to me that the most likely line for the disputed boundary is some distance from the rear wall of the present outbuilding. This would explain the conduct of the Respondent's father in storing items in the gap. It would explain the existence of a dwarf wall in that gap, the position of the window and the experience of the Respondent's son as a child looking through the window. It also makes sense that the Respondent's predecessors in title would not have built an outbuilding right up onto the boundary line, but would leave an area in which to gain access for building and maintenance work. This matches and lines up with a similar feature at the rear of Is-y-Graig. It also fits with the flow of the land in the sense that Bedw Arian is generally the high ground in that area and it would make no sense for Bedw Arian to have a small area of low level ground at the foot of a vertical drop down to the level of the Gwynant Street houses.
25. In all those circumstances, I find that the true boundary follows a line a little distance away from the wall of the 20 Gwynant Street outbuilding and roughly in line with the outer edge of the Is-y-Graig ditch. I do not find the line of the boundary to the detail required for a section 60 determination application because I am not considering one and I do not have the material to be able to do so. But my finding, such as it is, is sufficient for me to reach the conclusion that there is no mistake in the general boundary marked on the HMLR filed plan for CYM5678923, because it shows the boundary a little distance from the outbuilding wall.
26. In any event, even if there were a mistake in the register, there was no cogent evidence that it was caused or contributed to by lack of care on the part of the Respondent (no fraud was alleged). He registered what he genuinely believed to be his property and had no reason to believe otherwise, even if it turns out that he was wrong. I heard no special evidence or submissions on whether there were any reasons which would make it unjust

not to make the alterations. In those circumstances, I would not direct the registrar to make any rectification of the register, even if there were a mistake.

27. In the premises, I direct the Chief Land Registrar to reject the Applicants' application to alter the register.

Dated this 19th day of July 2017

Timothy Cowen

BY ORDER OF THE TRIBUNAL

