



REF/2016/0645

**PROPERTY CHAMBER LAND REGISTRATION
FIRST-TIER TRIBUNAL
IN THE MATTER OF A REFERENCE
UNDER THE LAND REGISTRATION ACT 2002**

BETWEEN

GLENN ALEXANDER TOCHER and MARIE JOYCE TOCHER

APPLICANTS

and

NOLAN ROY DRIVER and SHARON LESLEY DRIVER

RESPONDENTS

Property Address: 54 Hurst Farm Road, East Grinstead, West Sussex RH19 4DH

Title Numbers: SX44424

Before: Judge Owen Rhys

Sitting at: 10 Alfred Place, London WC1E 7LR

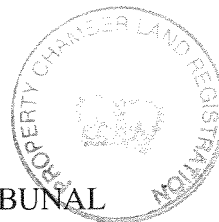
On: 7th April 2017

ORDER

IT IS ORDERED that the Chief Land Registrar shall give effect to the Applicant's DB application dated 15th February 2015.

Dated this 27th day of April 2017

Owen Rhys



BY ORDER OF THE TRIBUNAL



[2017] UKFTT 0363 (PC)

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Applicant representation: In person

Respondent representation: In person

DECISION

1. This is a disputed application for a determined boundary between the two affected titles. The Applicants are the joint registered proprietors of 52 Hurst Farm Road, East Grinstead, under title number WSX49515 ("No. 52"). The Respondents are the registered proprietors of the adjoining property, 54 Hurst Farm Road, under title number SX44424 ("No. 54"). Nos. 52 and 54 are on the north side of the road, No. 54 immediately to the north-west of No. 52. The ground level of No.52 is slightly higher than that of No. 54. On 15th February 2016 the Applicants applied to Land Registry in Form DB to determine the exact line of the boundary

between the two properties. The Respondents lodged objection to the DB application on 27th May 2016, and the dispute was referred to the Tribunal on 18th August 2016. The matter came before me on 7th April 2017, after a very useful site view in the presence of the parties (other than Mr Driver) on the previous day. I heard from both Mr Tocher and Mr Driver, who both gave evidence and were cross-examined.

2. The Applicants claim that the exact legal boundary runs along the line A-M as shown in the plan lodged in support. Point A is at the southern end of the boundary, with Point M at the northern end. Point A is the south-western corner of a brick pillar, forming the end of the low brick wall that runs along the street frontage of No.52. This wall is not original, but was rebuilt (as a 9 inch as opposed to 4 ½ inch wall) by the Applicants in 1996 in exactly the same position as the original, according to their evidence, which was not challenged. This brick pillar also forms the southern terminus of a low brick retaining wall (“the Retaining Wall”) that runs northwards between the back gardens of the two titles, to a point several metres north of the rear walls of the two houses. The Retaining Wall was present when the Applicants bought No.52 in 1980 and is believed to be an original boundary feature. The line A-M runs along the south-western face of the Retaining Wall, and that line is projected north to Point M at the end of the back gardens. There have been numerous changes to the boundary features over the years, and fences have been erected on and to both sides of the Retaining Wall. There is also a substantial hedge enclosing No.54’s rear garden, to the west of the line A-M. The dispute is focused on the ownership of the Retaining Wall, which appears to be the only extant original feature. The Applicants claim that the legal boundary is on No.54’s side of the Retaining Wall, which is wholly within their title. The Respondents claim that they own all of the Retaining Wall, or at least up to its mid-point. In 2012 they extended their frontage wall eastwards, so that the eastern end of it overlaps to a small extent with the brick pillar at Point A. In the past they have also constructed a fence partly on top of the Retaining Wall. This is consistent with their claim that all or part of the Retaining Wall (including the brick pillar) lies within their title.
3. This unfortunate neighbour dispute has been continuing, in one shape or form, since approximately 2003. There have been numerous allegations and counter-

allegations of trespass, and damage, and on occasions the police have been called. It is fair to say that these neighbours have been at loggerheads over the line of the boundary for more than 10 years. Fortunately, I do not need to examine these extraneous issues. My sole task is to determine the true line of the legal boundary, and not to stray into other areas that are not directly relevant to that enquiry.

4. The Applicants' case on the legal boundary line is simple, and is rooted in the conveyancing history of the two titles. The boundary between No. 52 and No.54 was also the historic boundary between two much larger parcels of land which were developed in the early 1960s by two different landowners. No.54 (being Plot 18 on the Hollybanks Estate) was originally transferred to a Mr and Mrs Gray by a Transfer dated 6th April 1961 ("the Clarke Transfer") by the developer R.J.Clarke & Company (Builders) Limited ("Clarke"). The Charges Register for SX44424 refers to certain covenants contained in a 1935 Conveyance, including the following:

"1. To erect forthwith and ever after to maintain a good and sufficient cattle proof fence on the South Eastern boundary of the piece of land hereby agreed to be sold between the points marked A and B on the said plan.

2. To erect when called upon so to do by the Vendors a similar fence between the points marked B and C on the said plan."

It is noted on the register that *"The south-eastern boundary of the land in this title lies between the points marked B and C."* The south-eastern boundary is the disputed boundary between Nos. 52 and 54. A copy of the plan to the Clarke Transfer is in evidence and a "T" mark has been placed on the south-eastern boundary of the plot, denoting that there is an obligation to maintain the boundary feature.

5. No. 52 was originally conveyed to a Mr Kirtley by a Conveyance dated 2nd June 1961 ("the Wait Conveyance") from the adjoining developer, namely A.J.Wait and Company Limited ("Wait"). In view of the presence of certain covenants pertaining to the construction of a dwelling house on the land – referred to in the Charges Register of the title – it is not clear if the house had actually been constructed by the date of the Wait Conveyance. There is also a covenant to maintain and repair certain fences marked with a "T" on the conveyance plan.

The register notes that the covenant affects the Western boundary – namely, the disputed boundary. Although there seem to be two versions of the conveyance plan in evidence, one of which shows no “T” marks, one plan does have a “T” on the relevant boundary, and in view of the note on the register there can be no doubt that the owner of No.52 is under an obligation to maintain the western boundary. Thus both adjoining owners are under an obligation to maintain the boundary feature along the common boundary.


6. The Applicants’ case is that the two estates were separated by the “*good and sufficient cattle proof fence*” that was required to be erected by the 1935 Conveyance which is noted on the register of No.54. I shall refer to this as “the Original Fence”. Mr Tocher has consistently maintained that this is the true boundary line, at least since his letter to Mr Driver dated 21st April 2005. They submit in the reference before me that the Original Fence formed the physical boundary of No.54 when it came to be built, and represents the true legal boundary line between the two titles. Accordingly, if they are able to establish the line of the Original Fence – which no longer exists – they argue that they are in a position to identify the exact line of the legal boundary.
7. The Applicants have produced a number of photographs in support of the DB application, dated 2003 and 2007. These photographs were taken by Mr Tocher and he confirmed in evidence that the physical features shown on the photographs did exist at those dates, although some of the boundary features have since been altered. The photographs are as follows:
 - a. Photograph A was taken in June 2007, and shows (a) the brick pillar (Point A) at the junction of the front garden wall and the Retaining Wall, previously referred to; (b) the front garden wall of No.54, the eastern end of which terminates a short distance west of Point A; (c) a wood panel fence erected by the Respondents along a line to the west of the Retaining Wall, with the southernmost fence post occupying the gap between Point A and the eastern end of No.54’s front garden wall. Mr Tocher’s evidence was that this wood panel fence was removed in 2012.
 - b. Photograph B, taken in April 2003, shows the boundary features along the side passage between the two houses. The photograph is taken from

the garden of No.52. The Retaining Wall is in the foreground. Behind it there is a narrow gravel strip, and behind that a rather weathered wooden panel fence. According to Mr Tocher, this fence was in place when the Applicants bought No.52 in 1980, but was replaced in 2003 by the Respondents, but along the same line. This, according to Mr Tocher, was the line of the Original Fence. In his note, he also points out that the bricks used in the Retaining Wall appear to be the same as some courses of brick in his own house, suggesting that the Retaining Wall was constructed at the same time as the construction of No.52 and by the same builder.

- c. Photograph C was taken in January 2007, also from No.52's garden, and shows the Retaining Wall a little further north into the rear garden. There is a beech hedge on the west side of the Retaining Wall (i.e on No. 54's side) which appears mature judging by its thickness. Interestingly, there are two old fence-posts just in front of the hedging – between the hedge and the Retaining Wall – to which strands of rusting wire are attached. These strands of wire are also attached to the trunks of the beech hedge. According to Mr Tocher, this is actually part of the Original Fence.
- d. Photograph D was taken in February 2007 at a point approximately two-thirds of the way from Point A to the rear boundary. It is taken in line with a small brick wall which supports the rear patio of No.52. The note reads: *“Shows my white marker peg at the end of the brick retaining wall which supports my upper patio. The line of my marker cord runs in a straight line from the back of 52's brick retaining wall (which runs from the pillar connected to my road frontage wall).”* This is a reference to the Retaining Wall and Point A. It continues: *“The post and wire fence can be seen beyond my marker cord with 54's hedging growing through it.”* Old posts and rusty strands of wire are indeed visible, as the note suggests.
- e. Photograph E dates from September 2007 and is taken towards the northern end of the common boundary. It shows what Mr Tocher describes as *“52's vertical pavers”*, installed by him, which have the appearance of concrete slabs laid on end to form a low wall. On the

eastern side (on No. 52) there is a conifer hedge and a single post, which resembles the posts shown in Photos C and D, and has some strands of wire attached to it on the southern side.

8. There is no existing sign of the post and wire fence along the boundary. When the Applicants bought No.52 in 1980, there was a substantial wooden fence in place between the two houses, which was erected on No.54's side of the Retaining Wall. This was Mr Tocher's evidence, and is apparent from the photographs (at pages 105 and 106 of the Bundle) of the Applicants' sons, with the boundary features behind them. Presumably, the southern section of the Original Fence must have been removed and this fence erected along the same line. The Respondents allege that Mr Tocher must have removed the last remnants of the Original Fence since this dispute began. That seems highly unlikely, given that he has consistently (certainly since 2005) claimed that it is the best evidence of the true boundary line. It is much more likely that it disappeared while work was carried out on the construction of the various new boundary features over the years. Fortunately, however, the position of this fence can clearly be identified from the photographs that I have referred to, and from the evidence of Mr Tocher, which was not challenged insofar as it related to the position of this fence. It is evident that it followed a line just to the south-west of the Retaining Wall, namely on No.54's side of that wall. If the Original Fence constitutes the true legal boundary, it follows that the Retaining Wall lies entirely within the Applicants' title, and that the line A-M does indeed represent the exact line of the boundary.
9. Accordingly, I must decide whether the Original Fence was constructed along the intended boundary between No.52 and No.54. There are a number of factors which indicate that it was. First and foremost, the obvious point that there was an obligation (on the part of the predecessors in title of the Respondents) to fence the disputed boundary with a fence of the same description – namely, a “*good and sufficient cattle proof fence*”. It is improbable that such a fence would have been erected other than along the true boundary line. Secondly, it is apparent from inspection that the bricks which form the Retaining Wall are visually identical both to the bricks used as facings to the house at No.52 itself, and also to the front boundary wall at the house on the opposite side of the road, also built at the



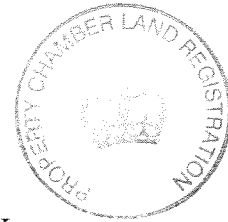
boundary between the Clarke estate and the Wait estate. Thirdly, it is inherently improbable that the Retaining Wall – constructed to contain the soil of No.52's plot which is at a higher ground level than that of No.54 – would have not been constructed by the developer of No. 52 on its own plot.

10. Furthermore, this is the conclusion that two surveyors have reached, albeit that neither of them gave evidence before me. Nevertheless, they have both surveyed the site and written very thorough reports on the boundary. Mr Anthony Beevor FRICS prepared a boundary report for the Applicants on 17th December 2012, upon which they rely. Furthermore, David J Powell FRICS prepared such a report and survey for the Respondents, on 23rd December 2013. Although this report was not released by the Respondents immediately, eventually it was seen by the Applicants, and essentially forms the basis of Mr Tocher's site plan and supports the Applicants' case generally. It is Mr Powell's view that the line A-M – which he refers to as A-B (his Point B being the Applicants' point M) – is the true boundary line. In his report, he draws attention to other matters. First, he has projected the line B-A southwards (to Point G), and it exactly lines up with the western end of the front wall to No. 17 Hurst Farm Road, which is on the same common boundary between the Clarke land and the Wait land. Secondly, he expresses the opinion that it is not uncommon, where two development estates meet, for both boundaries to be subject to an obligation to maintain. This last point relates to the fact that both boundaries are marked with "T" on the relevant plans. Since the plots were in different ownership, there would be every reason to construct a double boundary feature. Indeed, that is exactly what happened in this case, with the Original Fence forming the physical boundary of No. 54 and the Retaining Wall the physical boundary of No.52.
11. Although the Respondents have objected to the application, they have not been able to rebut the Applicants' case. I do of course have regard to the various points that they have raised, including those summarised in the document dated 29th March 2017 which they submitted to the Tribunal. However, in my judgment the reasons put forward by the Respondents in opposition to the claimed DB boundary do not have any merit.

12. I shall therefore direct the Chief Land Registrar to give effect to the DB application dated 15th February 2015.

Dated this 27th day of April 2017

Owen Rhys



BY ORDER OF THE TRIBUNAL