

GEOSIGHT BOUNDARY SERVICES

Every property has a boundary surrounding it, and that boundary is shared with the neighbouring properties. Understanding where that boundary is and what features are used to define it is important whenever you are buying or selling a property, planning an extension, changing a hedge for a fence, in fact whenever anything happens at the perimeter of your property.

The details of your boundary will be described to a greater, but unfortunately more often to a lesser, extent in your conveyance and title documents. There will be a section that starts “ALL THAT ...” and go on to describe the property. If you are lucky, it will accurately describe the land and maybe, just maybe, you will have a dimensioned drawing showing the land as well. More often than not though you will either have a vague sketch or even more likely a reference to the phrase “delineated on the accompanying plan by a red line” or similar. There may be some dimensions mentioned for width and depth followed by the words “or thereabouts”. For such an expensive and important purchase, the actual land itself is usually very poorly described.

Most boundaries are defined as a “general boundary”, where the *exact* location is not recorded. Instead, the location is expected to be defined by the neighbours involved.

Unfortunately, over time the physical features representing boundaries can move – hedges and trees grow and spread over the boundary line; hedges are ripped up and replaced by fences; outbuildings go up and are taken down; stakes and posts rot and fall down or are hidden in undergrowth. There are many, many ways a straightforward boundary line can end up as anything but straightforward. This ambiguity in boundary line position can lead to arguments and legal dispute between neighbours.

To help people through this maze GEOSIGHT offers an impartial, evidence based, Boundary Dispute Service, bound by our membership of the Royal Institute of Chartered Surveyors (RICS) and the Chartered Institution of Civil Engineering Surveyors (ICES). Our service is based around RICS practice notes, from UK.GOV, and from our own experience in dealing with a wide range of clients and their issues and situations.

What neighbours in a dispute need to hold on to is the value of the land they are fighting over, and the distress and misery each party undergoes through what is always a very stressful, emotional and time-consuming process. Matters of pride and principle very often achieve nothing more than a hollow victory where one neighbour “wins” and gains practically nothing, at the cost of many thousands of pounds and the animosity of all those around them. The actual value of the land being fought over may be measured in only hundreds or a few thousand pounds. Even if the area of land being fought over is large, the

cost of going to court and the fallout of the whole process is usually disproportionately larger.

GEOSIGHT will do everything we can to keep your costs down, and to represent you in as professional, fair and neutral way as we can, giving you unbiased advice based on our knowledge and experience. We are able to support you from an initial conversation for advice over the phone to representing you in court, and all points in between.

Who Does GEOSIGHT Represent?

We always represent our clients by offering a pragmatic solution, although what we say may not always be what you want to hear.

Although the output of our work is on behalf the client who engages us either directly or via legal firm on their behalf, all the boundary work GEOSIGHT undertakes is produced as if for a court appearance from the outset, and as such will not favour any particular party, insomuch as we will not slant the facts to someone's benefit.

If there is a dispute, we may be requested to meet the surveyor acting for the other party. We both then try to prepare a schedule of 'agreed' and 'disagreed' points together with a 'joint plan'. These schedules and plan will help either our respective clients or a court narrow down the matters being contested.

There are occasions where a single surveyor is engaged by both parties as a Single Joint Expert (SJE). This can be voluntary or where a boundary case has gone to court and a ruling made compelling the parties involved in the dispute to engage an SJE. Where this happens the parties contesting the boundary must instruct and pay for the services of a single boundary surveyor. The surveyor's instruction will be to weigh the evidence, produce a drawing and accompanying report that puts forward independently gathered evidence, and recommends an outcome that both parties agree to abide with, and that is accepted by the court.

If in an SJE situation ordered by court, we will normally attend a conference with counsel in advance of being cross-examined on our evidence under oath. Once the court has defined a boundary line and an order has been written, or if the matter has been settled prior to the court, GEOSIGHT may then be asked to mark out the boundary line on the ground for any fencing contractors or builders so that a second dispute does not arise because of poor interpretation of the result.

Summary

A boundary surveyor is probably the one professional who is present from start to finish, and in an independent and objective role. The boundary surveyor will meet one or both parties and their lawyers, measure up the land, analyse the deeds, give evidence in court and then mark out and record the final boundary.

Resources

<https://www.propertyprotocols.co.uk/the-boundary-disputes-protocol> & [Guidance Note Boundary Disputes Protocol \(propertyprotocols.co.uk\)](#)

[Part 35.3 of the Civil Procedure Rules \(CPR\)](#)

[Practice guide 40: HM Land Registry plans, supplement 4, boundary agreements and determined boundaries - GOV.UK \(www.gov.uk\)](#)

[boundaries---procedures-for-boundary-identification_-demarcation-and-dispute-resolution_-e_w-gn_-4th-ed-amended.pdf \(rics.org\)](#)

Definitions

In most instances, what is shown on your Land Registry Title Plan is referred to as a 'General Boundary'

General Boundary

England and Wales operate a 'general boundaries' system of land registration (as does Scotland and Ireland). A title plan with 'general boundaries' shows the boundary of a property in relation to a given physical feature on the ground, such as a wall or hedge as identified on the Ordnance Survey map. The red edging on a Land Registry title plan is therefore not definitive as to the precise position of the boundaries. For this reason, official copies of title plans carry the following warning: 'This title plan shows the general position of the boundaries: it does not show the exact line of the boundaries. Measurements scaled from this plan may not match measurements between the same points on the ground.'

In respect of this, you are **not** advised to use a title plan to define the extents of your property. Rather, you should look to accurately define your boundaries with your neighbours and apply to the Land Registry to have these determined.

Determined Boundary

The Land Registration Act 2002 provides for the recording of 'determined boundaries'. The aim is to record a boundary's position to a precision of +/- 10 mm. The determined boundary should be mapped relative to surrounding 'hard' detail (anything made of brick, stone or concrete that is expected to endure) or to the OS National Grid to a high level of accuracy that is certified by a chartered land surveyor. The intention is that another chartered land surveyor would be able to relocate or replicate the boundary. A determined boundary should be agreed between the neighbouring landowners before it can be recorded. The only practical difference between a boundary agreement and a determined boundary is that the determined boundary is recorded on a plan whose accuracy has been certified by a chartered land surveyor.

Upon receipt and acceptance of a Determined Boundary application, Land Registry will then make it apparent from the register that the boundaries have been Determined. Reference to the boundary concerned being a Determined boundary will be made in the property register of each affected title. Thereafter you can proceed safe in the knowledge that your boundaries are now legally defined and can never be called into question, since the definition of Determined Boundary remains with the property and not just the proprietor. This also makes any future conveyance on the property much easier, because a Determined Boundary adds value, in the sense that it rules out any future boundary dispute issues.

Chartered Surveyor

Someone who has studied surveying, past the requisite examinations and interview, and has been accepted as a member of the RICS. They agree to abide and be bound by the

rules and standards of the Institute in providing an independent and professional service to their clients.

Expert Witness

A witness called by a tribunal to give expert opinion and evidence by virtue of experience, knowledge and expertise of a particular area beyond that expected of a layperson. The overriding duty of the expert witness is to provide independent, impartial and unbiased evidence to the tribunal – covering all relevant matters, whether or not they favour the client – to assist the tribunal in reaching its determination.

Boundary Report

We produce two reports, a Boundary Report and an Expert Witness Report produced to comply with Crown Prosecution Rule (CPR) 35. Our boundary report contains what we did during the survey and with what instruments, what our findings are and what our opinion is regarding the location of a boundary. The CPR35 report will contain a mini-CV, instructions received from the client(s), an index, a brief description of the surveying methodology used, a detailed analysis, a conclusion and a copy of all the evidence we have used to arrive at our opinion. The conclusion will include a summing up of all ranges of opinion with regard to the disputed boundary so that 'no stone is left unturned'.

The Land Transfer Act

In 1862 and then in 1875 legislation was passed that allowed the voluntary registration of land. In 1897 the Land transfer Act made the registration of land titles compulsory in London. However, it wasn't until 1990 that compulsory registration was finally rolled out to the whole of England and Wales. Generally, as property is bought and sold it is registered with HM Land Registry. To date about 88% of all land is registered. Registration brings about a transparency over ownership together with any covenants, easements and rights of way.

The Act also prescribed that "the Ordnance Survey map, on the largest scale published, shall be the basis of all registered descriptions of land". However, the Ordnance Survey Act 1841 *prevents* Ordnance Survey maps from showing property boundaries and from having any effect on anyone's legal interests in land. Moreover, the Ordnance Survey maps are not sufficiently accurate to show the exact positions of the physical features represented by the lines on those maps.

Ordnance Survey National Grid

The OS National Grid is the map reference system used on all Ordnance Survey maps to identify the position of any geographic feature.

Preliminary Opinion

A brief review of available documentation, photographs and a conversation with our client in order to decide if there is a boundary case worth pursuing. If so we can provide an estimate of fees and timescale for our clients and, if involved, their legal and insurance representatives.

Professional Opinion

This is the opinion of the surveyor engaged to study a boundary issue and report on their findings. A chartered surveyor will be trained in their subject, have previous experience in unpicking the issues presented, and be able to present a coherent and relevant conclusion that is evidence based, independent in nature, and offers a satisfactory outcome.

Single Joint Expert (SJE)

An expert instructed to prepare a report for the Court on behalf of two or more of the parties (including the claimant) to the proceedings.

Title Deeds and Plans

Title Deeds are the definitive legal documents that track the ownership of property over time. Most commonly these include conveyances, transfers and leases.

A Title Plan is the document that graphically shows the extent of property ownership on an Ordnance Survey map and forms part of the Title Deeds. Ownership is usually shown as a red border around a parcel of land, although other colours can be used.

Typical procedure for a boundary examination

Roughly in sequence, the order of services runs as follows:

1. An initial discussion with our potential client to ascertain the extent of their issue, whether GEOSIGHT can assist, what the client's expectations are, and what level of service will be required from GEOSIGHT. In some cases, neighbours have reached an impasse over the position of a boundary line and need assistance in aligning existing features with those depicted on a Title Deed. Other cases deal with known and accepted boundaries and require lease plans, a Determined Boundary Application or just an up-to-date drawing of the land. In all cases GEOSIGHT acts as an independent expert witness and will survey, draw and write the evidence we find as if it is for a court appearance, regardless of who is paying for the service and whether our evidence is in their favour or not. The services we then provide can then range through the following:-
 - a. Some issues can be dealt with quickly by a phone call, imparting information regarding boundaries and how they affect their owners.
 - b. We may be asked to give a Preliminary Opinion. Having made a brief review of any documentation, photographs and conversations with our client we can provide an estimate on whether there is a case worth pursuing in the first place. If it is we can say how complex the case may be and give an estimate of fees and timescales.
 - c. Some issues can be dealt with as a desktop exercise, answering queries regarding the meaning of Title Deeds and the information they contain, what various coloured lines and areas might mean and to whom they relate.
 - d. More usually boundary issues require a meeting with the client to discuss the property legal paperwork and a site survey to accurately position the boundary in question. This is followed by a drawing precisely showing the boundary features, located to the Ordnance Survey National Grid. Often the case needs go no further as the drawings provide sufficient proof to the parties concerned as to where the boundary lies, and who owns the various land parcels.
 - e. With a little more work from the previous step, drawings required for a Determined Boundary Application can be produced.
 - f. In most situations, to accompany a drawing or a site visit, GEOSIGHT will produce a written report. This report can be in summary form detailing our findings only; or we can describe the issue, our procedure and findings expressed as a

Professional Opinion, as for court and complying with Civil Procedure Rules (CPR) in Practice Direction 35.

- g. Rarely required, GEOSIGHT can appear in court as an Expert Witness, providing evidence as to the state and location of a boundary.
2. Prior to carrying out any of these services, we confirm our contract with our client through a Letter of Instruction. This details our understanding of the issues and gives an estimate of the duration and charges for the services described in the letter. Further services may take place at a later date and will attract their own charges.
3. Reading and thoroughly examining all the client supplied papers relating to the boundary issue. From this GEOSIGHT can determine if any more information is required. Such additional papers may be in the form of aerial photographs, contemporaneous maps, deeds and documents other than just Land Registry entries and deed plans. This is usually done before we attend site for a survey.
4. Visiting our clients and their property. It may seem obvious, but site visits can be crucial to a comprehensive understanding of what is or was represented on maps and plans. A ditch may have been filled in and the hedge replaced by a fence, or the Ordnance Survey (OS) may have shown a stream which is now a ditch. It is the skill of the surveyor to be able to represent to our client, or potentially a court, what the lines on the maps and plans most probably represent or represented.
5. Make a measured survey of the land in question and its surroundings with, as deemed necessary at the time, laser Total Stations, 3D laser scanners, ground and aerial photos, to an accuracy appropriate to the circumstances. This will include any visible boundary features (posts, fences, hedges, walls, ditches, trees, etc.). The survey will be located to OSGB36(15), otherwise known as the Ordnance Survey National Grid. This locates the measured features precisely with the rest of the country and removes any ambiguity as to their position.
6. Draw up the survey. This is done using Computer Aided Design (CAD) software.
 - a. Our plans are drawn at a scale of 1:1 and then reduced to 1:1250 or 1:2500 for location purposes, and then to 1:100, 1:200 or 1:500 to show the boundary or parts of it.
 - b. If required, we produce a version of our survey for a Determined Boundary application.
7. Prepare either:
 - a. an advisory opinion to alert the client to the evidence and gives them the opportunity to decide either to stop at this point or to proceed

or

 - b. a survey report or Expert Witness Report in accordance with the RICS practice statement and guidance note entitled "Surveyors acting as Expert Witnesses".
8. Optionally, rather than take a case to court, the parties involved in a boundary dispute can opt to engage mediation services (e.g. RICS Dispute Resolution Service (DRS) or follow The Boundary Disputes Protocol via solicitors). If this course is followed an independent professional is engaged to help each side of the disagreement put their case forward, for both sides to explore the options, and for a joint agreement to be arrived at that both parties will uphold. Usually as an

outcome of this process a Determined Boundary Application will be made recording the final agreement.

Typical Sequence of a Boundary Dispute

Issue: Neighbour A decides the existing boundary features with Neighbour B are in the wrong place.

Remedy: The two neighbours discuss the situation, agree on the location for the boundary features and life carries on.

Cost: Free. Over in a very short timescale.

Issue: Neighbour A moves a boundary feature without discussing it with Neighbour B. Neighbour B objects.

Remedy: Neighbours A and B discuss the situation and come to a compromise agreement. The boundary feature is either left in place or moved.

Cost: Free. Over in a relatively short timescale.

Issue: Neighbours A and B disagree with the location of a boundary feature and cannot come to an agreement about the true location.

Remedy: The two neighbours agree to engage a boundary surveyor to act for both them (Single Joint Expert service), the boundary surveyor is tasked to research the boundary, survey and produce a plan and report of the existing situation and a plan of where the boundary features should be. Both neighbours then make suitable changes.

Cost: Depending on complexity, £1,500 to £3,000. Can take a couple of months.

Issue: Neighbours A and B cannot agree to engage an SJE, Neighbour A is adamant they are correct.

Remedy: Neighbour B engages a boundary surveyor to produce the boundary plan and report and uses that to back their argument with Neighbour A (unless Neighbour was correct of course).

Cost: £1,500 to £2,500 – to be met by Neighbour B only. Can take a couple of months.

Issue: Neighbour A disagrees with neighbour B's surveyor and engages a boundary surveyor of their own.

Remedy: The two neighbours compare their surveyors' drawings and reports. It may be that the two surveyors are asked to find any areas they disagree on and recommend a way forward.

Cost: £1,500 to £2,500 each neighbour. Likely to take 6 months or so.

Issue: A stalemate is reached where neither neighbour will back down.

Remedy: An independent mediation service is engaged to manage the disagreement between the two neighbours. A settlement is reached.

- Note:* This option can be undertaken at any of the points above.
- Cost:** The cost of any surveys plus the cost of the mediation service. This can vary depending on who is engaged, there is a wide variation. Likely to take 6 to 12 months.
- Issue:** The mediation option fails.
- Remedy:** The two neighbours' resort to the legal process and engage solicitors to represent them. This can sometimes work. Otherwise, the situation will escalate to court. Each side will typically also require a barrister to represent them in court.
- The court will not usually accept cases unless all the above have been tried and failed, certainly the mediation option.
- The court may order yet another boundary surveyor to compile a drawing and report.
- Costs:** The costs of any surveys, plus solicitors fees, plus barristers fees, plus anything the court orders the two neighbours to carry out. In our experience the *starting* costs for each party of going to court are from £25,000 to £30,000, and they can escalate quite rapidly upwards from there. £50k to £60k is common and over £100,000 is not unheard of. Likely to take one to two years, can be more.
- Note:** Legal representation can be engaged by either party, or both, at any time during the above scenarios. Whilst this can increase the associated costs to the dispute, it can potentially reduce the time and avenues chased by the two parties by providing expert advice on the legal situation surrounding boundary disputes and in handling disputes themselves.