



[2019] UKFTT 0054 (PC)

REF/2017/1142

**PROPERTY CHAMBER, LAND REGISTRATION  
FIRST-TIER TRIBUNAL**

**LAND REGISTRATION ACT 2002**

**IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY**

**BETWEEN**

**Satyanand Bhakri and Nina Bhakri**

**APPLICANTS**

**and**

**Isabell Corinne Friedrichs**

**RESPONDENT**

**Property Address: 22 Fairfax Close Caversham Reading & 24 Fairfax Close Caversham  
Reading**

**Title Number: BK347012 & BK348104**

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**ORDER**

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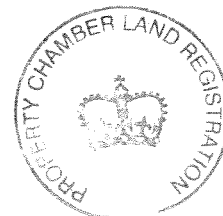
IT IS ORDERED as follows:

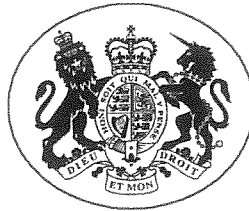
1. The Chief Land Registrar is to give effect to original application dated 15 May 2017 to for a determined boundary only as to the line between points a and F on the Applicants' plan.
2. Pursuant to rule 40(3)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 I direct that the registrar is to note on the register that the boundary between numbers 22 and 24 Fairfax Close runs along the north face of the wall and fence that separate the back gardens of the two properties.

Dated this 4 December 2018

BY ORDER OF THE TRIBUNAL

Elizabeth Cooke





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**DECISION**

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1. Numbers 22 and 24 Fairfax Close, Henley Road, Reading are pleasant modern houses in a quiet cul-de-sac. Sadly relations between the two households have become very strained and Mr and Mrs Bhakri, the registered proprietors of number 22, have applied to have the boundary between the two properties determined pursuant to section 60 of the Land Registration Act 2002 (“the LRA 2002”). Ms Friedrichs, the registered

proprietor of no 24, disagrees with the line they propose, and so the dispute has been referred to the Land Registration Division of the First-tier Tribunal pursuant to section 73(7) of the LRA 2002.

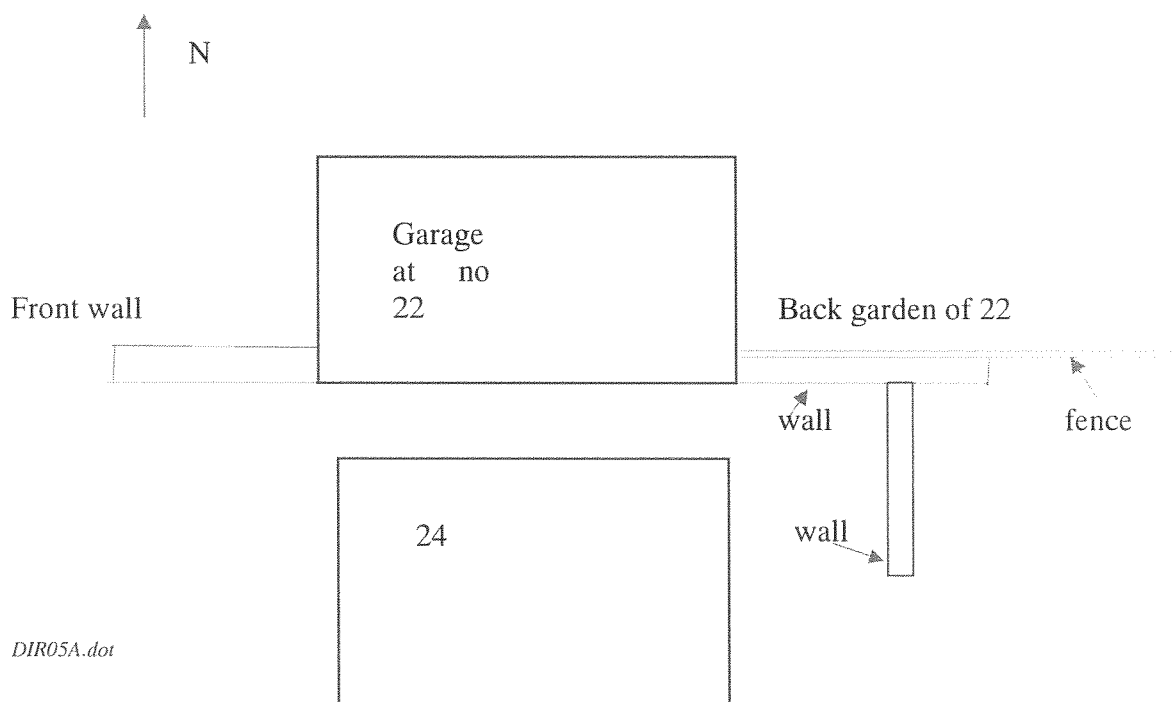
2. I visited the properties on 26<sup>th</sup> November 2018 and I am grateful to the parties for allowing me access to their gardens.
3. I heard the matter in Alfred Place on 27 November 2018; the Applicants were represented by Ms Katrina Mather of counsel, and Ms Friedrichs represented herself; I am grateful to them both for the restrained and proportionate way in which they presented their cases. In the paragraphs that follow I discuss the law, describe the properties and the boundary, summarise the arguments on both sides, and then explain my findings as to the boundary.
4. I am not going to comment on the voluminous evidence filed and served which relates only to the relations between the parties. As the parties, to their credit, accepted at the hearing, it is irrelevant to what I have to decide.

#### **The law**

5. The law is well-established.
6. The authorities are *Gillon v Baxter* [2003] EWCA Civ 1591, *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark (No 2)* [1975] 1 LR 468, and *Allan Wiberley Building Ltd v Insley* [1999] 1 WLR 894. I am to look first at the document that created the boundary in order to decide where it lies. If that does not assist me I must look at other evidence as to the intentions of the parties who created the boundary, including the physical features on the ground. I am to consider what the reasonable person with the plan in his or her hand, at the date of the creation of the boundary, would have thought was being transferred.
7. In certain circumstances a boundary can be changed by a boundary agreement, even one that is not written down (despite the rule that a contract relating to land must be in writing, section 2 of the Law of Property (Miscellaneous Provisions) Act 1989. Ms Friedrichs sought to argue that there had at various points been agreements about the boundary; at the hearing she modified this to say that the correspondence hints at an agreement. I do not need to go through that correspondence in any detail; I find that there is no evidence whatsoever of an agreement as to the position of the boundary, although on occasions the parties have sought to reach agreement about the maintenance of the fence, about access for number 24 to cut the north side of their hedge at the front, and about plants growing along or near the wall.

### The properties and the boundary

8. Numbers 22 and 24 are detached houses. Number 22 is to the north of number 24 and the boundary between them runs east-west. Very helpfully it is agreed that all the boundary features are original.
9. The front gardens of the two houses are separated by a low wall. The p face of that wall is in line with the south face of the garage to its east. The back gardens of the two houses are level near the houses and then the gardens slope upwards. Looking at the boundary from number 24's garden the wall continues along the same line, with its south face in line with the south face of the garage and of the front garden wall; instead of going all the way to the eastern boundary it stays level and therefore comes to an end part-way up the slope. It forms a T-junction with a wall running north-south in number 24's garden and the brickwork is keyed into that north-south wall. On top of the wall is a wooden fence; the north face of the fence is flush with the north face of the wall. The fence is thinner than the wall and therefore the top of the wall forms a shelf on which the Respondent has potted plants. The fence continues where the wall ends.
10. The wall is not a continuous structure; there are breaks in the brickwork at the front and the back of the garage and part-way down the back garden.
11. A brick pier supports the wall in the garden of number 22. A concrete post supports the fence in the back garden of number 24. The smooth face of the fence faces number 22; the structural parts of the fence face number 24.
12. The following is a schematic diagram; it is not to scale and is intended only as an illustration. I have not reproduced in the diagram the breaks in the brickwork.



### **The arguments for the parties**

13. The Applicants say that the boundary runs along the south face of the wall until its end. It then follows the south face of the fence; accordingly they say it has a short dog-leg near its eastern end since the fence is thinner than the wall.
14. The Respondent says that the boundary runs along the north face of the front garden wall, the south face of the garage, and the north face of the fence and wall at the back.
15. Accordingly neither party contends for a straight boundary.
16. I turn therefore to the creation of the boundary in order to seek out the intentions of those who created it.
17. The boundary was created by the transfer of number 24 from the developer, Fairview New Homes plc, to Mr Lynton Stewart-Ashley on 27 October 1997. Number 22 was retained by Fairview but was sold shortly afterwards.
18. The transfer plan of number 24 shows a straight boundary, which appears to run parallel with the south face of the garage wall.
19. Number 22 was sold in December 1997; title to both properties was registered prior to their purchase in 1997. The registered title plan to each property shows a straight line boundary, again apparently in line with the south face of the garage wall.
20. The 1997 transfer plans were not of a sufficient scale to indicate the thickness of a brick wall or of a fence. And of course the plan at HM Land Registry indicates general boundaries only, which is why a determined boundary is applied for. Neither party is content with what the plan appears to show, and indeed a straight line boundary in accordance with the plan would not work very well. A straight line parallel with the garage wall would leave a strip of the garden of number 24 in the ownership of number 22, to the south of the fence where there is no wall, and the Applicants do not claim to own that land. It would be very inconvenient for them to own it and that cannot have been what the parties intended in 1997. On the other hand a straight line parallel with the north face of the walls at the front and back leaves number 22's garage wall in the ownership of number 24, which the Respondent does not claim and which it is inconceivable that she was intended to own.
21. Inevitably there is no direct evidence as to the intentions of the transferor and transferee in October 1997.

22. However, the transfer of number 24 imposes a covenant to repair the fence at the boundary marked with an inward T, and there is a T on the south side of the boundary on the plan in the front and rear gardens of number 24. It has always been accepted between the parties that it is the Respondent's responsibility at least to maintain the fence – maintenance of the front garden wall has not, I think, been discussed. As both parties accept, T-marks do not indicate ownership of a boundary feature, although they may amount to evidence in favour of ownership. Moreover, the positive obligation to maintain the fence cannot now be enforced against Ms Friedrichs as she was not a party to the deed that imposed that covenant.

23. It will be clearest if I look at the boundary now in sections.

*The front garden wall*

24. The front garden wall appears at first sight to project from the garage, although there is a gap in the brickwork where the wall and the garage meet. The purchaser of number 24 on 27 October 1997, looking at the plan, would I think have concluded that the wall belonged to the owner of the garage, since the boundary was supposed to be in a straight line, and since the thickness of wall stands in line with the garage. In short, the wall appears to stand on number 22's land. The covenant to maintain the fence is inapplicable (despite the T-mark on the plan) since there is no fence at the front. If the wall had been intended to belong to number 24 it would, I think, have been placed on land that appeared to belong to number 24 instead of being directly to the west of number 22's garage.

25. So I take the view that the boundary runs along the south face of the wall at the front, in accordance with the Applicants' proposed line.

*The garage wall*

26. There is no dispute that the south face of the garage wall is the boundary.

*The back garden*

27. In the back garden the position changes. There must be a dog-leg in the boundary, either at the back of the garage, if the wall and fence belong to number 24, or at the end of the wall, if the wall and fence belong to number 22. And while the straight line on the transfer plan point to the wall and fence belonging to number 22, that straight line ignores the inevitable dog-leg and so cannot be conclusive.

28. Four factors point towards the wall and the fence belonging to number 24. One is the fact that the structural parts of the fence are on the south side. It is customary for someone who puts up a fence to put the smooth side facing their neighbour, and so the

purchaser of number 24 might have thought that the fence was his (and therefore the wall too).

29. Second, the fence is thinner than the wall and therefore the top of the wall is an obvious place for number 24 to put plants on the top, as they have done. It would be very odd if they were trespassing by doing so, or required permission from number 22 to do so. Again, therefore, that would lead the purchaser in 1997 to think that the wall was his.
30. Third, there is the T-mark on the plan. Unlike the one in the front garden it is clear that, for the original purchaser, this marked an obligation to repair, since there is a fence. That is by no means conclusive as to ownership. But eventually fences need replacing, and it would be very odd if the owners of number 24 were obliged to replace a fence that did not belong to them. So, again, the purchaser in 1997 would have thought that the fence belonged to him.
31. Fourthly, if the fence belongs to number 22 it is difficult to say where the exact line of the boundary runs. Does it run along the south face of the fence? If so, the consequence is that the support rails do not belong to the owner of the fence, but if not then number 22 owns a strip of the soil in which number 24's plants grow, as wide as the width of the support rails on the fence. So it makes much more sense if the boundary runs along the north face of the fence and that is far more likely to be what the parties in 1997 intended.
32. As I said above there has to be a dog-leg in the boundary in one of two places, either at the end of the garage or at the end of the wall. I conclude that the back garden wall and the fence belong to number 24, that the dog-leg is at the end of the garage, and that the boundary therefore runs along the north face of the fence in the back garden.

### **Conclusion**

33. So far as the front wall is concerned and the face of the garage the Applicants' application succeeds. So far as the back garden is concerned, therefore, the application fails, and I have directed the registrar to note on the register that the boundary lies along the north face of the fence in the back garden. Because the application has been successful in part and unsuccessful in part I propose to make no order for costs, but if either party wishes to seek to persuade me otherwise they may do so by application to the tribunal within 28 days of the date of this decision. The other party will then have 28 days to respond and the applicant 21 days to reply.

34. This dispute has been characterised by unnecessary hostility and by a great deal of misunderstanding. I hope that the parties can endeavour to live in peace and to be kind to each other, now that they have a clear boundary in answer to their dispute.

Dated this 4 December 2018

Elizabeth Cooke

BY ORDER OF THE TRIBUNAL

