



[2018] UKFTT 0723 (PC)

PROPERTY CHAMBER
FIRST-TIER TRIBUNAL
LAND REGISTRATION DIVISION

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

LAND REGISTRATION ACT 2002

REF No 2017/0680
BETWEEN

IAN MATHER
DENISE LINDA MATHER

Applicants

and

ADRAIN MARK BROWN
HELEN BROWN

Respondents

Property: Fern Cottage and land lying to the south, East Street, North Molton,
Devon

Title numbers: DN403609, DN436766 and DN273925

ORDER

The Chief Land Registrar is ordered to cancel the application dated 16 December 2016

BY ORDER OF THE TRIBUNAL

Ann McAllister

DATED THIS 31ST DAY OF OCTOBER 2018





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Applicants

and

**ADRIAN MARK BROWN
HELEN BROWN**

Respondents

Property: Fern Cottage, East Street, North Molton EX36 3HX

Title number: DN403609

**Before: Judge McAllister
Exeter Magistrates Court
3 October 2018**

Representation: Mr Paul Hevingham of Counsel appeared for the Applicants; the Respondents appeared in person

DECISION

Introduction

1. The Applicants, Mr and Mrs Mather, are the registered owners of a property known as Fern Cottage, East Street, North Molton ('Fern Cottage'). The property was purchased by them on 30 July 2004 and is held under three titles, DN403609, DN436766 and DN413352. The first of these titles comprises the cottage itself and the garden thereto; the second land further to the south which was more agricultural in nature, and the third land formerly part of Meadows View, to the west of the cottage. The second

parcel of land was purchased by the previous owners from the neighbouring owners, the Methodist Chapel, in September 2000. The third parcel of land was purchased by Mr and Mrs Mather in June 2014.

2. The Respondents, Mr and Mrs Brown, are the owners of the property immediately to the east of Fern Cottage. This property is known as 'Pullens'. It was purchased by Mr and Mrs Brown on 15 January 2013 and is registered with title number DN273925.
3. The dispute between the parties relates to the eastern boundary of Fern Cottage (and therefore to part of the western boundary of Pullens). The boundary is some 83 metres long. The relevant titles affected are DN403609 and DN436766 (Fern Cottage) and DN272925 (Pullens).
4. By an application dated 16 December 2016 Mr and Mrs Mather applied to the Land Registry to determine the exact line of the boundary under section 60(3) of the Land Registration Act 2002 and under the relevant provisions of the Land Registration Rules 2003. The application was made on the basis, it appears, that the conveyancing documentation relating to Fern Cottage is not clear enough to define the boundary.
5. The boundary sought by Mr and Mrs Mather is shown in red on the plan prepared by Mr Watts of PWH Chartered Surveyors dated November 2016 ('the Plan'). Mr Watts gave evidence before me, as did Mr Mather and Mr Brown. Mr and Mrs Brown do not rely on any expert evidence. I also had the benefit of a site view.
6. The principal issue between the parties relates to the ownership of a 'Devon bank' which is most visible between points F to H on the Plan, albeit that the dispute relates to the entirety of the boundary.

Determined boundaries

7. As is well known the boundary marked on a title plan is a general boundary only (section 60(1) of the 2002 Act). Section 60(2) provides that a general boundary does not determine the exact line of the boundary. An application can be made under section 60(3) for a determined boundary. The detail is set out in Rules 118 and 119 of the Land Registration Rules 2003. In particular, Rule 118 provides that (1) a

proprietor of a registered estate may apply to the registrar for the exact line of the boundary of the registered estate to be determined and (2) an application made under paragraph (1) must be made in Form DB and be accompanied by (a) a plan, or plan and verbal description, identifying the exact line of the boundary claimed and showing sufficient surrounding physical features to allow the general position of the boundary to be drawn on the Ordnance Survey map and (b) evidence to establish the exact line of the boundary.

8. In addition, the Land Registry publishes publishes a number of Practice Guides. Practice Guide 40 is a detailed guide dealing with the more technical aspect of land registry plans. A supplement to this guide states that where an an application to fix an exact boundary is by reference to a plan using measurements, those measurements must be accurate to $+/- 10$ mm. These requirements do not appear either in the Act or the Rules but are widely accepted and applied.
9. In the event In the event that such an application is made and a dispute arises, the matter is referred under to the Tribunal under section 70(3) of the Act. The jurisdiction of the Tribunal has been considered in a number of cases and most recently in the decision of Morgan J, sitting as a Judge of the Upper Tribunal, in *Lowe v William Davis Limited* [2018] UKUT 0206.
10. It is now settled that if the Tribunal is not satisfied that the boundary is as shown on the application plan, it may nonetheless make a finding as to the true position of the boundary. Morgan J rejected the contention that once the Tribunal concludes that the plan is inaccurate, it no longer has jurisdiction to make a decision as to the location of the boundary, and found that *Bean v Katz* [2016] UKUT 168 was altogether more persuasive than *Murdoch v Amesbury* [2016] UKUT 3. It is open to the Tribunal to decide all matters in dispute: its jurisdiction is not limited to deciding whether or not the applicant's plan is accurate.

Relevant legal principles

11. The legal framework to be applied in determining a boundary is well known. A useful summary can be found in *Acco Properties v Severn* [2011] EWHC 1362. For present

purposes, the key points are as follows. First, file plans show only general boundaries, and not the exact line. They should not be scaled up to show an exact boundary, because the lines marking the boundaries become so thick as to render them useless for a detailed definition. In this sense, the exercise carried out by Mr Watts of scaling up the OS plan to form the base of the Plan is of little use.

12. Secondly, the starting point is the language of the original conveyance together with the plan attached, if this helps. If this is not sufficient, it becomes necessary to have regard to extrinsic evidence in order to establish (to use the test set out by Butler-Sloss LJ in *Topliss v Green* [1992] EGCS 20) what a reasonable layman would think he was buying.
13. A more recent and often cited test is that set out in the judgment of Mummery LJ in *Pennock v Hodgson* [2010] EWCA (Civ) 873 at paras 9-11 where he said: *'Looking at the evidence of the actual and known physical condition of the relevant land at the date of the conveyance and having the attached plan in your hand on the spot when you do this are permitted as an exercise in construing the conveyance against the background of the surrounding circumstances. They include knowledge of the objective facts reasonably available to the parties at the relevant date. Although, in a sense, that approach takes the court outside the terms of the conveyance, it is part and parcel of the process of contextual construction'*.
14. Thirdly, the boundaries are fixed at the time of the original conveyances unless it can be established that the parties, at some point, entered into a boundary agreement or such an agreement can be implied, or, one party establishes title to some of the land in dispute by adverse possession. A boundary agreement may be inferred from conduct, particularly where physical features have been in the same position for very many years: see the discussion in *Bean v Katz* [2016] UKUT 168 (TCC) at paragraphs 58 to 71. But the key point is that boundaries are, generally, fixed at the moment of the original conveyance.
15. Fourth, subjective beliefs as to the position of the boundary are irrelevant, but, again, it may in some circumstances be permissible to look at the subsequent conduct of the relevant parties, that is to say the parties to the original conveyance: *Liquat Ali v Robert Lane* [2006] EWCA Civ 1532. It follows therefore that the belief of subsequent buyers is

irrelevant, unless they can pray in aid either a boundary agreement or can make out a claim to adverse possession.

16. Fifth, when a boundary is in dispute, it is important to bring certainty to the determination by proclaiming the boundary and not leaving the plot 'fuzzy at the edges'. (per Megarry in *Neilson v Poole* [1969] 20 P&CR 909).
17. To these general principles, there are a number of other points which are relevant to the present dispute. The root conveyance of Pullens dated 1st November 1974 (the 1974 Conveyance) included a parcel of land described and numbered 8368 on the OS plan, which also includes a reference to the acreage. That plot includes land which runs further south than the common boundary with Fern Cottage.
18. The Ordnance Survey calculates acreage from the middle of the hedge or ditch (see *Fisher v Winch* [1939] 1 K.B. 666). This means that the conveyance of the above plot will include land to the middle of the hedge. In aerial photograph dated September 1968 the hedge between DN436766 and Pullens can be clearly seen, as it can be in the later photo taken in the 1980s, where the line of trees, since felled, is clearly visible.
19. So where, as here, Pullen's title is derived from a document which refers to an Ordnance survey, the survey will show the boundary features, in this case the Devon bank. This being so the boundary will be the centre line of the hedge. *Fisher v Winch* was followed in *Davey v Harrow Corporation*[1958] 1 QB 60 and by Morgan J in *Harsten Developments Ltd v Bleaken* [2012] EWHC 2704 (Ch) where he said: '*The 1926 conveyance conveyed land by reference to the Ordnance Survey map and therefore the middle line of the hedge became the legal boundary created by the hedge. In the course of arguments various points were made as to the possible inconvenience of a legal boundary running along the middle of a hedge. Questions were raised as to one owner cutting back to the hedge up to the middle line. It was suggested that there might be constraints on an owner behaving in this way. The courts have not found any legal difficulty in the past in holding that the legal boundary runs along the middle of a hedge.*'
20. The same principle was applied in *Avon Estates v Evans* [2013] EWHC 1635 (Ch) (referred to further below), *Lowe v Lowe* [2018] UKUT 0206 (TCC) and *May v Iles* (Property Chamber, REF 2016/ 0481 July 2018).

21. The second specific point relates to the T mark shown on the plan to the 1974 Conveyance. This shows the vertical stroke as facing inwards into Pullens' plot. The vertical stroke of the T on the far boundary faces into the adjoining plot. These marks (looking like 'lollipops') are shown on shown the filed plans of DN403609 and DN436766 (Fern Cottage) and, inaccurately, on the filed plan for Pullens (in that the mark is inward facing on the eastern boundary of Pullens). The relevant 'T' mark, on the western boundary, is shown.
22. The Land Registry view of the significance of 'T' marks is set out in paragraph 5.017 of *Ruoff and Roper, Registered Conveyancing*. It is the view of the writers that 'T' marks on deed plans which are not referred to in the text of the deed have no special force or meaning in law, and unless an applicant specifically requests that they be shown on the filed plan, they will not normally not be. That view may be unduly restrictive.
23. In *Seeckts v Derwent* [2004] EWCA Civ 393 the conveyance plan was marked with a boundary showing 'T' marks, as well as some measurements in feet and inches from various points on the boundary to a building called Clock House. There was an inconsistency between the two means of identifying the boundary. It was held that the 'T' marks should prevail. Carnwarth LJ said this: '*In my view it is not possible to disregard the ordinary understanding of 'T' marks. The natural indication is that they were intended to represent existing boundary features and that those features belong to Clock House...*'
24. In *Avon Estates v Evans* the issue was whether the prima facie position that the boundary established by reference to an ordnance survey map marking a hedge was the middle of that hedge was affected by the position of 'T' marks, even though those were not referred to in the body of the conveyance. The judge held not. The judge distinguished *Seecks v Derwent* on the basis that in that case there was agreement by the experts that 'T' marks indicated ownership of the feature to which they were attached.
25. The court held that there is no single meaning or default meaning established by the evidence or authority than can be attached to 'T' marks where the meaning cannot be ascertained by the body of the conveyance or other ascertainable material. The outcome was, in the event, that the centre line of the hedge was the boundary.

26. The Court of Appeal re-visited the question of 'T' marks in *Lanfear v Chandler* [2013] EWCA Civ 1497. In that case the purchaser covenanted with the original vendor that they would maintain and keep in good repair the fence on the side of the land transferred marked with a 'T' on the boundary. Patten LJ held the true analysis is as follows. There is a common and well established practice of using 'T' marks to identify the ownership of a wall or fence to mark a boundary. That is a relevant factor in determining the position of the boundary. But '*whether it is determinative of the boundary depends upon balancing it against the other relevant terms of the conveyance and the features of the plan coupled, when appropriate, with the evidence of the position on the ground... to say that the use of 'T' mark raises a presumption (even a rebuttable one) that the boundary feature belongs to the adjoining landowner indicated by the use of the marks seems to me to be wrong in principle and in effect to pre-empt the process of construction on which the court is concerned.*'
27. For the reasons then set out, the court rejected the argument that the fence marked the boundary.
28. The third more specific point is this. Mr and Mrs Mather do not dispute that the wall at the northern end belongs, as I understand it, to Pullens but they nevertheless claim that the boundary is on the far, eastern, side of the wall and that the land on which the wall is built belongs to them.
29. As a general rule, and not surprisingly, ownership of a wall follows the ownership of the land on which it was built. It is a natural assumption that anyone building a wall or fence will do so to the limit of their land. Accordingly, if a wall was built entirely on the land of one owner, there is a presumption that the wall belongs to that owner (see *Jones v Read* (1876) 10 I.R.C.L at 315 and *Hutchinson v Mains* (1832) Alc. & N. 155). That presumption can be displaced by evidence of a contrary agreement. There is no evidence of such an agreement here.

Conveyancing history

30. Both Fern Cottage and Pullens once formed part of the Poltimore estate. By a conveyance dated 6 November 1950 between the Right Honourable Baron Poltimore and William

James Boyle, the land now in title DN403609 (part of what is now Fern Cottage) was conveyed.

31. The parcel clause is in these terms: *'ALL THAT dwellinghouse known as Fern Cottage together with the garden and outhouses thereto belonging situate adjoining East Street in the village of North Molton in the County of North Devon All which said premises are now in the occupation of Mr J Burgess as Tenant thereof...'* There is no plan attached to this conveyance, and no evidence as to exactly what land was occupied by Mr Burgess. It is therefore correct to say that the boundary cannot now be determined by the root conveyance of Fern Cottage (ie the land now registered with title DN403609).
32. As explained above the land registered with title DN436766 was purchased in 2000 by Mr and Mrs Mather's predecessors in title. I have seen a letter from the vendor's solicitors to the trustees of the Methodist Chapel dated 13 July 2000. The letter deals with a number of matters including the width of the southern boundary. The writer stated: *'I have estimated the width of the southern boundary to be some 40 feet measured from the centre of the hedge...'* This is significant: the sale to Mr and Mrs Mather's predecessors is the first sale of this land. It was necessary to mark out the plot by erecting a fence on its western boundary, and accordingly it was necessary to determine its eastern boundary. From this letter it would appear that the vendor's believed the eastern boundary to be the middle of the hedge.
33. The 1974 Conveyance (of Pullens) was made between the trustees of the Church Lands North Molton and John and Laura Palfryman. The parcels clause is in these terms: *'ALL THAT piece or parcel of land having a frontage to East Street North Molton... TOGETHER with the detached cottage known as 'Pullens' East Street aforesaid and the outbuildings and premises thereto belonging and also ALL THAT piece or parcel of land situate at the rear of the property above described and numbered 8368 on the Ordnance Survey map for the parish of North Molton aforesaid containing an area of half an acre or thereabouts ALL WHICH premises are for the purpose of identification only delineated and edged red on the plan annexed hereto...'*

34. The inclusion of the additional parcel of land at the rear of Pullens means that the land belonging to Pullens extends significantly further south than the land belonging to Fern Cottage.
35. I have not seen any further documentation relating to the conveyances of either property. Mr and Mrs Mather rely in part on the Sellers Property Information Form completed by their vendors on 17 February 2004. In response to question 1.3 'Do you know of any boundary being moved in the last 20 years?' the reply is 'Purchase of land to rear of property (see deeds)'. This must refer to the land comprised in title DN436766.
36. In response to question 6.1 '*Are you aware of any responsibility to contribute to the cost of anything used jointly such as the repair of a shared drive, boundary or drain?*' the answer was '*The seller has responsibility for the bank and fence which form the boundary to the left of the property*'.
37. One further point should be noted. The 1950 conveyance of Fern Cottage provides '*that the wall separating the buildings from the adjoining buildings are party walls and the rights and liabilities in respect thereof shall be in accordance with section 38(1) of the Law of Property Act 1925.*' This provision is noted in the property register of title number DN403609.
38. There are no walls separating Fern Cottage from any other buildings. It may be, as Mr and Mrs Brown state in their evidence, that the cottages to the west of Fern Cottage were demolished in the 1950s. What is clear, to my mind, is that this provision cannot refer to the stone wall running between points B and F on the Plan, which wall runs on the western side of the access lane leading to the land behind Pullens.
39. Mr and Mrs Brown drew my attention to the pre-contract report prepared for them at the time of their purchase. Relying on the 1974 conveyance, the solicitors advised them that they were responsible for the right hand boundary (the disputed boundary) looking towards the property from East Street. This must, it seems to me, be a reference to the T marks.
40. In short, both parties purchased their respective properties believing they were responsible for the disputed boundary.

The physical features on the ground

41. The boundary in dispute is some 83 metres long. At the northern end, running from points B to F on the Plan, is a retaining wall bounding the western side of an access track leading beyond Pullens (the building). The Applicants do not claim ownership of the wall, but maintain that the boundary is the outer, eastern, face.
42. It is important to note that the ground at the rear of both properties falls away steeply and further that Pullens is very much lower than Fern Cottage. The wall is higher at the northern end (possibly 1.4m) and is lower at the southern end. The entire wall runs for a little less than 50 metres. Thereafter the physical boundary becomes a substantial traditional Devon earth hedge bank. At point H the ground levels out.
43. Between points B and D the wall has a hedge on top of it or very close to it, and there is a larch lap fence between C and D. The fence is set back some 600 to 800mm from the inner face of the retaining wall. This created a strip of land between the fence and the wall which, on Mr and Mrs Mather's case, belongs to Fern Cottage. Point D marks the beginning of the lower field or garden comprised in title DN436766.
44. There are existing fence posts marked on the Plan at three points between D and F. These are part of an existing post and wire fence. Between D and E there is wire netting fencing. Mr and Mrs Mather planted a beech hedge approximately 1000mm in front of the post and wire fence in 2005. In front of the hedge is a low wall erected by them in 2005. The post and wire fence is marked as the boundary on the Plan.
45. The lower retaining wall stops at point F. Thereafter there is a Devon bank. There are existing fence posts and tree stumps more or less in the middle of the bank. At the southern end, and running northwards from the southern boundary of Fern Cottage, is a short run of fence, again in the middle of the bank. There is also a stock proof fence on the Pullens side set back a metre or so from the base of the bank.

Background and evidence

46. Mr and Mrs Mather's evidence is that the red line on the Plan represents what they believed they bought in 2004. Their difficulty, however, is that the red line does not accord with their belief that the Devon bank was part of their title.
47. Mr and Mrs Mather believe that the previous owners of Fern Cottage erected a fence at about point C or a little higher on the Plan running to point D in or about 2003, leaving a gap of some 600-800mm on which there is now a hedge (and a gap between the hedge and the fence). Point D is, approximately, where the parcel of land included in title DN436766 begins. I am also told that they were informed by Mr and Mrs Radcliffe that there was never a fence on the western side of the Devon bank between G and H, save for a 12 foot section of post and rail at the southern end. This is still there. The only other fence was on the eastern side of the bank. This ran approximately 1 to 2 feet from the base of the bank.
48. In 2005 Mr and Mrs Mather were granted permission to widen the western access to allow parking for three vehicles and the construction of a double garage and workshop. It was a condition of the planning permission that a beech hedge should be built along the southern boundary of the turning/parking area to separate the domestic curtilage of Fern Cottage from the agricultural or pastoral land below. This is also when the new low wall and beech hedge, on the west of the wire fence, was built. The hedge was planted approximately 1000mm in front of a post and wire fence shown between points D and E on the Plan.
49. The hedge at the northern end of the boundary which is shown clearly on the 1968 aerial photo (produced by Mr and Mrs Brown on the day of the hearing), and which can also be seen clearly in a photograph taken in the 1980s, was not there when they purchased: this was probably taken down, they believed, to build the wall which now separates the properties.
50. As stated above the fence (a larch top fence) between B/ C and D is set back from the wall. Mr and Mrs Mather maintain that the hedge on the Pullens side of the fence is part of their title and dispute that Mr and Mrs Brown regularly maintained this hedge. The fence makes access to the hedge difficult but not, according to Mr Mather, impossible.

The fence (now replaced) can be clearly seen in an aerial photograph taken in about July 2006.

51. Below point D, there was, according to Mr Mather, a very poor fence which he may have removed. A beech hedge was planted on top of the bank between F and H which, it is said, was partly removed by Mr Brown in July 2015. The trees on the Devon bank were removed at Mr and Mrs Mather's request in early February 2013. The trees were substantial, as can be seen in the 2006 photograph and the 1968 aerial photograph. The felling of the trees led to a letter from Mr and Mrs Brown in May 2015 requesting compensation. The first verbal complaint about the trees was in February 2015.
52. Following the removal of the trees the Devon bank in the lower field was left to grow wild, partly as a result of the advice received in these proceedings by Mr and Mrs Mather. When Mr and Mrs Mather bought their property in 2004 the lower field was not maintained in any way. They do however, as I understand it, rely on the previous owner's use of the bank since 2000 as part of their claim to adverse possession.
53. Mr and Mrs Mather continued to maintain the eastern boundary until June 2016 when Mr Brown cut down the hedge between B-C on the Plan. It is Mr Brown's case that he maintained the western boundary of his property from January 2013, including the boundary beyond Fern Cottage. Part of the Devon bank was trimmed in June 2016. In the same month Mr Brown cut back part of the hedge on the other side of the lap larch fence: Mr Mather's case is that this had not been done before.
54. Mr and Mrs Brown first erected a post and rail fence on their side of the bank, followed by a temporary fence. The temporary fence, according to Mr and Mrs Mather, followed the red line on the Plan between points G and H. The new, existing fence, is set back a metre or so away from this line. This fence, on Mr Brown's evidence, was not intended to be a boundary fence, but was erected to prevent the animals from eating the plants growing on the Devon bank.
55. In their Statement of Case Mr and Mrs Brown set out some of the history of Pullens. They believe Pullens was sold by the North Molton Estate to a dray man who had a large horse and cart and therefore had access down the western side of the house to where the stables once were. It is also their belief, based in part on fittings and tank for an old petrol pump

which are there to this day, that vehicles were able to gain access along the access way to the rear of the property. The point they are making is that the access to their land was always the same width.

56. I have also seen a statement from Mr Bulled who rented the paddock and buildings behind Pullen's house from the previous owner, Mr Laker, for 9 years until the property was sold to Mr and Mrs Brown. He kept sheep and horses. He said little about the boundary, save that Mr Laker cut timber from the hedge on the western boundary for firewood. From personal knowledge, he also stated that the North Molton Estate kept shire horses and timber wagons in the lower fields of Pullens which wagons were wider than modern cars. The access was along the present driveway. Later a Mr Bawden lived in the property and kept two bread delivery vans in the yard.
57. Mr White owned and lived at Pullens between 1982 to 1989. He had the stone retaining wall built by a Mr Buckingham. (A builder and then owner of Fern Cottage). Before that a Devon bank separated the two properties. The wall was built to shore up the bank which was slowly falling away. The gap between the newly built wall and the original bank was filled with earth which created a level strip of land. So far as Mr White was concerned there was never any question but that the wall belonged to Pullens.
58. In May 2016 Mr and Mrs Mather wrote to Mr and Mrs Brown. This letter summarised their then case. It is to be noted that they stated: *' We accept that the high retaining stone wall leading from East Street and the hedge that runs along the centre of the wall belongs to Pullens and forms the boundary. We claim title to all the land retained by this wall and do not accept that our larch lap fence demarcates the boundary.'*
59. The events which have happened recently are not relevant to the determination of the boundary, but they form the backdrop to the present application. I have no doubt that both Mr Mather and Mr Brown were doing their best to recollect events. It is possible that there was a misunderstanding about the felling of the trees, or that, in any event, the difficulties which followed (connected with the erection of stables on Pullens, the number of horses on this land, manure heaps etc) have led to entrenched positions and to heightened animosity. I will not deal with these issues further.

Expert evidence

60. The report prepared by Mr Watts dated November 2016 is based only, so far as documentary evidence is concerned, on the three filed plans of the registered titles owned by Mr and Mrs Mather, and on his own survey. He did not consider the November 1974 conveyance of Pullens, nor, so far as I am aware, had he seen the letter written in 2000 regarding the width of the southern plot. As I have stated above, the exercise of scaling up from filed plans is of very little use.
61. His survey was further limited by the fact that he did not have access to Pullens. Mr Watts notes that the size and scale of Fern Cottage does not sit with the OS plans (on which the filed plans are based) and, of course, accepts that the OS plan can be 3 to 5 metres out in relation to the on site position.
62. Significantly, Mr Watts states that the boundary on the eastern side, at the southern end, appears to follow the line of the original tree stumps and existing fence posts that are clearly set in the Devon bank, and can be seen in photograph 3 of his report. His conclusion is that boundary runs along the middle of the Devon hedge bank. This then follows, as he puts it, up through the garden area where the posts are clearly in line.
63. At the front of the property, his boundary line of the Plan veers eastwards to run along the face of the stone wall. There is no good reason, it seems to me, why Mr Watts concludes that the face of the wall should be the boundary, other than to say that it follows the Land Registry plan (notwithstanding the fact that he accepts that this line can be 3-5 metres out in regard to the on-site position).
64. I note also that Mr Watts states in his report that *'the one section that could not be fully determined is that from the end of the gable wall of Fern Cottage down to the end of the stone wall with the formal parking area and garden area, as we have not been able to fully survey the area inside the Pullens.'*
65. In oral evidence Mr Watts re-affirmed that he believed the boundary to be on the top of the bank between H and G and not on the eastern side. The red line on the Plan was intended to show the middle of the bank, based on the remains of a fence running up from

point H. The posts marked between D and E are historic posts. He did not say any more on the wall, other than to say that the line between B and C fits with the title plan.

The Applicants' case

66. The difficulty with the Applicants' case is that, as stated in their Statement of Case, this does not accord with the expert evidence they rely on. Mr Watts was clear that, at least as between D and H the boundary is the middle of the Devon bank as evidenced, on the ground, by the existing fence posts and the short run of fencing at the southern end. So far as the claim that the outer face of the wall is the boundary, this does not accord with their own case as set out in earlier correspondence, and nor is it convincingly established by Mr Watts, who could provide no basis for this assertion other than it fits with the filed plan. He was also necessarily less assured as to the line between C and D because he had not been able to survey the area fully.

The Respondents' case

67. As stated above, the Respondents do not rely on expert evidence. In their Statement of Case they claimed that the boundary is as follows. Between B and C the boundary is western edge of what remains of the Devon bank. This is not easy to establish on the ground. In any event, it is their case that the wall along the access way is built on Pullens' land, and the boundary lies further to the west.

68. Between C and D it is their case that the boundary is the larch lap fence erected on the same line as the 2003 fence. The hedge to the east of this fence is therefore on their land. Between D to H the boundary runs along the wall constructed in 2005 when the parking area was created, and thereafter along the western base of the Devon bank. They make the point that the 2005 wall is in line with the larch lap fence and is more or less in line with the Devon bank.

Conclusion

69. In my judgment the boundary between the properties is as follows. It is to my mind clear that the centre of the Devon bank formed the boundary between the two properties. I say this for the following reasons. First, the conveyance to Pullens clearly refers to the OS number of the lower field. The principle that the centre of the hedge is the boundary is well accepted where a hedge is shown on an OS map, as set out above. This, in my judgment, displaces any argument which might be made relating to the T mark. There is no reference to the T mark in the body of the 1974 conveyance.
70. My conclusion is strengthened by the fact that, in 2000, when the southern plot was sold to Mr and Mrs Mather's predecessors in title, the width of the newly created plot was taken from the centre of the hedge on the eastern boundary.
71. Moreover, as can be seen in the photographs attached to Mr Watts' report, the timber post and rail fence at the southern end of the boundary, and the other remains of historic posts, tie in, as he puts it, with the centre of the Devon hedge. The boundary is not, therefore, either on Pullens side or the Fern Cottage side of the bank.
72. Mr Watts was clearly of the view, both in his report and in his written evidence, that the centre of the Devon bank is the boundary from point H up through the back of the formal garden area. There was no confusion in his mind about this. Between F and D it follows the existing fence posts marked on the Plan which, as I understand his evidence, continues the centre line of the Devon bank.
73. For the avoidance of doubt, therefore, the boundary is not the 2005 wall or the beech hedge behind the wall.
74. Mr Watts was less clear, though, as the boundary between the end of the gable wall down to the stone wall where the parking area is. Prior to the wall being erected in 1987 the boundary would, in my judgment, have followed the centre line of the Devon bank running northwards to the road. This is clear from the aerial photographs I have seen.
75. I fully accept that the entirety of the wall built by Mr White was built on Pullens land. The boundary is not therefore the eastern face of that wall. Both the higher and lower retaining

walls are on Pullens' land. It seems to me clear that the previous owner would have built the wall on his land between B and D. I also accept that the gap between the newly built wall and the original Devon bank was back filled with earth, creating a level strip of land.

76. In their letter dated 31 May 2016 Mr and Mrs Mather, (in my view rightly) accepted that the high retaining wall and the hedge running along it belong to Pullens. The boundary is therefore, in my judgment, the western side of the hedge (not the fence erected by Mr and Mrs Mather on the line of the 2003 fence).
77. It is understandable that Mr and Mrs Mather may have believed that they owned the Devon bank, relying on the sellers' information pack. It is also clear that the issue of the boundary never arose before the present dispute. Mr and Mrs Brown also bought in the belief that the western boundary was theirs. Once the matter is put in issue, the exercise of determining the boundary comes into play, and the subjective belief of the previous owners is generally of little relevance.
78. In my judgment, the claim to adverse possession of the Devon bank or any other land by Mr and Mrs Mather fails. As I understand it, the claim relates only to E to H (or at least, relates principally to this area). I can deal with this point briefly. There are two difficulties with this claim. The first is that it can only be made under Schedule 6 to the Act. This sets in train a process by which the respondents can require the applicants to prove one of three conditions. Mr Hevingham's skeleton argument clearly shows that he is aware of the way in which the 2002 Act operates. It is not enough, in my judgment, to add such a claim in the course of a reference for a determined boundary.
79. Even if his procedural obstacle could be overcome (by making findings of fact which would in turn allow a further application to land registry to be made), the claim fails on its merits. In view of my findings as the boundary, the claim must relate, if at all, to the eastern side of the Devon Bank between F and H. The acts of adverse possession consist of cutting down trees, maintaining the Devon bank, and generally looking after the boundary features. These are not sufficient, in my judgment, to give rise to a claim of adverse possession. They are consistent with an owner's desire to keep boundary features tidy and in good condition. And it is also right to note that this alternative case was not really developed, either in evidence or in argument.

80. The determined boundary application therefore fails. I will order the Chief Land Registrar to cancel the application. The Plan in any event suffers from the very major drawback that it was prepared without access to Pullens. Without access to Pullens, the line drawn certainly does not meet the Land Registry's exacting requirements. As stated above, I do not in any event accept that the boundary is as shown on the Plan between B and D in so far as it being asserted that the eastern face of the wall is the boundary.

81. This leaves the question of costs. I invite the parties to make submissions in writing within 21 days of receipt of this decision.

BY ORDER OF THE TRIBUNAL

Ann McAllister

Dated this 31st day of October 2018

