

Check the ground rules to avoid boundary disputes

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Warm weather and longer days see a surge in interest in garden works each year, and where householders improve and replace, boundary disputes are sure to follow.

One recent long-running case saw an Essex couple fighting over six inches of disputed land ownership for eleven years, with costs estimated to be as high as £60,000. Philip and Denise New say they have had to re-mortgage their home to cover their costs after losing their case.

The argument started after they replaced rotten fence panels: they say they used the original cement posts that had been there for 50 years, but their neighbours said the fence was in the wrong place and that the News were trespassing on their land.

Mediators and land professionals were called in, but the neighbours could not agree on the disputed land, and the case finally reached the High Court.

Property partner Ben Marks commented:

“This was an extreme example, but boundary disputes have a tendency to inflame neighbour relationships.

The best approach is to try and avoid arguments arising in the first place by having a quiet chat with neighbours before you do the work.

If that highlights a difference of opinion that you can't resolve, then staying civil is essential. You still have to live next door to each other and even if you think a house move may be a solution, remember you have to declare any disputes when you come to sell a property these days.”

Boundary problems often arise because nobody knows who owns and is responsible for a fence, or the location may not be clear from Land Registry records. While modern housing will clearly state who owns which boundary or whether it is a party fence, it is not always clear with older properties. Locating original title deeds or checking with the local authority may help recover old documents, but more work will be needed if no documentary evidence is available.

One option is to apply to the Land Registry for what is known as a '[determined boundary](#)', obtaining an expert's report to make your case and submitting with a surveyor's drawing of the proposed boundary. However, approval is not a guaranteed solution, as the neighbour must still agree with the determined boundary. If they don't, it would mean going to a tribunal.

Otherwise, an offer of payment for any area of land under dispute in return for setting an agreed boundary may be a solution.

Another possibility where there is uncertainty over the boundary line would be to fence the area concerned; then, after ten years, an application for formal ownership can be made, claiming 'adverse possession'. Adverse possession may be an option where the adjoining landowner is unknown or in other situations where no immediate neighbour is involved and actively disputing the boundary.

Establishing where the boundary is and who is responsible for it does not require the owner to replace a fence, so if you are the one determined on the upgrade, it may be worth considering offering to pay for it. There is no reason why not, even if you are not the one who is responsible, but you will still need to get an agreement from your neighbour first. Discussing what you have in

mind also allows you to agree on who is responsible for future maintenance.

Ben added:

“If you really don’t feel able to have an initial conversation, or if you’ve already landed yourself in the middle of a red-hot boundary dispute, then that’s the time to call in a professional to act as an intermediary with your neighbour, rather than pressing on and raising the temperature further. Then, if you reach agreement, you may have to declare the dispute, but you can say it was settled.”

Contact Ben Marks today for property law advice and information.

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Note: This article is not legal advice; it provides information of general interest about current legal issues.

