

Eiendomsgrenser i England og Wales «Matrikkel?» – Nei takk!»

David J Powell

David J Powell: Property Boundaries in England & Wales «Cadastré? – No thank you!»

KART OG PLAN, Vol. 69, pp. 84–86. P.O.B. 5003, NO-1432 Ås, ISSN 0047-3278

This paper will discuss and compare a precise cadastral system of boundary recording with the general boundaries system operated in England and Wales. The paper describes the «general» system whereby property is recorded by paper-title (in the form of a legal deed) with a precision that is completely at the discretion of the parties involved. That transaction is then recorded in a general (rather than a precise) way at Land Registry. The paper puts forward the firmly held view that a general boundary system, as opposed to a cadastral system is the best way, in the 21st century to record the extent of property ownership. Such a (general) system can be easily installed in the developing world and is cheaper and more «people friendly» than a precise cadastral system.

Key words: General, Deed, Court, Cost, Vote, Boundary

David J Powell, FRICS, FRGS, MAE, Managing Director, DJPS Ltd, Orchard House, 37-39 Christchurch Road, Ringwood, Hampshire, England, UK, BH24 1DG. Email: davidjpowell@btinternet.com

Introduction

I have been involved in boundary demarcation in England & Wales since the mid 1980s and have also travelled to Spain, Germany, France, Trinidad & Tobago and Belize as a boundary expert. In that time I have attended to over 3,000 separate boundary disputes or matters of confirming demarcation and have given evidence in Court on 102 occasions. I regularly give lectures to groups of lawyers and surveyors throughout the UK and Ireland. One of the things I am often asked, usually by surveyors who have worked in mainland Europe or further afield is... «*Wouldn't it be much better in England & Wales if we had a proper cadastre with all boundaries being recorded by surveyors to a matter of centimetres?*». In this article I will explain why such a cadastre is not only unnecessary but also why other countries may well be better off by discarding their current cadastral systems and adopting a «general boundaries» system.

Current system in England & Wales

In England & Wales property has always been bought and sold by means of a deed. A «deed» can be a Conveyance, an Indenture, a similar

document or, more recently, a Transfer. There is also a Land Registry (LR) which operates on a district basis and through which all property transactions must be registered. Registering transactions with LR is now compulsory but not all properties are on the Register, partly because they have not been bought/sold since the inception of compulsory registration. There are approximately 21,000,000 properties in England & Wales and approximately 18,000,000 are registered. This latter figure will increase as more properties come onto the Register and the day will arrive, probably within the next 25 years, when all 21,000,000 properties will be on the Register.

Returning to the deed, and I am going to use a Transfer as an example, it consists of two parts, text and a plan. The combination of the text of a deed and the plan attached to it describe the extent of the property involved. This may be as precise or as imprecise as the parties wish. The plan may be a highly detailed surveyor's plan at, say, 1:200 scale, with dimensions, or it may be a photo-copy of an Ordnance Survey (OS) map at 1:2,500 scale, with no dimensions whatsoever, or it may be anything between those two extremes. The text of the deed may describe the extent of the prop-

erty in great detail or it may just say something like «*all that parcel of land edged red*». That document, the deed, is often referred to (particularly in legal circles) as «paper-title». Once the seller and buyer have agreed and signed the deed it is forwarded to LR where the property (if it has not been registered before) is marked up on either an OS 1:2,500 map (rural areas) or an OS 1:1,250 map (urban areas). That plan is called «the Title Plan».

So, there are usually two plans in existence... paper-title (the deed) and the title plan (LR). In the LR Rules, published in 2003, the title plan is limited in its precision by the description of the extent shown as being a «general boundary». Thus, the LR Title Plan shows a parcel of land, always edged in red by LR, which shows the location of the general boundary only. A general boundary can be a wall (but which side of the wall is it... or is it the centre?), a hedge (is it the whole hedge or the trunk line?), a fence (but who owns the fence?) or a stream or any line parallel to the feature depicted. In other words, the LR Title Plan gets us as far as knowing that there is a boundary feature in a general area but, if one wants to know where the boundary is more precisely then one must turn to the deed (paper-title). It is often the case that the deed plan is not precise enough (either in scale or in dimensions) for the boundary to be found with certainty and so the surveyor must look on the ground for old fence posts, remnants of walls and hedges as well as aerial photography and the history of the land as recalled by the occupiers and/or previous owners. Evidence taken from occupiers or previous owners is known as «factual evidence» and, if challenged, can only be verified by a Court, usually after cross-examination.

It is my experience that it is usually the case that property boundaries can be located with precision by reference to the paper-title (the deed) and the features that still exist on the ground. It is only the very rare instances where this is not possible, perhaps due to a poor plan and the fact that the original features have been destroyed, or where the parties are already in dispute about other matters and will not agree a new boundary line.

There are, in my opinion, only a tiny minority of property owners who have any uncertainty about where their boundaries lie and,

of those who have doubts, an even smaller minority who care enough to proceed to Court. Thus it can be said that, for the vast majority of property owners, the current system works.

Typical Disputes

A typical boundary dispute will usually involve a distance of between 2 and 6 inches (50mm to 150mm) and often involves the mispositioning of a new fence. The most frequent request that comes into my office starts with... «*We have just come back from two weeks holiday in Spain and found that our neighbour has put a new fence up which is 4 inches (100mm) on our land!*». It is extremely difficult trying to establish whether the fence has been moved by such a small amount (although some deed plans do have precise measurements along the road frontage and across the rear garden) and the surveyor often finds that it is better to record where the «new» fence is, for the future, and then persuade the two parties not to go to Court, with the possible of costs of tens of thousands of pounds, over such a small (even though annoying) dimension. However, some people insist on going to Court and I have known parties spend over £50,000 each on such a dispute. At the end of such a dispute the poor Judge has the unenviable task of drawing a boundary line, assisted by expert and factual evidence, and bringing the matter to an end. I must stress that such instances are rare and most people live side by side happily.

The dominating factor in such disputes is the personality of those involved rather than the accuracy of boundary records. Some people couldn't care less about $\pm 200\text{mm}$ whereas others will fight in the Courts for $\pm 10\text{mm}$.

LR Determined Boundaries

For those property owners who do want their properties recorded at LR to a higher degree of accuracy, they can, under the LR Act 2002, have their boundary «determined» through a process known as «DB» (Determined Boundary). For this to take place both parties have to agree where the boundary lies and then a surveyor (usually a land surveyor) produces a large scale measured plan with dimensions

to an accuracy of 10mm that will enable that boundary to be re-established in future to an accuracy of 10mm.

This process is popular with those property owners who have a pedantic nature or who have had problems in the past and wish to avoid future repeats.

What would be the benefit of a «cadastre» in England & Wales?

It is my opinion that there would be no benefit whatsoever from having a cadastre, in the sense of co-ordinated boundary records for each property in England & Wales. There are several reasons for this but the main one is of appropriate public expenditure and the consequent benefit to the community.

The cost of introducing and maintaining a cadastral system in England & Wales would be very high. It can safely be assumed that it would cost at least £1,000 per property to introduce a cadastral system (a combination of legal, surveying and registry costs) and thereafter the maintenance costs would be similar to that in other countries where such systems exist. The taxpayer would have to fund the introduction of such a system and I would not like to be a politician who stood up and said *«Vote for me and I will spend more on introducing a cadastral system than on hospitals, schools and defence!»*. The benefits of such a system would not only be negligible but would, in fact, be non-existent. The few people who have boundary disputes now would continue to have them even if such a system was to be implemented. As most arguments are over a few inches, the parties would simply argue that the cadastral co-ordinates are not accurate enough or that the original survey was unreliable. Thus the people who argue now would still argue.

At present, under the general boundaries rule, those who argue with their neighbours and go to Court pay for it themselves (or pay for some or all of it through private insurance policies) and it costs the taxpayer nothing and, of course, those who don't have arguments don't pay anything at all. If a nationwide cadastral system was introduced then everyone would have to pay, through their taxes, for something that gives them no benefit whatsoever.

Then there is the notion that it would be better for land valuation and land-use assessment for a cadastre to exist. This, again, is incorrect, because the current general boundaries system enables land areas to be calculated to within OS accuracy limitations, which are constantly improving and which are generally better than 0.6m (linear). The real practical issues of who owns a hawthorn hedge or who owns a brick wall sink into insignificance when the value of land is concerned.

Conclusion

The general boundaries system, based on OS maps (the national mapping agency), within which individuals may, if they so wish, pay to have a Determined Boundary (see above), provides the best of all worlds. It provides property owners with a general idea of where their boundaries lie (if they want to know in greater detail then they can look at their deeds or the features on the ground) and, by using the existing lines drawn on the national mapping agency's maps, the government and public bodies can plan land-use and assess the value of projects without the need for an army of land surveyors and their co-ordinate geometry.

As a land surveyor with 45 years experience, there is nothing I would like more than to see my fellow land surveyors full to the brim with the work that would inevitably follow the implementation of a cadastral system in England & Wales, however, there is the greater good to consider, being that of the tax-payer and of sheer common-sense, which is why I am convinced that the general boundaries system is not only adequate but presents a ready-made model for countries on the Developing World to adopt.

However, it would be churlish not to recognize that other countries successfully operate a variety of versions of a co-ordinated cadastre, and so one way forward for England and Wales may be to allow the current general boundaries system to continue but to adopt a more rigorous model, along the lines of some of the systems described at this conference, where new housing estates are built. Over time this would allow a gradual establishment of a precise cadastre in England and Wales but without the dramatic (and unacceptable) costs involved in a sudden implementation.