

Busbys Solicitors

POSSIBLE PROBLEMS WITH BOUNDARIES

There are many possibilities for problems arising with the boundaries between adjoining properties. In previous articles in this publication I have written about hedges and ditches, fences and walls for which one or both owners may be liable to contribute. This article is intended to provide some basic information about trespass to air space, responsibilities for trees and a brief introduction to the Party Wall Act 1996 where there are building works either new or by way of treatment of existing features or by way of excavation work on land near to the boundary. Let's start at the bottom and work our way up:-

Party Walls

The Party Wall Act is really quite complicated and it all depends what you are proposing to do – here are some examples.

1. A new building or wall on the boundary. Suppose you want to build on the boundary to create a party wall or party fence or even to build a wall on the boundary which will be on your own land except for the foundations which will project on to the neighbour's land. First you are required to give one month's notice to your neighbour. If the neighbour consents and gives notice to confirm that consent in 14 days the party wall may be built - the cost of it being shared between the two owners based upon their use of it. This is hardly likely to apply in the setting of established residential properties, but it could of course apply to a new development next door.

2. Suppose you want to carry out some works to an existing party wall or structure such as underpinning or inserting a damp proof course, up grading the wall or re-building it. Here at least two months notice must be served on the neighbour who can serve a counter notice within two further months for example to require that additional or different works be carried out.

3. Excavation works on land near to the boundary. Here different rules apply depending upon the proximity so that, for example, if your excavations are going to be within 3 metres and go lower than the foundation of the neighbour's building then there are stringent provisions to follow. If the excavation is to be within 6 metres but such excavations will be lower than a line drawn at 45 degrees downwards towards the boundary then again there are stringent provisions to follow. An informal consent from your neighbour is not sufficient to avoid the formalities of the Act which must be closely followed.

The most basic guidance I can give you in these circumstances is that you consult a surveyor straightaway before making any detailed plans and certainly before carrying out any works. It could prove very expensive indeed if you have commenced works and they have to be stopped halfway or reinstated.

On the Ground

What is the obligation of a land owner whose trees cause damage? What must you do to protect your position? A fairly recent case involved a 28 metre tall pine tree which fell on a neighbour and the neighbour's claim for compensation was based on the land owner's failure to inspect his trees and to ensure that they were safe at least as far as this can be predicted. The law is peppered with phrases like fair and reasonable, ordinary, foreseeable, average etc and one we were all taught at Law school was the definition of "the average man" who (by way of humorous example) was said to have to possess the agility of an acrobat and the foresight of a Hebrew prophet – in the context of avoiding a potential accident. In the case of trees, the relevant standard of care is held to be that of the "reasonable, prudent land owner". The Judge wisely said that the tree owner does not have to become an insurer of nature or that fault is to be imputed to him until it appears, or would appear upon proper inspection that nature can no longer be relied upon.

The tree owner is not bound to call in an expert to examine the trees unless he has reason to believe they may be unsafe. Your guess as to when this point might have been reached is no doubt as good as mine. Like so many things in the law it is all a question of knowing where to draw the line between the knowledge you and I might

possess as an ordinary observer of trees, and the knowledge of a scientific tree expert. Public bodies and land owners, perhaps like the National Trust, are under a greater duty of care than house holder and private estate owners or landlords. I am sure that common sense tells us all that periodic checks for obvious signs that a tree is likely to be unstable should be carried out by a person with a working knowledge of trees and their defects. The message is check out your trees, particularly those on a boundary line or where visitors or others may come into contact with them thereby running the risk of injury.

The air above the boundary

This is really all about a claim for trespass to air space when a land owner hasn't really suffered any actual monetary loss. An example would be a crane over sailing the boundary or an advertising hoarding. There was a recent case about an advertising hoarding which intruded into air space over the claimant's land. In civil claims the starting point for the calculation of damages for trespass is how much would compensate a claimant for his loss or put him back into the position he was in before the trespass. Where there is no calculable loss, the Courts can look at the problem from the other perspective, that is to say what was the benefit received by the trespasser for the use of the neighbour's land? In the case of an advertising hoarding, obviously the adjoining land owner received payment for allowing the advertising hoarding on his land. In this case the Court work out what they think is a hypothetical licence fee, that is to say how much you would have charged the adjoining land owner for permission to enable them to erect the advertising hoarding.

To avoid such difficulties the answer is to consult with the neighbour and agree terms in advance whether you are concerned with excavations, a proposed building on or near the boundary, or indeed a structure like an advertising hoarding which might amount to trespass. Not to do so can attract a very expensive claim, and result not only in financial loss to you but also having to undo the work that you have done.

Action

If you have any problems with regard to boundaries, we are always here to help. Contact me, David Helman, or my colleague, Ian Osborne, at Busbys on 01288 35 9000.

David Helman

Notary Public

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