

## NEIGHBOUR DISPUTES SHOULD BE AVOIDED

**The Message:** Professional advisers need to be pro-active in taking steps to avoid wholly disproportionate costs being incurred in relation to minor disputes between neighbours.

**The Case:** The Court of Appeal has clarified the law as to the extent of the evidence that can be relied upon to resolve boundary disputes and has also expressed considerable concern about the tendency of neighbours to fight such cases at a cost out of all proportion to what is involved (*Ali-v-Lane* (21/11/2006)).

The Defendants, Mr and Mrs Lane, own a property called Greenacres near the Alcester Road, Portway, Worcestershire. They run a cattery and dog kennel business from their property and they have been involved in a long running dispute with Mr Ali, the Claimant, who owns the land to the north of their property.

Initially, the Defendants claimed ownership of about an acre of land which is registered in Mr Ali's name on the basis that they had been in possession of the land for many years and acquired squatters rights to it. That claim failed and the dispute then centred on where the actual boundary was between their respective properties. At the widest point, the difference between the parties was only about 2 metres.

Boundary disputes are common because of the fact that the plans used in conveyancing are often inadequate or wrongly drawn or are often expressed to be for identification purposes only. In this case, the Claimant relied on the plans attached to various transfers of the land in dispute and surrounding land in or about 1947 but the Defendants argued that these plans were wrong and sought to rely on evidence coming into existence at a later date to show that the boundary was further north. In particular, the Defendants relied on some posts that had been located along the line of what they claimed to be the proper boundary and on some other features and use of the land which supported their case.

The general rule is that the Court must not look beyond the documentation in question in construing any document. It has to construe the intentions of the parties from the words used and not from their actions or upon the basis of any extrinsic evidence. However, boundary disputes are an exception to this rule because of the fact that the documentation is often unclear and there is a need to produce a definitive answer as to where the boundary actually is.

In order to clarify the law as to what evidence can be relied on in boundary disputes, the Court of Appeal reviewed the previous authorities and confirmed that, in cases where the conveyancing documentation is ambiguous or unclear, the Court can have regard to extraneous evidence and the subsequent conduct of the parties. However, this is only if such evidence assists in determining what the original intention was.

Accordingly, the Court held that the Defendants could only rely on matters that would shed light as to what the parties had known and intended in 1947, not matters that have come to light thereafter. The Court held that the trial Judge had been correct to find that the 1947 plan was correct and it refused the Defendants' application to adduce fresh evidence that had only just come to light as it was not conclusive and could have been obtained before the trial.

Given that the strip of land had no particular value or significance, the Court queried why the parties had pursued this dispute to trial and had not resolved the matter by mediation or some other form of alternative dispute resolution. It stated that professional advisers in these sort of cases should regard themselves as being under a duty to ensure their clients appreciated the potentially catastrophic consequences of litigation of this kind.

Clearly, the Defendants, who will have to not only pay their own costs but the Claimant's as well, will now fully appreciate what these consequences are but, hopefully, other litigants will not now suffer similarly