

[2019] UKFTT 0015 (PC)

REF/ 2017/0118

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

LAND REGISTRATION ACT 2002

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

(1) JOSEPH GUERIN
(2) MARY GUERIN

APPLICANTS

and

(1) CRAIG GILLESPIE
(2) RACHEL GILLESPIE

RESPONDENTS

Property Address: 93 High Street, Great Broughton, Middlesbrough TS9 7EF

Title Numbers: NYK271526

ORDER

The Tribunal orders that the Chief Land Registrar do give effect to the application of the Applicants, Mr and Mrs Guerin dated 20th December 2015 to determine the exact line of the boundary between Title Number NYK271526 and the adjoining Title Number NYK312480 as if the objection of the Respondents, Mr and Mrs Gillespie thereto had not been made.

BY ORDER OF THE TRIBUNAL

Michael Michell

DATED 21st NOVEMBER 2018





[2019] UKFTT 0015 (PC)

REF/ 2017 / 0118

PROPERTY CHAMBER, LAND REGISTRATION DIVISION
FIRST-TIER TRIBUNAL

IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY

BETWEEN

(1) JOSEPH GUERIN
(2) MARY GUERIN

APPLICANTS

and

(1) CRAIG GILLESPIE
(2) RACHEL GILLESPIE

RESPONDENTS

Property Address: 93 High Street, Great Broughton, Middlesbrough TS9 7EF
Title Number: NYK271526

Before: Judge Michell

Sitting at: Darlington Magistrates Court

On: 7th and 8th August 2018

Applicant Representation: Mr James Kemp, counsel, direct public access

Respondent Representation: Mr Paul Bennett, solicitor, of The Endeavour Partnership

DECISION

Cases referred to

Acco Properties Ltd v. Severn [2011] EWHC 1362 (Ch)

1. Mr and Mrs Guerin are the registered proprietors of 93 High Street, Great Broughton under title number NYK271526. The title includes a lane leading from the High Street in Great Broughton between 91 and 95 High Street (also called “Central House”) to the house and grounds known as 93 High Street. The lane runs straight in a north-north-east direction but for ease of comprehension, I shall refer to it as running east so that the High Street is at its western end, 95 High Street is on the southern side and 91 High Street is on the northern side. The lane gives access to the side and rear of 91 High Street but also to land forming part of the grounds of 89 High Street. That land lies on the left-hand side of the lane when viewed from the High Street, i.e. the northern side. Mr and Mrs Guerin applied to HM Land Registry under Land Registration Act 2002 s. 60 for the exact line of the boundary of the lane to be determined. Mr and Mrs Gillespie are the registered proprietors under title number NYK312480 of 89 High Street, which includes the part adjoining the northern boundary of the lane. Mr and Mrs Gillespie objected to the application and the matter was referred to the Tribunal for determination.

2. The Case Summary sent by Land Registry to the Tribunal under Rule 3 of the Land Registration (Referral to the Adjudicator to HM Land Registry) Rules 2003, as amended by SI 2013/1036 refers to the Application to determine the exact line of the boundary dated 20th December 2015 together with the plan that accompanied that application. The Case Summary does not refer to any other plan. However, HM Land Registry wrote to Mr Guerin on 7th January 2016 stating that the plan provided with the application did not meet the requirements for a determined boundary application. Mr Guerin sent in a revised plan but HM Land Registry wrote to Mr Guerin on 23rd February 2016 stating that the application plan must show measurements to points along the boundary to be determined from at least two identified points on surrounding permanent features. Mr Guerin then sent to HM Land Registry a plan marked “modified 17-03-2016”. This plan is essentially the same as the plan with the Case Summary in that it shows the physical features on the ground in the same place but it has written on it a table giving measurements to points on the boundary from two identified points on surrounding permanent features. It was this plan that HM Land Registry sent to Mr and Mrs Gillespie with notice of the application. It is the plan that was accepted by HM Land Registry as the application plan and I shall treat that plan as showing where Mr and Mrs Guerin say the exact line of the boundary runs.

3. The matter referred to the Tribunal is the dispute between Mr and Mrs Guerin and Mr and Mrs Gillespie as to the location of the boundary between the Guerin's' title NYK271526 and title number NYK312480. This latter title includes part only of the land belonging to Mr and Mrs Gillespie, bordering the lane.

Principles

4. HH Judge Simon Barker Q.C, (sitting as a judge of the High Court) in the case of *Acco Properties Ltd v. Severn* [2011] EWHC 1362 (Ch) set out a very useful summary of the principles relevant to the determination of a boundary dispute. I set it out below so far as is relevant to the matter before me.

- “1. Where the property in question is registered land, the file plans show only the general boundaries.
2. Similarly, Ordnance Survey plans, ..., are no more than a general guide to a boundary feature and they should not be scaled up to delineate the exact boundary. This is because the lines marking the boundaries become so thick on being scaled up as to render them useless for detailed definition.
3. In order to determine the exact line of the boundary, the starting point is the language of the conveyance aided, where the verbal description does not suffice, by the representation of the boundaries on any plan, or guided by the plan if that is intended to be definitive.
4. If that does not bring clarity, or the clarity necessary to define a boundary, recourse may be had to extrinsic evidence – such as topographical features on the land that existed, or may be supposed to have existed, when the dividing conveyance was executed.
5. Admissible extrinsic evidence may also include evidence of subsequent conduct where of probative value in showing what the original parties intended.
6. Evidence of later features – that is, later than the earliest of the dividing conveyance – may or may not be of relevance. The probative significance of such evidence depends upon the extent to which, if at all, the dividing conveyance, or evidence of its terms, exists.
7. ...

8. Even where a boundary may be determined by reference to a conveyance, other evidence may be admitted and probative in establishing a different boundary obtained by adverse possession, ...
9. As to informal boundary agreements, the statutory requirement that contracts for the sale or other disposition of land be in writing does not apply. That is because the purpose of such agreements is to demarcate an unclear boundary referred to in title documents and not to transfer an interest in land.
10. Such agreements are usually oral and the result of neighbours meeting to avoid or resolve a potential or actual dispute. However, there is scope for a boundary agreement to be implied or inferred – that is, to be the logical conclusion to be drawn from primary facts.
11. When bearing these principles in mind as the platform on which to place and examine the facts, a judge should have regard to three further important yardsticks or rules of thumb. These are: (1) when considering any acquisition of property, it is vital to consider what a reasonable layman would think he is buying; (2) every case turns on its own facts; and (3) the task of the court is to assess all available and admissible material in arriving at its answer, and then to achieve the correct answer”.

Site Inspection

5. I visited the site on the afternoon prior to the hearing and was accompanied by the parties’ representatives.

(1) At the end adjoining the High Street, the side fence of the front garden of 91 High Street is on the left-hand side and the side wall of the front garden of 95 High Street is on the right-hand side. Beyond that the side flank walls of 91 and 95 High Street lie on the left and right-hand sides of the lane respectively. 91 High Street is a twentieth century bungalow. 95 High Street is a double-fronted house of nineteenth century appearance. Both 91 and 95 High Street are set back from High Street, behind front gardens. The front of 91 High Street is set further back than the front of 95 High Street.

(2) A car port and garage forming part of 95 High Street lies just behind the house at 95 High Street. These are set back from the line of the flank wall of the house. Beyond the garage is a tall block wall and then the flank wall of a building forming part of 95 High Street, both of which are in line with the flank wall of the house at 95 High Street. This block wall and single-storey building are opposite the land in title NYK312480. Beyond the building there is a large shed with a corrugated iron roof. The shed extends eastwards up to the boundary with

the main area of land in Mr and Mrs Guerin's title. The northern flank wall of the shed is not on the same line as the flank wall of 95 High Street and the wall and building to the rear of the house at 95 High Street. It is set a little distance to the south of that line. Between this shed and the tarmacked area of the lane there is a grass verge. The part of the verge nearest to the shed belongs to the owner of the shed, Mrs Susan Smith. The remaining part forms part of the land owned by Mr and Mrs Guerin.

(3) On the left-hand side of the lane, beyond the flank wall of 91 High Street running beside the lane is a brick wall enclosing a small courtyard at the rear of 91 High Street. Beyond that courtyard is a brick garage forming part of 91 High Street. There is a concrete area of forecourt in front of the garage. This forecourt is not sufficiently deep to park a car on. Beyond the garage is part of the area of land in title NYK312480. This part is open to the lane and has on it two garages. There is room to park cars between the lane and the garage. The open area is roughly surfaced with gravel. Set in concrete in this open area are the bases of 3 posts. There is a strip of tarmac over the whole length of the lane. Mr and Mrs Gillespie appear from correspondence to regard or to have previously regarded the edge of the tarmac as marking the edge of the lane. There is a strip of gravel between the area with the concreted posts and the edge of the tarmac strip. Beyond the area in title NYK312480 is the other area of land owned by Mr and Mrs Gillespie and bordering the left-hand side of the lane. It contains a large shed (referred to in some of the evidence as a hen house) and is fenced from NYK312480 and from the lane by a wooden fence. There is a row of large stones on the lane side of the fence.

(4) Beyond this area, the tarmac strip passes between two gateposts into the main area of Mr and Mrs Guerin's property. This gateway is approximately 12 feet wide. Adjoining the gateway on the left-hand (or northern) side is a hedge of mature fir trees. On the other (or southern) side of the 12 feet gateway is a pedestrian gate.

(5) There is tarmac on the lane over its whole length. The north and south edges of the tarmac are somewhat rough and irregular. These edges do not form a straight line.

Pre-registration deeds

6. The boundary in issue was created on 1st October 1920. By a conveyance dated 1st October 1920 George Weatherill and John Sadler conveyed to George Myers the land now contained in Mr and Mrs Guerin's title and 95 High Street and the land behind 95 High Street extending up to the boundary with the land now in the Guerin's title. The vendors then retained the land to the north of the track, being the land now comprising 87, 89 and 91 High

Street and extending to the east to the boundary with the land in the Guerins' title. The land conveyed was described as "All that messuage or dwellinghouse with the garden and outbuildings known as "Central House" ... And also all those two closes or parcels of land commonly called or known by the name of "the Stripe" and "the Garth" and containing together by estimation five acres and twenty-six perches or thereabouts" and as being "delineated and coloured pink on the Plan drawn" on the conveyance. A strip of the pink land leading from the highway and adjoining the north flank wall of 95 High Street is shown separated from 95 High Street and the land behind it by a dashed line and the words "Right of Road" are written on this strip. The conveyance contains a reservation of a right "to pass and repass with or without cars and other vehicles horses and other animals along and over so much of the road leading to the said two closes of land hereby conveyed from the ... street of Great Broughton ... as is extensive with and abuts upon the adjoining property of the vendors coloured yellow on the said plan". The northern edge of the strip is shown as a straight-line. There is a dashed line marking the southern edge of the strip. This line is shown running along the northern flank wall of the house at 95 High Street and along the northern flank wall of a building behind the house at 95 High Street. The land coloured yellow is the land which is now 91, 89 and 87 High Street, 87 and 89 High Street being semi-detached houses.

7. The land now in Mr and Mrs Guerin's title was separated from the land then comprising 95 High Street on 2nd February 1921 and thereupon the boundary between the lane and the land on the south side was created. By a conveyance dated 2nd February 1921 George Myers conveyed to Jane Wright "All that messuage or dwellinghouse with the garden in front and the washhouse trap house and coal house and privy in the yard behind the same and the cesspit hereinafter mentioned and premises known as "Central House" ... All which said hereditaments are ... delineated and coloured red on the plan drawn hereon". The land was conveyed "Together with full right and liberty at all times and for all purposes to pass and repass with or without carts and other vehicles horses and other animals along and over so much of the road leading to the other property of the Vendor as adjoins the northern side of the property hereby conveyed and is coloured yellow on the said plan". Mr Myers retained "the Stripe", "the Garth" and the lane. The land coloured yellow on the conveyance plan is that part of the lane that adjoins the garden and house of 95 High Street and the building behind it but not that part of the lane to the east that adjoins the shed. The line marking the northern boundary of the land coloured yellow appears to have been drawn freehand as it is a little wavy but it is drawn parallel to the line marking the southern boundary.

8. The land retained by George Myers in 1921 (being the land now in Mr and Mrs Guerin's title) appears to have passed to Cyril Henry Myers by December 1935, though the instrument by which this happened is not in evidence. By a conveyance dated 19th December 1935 Cyril Henry Myers conveyed to William Garbutt "All those two closes or parcels of land commonly called or known by the name of "The Stripe" and "The Garth" and containing by estimation six acres and twenty-six perches or thereabouts and the piece of land used as a private road leading therefrom to the highway ... All which premises are more particularly delineated and described on the plan endorsed hereon and thereon coloured round with red ..." The plan shows the land used as a private roadway as being bounded by two parallel red lines.

9. By a conveyance dated 22nd August 1955 Cyril Henry Myers conveyed to Ellen and John Featherstone "All that piece of land situate in Great Broughton ... having a frontage to the Highway ... of fifty-eight feet or thereabouts together with the messuage or dwellinghouse and premises erected thereon ... and known as "Rosecroft" ... which said piece or parcel of land and premises are for the purpose of identification only delineated on the plan drawn hereon and coloured round with red". The land conveyed was what is now 89 High Street. How this land passed from the ownership of George Weatherill and John Sandler into the ownership of Cyril Henry Myers is not apparent from the evidence. The land was conveyed together with a right of way over the private road on the south side of the property, such right having been reserved by the 1st October 1920 conveyance. The lane is shown as bound by two parallel lines along the north and south sides.

10. The land that is now 93 High Street was conveyed by Mary Sanderson to Alfred Bell by a conveyance dated 12th June 1957. How title passed to Mary Sanderson is not apparent from the evidence. The conveyance plan is for the purposes of identification only. It shows the lane bounded by two parallel lines on the north and south sides.

11. By a conveyance dated 7th September 1963 Herbert and Olive Elizabeth Smith conveyed to Florence Jane Tyerman "All that piece or parcel of land having a frontage of thirty-two feet or thereabouts to the highway leading from Stokesley to Helmsley...". That is the land that is now 91 High Street. How title to this land passed from Mr and Mrs Featherstone to Mr and Mrs Smith is not apparent from the evidence.

12. By a conveyance dated 20th February 1978 Herbert Smith conveyed to Brian Smith the land described and delineated in a conveyance of 21st May 1955 by Cyril Henry Myers to Herbert and Olive Smith. The conveyance of 21st May 1955 is not in evidence. The conveyance also granted a right of way over the private road coloured yellow on the conveyance plan “so far as the vendor is able to grant the same”. The land conveyed was further described as being “more particularly delineated and described on the plan attached hereto and thereon coloured round red”. The copy of the conveyance plan in the bundle is not clear but it would seem to show that part of what was conveyed by the conveyance was the land in NYK406278. This plan appears to show a somewhat wavy northern boundary to the land coloured yellow.

13. Mr and Mrs Guerin were registered as proprietors of 93 High Street on 9th October 2002.

14. Susan Smith was registered as proprietor of land on the south side of the lane and the rear or east of 95 High Street and also of land now in NYK406278 under the then combined title number NYK211966 on 23rd March 2005.

15. Mr and Mrs Hebron were registered as proprietors of 91 High Street on 20th November 2017.

16. Mr and Mrs Gillespie were registered as proprietors of 89 High Street on 16th May 2013 following a transfer of title by Mrs Susan Smith.

Extrinsic Evidence

17. There is no evidence as to physical features on the ground on 1st October 1920 when the boundary between the lane and the land on its north side was created. No Ordnance Survey maps showing physical features surveyed on or close to this date were produced in evidence.

18. An aerial photograph taken in 1964 was in evidence. That photograph shows physical features that were in existence in 1964, including double gates in the area where the boundary is disputed. However, there is no evidence as to whether these gates were in position in 1920.

19. It is common ground that the frontage of 91 High Street to the highway is 32' "or thereabouts". Mr Kemp, counsel for the Applicant submitted that the phrase "or thereabouts" did not throw doubt on the measurement. He referred to *Horn v. Philips* [2003] EWCA Civ 1877. That was a case in which the parties agreed that the use of the words "or thereabouts" after a measurement in the parcels clause and not after the measurement on the conveyance plan did not make any difference in the case. It does not assist here. However, nothing turns here on the use of this word because Mr Bennett, counsel for the Respondent, accepted in his closing submissions that the frontage was 32'.

20. There is now a fence between 91 High Street and 89 High Street. Mr Hebron removed the hedge that used to be between 91 High Street and 89 High Street and erected the fence. He gave evidence that he erected the fence along the line of the centre of the hedge. It was accepted that the western end of the northern boundary of the lane was at point 32 feet from the western end of the fence between 91 and 89 High Street, measured along the boundary of 91 High Street with the highway.

21. There was some oral evidence as to the gatepost on the north side of the gateway at the eastern end of the lane. Mr Guerin said that the gatepost had been in the same position for all the time he had owned 93 High Street. Mrs Smith gave oral evidence that the gatepost had been moved in the 1970s "further into Mr Guerin's land" because the milk lorry was having a problem turning around the corner to drive north onto the land of 87 High Street. She did not mention this in her witness statement. Mrs Smith wrote a manuscript statement for Mr and Mrs Gillespie dated 29th June 2016. Mrs Smith wrote in that statement "All the paperwork, photographs etc show the lane as a straight line up to Mr Guerin's metal gate".

22. In the area where the location of the boundary is disputed there are three metal tubes cut level with the surface of the ground and concreted into the ground. The tubes have a diameter of about 2 inches and the diameter of the spread of concrete around each (though irregular in shape) is about 12". It is not in dispute that Mr Brian Smith, the then owner of 89 High Street and son of Herbert Smith, installed these as sockets into which he could fit posts linked by a plastic chain and that he did so in order to stop people parking on his land. His widow, Mrs Susan Smith said that these were installed in about 1978 or 1979. She said that Mr Brian Smith stopped putting up the posts and chain in about 1981 when their son was born.

23. There is an issue as to whether Mr Brian Smith intended to install the sockets on what he considered to be the boundary line.

(1) Mr Alan Blowes gave evidence that he was told by Mr Brian Smith that they marked the boundary of Mr Smith's hardstanding. He said that the posts were roughly in line with the hedge on the corner of 91 High Street and the end of a hen house which stood on

NYK406278. He also said that after Herbert Smith died, he saw Brian Smith put up a fence along the eastern boundary of 91 High Street. He said that Brian Smith told him this fence was to mark his boundary and that the fence ended where Herbert Smith's garden had ended.

(2) Mr William Robertson has lived at 87 High Street since 1983. He has the benefit of a right of way over the lane. He gave evidence that Brian Smith showed him the posts and chains and told him the boundary ran through the three tubes in which the posts fitted.

(3) Mr Guerin gave evidence that shortly after he and his wife moved into 93 High Street, Mr Smith showed him his boundary and said that it ran through the three sockets. Mr Guerin also said evidence was that in 2000 Mr Smith erected a small post and rail fence along the part of his boundary with 91 High Street. He said that the fence ended in line with the three sockets.

(4) Mrs Smith said that it was highly unlikely that her late husband would have told Mr Blowes or Mr Robertson that the sockets for the posts marked the boundary. He had never mentioned to her that he had told Mr Blowes or Mr Robertson that the sockets for the posts marked the boundary.

24. In about 2000 Mr Brian Smith erected a post and rail along the boundary between the part of 89 High Street used as parking area and 91 High Street. Mr Guerin's evidence is that the end post (i.e. the post at the southern end) was in line with the three concreted in tubes.

Experts' Reports

25. Mr Harrison, FRICS of Harrison & Johnson prepared a report for the Applicants. He gave oral evidence and was cross-examined. He drew a survey plan showing the physical features on the ground using measurements taken using a theodolite. His opinion was that sides of the lane were parallel and that the northern boundary began at the southern end of the 32' boundary of 91 High Street. He plotted the northern boundary of the lane by drawing a line from the starting point at the end of the frontage of 91 High Street and parallel with the southern boundary drawn as a straight line along the northern flank wall of 95 High Street. That line ended in the position of the northern of the two gateposts at the eastern end of the

lane. It passes very close to the three posts in the ground of the parking area of 89 High Street.

26. Mr David Loughrey of ASP Associates prepared a report on the instructions of the Respondent. He prepared a survey plan of the area using measurements taken using a handheld measuring device. Mr Loughrey scaled up from the Land Registry title plan for title number NYK 312480 (Number 89 High Street) and overlaid the red line boundary on the title plan onto his survey drawing. The red line on the title plan shows only the general boundary but Mr Loughrey expressed the opinion that the line produced by scaling up from the title plan was the true boundary line. Mr Loughrey then measured the eastern boundary of the land in title number NYK 225409, being number 91 along the scaled-up general boundary line for the western boundary of title number NYK 312480 (being number 89), coming to a measurement of 26' 9". This measurement corresponds to a measurement written for the same boundary on a plan which Mr Hebron had given to the Respondents' representatives. Nothing is known as to who drew this plan or when or as to who made the measurements written on the plan or as to how the measurements were made. It does not appear to be a conveyance plan.

27. Mr Loughrey accepted in cross-examination that the conveyances for all properties having the right to use the lane showed the sides of the lane as being parallel from the junction with the High Street up to the end of the lane. He also accepted that if the true boundary of the Gillespies' land was as shown on his report then the boundaries of the lane would not be parallel.

28. Mr Loughrey did not consider any pre-registration conveyances in preparing his report.

Boundary Agreements

29. The Applicants sought to rely on what they said were three boundary agreements made by Mr Guerin with neighbours.

30. The first relied on is an agreement made between Mr Guerin and Mr Geoff Brown and Mr Alan Blowes in October 2000. Mr Geoff Brown was the son of Mrs Peggy Brown, the then owner of 91 High Street. Mr Blowes is the owner of 95 High Street. In October 2000 Mrs Brown had some building works done to her house, which included the construction of the brick garage that can now be seen behind 91 High Street and an area of concrete hard standing in front of the garage. Mr Guerin considered that the hard standing was laid partly on the lane. He took some measurements and prepared a sketch plan showing the distances between the back door of 91 High Street and the lane and also between the front of the garage and the lane. The words "Agreement between JP Guerin, G Brown and A Blowes regarding the boundary between 91 High Street, Gt Broughton and the lane accessing No 93 High Street and No 95 High Street". Mr Guerin, Mr Brown and Mr Blowes signed that sketch drawing with measurements from the side wall of Number 91 to the boundary with the lane and from the front of the garage of Number 91 to the boundary with the lane. Mr Guerin's evidence was that Mr Brown represented his mother who was then in her 80s. I did not hear evidence from Mr Brown. On the sale of 91 High Street to Mr and Mrs Hebron, a copy of the plan was given to their solicitors by the vendor's solicitors. Mr Hebron said that he saw it on the day before exchange of contracts. In the circumstances, I accept that Mr Geoff Brown signed the plan as agent for his mother and thereby agreed on her behalf the location of the boundary between 91 High Street and the lane. This agreement assists in determining the disputed boundary only in that the parties' agreement that part of the structures at 91 High Street lay on the lane side of the boundary is consistent with Mr and Mrs Guerin's case as to the line of the boundary in the disputed area.

31. The second agreement relied upon is said to have been made in 2007 between Mr Hebron and Mr Guerin. Mr Hebron moved into Number 91 in 2007. Mr Hebron wanted to build a wall along the hardstanding at the back of his house with a pillar at the southern end. He approached Mr Guerin to run his proposal past Mr Guerin. The pillar is on the lane side of the boundary line for which Mr and Mrs Guerin contend. Mr Guerin said that he agreed with Mr Hebron that he could put the pillar where he said he wanted to put it. Mr Hebron said that he ran the proposal to build the pillar past Mr Guerin "even though it was on" Mr Hebron's land to see if he had any objections. This exchange does not assist in the present case. The pillar is not on the boundary line for which Mr and Mrs Guerin contend. It is not evidence that Mr Hebron agreed that the boundary was that line.

32. The third agreement relied upon is an agreement made between Mr Guerin and Mrs Susan Smith. Mrs Smith lived at 89 High Street from 1978 until 2013. Her husband, Mr Brian Smith died in 2003. In November 2008 Mr Guerin and Mrs Smith took measurements along the lane. Mr Guerin prepared a plan showing the lane and land on both sides. Both he and Mrs Smith signed the plan. Both Mr Guerin and Mrs Smith agreed that the signing of the plan came about because Mr Guerin complained about Mrs Smith's children parking on the righthand side (southern side) of the lane and obstructing access to Mr and Mrs Guerin's house. Mr Guerin and Mrs Smith agreed that the part of the grass verge next to the building on the southside of the lane belonged to Mrs Smith and the strip to the north was owned by Mr Guerin. The plan shows hatched blue the area agreed to belong to Mrs Smith and an area hatched red, which is described on the plan as "Lane owned by Mr and Mrs J Guerin". Mrs Smith accepted in cross-examination that the red hatching was on the plan when she signed it. The northern edge of the red hatched area is shown as a line passing through the three cut off posts. There are two measurements written on the plan giving the width of the red-hatched area, both being 13'2". One is written as the width at a point mid-way between the western and centre cut-off posts and the other is from a point adjacent to the north-western corner of the building on the south side of the lane. Mrs Smith said in her witness statement that she and Mr Guerin took measurements from the right-hand (i.e. southern) side of the lane. She did not say that measurements were not written on the plan when she signed it. In her oral evidence, Mrs Smith said that she did not think the measurements were on the plan when she signed it. Mr Guerin said that he wrote the measurements on the plan and then took it to Mrs Smith to sign. He said that the measurements were on the plan when Mrs Smith signed it. Mr Guerin said that there was another reason for his getting Mrs Smith to agree the plan apart from agreeing the ownership of the land on the southern side of the lane. It was because Mrs Smith was making an application for planning permission to erect a house on her land on the northern side of the land and he wanted to make sure the boundaries of that land were agreed.

33. Having considered the evidence of both Mr Guerin and Mrs Smith I am satisfied that the measurements were on the plan when it was signed by Mrs Smith. I prefer the evidence on this point of Mr Guerin. He was sure whereas Mrs Smith's appears rather to have doubted only when giving oral evidence that the measurements were on the plan when she signed it. Mr Guerin appears to be a person who has a concern for detail. He drew up the plan and had it agreed by Mrs Smith in order to get a clear agreement about what land he owned. In those circumstances, it is more likely that he would have put the measurements on the plan before

getting Mrs Smith to sign it than that he would have added the measurements later. By signing the plan, Mrs Smith agreed that the boundary between her land and the lane was the line shown on that plan.

Decision

34. The starting point for determining the boundary is to construe the conveyance dated 1st October 1920 by which the boundary was created. The land conveyed was described as being “delineated” on the plan drawn on the conveyance. The plan therefore is intended to show the boundary line. The plan shows the boundary to be a straight line and to be parallel with the flank wall of Central House (or 95 High Street).

35. There is no extrinsic evidence concerning physical features along the boundary in question either at the time the boundary was created (i.e. 1st October 1920) or shortly thereafter. The evidence as to the sockets and posts erected by Mr Brian Smith does not assist in construction of the 1920 conveyance because they were erected many years after that conveyance and by someone who was not a party to that conveyance.

36. Though there is no evidence as to the precise date on which the house now known as 95 High Street was erected, it is plain from a physical observation of that house that it predates 1920. That is apparent from its architectural style and condition. There is no sign from observation of the building that there have been any works to alter the line of the northern flank wall of the building. I conclude that the boundary line was intended to be a line running parallel to a line projected along the flank wall of 95 High Street and parallel to the side flank wall of 95 High Street in its present position.

37. The parties are agreed that the boundary between the lane and 91 High Street at the western end of the lane is a point lying 32 feet to the south of the boundary between 89 High Street and 91 High Street. The boundary set by the conveyance of 1st October 1920 is thus a straight line drawn from this point and running parallel with the northern flank wall of the house at 95 High Street. That is the line drawn on the plan produced by Mr Harrison and on the determined boundary application plan.

38. I am not assisted by the report prepared by Mr Loughrey. He did not consider the pre-registration conveyances. He should have done so because the issue to be determined was

where was the boundary drawn when the boundary was created by the conveyance separating ownership of the land on each side of that boundary. Mr Loughrey produced a report which was based on scaling up the general boundary from the title plans. As clearly stated in *Acco Properties Ltd v. Severn* that is not how an exact boundary is to be determined.

39. The boundary agreed by Mr Guerin and Mrs Susan Smith in 2008 is consistent with the boundary being in the position shown on the plan produced by Mr Harrison. They agreed that the boundary was on a line which corresponds approximately with the line on the determined boundary application plan. In that it differed slightly in that it passed through the three post holes whereas the line on the determined boundary application plan passes through the eastern hole but is slightly to the south of the central and western hole, the determined boundary plan slightly benefits Mr and Mrs Gillespie. It is open to Mr and Mrs Guerin to concede that the boundary should be determined to be slightly to the south of the line agreed in 2008. If I had not been satisfied that on a construction of the 1st October 1920 conveyance the boundary line was along the line for which Mr and Mrs Guerin contend then I would have found that the boundary was on the line for which they contend because Mrs Smith had agreed that it was on that line by signing the plan prepared by Mr Guerin in 2008.

40. There is no evidence in this case that the boundary set by the 1st October 1920 conveyance has changed because land lying to the south of that boundary has been acquired by adverse possession. The land is open as part of the lane. There is no evidence of the owners of 89 High Street having taken factual possession of any part of the lane with the intention to possess it.

41. The boundary line determined as being as set out on the application plan is not inconsistent with what a reasonable layman acquiring either the land now owned by Mr and Mrs Guerin's title or the land now owned by Mr and Mrs Gillespie's title would think they were acquiring. It is not inconsistent with any physical features that could reasonably be considered to mark the boundary. The edge of the tarmac on the lane could not reasonably be considered to mark the boundary because it has been laid roughly and the edge is not a straight line.

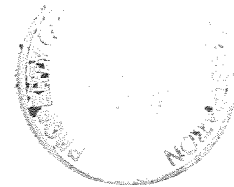
Conclusions

42. I am satisfied that the exact line of the boundary is as shown on the application plan. Accordingly, I shall direct the Chief Land Registrar to give effect to Mr and Mrs Guerin's application as if the objection of Mr and Mrs Gillespie had not been made.

43. The normal practice in proceedings before the Tribunal is for the unsuccessful party to be ordered to pay the costs of the successful party. I am not aware of any reason why that practice ought not to be followed in this case. Any party who wishes to submit that some different order should be made as to costs should serve written submissions on the Tribunal and on the other party by 5pm on 4th December 2018.

DATED this 21st November 2018

Michael Michell



BY ORDER OF THE TRIBUNAL