



REF/2018/0613

**PROPERTY CHAMBER LAND REGISTRATION  
FIRST-TIER TRIBUNAL  
IN THE MATTER OF A REFERENCE  
UNDER THE LAND REGISTRATION ACT 2002**

**BETWEEN**

**JAMES CARLYLE RODDICK**

**APPLICANT**

**and**

**PHILLIP HOPKINS  
SUSAN HOPKINS**

**RESPONDENTS**

**Property Address: Rockmount Cottage, Sandy Lane North, Wirral CH61 4XX**

**Title Number: MS441292**

**Before: Judge Owen Rhys**

**Sitting at: Liverpool Civil Justice Centre**

**On: 2<sup>nd</sup> April 2019**

**Applicant representation:** In person  
**Respondent representation:** In person

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**ORDER**

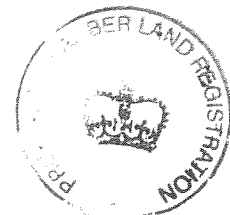
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**IT IS ORDERED** that the Chief Land Registrar shall cancel the Applicant's application in Form DB dated 30<sup>th</sup> January 2017.

Dated this 3<sup>rd</sup> day of May 2019

*Owen Rhys*

**BY ORDER OF THE TRIBUNAL**





[2019] UKFTT 0383 (PC)

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**DECISION**

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1. On 30<sup>th</sup> January 2017 the Applicant applied to the Land Registry in Form DB to determine the exact line of the boundary between his property Rockmount Cottage, Sandy Lane North, Wirral (“Rockmount”), registered under title MS441292, and the adjoining property known as Woodcote, Hillbark Road, registered to the Respondents under title number MS576454. The Respondents objected to the application, and the dispute was referred to the Tribunal on 18<sup>th</sup> July 2018. I heard the case at Liverpool Civil Justice Centre, having had a site

view on the previous day. Mrs Roddick represented the Applicant, who was cross-examined on his Statement of Case. Evidence for the Applicant was also given by Mr N. Masterson. Mr Hopkins represented the Respondents and was also cross-examined on his Statement of Case. Neither the Applicant nor the Respondents had made separate witness statements.

2. Boundaries between registered titles – the boundary lines shown on the title plans – are normally “general” boundaries. A general boundary does not determine the exact line of a boundary – see section 60(1) and (2) of the Land Registration Act 2002. There is a procedure, set out at Rules 117 to 120 of the Land Registration Rules 2003, whereby a proprietor may apply to the Land Registry to determine the exact line of the boundary. The proposed line must be identified on a suitable plan, drawn to a very precise scale, and must be supported by evidence (see Rule 118(2)).
3. Conventionally, the general boundary is mapped as at the date of first registration. This will be based on the conveyance or transfer that led to first registration. Land Registry title plans are based on the current OS data. The Land Registry matches, or attempts to match, the description of the property in the relevant transfer or conveyance – including any plan – with the OS data, in order to produce the title plan. Where a determined boundary is applied for, therefore, it is necessary to investigate the pre-registration title deeds. Sometimes, these will include a more precise description of the boundary features from which conclusions may be drawn as to the exact line of the boundary. It will also be necessary to consider the physical boundary features that existed at the date of first registration, if that evidence is available, so that these can be related to the verbal description and any plan that was used in the relevant conveyance or transfer.
4. The layout of the site is as follows. Hillbark Road runs more or less east to west. Rockmount lies to the north and east of Woodcote, both accessed from Hillbark Road along vehicular drives on its southern side. The disputed boundary is a section of the common south-western boundary of Rockmount and the north-eastern boundary of Woodcote. The properties are at different levels. The western boundary of Rockmount is formed by a natural cliff feature approximately 2 meters in height. By way of background, the immediate area

originally formed part of the Irby Quarry. Shortly before the western boundary joins the southern boundary, the cliff makes a right angle turn in a westerly direction. The contentious part of the boundary begins at this corner. There is currently in place a post and wire mesh fence (“the Fence”), which continues south in line with the cliff face for approximately 3 metres. The Fence then turns south-east and continues as far as the boundary with the neighbouring property to the east, Romany Tor. This junction forms point B on the Applicant’s DB plan. The Fence was erected by the Respondents and in their view represents the legal boundary.

5. The eastern point of the boundary contended for by the Applicant and shown on the DB plan is, as I have said, point B. However, his claimed boundary deviates significantly from the line of the Fence. Its western point (point C on the DB plan) lies several metres south of the point where the Fence turns from south to east. It lines up with a section of laurel hedge (now removed), which lies within the garden of Woodcote to the south of the Fence. From point B, the boundary line contended for by the Applicant follows a roughly west-north-west alignment, whereas the Fence runs more or less north-west from point B.
6. In his Statement of Case, the Applicant refers to the triangular area lying between the two rival boundaries as “*the Purple Land*”. In paragraph 7, he states that since 1983 he has enjoyed “*free and uninterrupted access*” to the Purple Land, until the Respondents erected the Fence. His reasoning for the claimed boundary appears from paragraph 12 of the Statement of Case:

*“The boundary marked on the Plan JCR1 was inaccurate. The original plan JCR4 provided by the Smiths Trust at the time of the Applicants purchase in 2001 clearly shows the Purple Land aligning with the southern “undefined feature lines”. The Plan (JCR1) aligns with the northern feature line. The historic laurel hedge ran alongside a post and barbed wire fence (JCR4) and was the obvious physical boundary.”*

7. The background to the claimed boundary is as follows. Although the Applicant had rented Rockmount from 1983 onwards, he bought it from the trustees of the Joseph Smith Trust by Transfer dated 5<sup>th</sup> January 2001. The property transferred

was “*defined on the attached plan and shown edged red*”. The plan (“the 2001 Plan”) is drawn to a scale of 1:200 (on an A3 sheet). The western boundary is marked “*Line of Quarry*”, and the southern boundary “*Post and Barbed Wire Fence*”. On the 2001 Plan, two black lines are marked which run west from the south-western boundary of Rockmount, one to the north of the other. They are not exactly parallel, and the southern line appears to be a continuation of the southern boundary line. These lines are also shown on the Ordnance Survey edition on which the title plans were based. The Applicant refers to these as the “*undefined feature lines*”.

8. The Applicant’s title plan – and indeed the Respondents’ – aligns the south-western corner of Rockmount with the northern of the two black lines. The Applicant’s case is very simple. He contends that the 2001 Plan shows his southern boundary as aligned with the more southerly black line. Furthermore, he contends that the southern of the two lines marks the position on the ground of the laurel hedge, removed by the Respondents in 2017 although its exact position is known (see the second Land Registry survey referred to below). The Applicant is right in saying that the Land Registry boundary coincides at this point with the northerly black line. However, to succeed in the DB application he must establish, on the balance of probabilities, that the line of the laurel hedge equates to the southern of the two “undefined feature lines” on the 2001 Plan.
9. The Respondents commissioned their own survey of the boundary area. Unfortunately, they simply produced the survey plan, without any accompanying explanation or report, and the surveyor did not attend the hearing. The survey is produced by a reputable company – Survey Systems Limited – which includes boundary surveys within its area of expertise. This may be contrasted with the Applicant’s DB plan, drawn by an architect and simply identifying the position of the claimed boundary by reference to a corner of the building on Rockmount. The Respondents’ survey is an attempt to relate the registered boundaries to the features on the ground. In particular, the surveyor attempted to identify the position of the two black lines relative to the boundary. His conclusion – as expressed by the survey plan, but without further explanation – is that the boundary fence erected by the Respondents is in the correct position.

Significantly, he marks the point where the cliff wall turns to the west – a feature which might possibly have been the northern of the two lines shown on the 2001 Plan – as being still further north. He has measured the distance between the corner of the cliff wall and the northerly black line at just over 3 metres. The Respondents have erected their fence accordingly. They say that this demonstrates that (a) neither of the black lines represents the cliff face, and (b) their fence accurately marks the legal boundary.

10. The burden is of course on the Applicant to establish that the exact line of the legal boundary is in the position that he contends for. Essentially his case depends on proving, on the balance of probabilities, that the post and wire fence shown on the 2001 Plan, adjacent to the southern “undefined line”, was in the same position as the laurel hedge that was in place until removed by the Respondents in 2017. The evidence relied on is as follows:

(1) Mr Masterson said (at paragraph 3 of his witness statement) that an old post and wire fence, some 30 years old, ran into the line of laurel hedging and was attached to it.

(2) In his Statement of Case, the Applicant said this: *“The [2001 Plan] ... clearly shows the Purple Land aligning with the southern “undefined feature lines”. The [Land Registry] Plan aligns with the northern feature line. The historic laurel hedge ran alongside a post and barbed wire fence (JCR4) and was the obvious physical boundary.”*

11. The Applicant was questioned by Mr Hopkins on his Statement of Case, but could give no further details, apart from the fact that he was able to enter the Purple Land at will, until the Fence was erected. He had not seen any evidence of a post and wire fence. Bearing in mind that this application was initiated by him, he had remarkably little to say about the historic boundary features. When questioned by Mr Hopkins, Mr Masterson did maintain that he had seen remnants of a post and wire fence within the laurel hedge, but that Mr Hopkins had removed them.

12. For his part, Mr Hopkins insisted that there had been no sign of any post and wire boundary fence when he first came to the site, and that the laurel hedge did not

connect to any boundary feature but just ran for a short distance. He gave evidence that remnants of wire could be seen in the trunks of trees that were planted in a line close to the line of the Fence, from which he deduced that this marked the line of the original post and wire fence. He relied on the survey that he had obtained, as showing that the Fence had been erected along the legal boundary as shown on the 2001 Plan. He also relied on some fairly rudimentary cross-checking of his own. In particular, he argued that the Fence lined up with the garages standing on the other side of Hillbark Road from his property, thus demonstrating that the Fence lined up with the position of the boundary on the Land Registry title plans. This argument does not, of course, address the Applicant's argument that the Land Registry boundary is in the wrong place.

13. Other evidence is available. On no less than two occasions in 2017 the Land Registry sent a surveyor to inspect the boundary area, and these surveys have been included within the evidence. The first survey was conducted on 28<sup>th</sup> June 2017, and the second on 11<sup>th</sup> August 2017, carried out by the same surveyor. On the second survey the laurel hedge was marked, between points 1 and J – the surveyor estimated that this feature was approximately 10 years old. He was specifically asked if there was any evidence of a former feature – “*perhaps old post and wire fence*” – between points A-B and C-D on the plan. These points lie between the Fence and the laurel hedge, i.e in the area of the boundary as claimed by the Applicant. The surveyor was unable to find any evidence of any former feature. Although the Land Registry surveyor did not give oral evidence at the hearing, the survey speaks for itself, and is supplemented by photographs taken by him.
14. My conclusion, on the basis of my inspection, and of the documents and oral and written evidence, is that the legal boundary between these two titles is on the same line as the Fence as erected by the Respondents, which is currently in place at the south-western corner of Rockmount. Essentially the only evidence in support of the Applicant's case was that of Mr Masterson. I did not find him to be a compelling witness. He is not a gardener, or someone who has spent any length of time in the boundary area. He is employed as the Applicant's general builder and maintenance man in connection with the Applicant's property

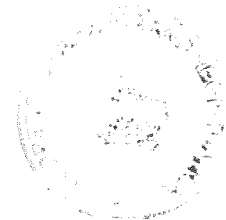
business. He accepted that he had only visited the disputed area on one or two occasions over a period of some 20 years. He had no interest in the boundaries of Rockmount, and in any event the whole area was very overgrown according to the Applicant. Bearing in mind his connection to the Applicant, his very limited familiarity with the site, and the absence of any sign of the post and wire fence on the occasion of the Land Registry survey, I do not accept his evidence that he had seen remnants of that fence inside the laurel hedge. I accept Mr Hopkins's evidence that the laurel hedge was not joined to any boundary feature, and did not contain any evidence of a fence.

15. The Applicant's case is that the southerly "*undefined feature*" on the 2001 Plan is the laurel hedge. He has failed to establish that fact. It is not clear what the two black lines are intended to mark. They are not recognisable symbols normally marked on the OS map. In my view, the Respondents' survey provides the most accurate evidence of the true legal boundary line. I am entitled to have regard to it, and, bearing in mind that the burden of proof is on the Applicant, I am not satisfied that the claimed exact boundary line on the DB plan is correct.
16. I shall therefore direct the Chief Land Registrar to cancel the Applicant's application in Form DB dated 30<sup>th</sup> January 2017. In the circumstances, I do not see why the Applicant should not pay the Respondents' costs incurred since the referral from the Land Registry, subject to the limitations applicable to litigants in person. If costs are claimed, the Respondents should serve on the Applicant and file with the Tribunal a statement of costs, with supporting vouchers, no later than 4pm on 24<sup>th</sup> May 2019. If the Applicant disputes the figures, he should do so in writing, to be filed and served no later than 4 pm on 7<sup>th</sup> June 2019.

Dated this 3<sup>rd</sup> day of May 2019

*Owen Rhys*

**BY ORDER OF THE TRIBUNAL**





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**BY ORDER OF THE TRIBUNAL**