

ENGLAND AND WALES / JUDGMENT

Austin Pickering & Anor v Rita Mensforth

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[2026] UKFTT 00449 (PC) FIRST-TIER TRIBUNAL PROPERTY CHAMBER LAND REGISTRATION DIVISION LAND REGISTRATION ACT 2002 Ref: 2025/0145 IN THE MATTER OF A REFERENCE FROM HM LAND REGISTRY B E T W E E N:

- (1) AUSTIN PICKERING
- (2) SHARON PICKERING and RITA MENSFORTH Applicants Respondent Property Address: 1 Derwent Mews & 61 Derwent Terrace, Spennymoor, County Durham DL16 6EF Title Numbers: DU168233 & DU155157 Before: Mr Max Thorowgood sitting as a Judge of the First-tier Tribunal Venue: Durham Civil and Family Justice Centre Applicants' representation: Abigail Cheetum of counsel Respondent's representation: Nigel Kidwell of counsel 1. 1.1. 1.2.

Introduction

The Applicants have been the registered proprietors of the freehold title to the premises which are known as 1 Derwent Mews, Spennymoor, County Durham since 1st May 1991. They applied on 9th August 2023 in Form DB to determine the position of the western boundary of their land with the eastern boundary of the Respondent's land. The properties are separated by a small roadway to the rear of Derwent Terrace which is tarmaced but of low quality. For convenience, I shall refer in this decision to the roadway as "Derwent Terrace". 1.3. 1.4. I had the benefit of viewing the site in advance of the hearing and the conclusions which I express below are informed by my observations on that occasion. In particular, it is important to record that in the course of the site visit various measurements were taken using a conventional long tape measure. The Applicants rely heavily upon the measurements of the boundaries of their land as they are shown on the plan to a conveyance of it dated 4th April 1984. The relevant ones are: the northern boundary at 147'; and the eastern boundary 70' – see Figure 1 below. Figure 1 1.5. 1.6. It is the Applicants' case that the northern boundary could be measured from the northernmost of the fence posts which they say mark the original position of the eastern boundary of their land. The position of these fence posts is shown on the DB Plan which is annexed hereto ("the Plan"). Measuring 147' from that fence post in a westerly direction towards the disputed boundary, the end point was in the middle of Derwent Terrace, more than a metre beyond the western edge of the concrete pad, which is the limit of the Applicants' claim. The Respondent contended, amongst other things, that the fence post from which the Applicants contend the northern boundary should be measured was not in the north eastern corner of the plot conveyed and that it was necessary to measure the length of the eastern boundary from the south eastern corner of

the plot northwards in order to determine the position of the north eastern corner of the plot and then and to measure the northern boundary from that north eastern corner. That measurement of the eastern boundary was made from the point marked “Original Fence” on the Plan with the result that the north eastern corner of the plot was approximately a metre beyond the northernmost of what the 1.7. 1.8. 1.9. Applicants contended were the original fence posts. The northern boundary was then re-measured from that point, with almost precisely the same result. I record these observations because, although nothing which was done or said in the course of the site visit constituted evidence, as such, these observations informed and were the subject of much of the evidence, discussion and submissions during the course of the hearing. Accordingly, those observations form part of the evidence to which I must have regard. The final point to mention is that Ms Cheetum was clear throughout that her clients’ claim as to the position of the disputed boundary was limited to the outside (western) edge of the concrete pad which the First Applicant said he had laid between his ‘boundary’ fence and the tarmac surface of Derwent Mews. That is to say, the Applicants do not claim the full extent of the land which the measurements described above would indicate is within their title. Unfortunately, although the Applicants’ position was clearly stated by Ms Cheetum, the plan which accompanied the referred DB application (“the Plan”) was not included within the hearing bundle. It was only produced towards the end of the hearing. The plan which was included within the bundle was a Promap plan, which accompanied the Applicants’ first DB application. That application had been rejected by HM Land Registry because the plan did not meet the requirements of its Practice Guide for plans accompanying DB applications in that it did not pretend to have been prepared to the required degree of accuracy. 1.10. There is, however, a more significant problem with the correct DB plan. As may be seen from Figure 2 below, the claimed boundary line (the red line marked “A”-“B”) does not coincide with what the Plan shows is the edge of the concrete pad, i.e. the brown line. Figure 2 1.11. This is a significant problem which I will have to address further below. 1.12. It is also worth stating at this juncture what “the matter” referred to the Tribunal with which this decision is solely concerned does not include. The dispute between the parties which gave rise to the Applicants’ application concerned rights to park on the land immediately outside the gateway to the Applicants’ property, namely the concrete pad. Whether that land is, or is not, within the Applicants’ title, which is a part of the matter which I have to decide, will not be determinative of the question whether the Applicants or anyone else is entitled to park on that land and I will not determine that question. That is, naturally, somewhat unfortunate but it is to be hoped that clarity about the position of the boundary between the Applicants’ land and the Respondent’s may assist the resolution of such further or other disputes as may exist or arise. 2. 2.1. 2.2. The conveyancing history As I have said, the Applicants’ case is founded upon the plan to the conveyance dated 4th April 1984 (“the 1984 Conveyance”). That conveyance was made between Henry Robinson, of 79 Derwent Mews (the adjoining property), and Ross Hodgson and was of the parcel described as ‘land at Derwent Terrace, Spennymoor ... more particularly delineated on the plan annexed hereto [of which Figure 1 is an extract] and thereon coloured round in red ...’. The parcel of land was conveyed together with the benefit of a right of way over the land coloured blue on the plan to the conveyance. The precise identity of the land coloured blue is one of the matters which I will need to determine but it is sufficient for present purposes

to say that it comprises that part of Derwent Terrace which enables access via its southern entrance to the Applicants' property. The schedule to the 1984 Conveyance refers to four instruments which are of significance for the purpose of understanding how the Applicants' land came to be defined as it was by the plan to the 1984 Conveyance, when they are put together with: the evidence of Mr Truswell and the plan to a conveyance dated 11th May 1950 of the land within the Respondent's title to which he refers; and the extracts from that conveyance (which has not apparently survived) which are recorded as part of the Respondent's title. Those documents are:

2.2.1. A conveyance dated 11th May 1950 and made between William Passet, Alfred Askew and Frank Sherratt of the one part and Wilfred Lightfoot of the other part ("the 1950 Conveyance");

2.2.2. An assent dated 5th February 1968 and made between Bruce Lightfoot and Hazel Robinson of the one part and Hazel Robinson of the other part;

2.2.3. Letters of administration dated 19th September 1979 in respect of the estate of Hazel Robinson deceased; and

2.2.4. An assent in favour of Henry Robinson in respect of the estate of Hazel Robinson.

2.3. 2.4. They show how the land conveyed to Mr Hodgson by Mr Robinson in 1984 came to be vested in him. The 1950 Conveyance has survived and was exhibited to the witness statement of Mr Trevor Humphries who is the current owner of 79 Derwent Terrace, it is at pp. 107 ff of the Hearing Bundle. The plan to it, which is extracted below as Figure 3, shows that the land conveyed to Mr Hodgson by the 1984 Conveyance formed part of a larger parcel which included both the land on which 79 Derwent Terrace now stands and the property which was then known as 37 Barnfield Road. The 1950 Conveyance also granted a right of way for the benefit of the land conveyed over what is now Derwent Terrace and reserved for the benefit of the sellers and their successors in title a right of way over the land which appears to be coloured orange on the copy of the plan in the bundle but which is described as being yellow by the conveyance, that is to say the southern access into Derwent Terrace, which formed part of the parcel of land conveyed.

2.5. It is notable that whilst the 1950 Conveyance did grant a right of way over Derwent Terrace for the benefit of the land conveyed, it does not grant a right of way along the northern edge of the Respondent's land.

Figure 3 2.6. The plan to the conveyance of the Respondent's land to which Mr Truswell refers in his evidence is at p. 120 of the hearing bundle and is extracted below as Figure 4.

Figure 4 2.7. The extract from that conveyance which is recorded as part of the Respondent's title is in the following terms: "TOGETHER WITH a right of way for the Purchaser and his successors in title owner or owners for the time being of the property hereby conveyed and his or their tenants servants and workmen at all times and for all purposes with or without horses cattle or other animals carts carriages and motor cars or other vehicles over and along the road coloured green on the said plan and thence into Barnfield Road aforesaid (Except and reserved unto the Vendors and their successors in title owner or owners for the time being of a piece of land situate at the rear of and co-extensive with Foundry Villas Foundry Cottages and the land hereby conveyed and now contracted to be sold to one Lightfoot a right of way at all times and for all purposes with or without horses cattle or other animals carts carriages motor cars or other vehicles over and along the portion of the road hereby conveyed as is coloured blue on the said plan and Except and Reserved all rights of way and other rights to the owners or occupiers of Foundry Cottages and their successors in title over and along the portion of the said private road as is coloured blue and yellow on the said plan so far as they are now entitled to exercise the same"

2.8. The land

coloured green is that part of Derwent Terrace which was not conveyed to the Respondent's predecessor. This is clear from the fact that the conveyance of the Respondent's land is subject to a right of way for the benefit of Mr Lightfoot with whom, the conveyance recites, the sellers had contracted to convey the land conveyed by the 1950 Conveyance. 2.9. It is thus clear, as already appears from the red line which apparently delineates the land conveyed to the Respondent's predecessor and indeed the plan to the 1950 Conveyance, that the land coloured blue on the plan at Figure 4 was intended to be included within the land conveyed. It cannot therefore have been intended to form part of the land conveyed by the 1950 Conveyance to the Applicants' predecessor. 2.10. These conclusions are inconsistent with the measurements taken on site in the course of the site visit in the sense that those measurements indicated that the western boundary of the Applicants' land should be more or less in the middle of what is now Derwent Terrace, whereas the plans referred to above would appear to show it abutting its eastern edge. 2.11. It is convenient at this point to consider the evidence of Mr Truswell who has lived in Spennymoor all his life and known this particular area since he was a boy because his uncle was Ross Hodgson who was the purchaser under the 1984 Conveyance. 2.12. It was Mr Truswell's evidence that his uncle had run a building and contracting business from a yard on the land which he bought in 1984 since the 1940's. He originally held the land under a lease from Mr Robinson and his predecessors. 2.13. Mr Truswell's evidence was given in large part by reference to the plan which is Figure 4 above. The larger manuscript additions to that plan are Mr Truswell's. He said that the Respondent's land had originally been used for commercial premises from which a firm of painters and decorators, Kell & Rand, had operated. His uncle's premises, he said, were always accessed over the yellow land because, he said, large lorries delivering supplies to his uncle's yard would not have been able (or at least would have had difficulty) to make the left hand turn into Derwent Terrace so as to use the southern entrance. He said that there were bays constructed from railway sleepers which were filled with aggregate, sand and other building supplies along the northern boundary and garages along the eastern boundary. These garages, he said, were predominantly of timber construction. That evidence is inconsistent with the evidence of Mr Pickering who recalled walking along the path which now runs along what was the railway track on his way to school and seeing a stone wall along the eastern boundary. Whether that was a boundary wall or the back wall of the garages is unclear. 2.14. It is an interesting element of the plan to the 1984 Conveyance that it shows what are described as, 'lock up garages' and a 'temporary fence' right across the frontage of the property with Derwent Terrace. Given that the access to the property, at that time at least, was from Derwent Terrace via that western boundary, it does not seem to be possible that the garages extended across the whole of the frontage and that inference is reflected in the Applicants' title plan which dates from May 1991. That plan shows some form of structure to the south of the access point across which Mr Truswell said his uncle had erected substantial gates, see Figure 5 below. It seems likely to me, in default of any other explanation, that that structure was the lock up garages shown on the plan to the 1984 Conveyance. Figure 5 2.15. In 1991 Mr Hodgson sold the part of his land shown in Figure 5 above to Mr and Mrs Pickering. They have since acquired a number of other parcels, which are separately registered. Save in the respect which I shall consider below, those parcels make up the parcel of land which they now own and include in particular the northern edge of the strip of

land along the side of what is now the primary means of access to their property. 2.16. At the time the Applicants completed their purchase from Mr Hodgson, the site had been cleared and a new, wooden, close-boarded fence had been erected along the eastern boundary by the contractor which had cleared the land. It is the Applicants' case and was Mr Pickering's evidence that that fence was erected in the same position as the original eastern boundary of Mr Hodgson's land. There is, however, no clear documentary or other evidence by reference to which it is possible to determine whether Mr Pickering's evidence is correct. I shall therefore have to consider that question further below. 2.17. The final aspect of the Applicants' title which must be considered is the current position of the eastern boundary fence. In his witness statement Mr Pickering said this at paragraph 15: "From early 2000, we started to experience antisocial behaviour from the old railway path to the rear of our property. We have a conservatory which runs the length of our property to the rear and children from the surrounding areas were throwing rubbish and missiles over the fence and generally causing a nuisance along that path. We complained to the council about the noise and the mess the antisocial behaviour was causing and as a resolution, it was agreed, after many years, that parcel of land would be transferred to us. We were required to erect a new fence between the land and the railway path to stop children and groups from congregating there and causing issues. When we purchased that land, in accordance with the transfer we installed a new fence while leaving the original fence in place. The original fence posts are still in their original position now and are used in our garden as a feature. I have annexed hereto at AP4 photographs taken by me showing the original fenceposts and the new fence which has been installed to stop the antisocial behaviour." (Emphasis added) 2.18. In cross examination, it emerged that in fact there had not been any transfer of the additional strip of land along the boundary, although a price for it had apparently been agreed. Although a good deal of the oral evidence was devoted to questions concerning this purchase and the alterations to and alleged uncertainties about the position of the original boundary which it created. It is my judgment that the only matter with which I need be concerned is Mr Pickering's evidence that the 'original' fenceposts, which he says were preserved when the new fence was erected, were erected on the line of the original eastern boundary. 2.19. I can deal with the devolution of the Respondent's title more shortly. The conveyance which created the parcel of land within her title is that dated 11 th May 1950 to which I have referred above. The Respondent acquired her land in 2015 and an extract from the title plan to it is Figure 6 below. Figure 6 2.20. The title was first registered on 12th December 1989 and, although it may not be immediately apparent, it is clear from the title plan that: it is based upon the plan to the conveyance of 1950 to which I have referred; and that the boundary of the Respondent's land extends almost up to the structure which I have surmised was the lockup garages referred to on the plan to the 1984 Conveyance and thus, that it includes the blue land over which the Applicants land has the benefit of a right of way. 2.21. As to the dimensions of the right of way, the Respondent pointed to the following evidence in an internal memo from the Principal Engineer (Highways) to Development control in connection with the Applicants' application for planning permission in April 1991: "The width of the access road which serves the rear of Derwent Terrace is 3.5 metres, although the space between the fences is shown as 6.0 metres on the drawing no. TA-04/02. If this is to be the case then I am satisfied that vehicular access to the plot can be achieved. The development of this area

of land will bring the total number of properties with garages served off the rear access road to five. The sight-lines and width of the road on the northern junction with Derwent Terrace are below standard but, given the fact there is an alternative (southern) junction where the sight-lines are satisfactory, I do not consider this to be a sufficient reason to refuse this application.”

2.22. This evidence is consistent with the position which I observed in the course of the site visit and the position as per the Plan. It was Mr Pickering’s evidence that the gates which give access from his land onto Derwent Terrace as well as his neighbours’ fence were deliberately set back from the edge of the roadway and that the concrete pad was laid so as to bridge that gap. 3. 3.1. 3.2. 3.3. 3.4. Witness evidence I heard evidence from Mr Pickering and Mr Truswell both of whom I found to be careful and honest witnesses. They were both clearly doing their best to assist me in making my decision. As I have said, the main point of contention concerns the question whether the fence posts which Mr Pickering contended were the original 1991 fence posts and whether those fence posts were in the same position as the original eastern boundary of the Applicants’ land as it was at the time of the 1994 Conveyance. Although the evidence of Mr Pickering as to his purchase of the land within his new eastern boundary fence, as he set it out in his witness statement, was shown to be incorrect, he admitted his mistake candidly in his oral evidence and I am satisfied that the mistake was caused by a misunderstanding of the position either on his part or on the part of his solicitor, or possibly a combination of the two. In any event, when questioned he did his best to answer honestly and subsequently produced documents to show the true position. Otherwise, the Respondent’s counsel did not seriously challenge the substance of his evidence and I accept it. In particular, I accept that his evidence as to the preservation of the original fence posts is true in the sense that they were the original 1991 fence posts. I also accept that in digging the foundations for his patio in the vicinity of that fence he unearthed what appeared to be the foundations of the wall which he said had stood on the eastern boundary before the garages were cleared prior to his purchase. 3.5. Whether that evidence proves that the fence erected in 1991 was in precisely the same position as the original eastern boundary of the parcel sold to Mr Hodgson is less clear. In particular, the fact that measuring 147’ from the northern most fence posts takes one to a point in the middle of the roadway which is now Derwent Terrace would suggest that the eastern boundary was originally further to the east, if, as seems to be clear there has been no significant alteration to the position of tarmacked surface of Derwent Terrace. It may well be, however, that it was more difficult at the time of the 1984 Conveyance to measure that distance accurately because of the presence of the bays described by Mr Truswell. 3.6. I likewise accept without qualification the evidence of Mr Truswell who was an independent witness, with good knowledge of the ground over a long period. The only possible point of controversy concerning his evidence related to his description of the garages as having been predominantly of a timber construction. As I have already noted, this evidence conflicts with the evidence of Mr Pickering which was that the eastern boundary was of stone construction. 3.7. Whatever the explanation for this discrepancy may be, I am confident that both Mr Truswell and Mr Pickering were answering honestly to the best of their recollection. It may well be that there was in truth no discrepancy in that they were looking at the buildings from opposite sides. 3.8. On the balance, therefore, I am satisfied that the fence erected in 1991 was erected in a position which was more or less the same position as the original eastern

boundary, that is to say, within 50 cm or so of that boundary. At the very least, I am satisfied that it was not erected in a position which more than a metre to the west of the original eastern boundary. 3.9. I am accordingly satisfied that the concrete pad was laid on land which was within the Applicants' title as it was conveyed to him by Mr Hodgson. 4. 4.1. 4.2. The Plan The final matter which I must consider is whether the fact that the Plan does not accurately plot the position of the boundary for which the Applicants contend means that I must or should direct the Chief Land Registrar to cancel the Applicants' application. The alternative would be that I should direct the Chief Land Registrar to alter the register so as to show the boundary between the Applicants' and the Respondent's land in the position for which the Applicants contend as it is shown on the Plan, that is to say, the brown/olive line which delineates the position of the concrete pad. I should perhaps say that I am satisfied on the basis of my conclusions above that the line A-B as it is marked on the Plan is also either at or within the western boundary of the Applicants' land which I find is marked by the eastern edge of the tarmacked roadway which is known as Derwent Terrace, wherever precisely that may be. Given that the eastern edge of Derwent Terrace is not marked on the Plan and the determination of its position may well be the subject of some uncertainty, the possibility that I should open that question up for debate by directing the Chief Land Registrar to cancel the Applicants' application, the result of which would presumably be that the Applicants would make a further application based upon a new plan to which the Respondent might object, is one which I express with considerable trepidation. 4.3. 4.4. Section 60 Land Registration Act 2002 enables rules to be made for the purpose of enabling the exact line of the boundary of a registered estate to be determined. Those rules, as they currently stand, are set out in rr. 118 to 120 Land Registration Rules 2003 in the following terms, so far as material: 118 Application for the determination of the exact line of a boundary "(1) A proprietor of a registered estate may apply to the registrar for the exact line of the boundary of that registered estate to be determined. "(2) An application under paragraph (1) must be made in Form DB and be accompanied by— (a) a plan, or a plan and a verbal description, identifying the exact line of the boundary claimed and showing sufficient surrounding physical features to allow the general position of the boundary to be drawn on the Ordnance Survey map, and (b) evidence to establish the exact line of the boundary. 119 Procedure on an application for the determination of the exact line of a boundary "(1) Subject to paragraph (2), where the registrar is satisfied that— (a) the plan, or plan and verbal description, supplied in accordance with rule 118(2)

- (a) identifies the exact line of the boundary claimed, (b) the applicant has shown an arguable case that the exact line of the boundary is in the position shown on the plan, or plan and verbal description, supplied in accordance with rule 118(2)(a), and (c) he can identify all the owners of the land adjoining the boundary to be determined and has an address at which each owner may be given notice, he must give the owners of the land adjoining the boundary to be determined (except the applicant) notice of the application ... and of the effect of paragraph (6). ...
- (7) Where the registrar is not satisfied as to paragraph (1)(a), (b) and (c), he must cancel the application.

- (8) In this rule, the ‘owner of the land’ means— (a) a person entitled to apply to be registered as the proprietor of an unregistered legal estate in land under section 3 of the Act, (b) the proprietor of any registered estate or charge affecting the land, or (c) if the land is demesne land, Her Majesty. 120 Completion of application for the exact line of a boundary to be determined
- (1) Where the registrar completes an application under rule 118, he must—
- (a) make an entry in the individual register of the applicant’s registered title and, if appropriate, in the individual register of any superior or inferior registered title, and any registered title affecting the other land adjoining the determined boundary, stating that the exact line of the boundary is determined under section 60 of the Act, and (b) subject to paragraph (2), add to the title plan of the applicant’s registered title and, if appropriate, to the title plan of any superior or inferior registered title, and any registered title affecting the other land adjoining the determined boundary, such particulars of the exact line of the boundary as he considers appropriate.
- (2) Instead of, or as well as, adding particulars of the exact line of the boundary to the title plans mentioned in paragraph (1)(b), the registrar may make an entry in the individual registers mentioned in paragraph (1)(a) referring to any other plan showing the exact line of the boundary.” (Emphasis added) 4.5. The emphasis placed upon the exercise mandated by these rules as being, the determination of ‘the exact line of the boundary’, is in my opinion notable. And the distinction drawn in r. 119(1) between: (a) the line claimed by the applicant; and (b) the need for the applicant to show an arguable case that the exact line of the boundary is in the position shown on the plan is in my judgment significant. The question, “where is the boundary between two parcels of land ?” is a mixed question of fact and law and it is a question the answer to which has real legal and physical consequences on the ground in the sense that the position of the boundary, once it has been established by the separation of the two parcels, can only be altered either by agreement between the parties or by the law relating to adverse possession. That is to say, it is not a matter which can be determined by one of the owners unilaterally agreeing to forgo some part of the land which was conveyed to them. Were that to be the case, it might be possible for that owner, by means of the procedure for determining the position of a boundary, to forgo their title to some piece of land which would otherwise be onerous to them. Nor does the Tribunal, or the Court for that matter, have power to determine that the position of the boundary is in a place other than that created by the division of the two parcels. 4.6. I am not suggesting that the Applicants in this case, by their concession that their land extends only as far as the western edge of the concrete pad, have any malign intent. Nevertheless, it does seem to me that there could be dangers for them and for the process of boundary determination more widely if I were to direct the Chief Land Registrar in this case to fix the position of the boundary in a position other than that in which I have determined it is as they invite me to do. For instance, were I to do so, it might then be possible for the Respondent to say that the Applicants have no right of way over the sliver of land between the edge of the concrete pad

and the edge of Derwent Way. 4.7. The leading authority on the operation of this jurisdiction is the decision of Morgan J in *Lowe v William Davis Ltd* [2018] 4 WLR 113. At §§40-44 Morgan J considered the position in that particular case as follows: “40 The parties then prepared for a hearing before the FTT. At that stage the dispute concerned the location of the boundary and there was no separate issue as to the accuracy of the plan. On that basis, both parties were seeking the determination of the FTT as to the location of the boundary. 41 At the hearing before the FTT, both parties continued to seek the determination of the FTT as to the location of the boundary. Mr Small cross-examined Mr Maynard the expert witness for William Davis Ltd on his evidence as to the location of the boundary. Mr Small did not raise with Mr Maynard any separate issue as to the accuracy of his plan. 42 As the FTT explained in its decision, the FTT itself asked Mr Maynard questions as to the accuracy of his plan. That led to closing submissions as recorded in the FTT decision. William Davis Ltd continued to contend that the only issue before the FTT was the location of the boundary and Mr and Mrs Lowe contended that in view of Mr Maynard’s answers the application should be dismissed and the location of the boundary left undetermined. 43 If the FTT had not taken the initiative of asking Mr Maynard about the accuracy of the plan, there could be no suggestion that the FTT lacked jurisdiction to determine the location of the boundary. That was the very thing which both parties were asking the FTT to do and it plainly had power to do it. The parties obviously envisaged that the FTT would determine the location of the boundary and if Mr and Mrs Lowe succeeded in their case as to where the boundary was, the application would be dismissed; conversely, if William Davis Ltd’s case prevailed then the FTT would determine the exact boundary in accordance with the plan. 44 When the FTT raised the question as to the accuracy of the plan and when it went on to hold that the plan was inaccurate, even on the basis that the boundary ran along the centre line of the hedge, the FTT had a case management decision to make. It could decide where the boundary was and then, having done so, it could go on to hold that the plan was not accurate as to the location of the boundary. Or the FTT could have said that even on the assumption that William Davis Ltd’s case as to the boundary was correct, the plan was inaccurate and, on that ground, the Chief Land Registrar should be directed to cancel the application. I see no reason to hold that the FTT lacked jurisdiction to make this case management decision in either of these possible ways.” (My emphasis) 4.8. At §55 he went on to make the following observations about the nature of the jurisdiction conferred by s. 60 LRA 2002: “(1) the FTT has jurisdiction to determine the matter referred to it;

- (2) the FTT does not have an inherent jurisdiction;
- (3) the procedure of an application for the determination of an exact line of a boundary is plainly available in a case where there is no wider boundary dispute but it is desirable to identify more precisely the exact line of the boundary;

- (4) however, the procedure for the determination of an exact line of a boundary can also be used where there is a general boundary dispute and where there is no separate question as to the accuracy of the applicant's plan if the applicant's case as to the general boundary were to be accepted; indeed, this was accepted (I think correctly) by Mr and Mrs Lowe at all stages in this matter until it emerged in the course of questions from the FTT that there was a separate question as to the accuracy of the plan;
- (5) further, this procedure can also be used where there is an issue as to the location of the boundary and an issue as to the accuracy of the application plan;
- (6) in a case where there is an issue as to the location of the boundary and also an issue as to the accuracy of the application plan, it is open to the FTT to decide all of the matters in dispute before it but it is also open to it to decide only the issue as to the accuracy of the application plan if that can be determined separately and might dispose of the entire application; it is for the FTT to decide as a matter of case management which course to take; it has jurisdiction to take either course;
- (7) although the right order to make on an application for the determination of an exact line of a boundary will normally be either a direction to give effect to the application or to cancel the application, that does not limit the jurisdiction of the FTT to make findings and decisions; further, pursuant to rule 40 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the FTT may include a direction to the registrar to give effect to the application "in whole or in part" and may add a condition to its direction;
- (8) in a case where the issue between the parties is as to which of them is right as to the location of the boundary and there is no separate issue as to the accuracy of the application plan, the FTT's direction as to whether the registrar should give effect to the application or cancel the application will be the means of resolving the dispute as to the location of the boundary;
- (9) the power under section 110 allows the FTT to decide "the matter" or to direct the parties to commence court proceedings to decide "the matter"; the FTT is not compelled to direct the parties to commence court proceedings but it has a genuine discretion as to which course to adopt; the wording of section 110(1) shows that the FTT has jurisdiction to decide the same matter as it can direct should be the subject of court proceedings;
- (10) in some circumstances, the FTT may well take the view that a general boundary dispute would be better litigated in the courts rather than before the FTT but it is not obliged to take that view in every case;
- (11) if it were the case that it was foreseeable that the FTT's decision as to a general boundary would not give rise to an issue estoppel because the application might fail on a separate point as to the accuracy of a plan (a point which I do not decide), that might be a consideration which would militate in favour of the FTT directing that the parties commence court proceedings where the decision of the court on the location of the boundary would, or at least would be more likely to, give rise to an issue estoppel." 4.9. In

my view, these observations and particularly the emphasised passage at §44, underline the following points. First, the task of the Tribunal in determining such an application is to decide where the exact line of the boundary is and then whether that line is accurately plotted on the plan filed in support of the application. Second, it is not constrained in so doing by the fact that the conclusion which it reaches as to the position of that exact line is one for which neither party contends or wants. 4.10. As I have said, it is my conclusion that the exact line of the boundary in this case is along the eastern edge of Derwent Avenue as it was on 11 th May 1950 when these parcels were divided. In many ways that is an unfortunate conclusion because of the continuing uncertainty which it produces. Nevertheless, it seems to me that it is the right conclusion in this case for the reasons which I have given. 4.11. It follows from that conclusion, because the line which I have decided is the boundary line is not shown on the Plan, that I must direct the Chief Land Registrar to cancel the Applicants' application. 5. Conclusions 5.1. I summarise my conclusions as follows: 5.1.1. 5.1.2. The boundary between the Applicants' land and the Respondent's land was fixed by the conveyances of the two parcels made on 11th May 1950. It is clear to me from the plans to those two conveyances that it was the intention of the parties to them to include the roadway which is now known as Derwent Terrace within the title to the Respondent's land and that the boundary between those two parcels was intended to be at the eastern edge of that roadway as it was in 11th May 1950. 5.1.3. There has been no alteration to the position of that boundary since. 5.1.4. The fact that the length of the northern boundary of the Applicants' land is shown on the plan to the 1984 Conveyance as being 147' long is irrelevant in the sense that it was not that conveyance which defined the position of the western end of that boundary. Nevertheless, it is indicative of the fact that in 1984 at least Mr Robinson and Mr Hodgson did not believe the boundary ended at a position to the east of the edge of Derwent Terrace and to that extent it is supportive of my conclusion. 5.1.5. My task in determining the matter referred is to decide where exactly the line of the boundary is and whether that line is accurately plotted on the Plan. The fact that the Applicants are willing to limit their claim as to the position of the boundary does not constrain me in reaching that

conclusion.

5.1.6. 5.1.7. It is of course possible that the parties may agree that the boundary is in a position other than that which I have determined. That is a matter for them. It follows from these facts and that the position of the boundary as I have determined it to be is not shown on the Plan that I must direct the Chief Land Registrar to cancel the Applicants' application. 5.1.8. As to the question of costs, whilst it may be said that in one sense the Respondent is the successful party, because I will direct that the Applicants' application should be cancelled, equally, my decision as to the position of the boundary is more favourable to the Applicants than that for which they contended. Therefore, subject to any other material considerations of which I am presently unaware, I would be minded to direct that the Respondent should pay a substantial proportion of the Applicants' costs, at least. However, because there may be considerations of which I am unaware and because I recognise that the parties will wish to make submissions as to costs, I will

give directions to enable them to do so. Dated this 11th day of March 2026 Max Thorowgood BY
ORDER OF THE TRIBUNAL 17

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Prepared on 28 October 2026 · Esheria