

# Boundaries and Easements: the value of knowing your boundaries and understanding covenants

Jersey Law deals with boundaries and other matters in its own individual way. It is important when buying your property to ensure that you know your boundaries and understand any covenants or restrictions that might apply to it and equally important to bear these matters in mind when thinking about developing your property. Always take legal advice if in doubt and remember that if rights need to be varied or obtained from a neighbour or a boundary needs to be clarified or changed, this can only be done by a contract passed before the Royal Court. Hand shakes, letters, or informal agreements will rarely be sufficient.

## 1. Boundaries and Relief

The starting point when planning any development is to know your boundaries as it is essential that you don't encroach upon your neighbour's property.

The boundaries of a property are described in its title contract and usually consist of walls, boundary stones and other physical enclosures or by GPRS coordinates. If a wall or other enclosure is stated to be party owned the boundary line runs down the middle of that wall or enclosure. However if properties are divided by means of a demarcation line and there is no provision enabling anyone to build over or up to that line, an off-set or "relief" of 18 Jersey inches (i.e. 16 1/2 imperial inches) must be allowed.

Jersey Common Law imposes an obligation on every property owner to set back any new building (or any part thereof such as paving slabs, drains, etc.) constructed on his property so as to allow for a "relief". The title contract can provide otherwise, and neighbouring property owners may agree (provided that this is recorded in a contract) that one or other or both of them can build up to the boundary line without leaving a relief.

If ownership of a wall or other enclosure is claimed, it will (unless there is provision to the contrary in the title contract) be owned with the benefit of a relief. If it is stated that the wall is owned without a relief, no land is owned beyond the wall or other enclosure.

Unless there is provision to the contrary in the title contract, a relief must be left towards a neighbour's wall or other enclosure (if he claims no off-set) or towards his relief if he claims the ownership of the wall or other enclosure with the benefit of a relief.

If the property's boundary is stated to be an existing enclosure such as a wall, bank or hedge the owner can build right up to that enclosure, although by so doing he might be deprived of access rights to build or maintain the facade or gable of the new building or other construction in the future, which might be a concern to a buyer of the property.

There is no obligation to leave a relief towards a party owned wall or other party owned enclosure nor towards a wall that is owned without a relief.

## 2. Windows and openings

Jersey Common Law recognises a very basic form of right to privacy. No window or other opening (construed by Jersey law as any manner of opening such as an overflow pipe or air vent) which could conceivably provide a view may be established within three feet of the boundary line unless otherwise provided for or agreed in a contract.

Where the window is sealed up so that it cannot open and has opaque glass, there is no infraction of the Common Law.

## 3. Access rights

The original purpose of a relief was probably to provide a strip for access purposes between neighbouring properties. In modern conveyances it has become the norm to provide for an express right of access over a neighbouring property with or without workmen, ladders, scaffolding and tools.

In the absence of a relief or express access right there is no implied right of access to go on to a neighbouring property to undertake building, repair or maintenance works save where an old Jersey right called "tour d'echelle" can be used.

## 4. Party ownership

Each owner may make reasonable use of a party owned wall and the cost of maintaining and repairing it is shared between them. If a party owned wall is in a state of disrepair there is no right for one party to unilaterally undertake the necessary maintenance works nor to go on to the neighbouring property to undertake the work. There is a Common Law right of action which may be brought against a neighbour who will not participate in such repairs compelling him to participate and contribute his half share of the costs of the repairs.

Unless there is express provision to the contrary in the title contract a party may not use more than his half width of the party owned wall and even then he may not do so if such use undermines or over burdens the wall. In such a case there will be no right to go on to the neighbour's property to build or repair unless a specific right of access for maintenance purposes is created by means of a contract passed before the Royal Court.

A party owned wall may not be demolished or substantially altered without the consent and participation of the neighbour.

A window (or other opening) cannot be established in a party owned wall unless there is a clear express right to such effect in the title contract.

## 5. Encroachments

Jersey Common Law dictates that whoever owns the soil owns everything above and beneath it. Accordingly, if part of a building overhangs a neighbouring property or if something (i.e. part of foundations or drains) has been established beneath the neighbour's property it is an unlawful encroachment unless provision has been made for it in the title contract.

An owner who suffers an encroachment cannot remove it and must obtain a court order requiring its removal where the neighbour will not cooperate. An exception exists in respect of encroaching roots in which case the neighbour into whose land such roots encroach may remove them without a court order.

## 6. Common Areas

Land that is in common ownership cannot be altered without the consent and participation of all co-owners, unless specifically provided for in title. Accordingly, it would not be possible, to establish "sleeping policemen" on a communally owned estate roadway or to alter the layout of a courtyard so as to make it part garden and part parking area unless all co-owners consented. If any major reorganisation is undertaken a contract of arrangement must be passed before the Royal Court setting out the new arrangements.

If an area is owned in common it is usual for the contract to set out the rights which each co-owner may exercise over the relevant area. In the absence of express rights each co-owner is entitled to make equal use of the common area with his co-owners for the purpose for which the common area was established, e.g. the right to come and go over a road way owned in common, or to park upon a courtyard owned in common.

If the contract is silent as to the rights which a co-owner may exercise over the common area difficult issues of interpretation can arise and the advice of a lawyer should be obtained, not least if any development is proposed which may affect the common area.

## 7. Building restrictions

Where a contract contains a building restriction the nature of the restriction and the area affected by it must be clearly understood.

There are other rights which effectively take the form of building restrictions, such as relief.

If a neighbouring property or properties enjoys rights over one's those rights can effectively operate as building restrictions. . If one builds over the area subject to a right of way the neighbour who has the benefit of that right can insist by that the construction established over the right of way be removed.

If a neighbour has a right in his contract to come onto one's property with workmen, scaffolding and ladders in order to maintain his walls or the side of his house the area of one's property over which he may exercise such rights cannot be developed or changed so as to deprive him of that right.

## 8. Water, Drainage and Services

A property owner through whose land a stream passes may use the water from the stream, but may not dam or divert it.

A property owner may retain rainwater which falls upon his land, but cannot drain onto his neighbour's property other than in

accordance with the natural lie of the land or in such manner as has been contractually provided for. The owner of the lower land is obliged to accept the water which naturally flows onto his land from the higher land in its accustomed channels.

Modern legislation imposes criminal penalties for water pollution.

Where drains or services pass under a neighbour's property the neighbour cannot connect to those drains or other services where the rights were created for the exclusive use of that party. In such a case the owner of the property under which they are located may not connect to them unless a right is created by means of a contract passed before the Royal Court.

## 9. Rights

If one needs to acquire or vary rights, boundaries or restrictions such rights will have to be granted or the consent recorded by means of a contract passed before the Royal Court.

An oral or written agreement will be effective (subject to proof) only against the original party to that agreement and will not be enforceable against a buyer or other party who subsequently comes to own the property.

It is not possible to acquire a right over a neighbouring property (such as a right of way) by long user, regardless of whether it can be shown that the right has been exercised for 20, 40, 100, 200 or more years. On the other hand, a right over one's neighbour's property can be lost if it is not exercised for 40 years or more.

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