

Love thy neighbour – good relationships with your neighbours can be priceless in resolving boundary issues

Possibly one of the greatest frustrations to property buyers and sellers is the failure to meet a completion date which has been set up after successful negotiations by an estate agent.

One reason for such delay can be the discovery of a problem with the boundary of the property. This may be the result of the innocent removal of features such as boundary stones, walls, fences, banks or hedges or a lack of clarity or a discrepancy in the title deeds. Sometimes the seller will have been made aware of the issue at the time of buying the property, but decided to accept it; on other occasions it may have been overlooked by the seller's lawyers. Buyers (and even more so their lenders) now tend to take a conservative approach to problems and usually require them to be resolved before the sale will complete.

In the majority of cases the problem can be speedily resolved by an approach to the neighbour and the parties agreeing to ratify a new boundary. This must be done in either in the sale contract itself or by separate contract passed before the Royal Court. The person making the request usually has to pay both parties' fees.

No property owner can be forced to cooperate in clarifying a boundary, so in extreme cases a decision may have to be imposed upon neighbouring property owners. This is achieved by a party requesting a *Vue de Vicomte* through issuing a summons. When a *Vue* is ordered the Viscount will convene the parties to have the background and nature of the dispute explained to him. Timeframes are set for the parties to file a statement of claim, an answer and a reply.

A date for the *Vue* is fixed and the Viscount arranges for ten experts to attend at his office in the presence of the lawyers acting for the parties. These experts will be conveyancing professionals from law firms who are not connected with the dispute. They are reduced to six, with each of the parties having the right to challenge the selection of one expert without reason and any other subject to giving reasons for the challenge. The experts must confirm that they are not conflicted by having knowledge of the disputed area or by being closely related to any of the other experts.

The experts are sworn in and provided with copies of the pleadings before witnesses are sworn in and the lawyers for each party present a summary of their cases. The Viscount accompanies the experts and an arpenteur (a public surveyor) to the site of the dispute for a silent viewing before returning to the court to hear evidence from each party and their witnesses.

It is the experts' duty to interpret the contracts relating to the boundary in dispute and they can only use the oral evidence to assist them in the interpretation of the contracts. After deliberation in private by the experts all parties return to the site and the foreman, assisted by the arpenteur, demonstrates the panel's decision. The arpenteur produces a draft Record of the experts' determination which forms the basis of the Viscount's Record of the proceedings.

The Viscount is empowered to award costs in such proportions as he deems appropriate and either party can request the Court to register the Viscount's Record in the Public Registry as proof of the boundary.

A party may appeal the findings of the experts in which case a *Vue de Justice* would be held, with the original six experts being joined by a further six, and the Bailiff, assisted by two Jurats, presiding.

As you will gather from the above, a *Vue De Vicomte* can be an expensive and drawn out procedure which should always be used as a last resort. It has tended to be rarely used for that reason however in recent years they have been increasing in number, perhaps a sign of the times where neighbours don't tend to know each other as well as they used to. All the more reason therefore to make sure that you have a great relationship with whoever lives next door!

Barry Le Feuvre is a Senior Conveyancing Consultant at Ogier and has been foreman of the panel of experts at the last two Vues to be held.

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