Property nightmare: a 32-year boundary dispute

Mary Wilson
12:01AM GMT 09 Mar 2005

When Michael and Susan Barnes put their names down for a house near Sheffield in 1972, they could not have believed that they would still be disputing its boundaries more than 30 years later, writes Mary Wilson.

Theirs is one of five houses (three town houses and two semi-detached) that are accessed at the back by a drive, with garages and paths to each house at the side. The Barneses chose the middle town house because it had a longer garden, and they moved in over Easter 1973. The developer retained land behind the gardens, but sold the freehold to that on which the properties had been built to a private landowner.

"After everyone moved in, the builder was said to have gone bankrupt before he could put boundary fences to the backs of our properties," says Michael. He and his neighbour marked where they thought their boundaries should be; Michael with a beech hedge that is now 6ft high, his neighbour with a fence. Twenty years later, the son of the original builder twice sought planning permission for two semi-detached properties on the land his father had retained.

"The son contested the boundaries at the time, but the development did not go ahead because access to it would have entailed building a road, which would have been costly," says Michael. Then five years ago, the Barneses bought the freehold to their house. "And now, 32 years after moving in, we have learnt that the original builder's son has sold the remaining parcel of land to another builder, who has also purchased some land beyond it and proposes building 12 to 14 houses there."

He has not seen any plans or heard from the new builder, but is worried about what might happen. "Obviously it will affect the value of our house and I do not want to lose any of my garden," says Michael. "I have heard a number of stories of squatters' rights and wonder whether land becomes yours if you have used it for a number of years."

David Powell, a chartered land surveyor specialising in boundary disputes (07810 483868; davidjpowell@btinternet.com), comments: "Like most boundary disputes, this one has three ingredients:
"The deeds describe the size of the property in words and, usually, with a plan. This document must be referred to because, if such a case goes to court, it is the first document that the judge will consult. The text is a matter of legal interpretation, and the plan is a matter for an experienced boundary surveyor. Many such disputes are resolved fairly quickly by applying the deed plan dimensions to the ground and, hey presto, the wooden pegs line up with existing boundary features. However, bear in mind that builders do not always build things where they were intended to be, and the deed plan and the features on the ground may not match.

"If paper-title does not resolve the problem, it is important to look at the features themselves and see if they have been treated by everyone involved as the boundary. Sometimes a spade is needed to unearth an old post or the base of an old wall, or, as in this case, to prove that there are no such indicators.

"Finally, there is the matter of adverse possession. This is a matter of law. If a property owner occupies a neighbour's land for more than 12 years without permission and excludes the rightful owner, that land will almost certainly become theirs. However, for that gain to be registered with the Land Registry, the occupier must have a minimum of 10 years' exclusive use of the land. On being notified, the Land Registry will inform the rightful owner, who then has two years to do something about it.

"In this case, it is important to seek legal advice from a solicitor specialising in property litigation. It is also vital to keep a photographic record of the features, together with all changes that occur, so that any damage to the hedge or trees can be clearly described to a court. My advice is to try to keep such disputes as amicable as possible, because the whole process of going to court can, typically, cost each party £20,000."

Send your property stories to House & Home, The Sunday Telegraph, 1 Canada Square, Canary Wharf, London E14 5DT; or e-mail houseandhome@telegraph.co.uk

How we moderateOur new look

© Copyright of Telegraph Media Group Limited 2014