

Uncertainty on the Line of Junction

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ABSTRACT

The esoteric term ‘Line of Junction’, in Section 1 of the Party Wall etc. Act 1996 (‘the Act’) has been the subject of much debate between party wall surveyors and lawyers.¹ The first half of this paper considers two topics in the context of a building owner proposing to construct a wall entirely on his/her own land: first, the use of the phrase ‘Line of Junction’; and second, what qualifies as building on the Line of Junction? Building a wall entirely on the land of the building owner, albeit up to the Line of Junction, would appear less problematic than constructing a new wall astride the boundary line. Indeed, the second part of this paper will describe the benefits to both the building owner and the adjoining owner in the service of an appropriate notice under the Act to facilitate this; some potential difficulties are also identified. The drafting of Section 1 has produced a self-contradictory concept of a wall which is built on the boundary, and yet at the same time is placed wholly on the land of one owner. To make sense of the concept, it is necessary to consider the definition of terms used in sub-section 1(1); this paper will show that seeking the definition of terms used in the Act is not that simple. There is also some confusion concerning footings or foundations

excavated on the boundary line: should they be considered as part of the wall built at the Line of Junction and is there an automatic right to place them on the land of the adjoining owner?

Keywords: *Line of Junction, not built on, are built on, as are necessary, boundary wall, fence wall*

INTRODUCTION

Section 1(1) of the Party Wall etc. Act 1996 states:

‘This section shall have effect where lands of different owners adjoin and —

- (a) are not built on at the Line of Junction; or
- (b) are built on at the Line of Junction only to the extent of a boundary wall (not being a party fence wall or the external wall of a building), and either owner is about to build on any part of the Line of Junction.’

This paper explores the issues which may arise when a building owner is proposing to build entirely on his/her own land but on the Line of Junction. If that is the intention, the building owner would be required to serve notice on the adjoining owner under sub-section 1(5) of the Act. Building entirely on the building owner’s land may not, however, have been the preferred choice. In seeking to maximise space, the building owner may

have wanted to build a new party wall astride the Line of Junction. In such circumstances, the building owner would have to serve notice on the adjoining owner under sub-section 1(2). In having received such a notice, the adjoining owner may consent under sub-section 1(3) to the proposal, in which case the parties can also agree exactly where the wall will be positioned in relation to the Line of Junction and how it shall be paid for, in accordance with the use to be made of it by each owner. If the adjoining owner does not consent positively within 14 days, the building owner cannot build a party wall astride the Line of Junction and under sub-section 1(4) of the Act he must only build the wall: ‘(a) at his own expense; and (b) as an external wall or a fence wall, as the case may be, placed wholly on his own land.’² The building owner does not need to serve an additional notice under sub-section 1(5) in these circumstances.

WHY IS THE TERM ‘LINE OF JUNCTION’ USED IN THE ACT?

With the building owner either electing from the start to build entirely on his own land or having reached this position because the adjoining owner dissented to the notice served under sub-section 1(2), the former may still wish to maximise the size of his extension and build on the Line of Junction. The following questions arise: what is the Line of Junction and why is this term used instead of ‘the boundary’? Surprisingly, the Line of Junction is not defined in the Act, but the barrister Nicholas Isaac suggests that it:

‘can, in the context in which it is used, only mean the point or line at which the land of the adjoining owners meets. As such it is interchangeable with the expression, more widely used outside of the Act, of “boundary line”. Such a line is infinitesimally narrow and should not

be confused with a “boundary feature” or “boundary marker” which is generally a fence or wall or other physically visible and tangible thing.’³

This distinction is crucial and is recognised as such by HM Land Registry, who inform us that the word ‘boundary’ has no special meaning in law. There are two senses in which it can be used: legal boundary and physical boundary. The Land Registry’s definition of the legal boundary follows closely on the interpretation given above for the Line of Junction:

‘An imaginary or invisible line dividing one person’s property from that of another. It is an exact line having no thickness or width and is rarely identified with any precision either on the ground or in conveyances or transfers and is not shown on Ordnance Survey mapping.’⁴

A physical feature, such as a fence, wall or a hedge, may coincidentally also follow the line of a legal boundary. The legal boundary may run within the physical boundary structure, but we are advised that:

‘it might just as easily run along one particular side of the structure or include all or any part of an adjoining roadway or stream. Living boundary structures such as hedges can be prone to a certain degree of movement: for example, if a hedge is left untended it might take root where it touches the ground and become very wide, making its original line hard to discern. So even if it is clear that the legal boundary ran along the hedge, identifying this boundary on the ground may become very difficult.’⁵

Stephen Bickford-Smith *et al.* has observed that the Act ‘fights shy’ of the word ‘boundary’ except in the expression ‘boundary wall’ and uses this periphrasis instead: ‘No doubt, this

is in order to emphasise that what is meant is an incorporeal concept rather than a physical feature.⁶

Party wall surveyors are limited in the advice they can give to the parties in terms of determining the Line of Junction/legal boundary. Isaac has observed:

‘Boundaries are often a cause for dispute between adjoining owners. The requirements for notice in Section 1, requiring any building owner intending to build a new wall astride or up to the boundary line to serve Notice of his intention to do so, potentially have the beneficial side-effect of fixing the boundary line between properties in a relatively non-confrontational way.’⁷

Alex Frame advises us that:

‘the position of the legal boundary must be determined or agreed between the owners and is not a matter within the remit of appointed party wall surveyors, albeit that they can offer much help, and indeed the guidance of the surveyors might well be sought by the owners. In the event of a dispute however, party wall surveyors cannot determine the boundary in their capacity as such.’⁸

Party wall surveyors should therefore ensure that they do not exceed their jurisdiction as they can get drawn into considering the location of the boundary, when determining whether a structure is a party wall or party fence wall or if a building owner is building up to or astride the boundary. HM Land Registry have confirmed that, ‘Ultimately the exact position of a boundary, if disputed, can be determined only by the court or the Land Registration division of the Property Chamber, First-tier Tribunal.’⁹

The Act therefore refers to the legal boundary or Line of Junction in the context of building and not a physical boundary

which may have been moved and/or its physical characteristics may have changed. Therefore, using a physical boundary as the parameter when erecting a building in the context of Section 1(5) of the Act may lead to a trespass.

WHAT QUALIFIES AS BUILDING ON THE LINE OF JUNCTION?

It will be noted from the above extract of sub-section 1(a) and (b) that the phrase ‘built *on at* the Line of Junction’ [my emphasis] is used. The meaning is not clear, and this adds to general criticism regarding the drafting of Section 1.¹⁰ Is the wall built *on* the Line of Junction or *at* the Line? Frame considers that,

‘This is merely a question of syntax and it is simply a wall built on at its junction or meeting point. This immediately tells us that it [the wall] cannot be any distance away from the line but must be on the line.’¹¹

There are differing opinions on this point and some surveyors doubt whether any wall can practically be built up to a line which is infinitesimally narrow. There is a school of thought that considers: (a) building on the Line of Junction is a flexible concept according to the individual facts of each case; (b) it is too simplistic to take the stance that if the wall is set back one inch (or one centimetre) from the Line of Junction, it is not notifiable work; and (c) it leads to far-fetched outcomes and is an attempt to provide a definitive answer when none can be provided. Isaac has noted that several party wall surveyors treat the Line of Junction in practice as being approximately 100mm wide, or the width of the goal line in football:

‘While there can be little doubt that, in law, the Line of Junction must be infinitesimally thin, the practical (and often

legal) difficulties of establishing a precise boundary line mean that using a wider line for deciding whether a Section 1 Notice should be served is both sensible and practicable.¹²

This is particularly the case when addressing difficult construction details on the boundary line and giving the building owner rights of access onto the adjoining owner's land to build the wall; it also affords the adjoining owner some protection by way of compensation. There would not, however, appear to be any defence if surveyors were challenged on the approach of using a wider line to invoke the Act, as there is no such provision specified in the statute.

It is therefore surprising there have not been any significant legal cases based on the obvious conflict between building an inexact structure, such as a wall, against a conceptual line; perhaps pragmatism has prevailed so far. Isaac concludes: 'As far as recording a Line of Junction in a plan attached to a Notice, [...] the line should aspire to its own legal narrowness.'¹³

Other surveyors consider that notice under sub-section 1(5) should be served where the wall is built away from the Line of Junction, but the foundations touch it. On the first point, the Act does not allow for any tolerance for building away from the Line of Junction. It is considered that an Act which authorises what would otherwise give rise to common law claims in trespass, must in so far as it provides such authority be construed strictly. On the second point, Section 1 is drafted in the context of building a wall on the Line of Junction and treats footings and foundation as separate entities, albeit 'necessary for the construction of the wall'.¹⁴

The term Line of Junction has been defined and an explanation has been given for using this term instead of referring to 'the boundary'. Consideration has also been given to what qualifies as building on the

Line of Junction. The second part of this paper now discusses the benefits and some difficulties in the application of Section 1 of the Act.

THE BENEFITS TO THE PARTIES FLOWING FROM A SUB-SECTION 1(5) NOTICE

The Pyramus & Thisbe Club 'Green Book'¹⁵ informs us that from one perspective, this sub-section is useful in that it provides a route for gaining access onto the adjoining owner's land to build the wall on the Line of Junction, because it is work in pursuance of the Act. It would be more difficult for the building owner's contractors to build a wall overhand on the boundary line than being simply able to stand and face the work, which ultimately is usually aesthetically pleasing to the adjoining owner who would be the one viewing the finished work.¹⁶ This would prove even more crucial where the wall is of such a height to require the placement of scaffolding on the adjoining owner's land.

Sub-section 1(7) of the Act provides that:

'Where the building owner builds a wall wholly on his own land in accordance with sub-section (4) or (5) he shall do so at his own expense and shall compensate any adjoining owner and any adjoining occupier for any damage to his property occasioned by —

- (a) the building of the wall;
- (b) the placing of any footings or foundations placed in accordance with sub-section 1(6).'

While there is a general compensation provision in Section 7(2) of the Act, it might appear slightly odd that there is a specific provision for compensation applying to new walls built wholly on the building owner's land (but not for the footings and foundations). Nevertheless, this means that the

building owner is obliged to compensate the adjoining owner or occupier for ‘any loss or damage which may result’ from the building of any new wall under Section 1.

LAND NOT BUILT ON

Section 1(1) (a) refers to ground *not built on at the Line of Junction*. Does this only apply to virgin ground or to land subject to redevelopment? For example, if a conservatory built on the Line of Junction was demolished and its foundations grubbed up, then the land would be returned to its virgin condition and would be regarded as not built upon. Despite arguments to the contrary, there is no time limit as to how long the land is not built upon and the action of demolishing and re-excavating could be within the same day. Frame recognises that there are cases where this action could be argued, so it may well be prudent to leave the land clean for one day and then start the new works.¹⁷ It was argued at the recent Faculty of Party Wall Surveyors’ Moot that in such circumstances, a Section 1 notice could not be served until the demolition had taken place and the foundations removed.¹⁸

LAND BUILT ON

What is the situation where one’s neighbour has already erected a fence to mark the boundary between the properties? Bickford-Smith *et al.* considers that in the context of Section 1, ‘a fence is not a wall, and that the distinguishing attributes of a wall are solidity and permanence. A boarded fence for example, lacks these qualities and could not be regarded as a wall.’¹⁹

Isaac highlights the importance of context in which the same terms used in different parts of the Act have varying applications. He suggests a wooden fence — particularly if fence posts are set in concrete, or are merely driven into the ground — is capable of being a structure within the context of

Section 6 of the Act (excavations).²⁰ And yet in the context of Section 1, he says that where one’s neighbour has already erected a fence to mark the boundary between the properties,

‘it seems likely that a fence (regardless of its precise type) would either be considered as a structure insufficient to be regarded as “built” on the Line of Junction and therefore come within (a), or that, as a structure of a lesser “extent” than a boundary wall, it would come within (b). To construe the sub-section otherwise would be to create an anomaly whereby the existence of a boundary wall entirely on one’s own or one’s neighbour’s land would not disqualify the person from serving Notice under Section 1, but a boundary fence on either piece of land would do so.’²¹

Section 1(1) (b) refers to a boundary wall *built on at the Line of Junction* not disqualifying the person from serving Notice under Section 1. The normal meaning of the expression ‘boundary wall’ is a wall which marks a boundary, whether it stands on it or next to it, and whether it is the external wall of a building or free-standing. It is clear from the wording in Section 2(1)²² that it means only a party fence wall or the external wall of a building. In the context of Section 1(1) (b), however, it is used in the specialised sense relating to a fence wall.²³ The term ‘fence wall’ is also found in Section 1(4) (b)²⁴ and is an expression which does not appear to have any ordinary meaning. It appears to denote a wall which is built wholly on one side of the boundary (and for this reason is outside the definition of ‘party fence wall’) except for its footings, which project over the boundary. Bickford-Smith *et al.* considers that this is a specialised concept arising from the confused drafting of Section 1, where this expression is adopted for this type of wall.²⁵

WHEN ARE PROJECTING FOUNDATIONS AND FOOTINGS NECESSARY FOR THE CONSTRUCTION OF THE WALL?

The right to place footings and foundations on the adjoining owner's land is an important right, licensing what would otherwise and at common law be a trespass both during and after the building of the wall. The right does not extend, however, to reinforced concrete footings or foundations which are 'special foundations' and would still require the expressed consent of the adjoining owner.²⁶

Frame refers to a common error where Section 1(6) is perceived as an automatic right to place foundations on the adjoining owner's land. He notes that the 1939 Act stated the following:

'[if] the building owner builds a wall on his own land he shall have the right at his own expense at any time after the expiration of six months from the service of the notice to place on land of the adjoining owner below the level of such land any projecting footings and foundations making compensation to the adjoining owner.'

There is a subtle difference in the 1996 Act, which says:

'Where the building owner builds a wall wholly on his own land [...] he shall have the right, at any time [...] to place below the level of the land of the adjoining owner such projecting fittings and foundations as are necessary for the construction of the wall.'²⁷

Concluding his analysis, Frame could not envisage any case in construction where it would be necessary to place foundations on the adjoining owner's land, as he was of the opinion that foundations can easily be designed for eccentric loading.²⁸ It has been

suggested, however, that it may not be technically feasible to utilise eccentrically loaded foundations for a building comprising three or more storeys; a technically and more costly alternative design may be required and this may be an argument for the necessity for placing foundations on the adjoining owner's land. The counter argument to this has recently been put forward: a non-binding legal opinion is that the test for enjoying the right to place footings and foundations on an adjoining owner's land is clearly set out in Section 1(6) as one of necessity, not mere convenience or economy.²⁹

CONCLUSION

This paper has examined the self-contradictory concept of a wall which is built on the boundary, and yet at the same time is placed wholly on the land of one owner. The definition of terms used in Section 1 have been sought in an attempt to make sense of the concept. Key terms used in this section of Act have been identified: Line of Junction; not built on; are built on; as are necessary; boundary wall; fence wall. None of these are defined in the Act and therefore legal opinion has been explored to assist us in determining what a building owner can and cannot do at the Line of Junction. In this regard, we can conclude the following in the context of Section 1 of the Act:

- (1) The Line of Junction is the legal boundary, that is, the point or line at which the land of the adjoining owners meets and does not necessarily correspond to a physical boundary;
- (2) It is not for party wall surveyors to make a determination on the position of a legal boundary where it is disputed by adjoining owners;
- (3) When recording a Line of Junction on a plan attached to a notice, it should depict its own legal narrowness, a line which is infinitesimally thin;

- (4) A building must be on the Line of Junction for Section 1 of the Act to be invoked;
- (5) The land must not be built on at this junction;
- (6) There is a right of access onto the adjoining owner's land because the works are in pursuance of the Act;
- (7) The adjoining owner and occupier have rights of protection and compensation;
- (8) The right to place foundations on an adjoining owner's land has to be necessary and not one of expediency and economy.

REFERENCES

- (1) Most recently at the Faculty of Party Surveyors' Moot, held at the Royal Society of Arts, London, on 12th December, 2018. The barristers Nick Isaac and Stuart Frame presented submissions to HH Judge Edward Bailey.
- (2) Extract from sub-section 1(4) of the Act.
- (3) Isaac, N. (2014), *The Law and Practice of Party Walls*, Property Publishing, Moseley, p. 48.
- (4) HM Land Registry plans; boundaries, Practice Guide 40, Section 2.1.
- (5) *Ibid.*, Section 2.2.
- (6) Bickford-Smith, S., Nicholls, D. and Smith, A. (2017), *Party Walls: Law and Practice*, Leis Nexis, Bristol, p. 16.
- (7) *Ibid.*, note 3, p. 56.
- (8) Frame, A. (2017), *Misunderstandings and Guidance*, 3rd edn, Faculty of Party Wall Surveyors, p. 20.
- (9) HM Land Registry, Section 2.2.
- (10) *Ibid.*, note 6, p. 15.
- (11) *Ibid.*, note 8, pp. 13–14.
- (12) *Ibid.*, note 3, p. 57.
- (13) *Ibid.*, note 3.
- (14) HH Judge Edward Bailey, The Moot, Faculty of Party Wall Surveyors. At the time of writing this paper the transcript of the Judge's decision is yet to be published.
- (15) The Pyramus & Thisbe Club (2016), *The Party Wall Act Explained: A Commentary on the Party Wall etc. Act 1996*, The Pyramus & Thisbe Club, Rathfriland, p. 6.
- (16) *Ibid.*, note 8, p.18.
- (17) *Ibid.*, note 8, p.14.
- (18) *Ibid.*, note 1.
- (19) *Ibid.*, note 6, p. 15.
- (20) *Ibid.*, note 3, p. 78.
- (21) *Ibid.*, note 3, p. 49.
- (22) Section 2(1) states: 'This section applies where lands of different owners adjoin and at the line of junction the said lands are built on or a boundary wall, being a party fence wall or the external wall of a building, has been erected.'
- (23) *Ibid.*, note 6, p. 15.
- (24) *Ibid.*, note 4.
- (25) *Ibid.*, note 6, p. 15.
- (26) See sub-section 7(4) of the Act.
- (27) *Ibid.*, note 8, p. 16.
- (28) *Ibid.*, note 8, p. 17.
- (29) Isaac, N., unpublished submission, the Faculty of Party Surveyors' Moot.