

The Boundary Problems Web site

Fences and boundaries

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Obligation to fence one's land

We are all accustomed to seeing fences around fields and around the gardens of individual houses. So it may come as a surprise to learn that there is no general obligation in law to fence the boundaries of one's land.

There are a number of circumstances where the law requires that fences are erected. These are usually related to safety and include:

- alongside railways: Railways Consolidation Act 1845;
- around disused mines: Mines and Quarries Act 1954;
- around building sites adjacent to highways, both road and path: Highways Act 1980;
- to prevent livestock from straying from their fields: Animals Act 1971.

A conveyance deed or a transfer deed may include a covenant requiring the purchaser to fence the land and for him or his successors in title to forever maintain the fence.

A wise householder will fence his land either for the protection of his own children or to prevent his pet animals from straying.



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FREQUENTLY ASKED QUESTION

Neighbour's fence: What can I do when my neighbour won't repair his fence?

If the question you are asking is: *How can I make my neighbour repair or replace his fence?* then my answer is that you most likely cannot force him to spend money on his fence if doesn't want to. It is, after all, his fence and if he wants to let it rot away then that is his choice.

Don't forget that there is no general obligation in law that requires him to fence his boundaries, so you cannot depend on the forces of law to make him change his mind.

There is no point instructing a boundary demarcation and disputes expert to write a report with which you are hoping to remind your neighbour that he should repair the fence: if he doesn't want to spend money on his fence then he will not listen to your expert. So you would be wasting your money, quite possibly as much or more money than it would cost to pay for a new fence.

So what can you do?

You could do nothing and just watch the fence rot away.

You could leave the old fence exactly where it is and erect your own fence right alongside of your neighbour's fence. So there are now two fences, one on your land and one on your neighbour's land. The boundary, being a line of no thickness, would then run between the two fences even if those fences are touching each other.

FREQUENTLY ASKED QUESTION

Fence height: How high a fence can I put on my boundary?

The height of fences is a matter of planning policy. To find out what is allowed in your area contact the local authority planning office. As a general rule, fences in rear gardens are allowed to be up to 2 metres high.

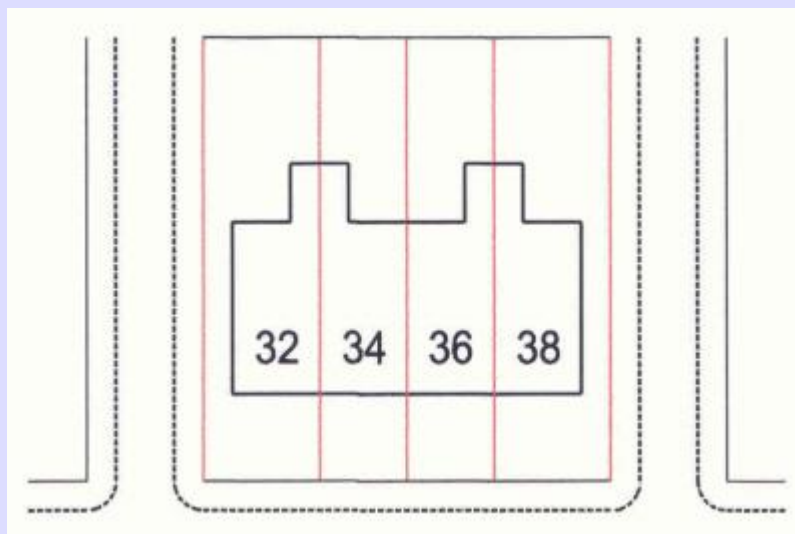


Who is responsible for erecting the fence?

FREQUENTLY ASKED QUESTION

Fence ownership: Who owns which fence? Is it true that every house owns the fence on its left side, as you look at it from the street?

There is no general rule about whether you own the fence on the left or the fence on the right of your property. The truth of the matter is this: it is the vendor who breaks up the land into smaller parcels before selling each parcel individually who assigns responsibility for the boundaries of the new land parcels that he creates. If he remembers to do so, then he will identify in the conveyance deed (or the transfer deed) the boundaries for which the purchaser is responsible.



Consider the picture above. It shows four houses, numbers 32, 34, 36, 38. Notice that, between them, they have five flank fences (shown in red). One of these four houses, therefore, must be responsible for both its flank boundaries.

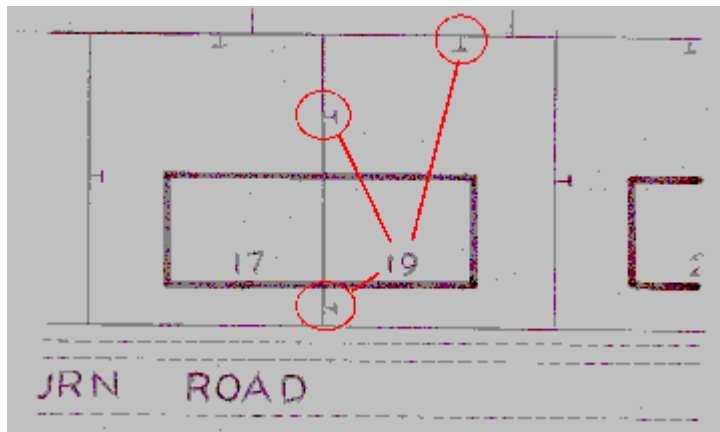
- This might mean that all of the houses are responsible for the boundary on their left and one of them is also responsible for the fence on its right;
- or it might mean that they are all responsible for the fence on their right whilst one of them is also responsible for the fence on its left;
- but it doesn't tell us which house is responsible for the boundaries on both sides;

And who owns the rear boundaries? Numbers 32 to 38, or the houses in the parallel street behind?

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The conveyance deed (or the transfer deed) may express in words the boundaries for which the owner of the property is responsible. If it does not then the conveyance (or the transfer) plan may employ the convention of applying a **T-mark** to those boundaries for which responsibility rests with the owner of the property (as in the diagram at right). If responsibility for the boundary is shared (for example, in the case of a "party fence wall") then an **H-mark** (effectively two T-marks mirrored on the boundary line) is the conventional symbol that is used.



If the deeds are silent on the question of responsibility for the boundary then you may have to work on the basis of the information given in the Seller's Property Information Form by the vendor at the time you bought your property.

It is sometimes possible to infer who is responsible for a fence by establishing the pattern of fence ownership along the same side of the street.

Your neighbour's fence

FREQUENTLY ASKED QUESTION

Fences, appearance of: Must the smooth side of my neighbour's fence face towards me? My neighbour is in the process of erecting his new fence, and he has started putting it up so that the smooth side faces towards his own house. Is he allowed to do this?

There is no law that says the smooth side of the fence should face the neighbour.

If your neighbour pays for a fence that he erects on his own land (even if he builds the fence so that the outer face of it, as seen from his land, runs along the boundary) then he is entitled to choose the style and colour of the fence, as well as whether he places the smooth side of the fence to face in towards his own house or out to face your house.

FREQUENTLY ASKED QUESTION

Fences as supports: Can I hang things on my neighbour's fence?

Fences as supports: Can I use my neighbour's fence as a support for my own plants?

Fences, appearance of: Can I paint my side of my neighbour's fence?

Only if your neighbour gives you permission to do so.

Leaning things against your neighbour's fence, hanging things on your neighbour's fence, even using your neighbour's fence as a makeshift retaining wall, will place a much heavier burden on the fence panels and supporting posts than they were designed to bear. The consequences of such actions are easy enough to predict and you will be liable for the cost of any repairs. On top of that you will still have to do, and pay



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for, the work that you did incorrectly and which resulted in the damage to your neighbour's fence.

In short, anything you do to your neighbour's fence without your neighbour's permission - including staining, painting or applying preservative to your side of your neighbour's fence - amounts to criminal damage.

FREQUENTLY ASKED QUESTION

Fences, appearance of: What can I do about the unsightliness of my neighbour's fence?

Unless your neighbour agrees, you cannot:

- paint, stain or varnish your neighbour's fence to make it a more attractive colour;
- affix close boards or panels to your face of the fence in order to conceal the support rails;
- attach trellis or some other system to support plants that you wish to grow up your side of your neighbour's fence.

What you can do is:

- plant free standing shrubs or a hedge to conceal the fence from your view;
- erect your own fence alongside your neighbour's fence.

FREQUENTLY ASKED QUESTION

Fence height: Can I make my neighbour reduce the height of his fence? My neighbour's fence makes my garden very dark because his fence is high and his garden is on higher land than mine.

If your neighbour's fence is within the height limits set by your local authority, when measured from the ground on which it stands (not from the level of the ground on your side of the fence) then there is nothing that you can do about it.

If your neighbour was to reduce the height of his fence, from say 1.8 metres to 0.9 metres, then you would find there was an issue of privacy within your land as your neighbour would easily see over the top of such a low fence.

Fences and boundaries

It is normal practice when using a fence to mark a boundary to place the outer face of the fence along the boundary, so that the posts stand on the land of the fence's owner.

There is an enormous variety of styles of fence, and the positioning of the fence relative to the boundary will depend on the style.



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- post & wire fence: if the posts are of metal or concrete then it is usual for the outer face of the post to be placed against the boundary and for the wires to be threaded through the centre of the posts;
- post & wire fence: if the posts are round timber then it is usual for the outer face of the post to be placed against the boundary and for the wires to be stapled to the outer face of the wooden post;
- with wooden panel fences and close board fences where the panels/boards are wholly contained between the fence posts, it is usual to place the outer face of the posts to be placed against the boundary;
- some close board fences have flat rails attached to the face of the posts and the boards attached to the face of the flat rails: in this case it is usually the outer face of the boards that is placed against the boundary.

If a fence post requires a footing, for example of concrete, to secure it into the ground then it is normal to allow the footing to lie partly beneath the adjoining land. In keeping with the [Party Wall etc. Act 1996](#), this does not give the neighbouring landowner the grounds for a claim of encroachment.

If the description of the boundaries in the parcels clause of the conveyance, or on the conveyance plan or transfer plan, is so poor that you have difficulty in interpreting the boundary's position on the ground then it is tempting to use the position of the fence as an indicator of the true position of the boundary. If you are confident that you are dealing with the same fence that was in place at the time of the original conveyance, or at least with a fence more than twelve years old, then you could fall back on the self evident truth that the boundary follows the outer face of the fence (see the list above), but this is not necessarily conclusive.

FREQUENTLY ASKED QUESTION

Fences, age of: How can I find out the age of my wooden fence?

If it was you who ordered a fencing contractor to erect the fence, and if you keep detailed records of household expenditure, then the invoice presented to you by the contractor is the most reliable, even conclusive, evidence of the age of your fence.

If you have no invoice, then if you have two photographs in your family photo album that show the fence in the background, and if the photos reveal two physically different fences, then the fence must have been erected at some date between the dates on which the photographs were taken. So now all you have to do is to work out the dates on which the photographs were taken.

If your family photo album doesn't help, then there is some chance that you may be able to discover aerial photographs taken on different dates showing different fences. Again, the fence will have been erected between the dates of the two photographs.

It is tempting to think that a dendrochronologist would be able to help. Of course he will be able to analyse the tree rings and determine the dates during which the tree (from whose wood the fence was made) was growing, but this is not the same as determining the date on which the fence was erected.

When trying to deduce the position of a boundary from the presence of fences on the ground, beware of chain link fences and chickenwire fences. Whilst chain link is sometimes used for fences that mark boundaries, both chain link and chicken wire are commonly used for keeping pets under control and pet fences are not necessarily located on boundaries: they may be placed to prevent dogs from passing beneath a hedge, and the hedge may be inside of the property boundary with the pet fence even further into the property and away from the boundary.



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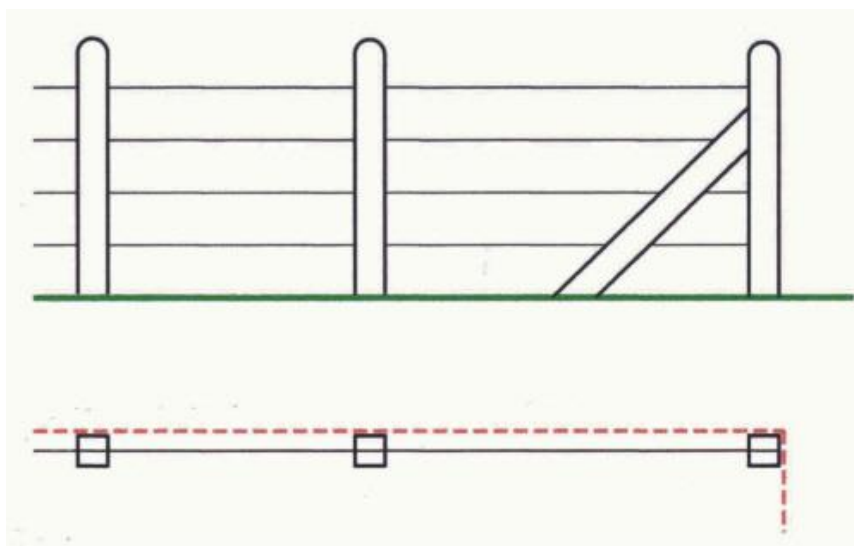
In rural areas fences may be erected for stock control or for disease control. A stock control fence may be placed so as to prevent livestock from grazing on a hedge that might endanger its health. Again, the stock fence may be placed to prevent livestock from falling into a ditch, gully, or stream and so injuring itself.



Above is a holiday photograph taken in Cornwall in 2012. Whilst it does not relate to any boundary that I have investigated, it neatly demonstrates that not all fences are necessarily boundary fences: it is likely that the stone wall carries the boundary whilst the barbed wire fence is there to prevent livestock from escaping over the wall.

Disease control fences are intended to prevent two herds of livestock from approaching close enough to infect each other. Such fences may be named after the diseases they guard against, and so they have names such as "tuberculin fences" or "TT fences". They will commonly be found parallel to each other at a distance apart that is prescribed by the relevant authority, and the boundary may be found along some, possibly unmarked, line between them.

A strainer fence can sometimes provide valuable evidence of the position of a boundary - provided that you can be sure that the fence was erected to mark the boundary and not for some other purpose.



The upper part of the above drawing shows a strainer fence, so called because of the diagonal strainer placed against the terminal post at either end of the fence to counteract the tension in the wires that might otherwise pull the terminal posts over. The lower part of the image is the same fence shown in plan view. It is tempting to deduce that two faces of the terminal post each stand against a boundary, as shown by the red dashed lines.



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Fences and adverse possession

If a house built more than one hundred years ago has boundaries marked by wooden fences then it stands to reason that the original fences will have rotted away a long time ago and that they will have been replaced several times over. It would be understandable if a replacement fence was erected in a position that did not exactly match the position in which its predecessor had been erected. So it is possible that the fences have migrated, if only by a small amount, over time.

Given the poor standards of boundary descriptions in conveyance deeds for unregistered land, it was generally not possible to say that the true position of the boundary is at "X" and the fence is 3 inches east of "X", so the fence must be moved by 3 inches in a westerly direction to restore the boundary to its true position. It was much easier to argue that the fence had stood in its present position for more than twelve years and that any land that fell inside the fence but outside of the true position of the legal boundary must now belong to he who had exclusively enjoyed the use of the disputed land for a period of at least twelve years.

Recent changes to the law regarding adverse possession have affected the ability of a squatter to obtain ownership of an entire parcel of land. Nevertheless, adverse possession appears likely to remain a viable argument where the land under dispute is limited to a small strip along a disputed boundary.

Replacement fence leads to confusion

Sometimes a situation gives rise to confusion over the relationship between:

- the position of the boundary;
- the position of the fence;
- the responsibility for maintenance of the boundary;
- the ownership of the fence.

In theory it is perfectly possible for one landowner to erect a fence upon a second landowner's land, but for ownership of the fence to remain with the first landowner. In principle, a similar situation occurs when Mr A parks his car on Mr B's land: the car remains Mr A's property.

Imagine a situation in which a pensioner with a limited income has lived in, and owned, the same house for very many years. The wooden fence for which he or she is responsible is rotting away and has become both an eyesore and a danger to the neighbour. The neighbour is a kindly person who is willing to pay to replace the fence, even though he is not responsible for it. What are the implications for his kindness in so doing?

This depends on exactly where he puts the fence and on the subsequent attitudes of himself, his neighbour, and the successors in title of both of them.

There are three possible immediate outcomes:

- **A.** He places the new fence on his side of the old fence, so that the new fence stands on his own land. He then takes down the rotten fence, and he ensures that his elderly neighbour understands that the new fence neither stands upon the pensioner's land nor is it (the new fence) the pensioner's property.
- **B.** He removes the old fence and erects the new fence in exactly the same position as the old fence stood. He makes a gift of the new fence to the pensioner.
- **C.** He removes the old fence and erects the new fence in exactly the same position as the old fence stood. He makes no statement to the pensioner as to where the fence stands or who owns it.

Let us now move the scenario forward to a time when both properties have been sold. The successors in title have encountered confusion as to the exact position of the boundary, but their investigations uncover the facts of what happened when the pensioner's fence was replaced by the kindly neighbour.

- If they discover that scenario **A** is what actually happened then they will surely conclude that the boundary runs along the pensioner's side of the fence that the kindly neighbour had erected on his own land.
- If they discover that scenario **B** is what actually happened then they will surely conclude that the boundary runs along the kindly neighbour's side of the fence that now belongs to the pensioner's successor in title.
- If they discover that scenario **C** is what actually happened then they will have to decide to either:
 - honour the original boundary line (on the kindly neighbour's side of the fence), or
 - to accept that the fence belongs to the successor in title of the kindly neighbour and that enough time has elapsed for the boundary to have moved by adverse possession to the pensioner's side of the fence.

