

Southern Boundary of Pump Hill.

Introduction

Readers of Parish Council meeting minutes will be aware that a dispute regarding the southern boundary of Pump Hill has been under discussion for some time. In this, as in other matters, the Council uses its judgement to try and decide what is, on balance, in the best interests of those they represent.

As the Parish Council was receiving legal advice it took the decision that it was in the public interest that these discussions should not be open to the public. Although there is a general presumption that council discussions *will* normally be open to the public, councils are allowed to do this in limited circumstances when they think it is appropriate.

For this reason, residents will not be aware of the full detail of how the Council has been responding to this dispute. As the current process has reached a significant outcome the Council now wishes to provide residents with an explanation of events so far.

History.

The Parish Council purchased the land at Pump Hill at auction in 2005.

The title registration map for the land showed the southern boundary with the garden of The Square to be where a wire fence separated the two pieces of land. This is where a number of residents and former owners of The Square have said they believed the boundary to be. This is also where a boundary appears to be shown on maps and earlier transfers of the land.

What defines a boundary?

It may have been generally assumed that the location of the boundary shown on the title map provided a legal definition of who owned what. But this is not necessarily the case.

HM Land Registry explain this as follows.

We will complete a first registration without making detailed enquiries as to the precise location of the legal boundaries. The title plan will reflect what we conclude to be a reasonable interpretation of the land in the pre-registration deeds in relation to the detail on Ordnance Survey mapping.

So, the registration may not take into account earlier documents if they were not made available at the time. And it is based on Ordnance Survey mapping which may, or may not, be accurate and may, or may not, show a feature where the boundary might lie. This process is explained further here.

HM Land Registry plans: boundaries (practice guide 40, supplement 3)

<https://www.gov.uk/government/publications/land-registry-plans-boundaries/land-registry-plans-boundaries-practice-guide-40-supplement-3>

Application to change the map in the title registration.

In November of 2018 the Council was informed by a representative of the owner of The Square that an application had been made to the Land Registry to amend the boundary shown on the title map. They advised that they had submitted documentary evidence in support of this request. And also, that they would erect a line of stakes to indicate where they believed the boundary should be. This line of stakes ran from the wall of the school garden and terminated roughly opposite to the boundary between the stable at Fernlea and Rosemary Cottage.

Survey

The Land Registry requisitioned a survey of features in the area which took place in December of 2018.

Notice of application for alteration of the register.

This formal notice was received from the Land Registry by the Council in February 2019. Enclosed with it was a copy of a "Statement of Truth" provided by the applicant in support of their claim. This document contained a number of claims which the Council did not necessarily accept.

Photographic evidence for boundary claim.

In particular the location of the suggested boundary marked by stakes was based on an opinion that a wall could be seen in this position in a photograph of the site. This photograph was not provided but it is believed to be one published in the "The Spirit of Parwich". The Council obtained access to an original of this photograph bearing the date 1934. The Council took the view that this photograph was too indistinct to provide any clear indication of the claimed boundary. It could equally well have shown a

feature, possibly vegetation, in a quite different location with no confirmation that it ever represented a boundary of any sort.

This was queried with the Land Registry case officer who indicated that this photograph, along with other aspects of the "Statement of Truth", were not in fact relevant to the claim. It seemed that the Land Registry too had been unconvinced by the photographic evidence. This was reflected in the map attached to the copy of the application received by the Council which showed the proposed alteration to a line terminating opposite to a point part way down the Fernlea stable; not where the stakes had been placed.

The background to this was confirmed in June 2019 in a letter from the solicitors representing the owners of The Square. They enclosed a copy of a letter from the Land Registry written in January stating that the documentation lodged relating to the title only supported an application to change the boundary to a line nearer to the existing wire fence.

Conveyance evidence for boundary claim.

The principle evidence provided for a change to the location of the general boundary was a conveyance of 1930. This conveyance related to the original purchase of the plot to create the garden area for The Square from the larger Pump Hill site. This conveyance contained both a map and a reference to the area of the plot in its text. The Land Registry had used this evidence to determine what they would allow in the application.

At around this time the stakes were moved to indicate where the Land Registry had said an application for alteration could be accepted.

Objection.

The application received by the Parish Council allowed them as the owners of the adjacent land affected by the change to the general boundary to lodge an objection. The Council was fortunate in being able to receive legal advice from several sources without the need to spend public money and is grateful to those who provided this support. This advice included the potential costs and outcomes of various courses of action.

With this support an objection was lodged in March of 2019. In particular this highlighted the possible inaccuracy of maps (many of which fail to show fixed buildings in their true location, never mind boundaries for which there is no longer any physical evidence.) The Council also provided evidence of its longstanding "occupation" of the land supported by statements from residents and former residents.

HM Land Registry Response.

In May of 2019 the Land Registry wrote to the Parish Council saying the objection had been accepted. They pointed out that this did not reflect any opinion as to whether the objection might succeed - merely that it was not groundless. They set out the possible ways forward.

1. The applicant and objector could attempt to negotiate an alternative settlement agreeable to them both.
2. The application or the objection could be withdrawn.
3. If neither of these occurred within a fixed timescale, or either party were not willing to enter into negotiation, the matter would be referred to Tribunal.

Negotiation.

Both parties indicated that they were willing to enter into negotiation. In June of 2019 the Parish Council received a letter from the solicitors representing the owners of The Square proposing their reluctant acceptance of a reduction of the claim from the original position of the stakes to the revised position.

The Parish Council responded that in its opinion this did not constitute a proposal as the Land Registry had already determined that the evidence submitted did not support an application to change the boundary to the original position of the stakes. The applicant had agreed to this. The notice the Parish Council had received, and objected to, reflected the boundary nearer to the wire fence. As such it appeared that there was no willingness to move to a negotiated compromise, only an intention to insist on the change applied for. And that, as such, no proposal for any alternative outcome was being made. The Council repeated its willingness negotiate an alternative outcome if this position changed.

Over the following months further correspondence only resulted in both parties confirming these views and no meaningful negotiation appeared possible.

Tribunal.

Attempts to resolve such disputes by negotiation are only permitted for a set length of time. After this they will automatically be referred to tribunal by the Land Registry. Had this been allowed to happen the Parish Council

could have faced significant costs. It is unlikely that these would have been recovered even if the objection had been successful.

The Council therefore had a difficult decision to make. Whilst it might still wish to pursue its objection, it had to balance the possible cost of doing so against the benefit to residents of retaining the general boundary in its current location. It also noted that with the change of boundary, responsibility for part of the boundary wall and a number of elderly trees would pass from the Council, which might provide a saving in future years.

Therefore, having done everything it thought it reasonably could to retain the disputed piece of land for the benefit of residents, without incurring undue cost, it was agreed to withdraw the objection rather than go to Tribunal. This was communicated to the Land Registry.

Postscript.

At the end of November, the Land Registry wrote to the Parish Council confirming that the application to change the position of the general boundary on the title map had been completed.

The boundary change has not significantly affected the Parish Council's intention to develop the Pump Hill site to provide greater public amenity. Minor alterations to the plans for this have been made to avoid the disputed area.

This account is not intended to provide full detail of all correspondence or consultation, or any legal opinion or legally binding statement. It is provided solely as a summary to illustrate the Parish Council's handling of the matter as it arose.

Andrew Martin
Parish Clerk.
January 2020