**[2025] UKFTT 01081 (PC)**

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| **Ref/2024/0460**  **PROPERTY CHAMBER, LAND REGISTRATION**  **FIRST-TIER TRIBUNAL**  **IN THE MATTER OF A REFERENCE FROM H M LAND REGISTRY** |

**BETWEEN**

**ASH~~R~~AF FARAZ KHAN**

**APPLICANT**

**And**

**(1) DR. MUHAMMAD SHAHID SIDDIQUI**

**(2) DR LUBNA NOOR**

**RESPONDENTS**

**Property Address:** **2 Jenner Close, Coulsdon, CR5 3FP**

**Title Nos: SGL768870 and SGL769976**

**Hearing on 22nd and 23rd July 2025**

**Before Judge Nicola Muir**

**Sitting at Alfred Place, London**

Applicants’ Representative Andrew Skelly

Respondents’ Representative Saad Karim

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**DECISION**

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**This Decision was corrected on 2nd September 2025 pursuant to Rule 5o of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on 2nd September 2025. The corrections are to the spelling of the first name of the Applicant and the date of and in an email referred to in paragraph 91 of the Decision**

Background

1. The parties are neighbours. Both occupy former show homes on the Cane Hill Park estate (“the Estate”) which was developed by Barratt David Wilson (BDW) about 10 years ago. The Applicant owns No. 2 Jenner Close, Coulsdon (“2JC”) which he purchased on 30th April 2021 and the Respondents own No. 3 Jenner Close (“3JC”) which they purchased a year earlier on 30th April 2019.

2. All was well until August 2021, when the Respondents dug up part of the planted area which sat between the two houses in order to extend their driveway eastwards. Shortly afterwards they erected a high fence along the edge of the new driveway in front of the Applicant’s western facing bay window.

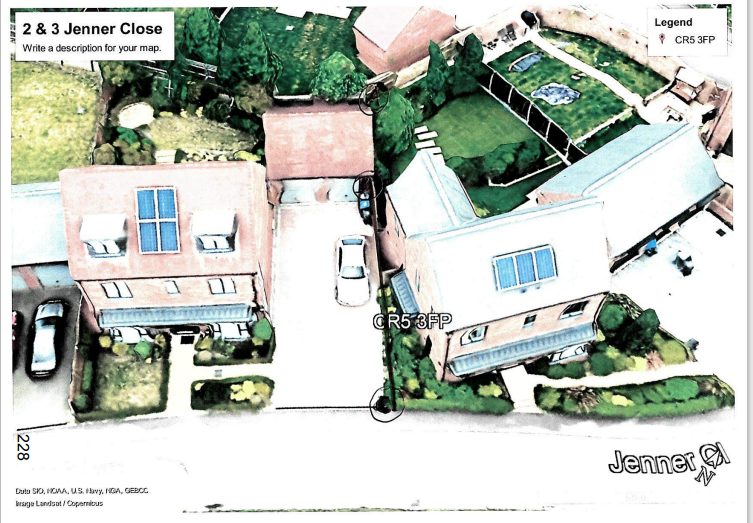
3. Following pre-action correspondence, the Applicant issued this application for a determined boundary on 18th September 2022. The Applicant relies on a plan prepared by Gary Jackson MRICS which is based on the Transfer Plan of 2JC (“the DBA Plan”) and is copied below.

A blueprint of a building

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4. The Respondents filed an objection to the Application on 10th April 2024 claiming that there was a boundary agreement made between the parties’ respective predecessors in title, specifically, BDW Trading Ltd (“BDW”), whereby it was agreed that the boundary would be the wooden fence and metal fence which were in place when the Respondents purchased 3JC.

5. The Respondents’ Statement of Case expanded the grounds of objection to include the assertion that the parties’ respective Transfers showed only the general boundaries of the plots conveyed and that the location of the wooden fence, the metal fence and the plans approved by Croydon Council should be used to determine the boundary. Again, it was asserted that there was a boundary agreement in place but, this time, made Mr. and Mrs. Long and Mr. and Mrs. Bailey rather than BDW Trading Ltd.

6. The Respondents rely on the expert evidence of Mr. Roger Russ, FRICS. In simple terms, Mr. Russ concluded that the transfer/conveyancing plans used at the times the subject properties were purchased in 2016 were unreliable and that the plans submitted in 2014 in relation to obtaining planning permission would be a better guide. Mr Russ also relies on the location of the wooden fence and the former metal railing as indicating the title boundary which he says runs in a straight line marked ABC with a black marker pen from the corner of the Respondents’ garage as shown on the plan below. The line appears to end a foot or so to the east of the Respondents’ driveway. 

7. The Applicant was represented by Mr. Andrew Skelly of Counsel and the Respondents were represented by Mr. Saad Karim of Counsel. Both Counsel filed Skeleton Arguments and I am grateful to them both for their helpful submissions. Mr. Karim indicated at the start of the hearing that he would not be pursuing the Respondents’ strike out application but would instead address the substantive issues raised by the Respondents reserving any comments on the strike out application to final submissions. Given the length of the strike out application and the overlap between that application and the main issues, that was a very sensible approach. In the event, Mr. Karim did not renew the strike out application.

8. The Respondents also applied to rely on an additional witness statement which had been signed by Dr. Noor on or before 14th March 2025 but had not been served on the Applicant. Mr. Skelly indicated that he had no strong objection to the witness statement being relied on and I gave permission for the Respondents to rely on this statement.

History of the Titles

9. The land on which both properties were built was originally owned by GLA Land and Property Limited. BDW did not own the land but developed it. On 26th February 2016 GLA Land and Property Limited sold 2JC to Mark and Tracey Bailey. It was common ground that Mr. Bailey was connected to BDW and that the house continued to be used as a show home after that first conveyance.

10. The Transfer of Part (the TP1) relating to 2JC describes the property as:

“Plot 40 Cane Hill Park, Coulsdon, London, CR5 3YL

The Property is identified and shown edged red on Plan 1 together with the dwelling constructed or to be constructed thereon an to be known as 2 Jenner Close, Coulsdon, CR5 3FP (forming part of the Estate).”

11. Plan 1 is part of the Estate plan and is drawn to a scale of 1/500. It is described as the “A3 Conveyance Plan” and is dated January 2016. Plan 1 shows the house set at an angle to the plot with a bay window looking westwards towards 3 JC. The disputed boundary is not a straight line but instead steps out towards 3 JC (Plot 41) as shown below. The boundary is made up of a number of straight lines.

A blueprint of a building

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12. There are “T” marks on the fences in the back garden but no “T” marks at the front. This was because the Estate was intended to have open boundaries at the front as set out in the 2JC Transfer which contains a covenant requiring the transferee, for a period of 10 years from the date of the transfer, not without prior written consent to:

“15.1.3 to erect any gate gatepost fence screen wall hedge or other boundary structure on the front or side boundaries of the Property”.

13. The 2JC Transfer also includes a Plan 2 which is described as the “Overall Conveyance Plan”. The plan of Plot 40 is the same as on Plan 1 but Plan 2 shows more of the Estate. There is an annotation on Plan 2 which states:

“08.12.15 Plot 40 Boundary revised”

14. The title to 2JC was registered on 4th April 2016 and the registered title plan appears to reflect the boundary shown on the 2JC Transfer Plan. The registered title plan shows the general boundary.

15. On 24th March 2016, 3JC was sold by GLA Land and Property Limited to Peter and Evanathia Long. The Respondents confirmed that Mr. and Mrs. Long were also connected to BDW in some way and that again, 3JC continued to be used as a show house after their purchase. The 3JC Transfer is in the same form as the 2JC Transfer but, of course, has its own plan.

16. Plan 1 to the 3JC Transfer is also entitled “A3 Conveyance Plan” but it is an earlier version – Version A. Again Plan 2 is described as the “Overall Conveyance Plan” and contains the same annotation regarding the revision of the 2JC Boundary on 8th December 2015. Plan 1 does not, however, exactly match Plan 1 for 2JC. Instead of being shown as a series of straight lines, the disputed boundary is shown to curve in the area immediately to the south of the 3JC garage. The overlapping areas are shown shaded yellow on the DBA Plan.

A blueprint of a building

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17. The 3JC Transfer excludes the area shown hatched black (which is designated as footpath) from the title. Again there are “T” marks on the western and northern sides indicating that the Respondents are responsible for the maintenance of those boundaries. The Applicant is responsible for the maintenance of the rear boundary with 3JC but there are no “T” marks on the disputed boundary.

18. 3JC was registered on 4th May 2016. The title plan does not show the curved boundary but instead shows the boundary in the same place as is shown on the 2JC title plan. It also shows 3JC has including the area hatched black in front of the Respondents’ garage until the point it meets the pavement. Although the Applicant’s Statement of Case suggests that this area should be removed from the Respondents’ title, there is no application to rectify the registered title plan before me and Mr. Skelly indicated at the start of the hearing that this was not pursued.

19. The Respondents purchased 3JC from Mr. and Mrs. Long on 30th April 2019. At that time there was an ornamental metal fence (“the Metal Railings”) which ran along the side of 2JC. I will refer to this fence in more detail below, however, the Metal Railings were removed by BDW/Mr Bailey in January 2021 prior to the completion of the Applicant’s purchase.

20. The Applicant first viewed 2JC in or around October 2020 and at that time the Metal Railings were still in place. As part of the conveyancing process, various issues arose regarding the boundaries of both properties resulting in a “boundary check” being carried out by BDW. On 8th February 2021, Dave Banks of BDW wrote to the Respondents as follows:

“What the boundary check also highlighted was a section of your drive to the right side (in front of your garage) falls within the ownership of 2 Jenner Close (approx. 0.7m wide). . . . As this area is part of your drive and has always been on your side of the fence the seller of Plot 2 Jenner Close is potentially willing to transfer you this piece of land as good will gesture in the hope that your claim of ownership over landscaped area can be relinquished.”

This relates to the small area adjacent to 3JC’s garage which was transferred to 2JC in 2JC Transfer then erroneously transferred again to 3JC in the 3JC transfer shown shaded yellow on the DBA Plan. The Respondents did not pursue the offer of a transfer.

21. As part of the boundary check, BDW also spotted that the area hatched black at the front of 3JC’s driveway had been registered as part of 3JCs title plan by the Land Registry even though it had not been included in the 3JC Transfer. As a result, in February 2021, BDW applied to the Land Registry for rectification of the title plan of 3JC to exclude the hatched footpath area. The Respondents objected to that application and on 15th July 2021, the Land Registry notified the Respondents that the application had been cancelled because BDW had not responded to their objection but said:

“this would not prevent the applicant lodging the same application in future in which case we would send a fresh notice to the objectors if the new application appeared capable of proceeding”.

22. The Respondents submit that the Applicant is estopped from pursuing his determined boundary application as a result of the abandonment of the earlier application by BDW. The Applicant said he had no knowledge of the application until he received the Respondents’ disclosure. That application related to a different piece of land and is not relevant to the determination of the disputed boundary. The Applicant does not claim that any part of the area hatched black forms part of his title. Further there was no adjudication on the merits of the application which as, the land registry said, could have been pursued afresh. Accordingly, the existence of this earlier dispute does not estop the Applicant from making the current application and I reject the estoppel argument.

23. Prior to his purchase, the Applicant raised the issue of the removal of the Metal Railings with his solicitor. He wanted the railings to stay in place in order to provide security. By an email dated 16th February 2021 the vendor’s solicitors advised:

“the railings were not part of the sale as the development is open plan on the frontages and these railings were a sales trap as part of the sales arena. There is substantial planting to the side in question and security is not really an issue, the railings in question were less than 3 feet in any event.”

24. The Applicant entered into a Contract to purchase 2JC which confirmed that:

“9. Prior to completion, the Seller will move the boundary in accordance with HMLR title plan and the gate will have been completed”.

In oral evidence, the Applicant explained that this provision had been included to address concerns regarding the location of the eastern boundary rather than the disputed boundary.

The Applicant completed his purchase on 30th April 2021.

Jurisdiction

25. This Application is brought pursuant to s. 60 of the Land Registration Act 2002 for a determination of the boundary between 2JC and 3JC. The Applicant’s plan is an enlarged version of the original Transfer Plan for 2JC showing measurements and features on the ground.

26. The Respondents argue that, in reality, this is an application by the Applicant to rectify the register. However, as can be seen from the plan produced by Mr. Russ, it is the Respondents who are arguing that the transfer plan and the registered title for their property are incorrect and need to be changed, not the Applicants. The Respondents’ case is that the true boundary is a straight line running from the corner of their garage along the edge of their newly extended driveway or alternatively along the line proposed by Mr. Russ. This is not what is shown on either of the Transfer Plans or the registered title plans which show the boundary stepping into the area previously occupied by a flower bed and now occupied by the extended driveway.

27. Neither the Applicant nor the Respondents have made an application to rectify the register or the Transfers and I have no jurisdiction to deal with any such questions. My jurisdiction is limited by Rule 40 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to either (1) giving effect to the Applicant’s original determined boundary application in whole or in part as if the objection to that original application had not been made or (2) cancelling the original application in whole or in part.

28. The Applicant relies only on the Transfer Plan which, he says, is accurately measured out in the DBA Plan. The issue for this Tribunal is whether the DBA Plan does accurately record the boundary. I agree with the Respondents that the only plan I should consider is the plan dated June 2022 on which the Application is based.

The Metal Railings

29. The Respondents’ case is based to a large extent on the location of a wooden and the Metal Railings which they say formed the boundary between the two properties. As this forms the basis of many of their arguments, it is useful to address the factual issue of where these fences were located first. The wooden fence is still in place but the Metal Railings were removed in January 2021 shortly before completion of the Applicant’s purchase. The Metal Railings were described as a “low height temporary metallic fences” in an email from Dr. Noor to the residents’ association written on 1st February 2021 shortly after their removal and photographs show a low level black metal railing style fence approximately 1 meter high. Dr. Noor said in oral evidence that she had only described the fence in this way due to her poor English. I have seen large amounts of documentation prepared by Dr. Noor and I am satisfied that she writes English very well and understood what she was writing.

30. The Respondents’ evidence as to the location of the Metal Railings was difficult to follow and contradictory. It was not possible to get a straight answer to the question of where they claimed the fence had been.

31. In their Statement of Case, the Respondents stated that the Metal Railings ran along the points marked B to C on the Plan attached to the Statement of Case and that the fence mirrored the plans approved by Croydon Council and/or the Greater London Authority. The line shown marked BC runs along the north eastern side of where the Respondents constructed their new driveway. This is marked as “Conc Edging” on the DBA Plan. Dr. Noor confirmed in evidence that she had approved the Statement of Case which had been drafted for the Respondents by their solicitor.

32. The plan produced by Mr.Russ is said to be based on the location of the wooden fence and Metal Railings and shows the boundary close to the driveway but not along the edge of the driveway. Instead, he shows it as a straight line at a slightly different angle and running over the adjacent front garden.

33. At the site visit, however, Dr. Noor said that the Metal Railings were nearer the house at 2JC and that she had planted a hedge in front of it. She pointed out a low hedge approximately 2 feet high which ran in front of the Applicant’s bay window. This would mean that the Metal Railings did not continue in line with the wooden fence which is still in place but veered off at an angle to run parallel to the southern western side of the house at 2JC. If the Metal Railings formed the boundary, this would mean that an area of planted land to the right of the existing driveway fell within the Respondent’s title. It would also mean that the boundary could not be a single straight line. The Respondents were both asked about this in cross examination and were adamant that the fence was always in a straight line.

34. After the discussions between the experts, Mr. Jackson produced a plan to be attached to the Joint Statement which is copied below. The plan is the same as the DBA Plan but shows an additional green dashed line showing the “indicative location of ornamental railing” which is shown as running in a straight line from the far side of the pavement parallel the south-western side of the Applicant’s house very close to the Applicant’s bay window and then turning northwards to run in another straight line in line with the north-eastern wall of the Respondents’ garage. This appears to reflect Dr. Noor’s claim that the metal railings ran close to her hedge although she denies that it ran over the pavement. The Respondents vehemently object to this second plan and I shall refer to this in more detail below.



35. Given the contradictory evidence from the Respondents, I prefer to rely on the photographic and documentary evidence.

36. Both parties accepted that they had no knowledge of when the Metal Railings were erected or what boundary features, if any, were on the ground when the titles were created in 2016. Both parties confirmed that their properties were amongst the first built on the estate and were used as show homes.

37. An aerial photograph dated June 2016 shows both properties having been built and does not appear to show any fencing between them or at the front of the properties although the planted area/flower bed is clearly visible. There are also two photographs showing 2JC with “David Wilson Homes” wording on the side of it. The first photograph shows no fencing at all although the boundary between 2JC and 3JC is not visible. The second shows low level metal railings on the outer side of the pavement running in front of 2JC and 3JC then turning right across the pavement between 3JC and no. 4 Jenner Close. No metal railings are visible between 2JC and 3JC.

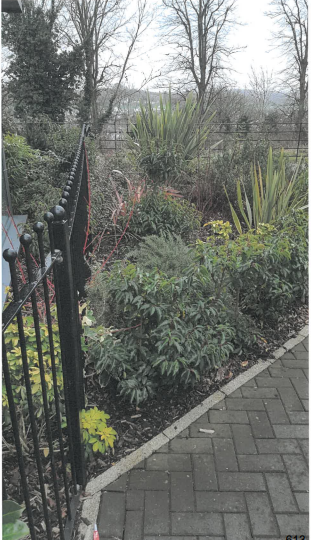
38. A document entitled “First Release of New Homes at Cane Hill Park in Coulsdon – Posted 30th June 2016.” shows a photograph of the fronts of both 2JC and 3JC. There is a metal railing right along the outer side of the pavement – between the pavement and the road in front of both properties. There is no metal railing running between the two properties visible in the photograph. The Respondents accepted that it would not have been the intention of the developer to include the pavement in the titles.

39. A photograph taken by the Respondents prior to their purchase shows the same style of metal railing running directly in front of the bay window of 2JC and then across the pavement. It does not show a hedge in line with those railings.

A photograph taken from the other angle, close to the Respondent’s garage, shows the Metal Railings running between the flower bed and the Respondent’s original driveway until the point where the flower bed juts out. At that point the fence turns and runs across the planted area and parallel to and very closes to the Applicant’s bay window.

. A two cones next to a building

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40. In cross examination, Dr. Noor denied that the second photograph showed the fence changing direction and insisted it was an optical illusion. I do not accept this. The fence cannot be both in line with the wooden fence and parallel to the bay window.

41. In an email dated 1st February 2021 from the Respondents to the Residents’ Association they stated:

“ . . .. In 2019, when we bought this property (3 Jenner Close), builder moved low height temporary metallic fences away from our side towards show home due to our concern, however did not put any permanent fence….”

42. It is clear from the photographs considered together that immediately prior to the removal of the Metal Railings in January 2021, it extended in line with the wooden fence for a short distance along the side of the Respondents’ original driveway then turned left to run through the planted area parallel to and close to the bay window of 2 JC in a straight line towards the pavement. This line was along or close to the “Indicative Location of Ornamental Railing” line on Mr. Jackson’s second plan. At some point the part of the railings which crossed the pavement was removed.

43. The photographs show that the location of the Metal Railings moved from time to time. This is consistent with the email from the Baileys’ solicitors to the Applicant’s solicitors dated 16th February 2021 which stated that the railings were a sales trap as part of the sales arena. The photographs do not show a hedge running along the Metal Railings but rather ornamental planting.

Witness Evidence

44. I heard oral evidence from all the parties. The Applicant had very little knowledge of the history of the site because he had only purchased in April 2021. He had, however, viewed the property in October 2020 and seen the Metal Railings. He could not remember the length of the Metal Railings and said that he did not see the Metal Railings crossing the pavement at that point. He said he purchased the property by reference to the 2016 2JC Transfer Plan and raised various issues about the boundaries. The Applicant noticed the security fence and indicated he would like to keep it but it was made clear to him that this was part of the sales trap and would be removed.

45. The Applicant was asked about the planting and said there was no hedge on either side of the railings at that time but there was substantial planting which provided some security. After his purchase, the Applicant said he had tended that garden area and he produced a receipt for some gardening works to the side garden.

46. Dr Siddiqui maintained that the line shown on the Respondents’ Statement of Case and Mr. Russ’s plan were in the same position. When asked about whether he relied on the Transfer Plan, Dr. Siddiqui explained that the Respondents had seen the Transfer plan but considered it was an error.

47. Dr. Noor confirmed that it was the Respondents’ case that the boundary lay along the line marked “ABC” on Mr. Russ’s plan. She said this was where the Metal Railings had been and where the LPA plan showed the boundary to be. Dr Noor was asked about her assertion at the site visit that the boundary was nearer to 2JC and Dr. Noor said that the physical boundary had been the planted hedges. Later in her evidence, Dr Noor said that the boundary was not along the edge of the drive but closer to No. 2.

48. Dr Noor confirmed that Mr. Russ had not seen the Metal Railings in situ and had relied on the photographs provided to him. Dr. Noor confirmed that she could only say where the fences had been 2018/2019. She could not recall when the Metal Railings were cut back from crossing the pavement. Both Respondents said that Mr. Bailey had indicated that he intended to relocate the fence along the Transfer boundary line within the planted area in or around 2020 but that they had objected. In the event, the fence was removed in January 2021 and not replaced.

The Expert Evidence

49. Neither expert was called to give oral evidence but both provided detailed expert reports. Mr Jackson produced a measured plan (the DBA Plan) for the purposes of the application. He also provided an Expert’s Report dated 5th July 2022 in which he recorded that his instructions were to provide an opinion regarding the location of the boundary between the properties.

50. Mr. Jackson’s report refers to the registered title plan and explains that this would have been based on modern OS mapping at a scale of 1/1250 but only shows the “general boundary” of the property. He notes that the Title plan for 2JC shows a mapped feature (solid line) which runs from the south-east corner of the garage to 3JC and then turns approx.. 80 degrees to meet the flank wall of 2 JC part way down the south- western façade. OS mapping uses a solid line to map physical features above 0.3 m in height, e.g., walls, fences and hedges. This visually corresponds with the wooden fence currently in situ.

51. The remainder of the boundary between 2JC and 3JC is shown by a “pecked line” which steps towards the house on 3JC. Mr. Jackson explains that OS mapping uses a pecked line to map physical features under 0.3 m in height, e.g, kerbs and changes in surface. This suggests that on the date of first registration the Metal Railings were not in place because the photographs show they were higher than 0.3 m.

52. The title plan for 3JC is also based on OS mapping but shows less detail than the title plan for 2JC. Mr. Jackson says that this indicates that the construction of the estate was still in process. Again, the disputed boundary is shown by a pecked line.

53. Both of the Transfer plans are based on different versions of the same Architects Design Layout. The 2JC Transfer is based on Revision B whereas the 3JC Transfer is based on Revision A. Mr. Jackson notes that there is a discrepancy between the two transfer plans. He has relied on the 2JC Transfer Plan because it was first in time. The vendors could not sell land to the purchasers of 3JC which they had already sold to the purchasers of 2JC.

54. Mr Jackson says:

“4.1.7 I use CAD software to draw my survey plans and this also allows me to create an overlay of the transfer plan for No. 2. Using this as a guide I can then re-establish the location of the ‘paper title boundary’. I have used sensible dimensions to plot the boundary shown by the solid red lines, see survey plan

4.1.8 The brown dashed line is the location of the boundary as shown on the transfer plan for No.3 and there is little difference between Points A to C. But there is a discrepancy between the brown dashed line and the red line, between Points C to E, as shown by the yellow shading.

4.1.9 The grey double hatching shown on my survey plan illustrates the extent of ‘footpath’ as shown on both transfer plans.

4.1.10 The only way to improve on this interpretation would be to reference a digital copy of the Architects Design Layout (CAD file format) upon which the transfers were based.

4.1.11 Using Images 1 & 3 Appendix G, I have plotted on my survey plan, an indicative extent of the driveway/flowerbed prior to the works undertaken by the owner of No.3. This is shown by the green dashed line on the survey plan.

4.1.12 It is evident from images 1 & 3 Appendix G, that what was in situ on the ground, prior to the changes made by the owners of No.3, did not correspond with the design layout of the estate as shown on either of the transfer plans. The extent of the flower bed extended into the land of No. 3 and into land designated as footpath on the transfer plans. . . .”

55. Mr. Russ did not produce a measured plan and explained that he took the view that he was not being instructed as “a boundary consultant but as a surveyor with experience in preparing CPR compliant reports involving boundary disputes”. However, at paragraph 2.03 of his Report, Mr. Russ set out his instructions which included conducting a boundary survey and identifying the physical boundary between the two properties.

56. Mr. Russ agrees with Mr. Jackson’s comments on OS plans and the significance of solid red lines and pecked lines on title plans. He also accepts that:

“3.07 The pecked line on the plan appears to touch the back corner of the main

building of number 2. It then continues in what I would describe as a staggered manner down towards the front boundary”.

57. Mr. Russ went on to consider the Transfer plans and again, he agrees with Mr. Jackson, that there is a discrepancy between the two plans as mentioned above. Mr. Russ felt this discrepancy “raised alarm bells with me as to the accuracy of these plans”. He then embarked on an investigation of the planning documentation for the development and, in particular, the “hard and soft landscape layout” and the “proposed site plan” dated February 2014. These plans show that the proposal in relation to plots 40 and 41 (now 2JC and 3JC) was that there would be a straight boundary from the corner of the garage of number 3 down to the front of the overall plot at its junction with the footpath and highway. Looking at the wider estate, Mr. Russ says, it can be seen that the original intention was that the various plots set out across the estate would be bounded by straight lines.

58. From these planning documents, Mr. Russ concludes:

“3.25 . . .As a consequence I opine that the curved/staggered line shown on plots 40 and 41 on the transfer plans is an anomaly. As such the boundary line as drawn on the transfer plans is logically not likely to be accurate. Indeed by being the only curved/staggered line between the plots on a development of over 600 hundred units it is not only logically incorrect but, I would further opine, that on the balance of probabilities it is only likely to be correct to a factor of 1 in 600, i.e, 0.166%. In other words it is on balance of probabilities more than 99% likely to be wrong”

59. Mr. Russ was asked in questions raised by the Applicant why he had not referred to the footnotes to Plan 2 attached to and referred to in the TP1 for Plot 40 which stated that the boundary for Plot 40 was revised on 8th December 2015 and again on 27th January 2016. Mr. Russ said that these plans (which form part of the 2JC Transfer and 3JC Transfer) were not in evidence at the time he prepared his report. Mr. Russ was also asked why he had not referred to a 2016 planning application in which the site plan showed a diagonal boundary and a 2018 plan which showed the “staggered” boundary and had subsequently been approved. Mr. Russ did not recall whether he had seen these plans but took the view that they were irrelevant because they post-dated the Transfer dates.

60. Mr. Russ also analysed the photographs provided by the Respondents and noted that the planted area which existed before they extended their driveway, is also not shown on the 2014 planning documentation. As regards the Metal Railings and the wooden fence, he says that these fences were along the same line as that on the 2014 planning application plans and would, therefore, in his opinion, have been “what was accepted by the developer as being the boundary between the two plots”. He considers the corelation between the planning permission and the fencing to be “good”.

61. Both parties raised questions of the other side’s expert. Mr. Russ was asked whether he considered that Plan 1 to the Transfers was the dominant description of the relevant boundary. Mr. Russ replied that this was a question of legal interpretation and not one he should have been asked. He confirmed his view that the Transfer plans are flawed and did not accurately show the boundaries.

62. There are two service covers situated in the Respondents’ newly extended driveway. One of these is in the area formerly occupied by the flower bed. Mr. Russ was asked whether he had ascertained which services are accessed via these covers. Mr. Russ said that he had been unable to do so but he thought it likely that they served the surface water system allowing for rainwater to discharge from the driveway. He said that further consideration needed to be given to the overall surface water and foul drainage systems serving each property.

63. As part of his further research, Mr. Russ located the “Flood Risk Assessment and Drainage Strategy” for Cane Hill. Mr Russ said:

“2.72 Section 6.31 of the strategy report (item 1 Appendix 5) states that “the run off from private driveways will drain to traditional gullies within the property boundary that will discharge into a carrier sewer located in the road”. Consequently the document confirms that the surface water chamber then it is logically within the boundary of number 3 as it serves that driveway. It logically does not serve the driveway of number 2 as that driveway is at the far side of number 2 adjacent to number 1 Jenner Close”.

64. Mr. Russ concluded from this that both service covers must have been within 3JC’s boundary. He said in the Joint Report that they are “an intentional design feature to manage surface water runoff from the driveway of (R) property as per approved plans . ..”. He went on to say that “If disputed land is a flower bed there is no need for it to contain a drainage system and an inspection chamber in this area”.

65. The Joint Statement is a lengthy document although the experts did not agree on a anything at all. Large chunks of Mr. Russ’s comments appear to have been written by the Respondents as they concern matters which are outside the scope of the expert’s role and are written in Dr. Noor’s style, for example:

“6. . . .(R) bought property with physical boundary in their full length between the properties and which were erected by builder in line with approved plans.

Why (A) did not raise boundary concerns at time of purchase if it was not according to Transfer plan 2016 and metal railings were ornamental. Why he did not seek clarification or correction of boundary before purchase in 2021 rather trying to raise a dispute afterwards in 2025…”

Conclusions on the Expert Evidence

66. There are a number of difficulties with Mr. Russ’s analysis. The first is that boundaries are not determined by planning documentation but by the terms of the transfer conveying the relevant plot. The primary source of a boundary line between any two properties is the conveyance whereby their ownership is divided. In this case, that was the 2JC Transfer because 2JC was the first of the two properties sold-off. The task of this Tribunal is to consider the Transfer as drafted. Mr. Russ did not attempt to plot the Transfer plans or carry out any measurements.

67. Extrinsic evidence may be relevant in interpreting the operative transfer if there is any ambiguity. However, the extrinsic evidence does not create the boundary. The fact that the developer submitted a different plan in a planning application two years earlier with a straight boundary does not assist in identifying the exact location of a staggered boundary created two years later. It merely shows that the plot was not developed in accordance with the 2014 planning application plan.

68. The second difficulty is that the LPA Plan relied on by Mr. Russ does not represent what was actually built on the estate. For example, a comparison of the 2014 LPA Plan and the “A3 Conveyance Plan” which forms Plan 1 to each of the Transfers, shows that plots 31, 32, and 34 on the latter were built to a completely different design to the houses shown in the LPA Plan. There are numerous other differences between the two plans. The 2014 plans were subsequently revised at least twice. Even if they were revised after the Transfer date, the permission would apply retrospectively.

69. The fact that straight boundaries are preferrable to developers and/or that the majority of the plots on this estate had straight lines also provides no assistance as to where the staggered boundary shown on the 2JC Transfer sits. It is easy to see why the developer would have included a stepped boundary in this case. If a fence was constructed on the “ABC” straight line, it would block the light to the bay window for 2JC as has now happened.

70. A further difficulty with Mr. Russ’s analysis is that the photographs do not show the Metal Railings running along his proposed boundary line but at an entirely different angle much closer to the Applicant’s house. Mr Russ had no personal knowledge of the location of the Metal Railings and there are no signs of its location on the ground. Further as Mr. Russ explained in his report, the registered title plans show the disputed part of the boundary as a pecked line and that this means there was no boundary feature higher than 0.30 m at the time the titles were registered. This, together with the early photographs indicates that the Metal Railings were not in place at the date of the Transfers.

71. Even if the Metal Railings had been in place at the time of the 2JC Transfer and had run along the ABC line proposed by Mr. Russ, the Metal Railings did not reflect the what was transferred by the 2JC Transfer.

72. In Beale v Harvey [2003] EWCA Civ 1883 the plan used in the transfer was based on an architect’s drawing which pre-dated the erection of a wall and fence along the boundary line. However, the boundary line on the plan did not exactly match that on the ground. Peter Gibson LJ had no doubt in determining that as the physical “boundary” features had been erected after the transfer, they could not determine where the boundary was. It remained as per the plan, albeit that that did not represent the physical construction. Absent any indication, whether from the transfer or the extant surrounding circumstances that the boundary line was to be other than on the plan, where that line could be ascertained with sufficient certainty, it would prevail over the arrival of subsequent topographical features that would tend to suggest that the boundary was elsewhere.

73. Mr. Karim submitted that the boundary could be determined from the Flood Risk Assessment and Drainage Strategy Report plan shown below. This plan shows the service covers in different places to those on the ground and pre-dates the Transfers by some years. Mr. Russ’s conclusions based on his assertion that both service covers serve 3JC’s driveway are, in my judgment, unsustainable. First, the Respondents have not proved that the two service covers do serve only 3JC. Secondly the eastern service cover was located in the planted area until August 2021 so did not serve the Respondents’ driveway and thirdly, the Transfers include extensive easements for the passage of services over neighbouring properties meaning that the exact location of the service runs didn’t matter.

A close-up of a map

AI-generated content may be incorrect.

74. As regards Mr. Jackson’s evidence, I accept that the only plan which is relevant is the plan attached to the Determined Boundary Application (the DBA Plan). A number of other versions of this plan have been produced but are of no relevance unless they prove that the DBA Plan is inaccurate.

75. Mr. Russ has not commented on the accuracy of the DBA Plan in either his Expert’s Report or in his answers to questions raised by the Applicant. He has not challenged any of the measurements contained in the DBA Plan or provided any alternative measurements. This is because the DBA Plan is based on the 2JC Transfer Plan which Mr. Russ considered irrelevant because it was, he said, 99% likely to be inaccurate.

76. Mr. Russ addressed Mr. Jackson’s plans for the first time in the Joint Report. His main concern was what he called “the new measured survey plan” which includes “alleged line of metal railing”. This part of his report appears to have been either written by Dr. Noor or on her instructions because much of the detail would not have been known to Mr. Russ. As the Metal Railings are no longer there, the indicative location does not assist with the plotting of the determined boundary.

77. The Respondents vehemently object to this second plan and describe it as “falsified”. They claim that it was backdated and that there were discrepancies between this plan and the DBA plan. I shall refer to this plan as the Disputed Plan. As set out above, I have based my findings on the location of the Metal Railings not on the Disputed Plan but on the photographs and documentation.

78. The Respondents also object to another plan disclosed by the Applicant which was also produced by Mr. Jackson (”the Second Disputed Plan). The plan is dated the same date as the DBA Plan but shows different data points. It appears to be a working document from which the DBA Plan was produced. The various measurements are taken from different points on the ground to those shown on the DBA Plan.

79. Mr. Karim took me through the alleged discrepancies between the DBA Plan and the Second Disputed Plan. He pointed out that different lettering had been used and different data points had been used. This gave rise to different measurements. As Mr. Russ had not checked any of these measurements, Mr. Karim could not say whether these measurements were wrong or inconsistent with the DBA Plan. The only measurement which at first blush appeared to be inconsistent was the measurement between points A and J on the Second Disputed Plan which marked the distance between the paper boundary and the edge of the Respondents’ new driveway where it meets the pavement. This was shown on the Second Disputed Plan” as 1.28 m whereas it is shown on the DBA Plan as 1.31 m. However, the difference is accounted for by the fact that point J on the former plan is stated to be “Junction of Edging (Centre Lines) whereas the measurement on the DBA Plan is to the outer point of the edging.

80. I do not find Mr. Russ’s evidence of any assistance on the question of the extent of the land conveyed by the 2JC Transfer or the 3JC Transfer because he simply did not address this question. Instead, he considered what he thought should have been conveyed. This was not the issue before the Tribunal and there was no claim for rectification of the Transfers or the register by either party.

81. I do not consider that the fact that Mr. Jackson produced additional plans affects the validity of the application. The plan the Applicant relies on is the DBA plan and neither the Respondents or Mr. Russ have challenged the accuracy of the measurements on that plan.

82. Rules 118 and 119 of the Land Registration Rules 2003 provide:

118. (1) A proprietor of a registered estate may apply to the registrar for the exact line of the boundary of that registered estate to be determined.

(2) An application under paragraph (1) must be made in Form DB and be accompanied by –

(a) a plan, or a plan and a verbal description, identifying the exact line of the boundary claimed and showing sufficient surrounding physical features to allow the general position of the boundary to be drawn on the Ordnance Survey map, and

(b) evidence to establish the exact line of the boundary.

119.—(1) Where the registrar is satisfied that -

(a) the plan, or plan and verbal description, supplied in accordance with rule 118(2)(a) identifies the exact line of the boundary claimed,

(b) the applicant has shown an arguable case that the exact line of the boundary is in the position shown on the plan, or plan and verbal description, supplied in accordance with rule 118(2)(a), and

(c) he can identify all the owners of the land adjoining the boundary to be determined and has an address at which each owner may be given notice,

he must give the owners of the land adjoining the boundary to be determined (except the applicant) notice of the application to determine the exact line of the boundary and of the effect of paragraph (6). . . .

(6) Unless any recipient of the notice objects to the application to determine the exact line of the boundary within the time fixed by the notice (as extended under paragraph (5), if applicable), the registrar must complete the application.

(7) Where the registrar is not satisfied as to paragraph (1)(a), (b) and (c), he must cancel the application.

83. The Land Registry was satisfied that the requirements of Rules 118 and 119 were fulfilled before it referred the Respondents’ objection to this Tribunal. Accordingly, I am satisfied that the DBA Plan complies with the requirements of Rules 118 and 119. I therefore find that the determined boundary of the land conveyed to the Applicant’ predecessor in title by the 2JC Transfer and then to the Applicant is as set out in the DBA Plan. This leaves the question of whether that boundary has been altered by a Boundary Agreement.

Boundary Agreement

84. Although both the Objection and the Respondents’ Statement of Case assert that there was a boundary agreement which displaced the legal boundary, this was not an argument which was pursued with any vigour by Mr. Karim. I asked Mr. Karim whether this argument was pursued and he asked me to consider it in my Decision on the basis of the Respondents’ case that there was an inferred boundary agreement. Dr Noor also confirmed in oral evidence that the Respondents were not claiming that there was any express agreement between their predecessors in title but rather that an agreement could be inferred from their actions.

85. The Respondents’ Statement of Case asserts that “a boundary agreement was entered into between (1) Mr and Mrs Long and (2) Mr and Mrs Bailey as respective owners of 2 and 3 Jenner Close” and that the agreed boundary was marked approximately ABC on the Plan to the Statement of Case. As set out above, that line runs along the edge of the Respondents’ newly constructed driveway.

86. The Respondents’ Statement of Case claims that the evidence in support of the existence of a boundary agreement is (1) the location of the wooden fence (2), the location of the metal fence (3) the plans approved by Croydon Council and/or the Greater London Authority (4) that the straight wooden fence and metal fence were erected prior to the Transfers (5) the fact that the driveway as originally constructed was not the recommended width of 5.5-6 metres for double garages and/or was not compliant with the approved plans (6) the fact that 2 Jenner Close was not erected perpendicular to the road (7) Mr and Mrs Long being in exclusive possession and/or actual occupation of the garden to the West of the Metal Fence (8) Mr. and Mrs Long having responsibility for the tending to the Garden and (9) Mr and Mrs. Long representing to the Respondents prior to the 2019 Conveyance that the boundary was marked approximately ABC on the Plan up to but not including the metal fence.

87. There was no evidence from either the Longs or the Baileys and it is not clear whether either of them lived in Jenner Close as both properties continued to be used as show homes. The Respondents did not disclose their original conveyancing file so they could not show what representations, if any, Mr and Mrs. Long made to them. It is clear from the email from the Baileys’ solicitors to the Applicant’s solicitors dated 16th February 2021, that the Baileys did not agree that the Metal Railings were the boundary.

88. The Longs did not have responsibility for tending the Garden to the West of the metal fence under the terms of the 3 JC Transfer and there was no evidence that they ever did so. As regards the parties, both claimed to have tended the planted area.

89. As regards the location of the Metal Railings, there is no evidence that there was any fence between 2JC and 3JC prior to the Respondents’ first viewing in 2019. As the Respondents acknowledged, they did not know when the fence was erected and the photographs indicate that there was no such fence at the time of the original transfers in 2016. There is also no evidence at all to show that the Metal Railings were ever along the line ABC. The photographs show that by the time the Respondents viewed 3JC, the Metal Railings ran close to and parallel to the south western side of the Applicant’s house. The wooden fence only runs for a short distance.

90. In my judgment, the other factors are not such as to give rise to an inference of a boundary agreement.

91. Dr Noor stated in her email dated 1st February ~~2020~~ 2021 that the Metal Railings had been moved in 2019 and were removed altogether in January 2021 ~~2020~~. It appears therefore that they were located in their final position for a relatively short period. I do not accept that there is sufficient evidence here from which to infer the existence of a boundary agreement.

Conclusion

92. The Applicant’s application succeeds and I shall direct the Registrar to give effect to the application.

93. As regards costs, the usual order is that costs follow the event which means that the Respondents should pay the Applicant’s costs of the application from the date it was transferred to this Tribunal. The parties may, by 5pm on 12th September 2025 file and serve any applications and submissions in relation to the costs of these proceedings. Any party seeking an order for payment of their costs shall also file a schedule of costs, in or substantially in the form of Court Form N260 for the purposes of a potential summary assessment. Thereafter, I shall determine the issue of liability for costs and give any necessary further directions for the assessment of the costs awarded.

Judge Nicola Muir

Dated this 15th August 2025

BY ORDER OF THE TRIBUNAL.