



How to Deal with Neighbour Disputes

working
with you,
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Stephensons

Our dispute resolution team have created this guide to summarise the stages of making a neighbour dispute claim. This guide is a brief overview of a complex and difficult area of law. It is not intended as legal advice and you should seek specific advice on your situation.

Introduction

You really don't want to be involved in a neighbour dispute if at all possible. The legal costs involved can be frightening. People have lost their houses in these kinds of cases.

If you can, you should try to resolve things peacefully and quickly with your neighbour. Have a brew. Invite them round for a beer or glass of wine. Work through a mutual contact. It's worth trying anything to peacefully resolve the issues, without incurring legal fees.

But there is an emotional cost as well. You have to live next to your neighbour whilst fighting them in court. It's like a divorce where you can't get away from each other and it's a long road - many years in some cases. We have seen the negative effect on people's health over and over again.

In some cases it may be easier to sell up than fight on but you need to make this decision early on in the case. Buyer's solicitors usually ask if there is any disputes with the neighbours. As soon as you are in a dispute, you need to

answer that question honestly. Most buyers will run a mile.

Mediation

One of the first ways to try to resolve a neighbour dispute is to take part in mediation. This is when a neutral professional problem solver tries to move both parties towards an agreement that you can live with. This method can allow a whole set of creative solutions that were not involved in the original dispute. For example, we have seen cases where small sections of land, fairly useless to one party, have been transferred to the other to solve access disputes, or where derelict garden areas have been landscaped and shared to both neighbours' benefit.

The key to successful mediation is choosing a good mediator; someone who can really work to put pressure on both neighbours to resolve the situation.

How to Deal with Neighbour Disputes

You don't need a lawyer in order to mediate; however, using a legal professional can help to define the issues, focus the negotiation, and implement the agreement afterwards. It is also better to know the strengths and weaknesses of your case before the mediation.

Choosing a lawyer

When choosing a lawyer for your case you need to instruct a professional who is completely knowledgeable in the law surrounding these disputes. It is no good using someone who dabbles in neighbour disputes; do you want to risk your home based on the advice of someone who is not an expert? Often inexperienced solicitors fail to advise their client to accept a very reasonable offer (see offers).

How do you know if a solicitor is right for your claim?

- They will be proactive, they won't sit on issues for weeks on end.
- They will be honest and tell you which aspects of your claim are strong and which are not.
- They will communicate clearly with you, and with all parties of the case.

Good solicitors will work in teams. There will be different people who help you with your case within the office and there may be also a barrister that deals with certain parts of the case. You are essentially buying in special skills, such as advocacy. Again the barrister needs to meet the same criteria - a proactive specialist, who communicates well.

Keep your evidence

If the dispute looks like it can't be resolved then you need to make sure that you get your evidence together:

Land registry information - this is publicly available information that can be searched online. See www.landregistry.gov.uk
Please note that the land registry plan does not define your boundary (see boundaries below)

Deeds - these are crucial, particularly in boundary disputes. If you don't have these at home they may be with your solicitor or lender. However, recently some lenders have been destroying deeds rather than storing them. If they allege that, then make a complaint and data protection act request. You'll need to send them £10 with the latter request. Copies or original deeds may then emerge. There are some other local registers of deeds that on rare occasions may hold copies of older paperwork*

Your solicitor's file - request the file from the solicitor you used to buy the house. They may have additional copies of paperwork. Most solicitors only keep purchase files for 12 years, but some destroy them earlier, so act quickly. If the firm has merged the Law Society may be able to tell you who it merged with. If the firm was closed down, then some files are kept by the Solicitors Regulation Authority.

Photographs - you need to ensure an accurate picture is presented of the position before and after the dispute. You may have to hunt through family albums to find pictures of the disputed area e.g. family photos in the garden/at the front door/pictures of vehicles parked near the relevant point. It is crucial that you keep hold of these originals.

Aerial photographs - most properties in the UK have been photographed from the air over time. The National Monuments Archive keeps a record of some of these, which can be searched. You may be able to see a feature on the ground develop over the years. See [English Heritage - Archives & Collections](#)

Video - you may have family video showing the situation prior to any dispute. It may also be useful to take footage along the disputed area, so that further details can be picked up.

How to Deal with Neighbour Disputes

Witness statements - if you can find the previous owners of the property this can really help. Other neighbours can also be useful. They may have insight as to what was there before, and on what they and their neighbours did.

Plans and other documents can be useful - this might include planning applications or building regulation approvals with local authorities.

Keep a diary - just a factual record of what happened when.

A word about CCTV - it can be very useful. But make sure it doesn't point on to your neighbour's land. This is a possible breach of their privacy. You can only cover your own property, or public spaces. Even with the latter it may breach privacy.

New evidence can cause cases to collapse, even at a very late stage. It is your responsibility to obtain the evidence as early as you can.

With all this evidence you need to keep it safe. There is no point in gathering it and then losing a crucial document.

*Deeds registries that hold some deeds

North Riding deeds from 1704 to 1970 (held at North Yorkshire Archives)

East Riding deeds from 1708 to April 1974 (held at the East Riding Archives)

West Yorkshire deeds from 1704 to September 1970 (held at Wakefield Archives)

Middlesex deeds from 1709 to 1938 (held at London Metropolitan Archives)

Expert evidence

You may well need to instruct an expert in your case. You should choose someone who has as much experience as possible in that field. They must also have experience of giving evidence in court - the more they have been cross examined by a hostile legal team, then the more accurate their initial opinion is likely to be.

You should refer the expert to CPR 35 - this is the standard of expert report required by the **Civil Procedure Rules** that govern disputes in court. Good experts will know about this anyway.

Please remember that an expert's primary duty is to the court. If they are willing to change their opinion to match your view, then you may come unstuck in the future. Again, you wouldn't want to risk your home based on an unreliable expert.

Funding

There are different ways to fund a legal case. Please note that Legal Aid is simply not available for most neighbour disputes. The only slight possibility is for pure harassment cases. This is only granted if there has been violence, or threats of violence. The police should have been contacted, and may well refuse to take action. Only then will Legal Aid be considered. However, it is not often granted even with these conditions.

You should carefully check whether you have Legal Expense Insurance (LEI) available to you. This may be attached to any insurance policy you hold including home or contents, or vehicle policy. Credit cards sometimes provide this cover, as do memberships of some organisations including chambers of commerce or business associations. If you are a member of a union or trade group, they may also provide some cover.

How to Deal with Neighbour Disputes

If you do hold such a LEI policy, please ring the helpline number they provide. Ask for the forms to make a claim. We can then assist you to complete these, and seek cover for you.

LEI companies have reporting deadlines - you should report your potential case to them very quickly, to ensure that you get cover. The LEI company will want you to use their own solicitors. You have the right to choose a solicitor once a court case is started. We can assist you with this decision.

Alternatively you may need to fund your case privately. This will usually involve paying some money up front, and then making regular payments throughout the case. Please note that costs escalate dramatically around the time of any trial.

Pre-action conduct

Using the courts should be a last resort to resolve a dispute as the courts expect you to give your opponent a chance to resolve issues. A detailed letter of claim will be needed, setting out what has happened, the law involved, and the remedy that is needed to prevent court action.

Your opponent should be given a reasonable opportunity to respond, this is usually to acknowledge the letter within 21 days. There then maybe a further 30 to 90 day period allowed to investigate the claim. The more complicated the situation, then the longer period is required.

However, in some urgent circumstances, court papers may follow more quickly. This is particularly where access is required, or damage is being caused (see injunctions below).

It may be wise to look at your opponent's assets before starting the case. This will give you an idea of whether they are worth suing. You may just be throwing good money after bad. This can be undertaken by obtaining a pre-sue report.

Offers

You need to make a reasonable offer early in the case. It must be lower than the maximum amount of your case. It needs to be in the correct format, which changes if you are a claimant or defendant. All offers should have the words "without prejudice save as to costs" in clear writing. It avoids confusion later on.

If the offer is accepted that is the end of the case. You must therefore be willing to live with the terms of the offer that you make.

However, if the offer is not accepted, the "without prejudice save as to costs" phrase above will mean that a Judge is not allowed to see the offer until after a trial. If you beat that offer at trial you are likely to recover a higher proportion of your costs from your opponent. You may also get a higher interest rate on the costs and the damages. It is very important to get that offer right.

Similarly if your opponent makes an offer you may end up paying a higher level of their costs.

You should therefore negotiate very carefully, not giving everything away at the beginning. This is one of the areas where a specialist lawyer can really add value.

Venue

Should you start a case at the Land Registry or in court?

The Land Registry procedure is initially less formal, and includes opportunity for resolving the case by other means, such as land registry officers assessing the land. However, the evidence works on pretty much the same basis as the court. Certainly the hearings are quite formal, as they are undertaken in the First Tier Tribunal (**Property Chamber**).

The large drawback is that the Property Chamber does not have the full powers of the court. This is particularly the case with injunctions. So if you are seeking an order to force your neighbour to do something, the court is more appropriate. This may be to move a boundary, to stop blocking your access, or to stop building work that encroaches on to your land.

There are also some cases that only the Tribunal can deal with, such as varying a covenant.

Interim injunctions

This is perhaps one of the most difficult issues to consider – should you apply for an order from the court that would stop your opponent doing something immediately.

This can mean, for example, that a court stops your opponent building, or grants you access to land, but on an interim basis.

The court may allow this order to remain in place during the case, and reconsider it at the final hearing. However, the danger is that you have to sign an undertaking in damages: This means that if the injunction is found to be wrongly applied, you will have to pay money in damages to your opponent. It is an increased risk to you. These are also not easy court orders to obtain.

The court will only grant an injunction if each of the following is met:

- you have a strong case
- that money (damages) would not compensate you adequately
- it considers the balance of convenience is in your favour
- and that the status quo should not be maintained.

If the court concludes that you have partially caused the problem, or been overly aggressive or inappropriate with your neighbour, then it may not grant an injunction. It is a discretionary remedy, giving a Judge a broad range to grant or refuse an order. The saying is that you need to come to court with “clean hands”.

Specific disputes

Boundaries

These are often the most complicated disputes. The first key point to remember is the Land Registry plan does not determine your boundary. It is only a general indication of the boundary (known as the general boundaries rule). Any report or letter that seeks to rely on the Land Registry plan is a bit of a ‘chocolate fireguard’.



Instead you need to rely on the deed where your land was first split off from the land around it. So on an estate of houses, this will often be the first transfer around the time the house was built, when it was first divided from the other building plots.

On older property the deed could be long ago. The more original copy of that deed, and the more detailed the attached plan, the better.

How to Deal with Neighbour Disputes

If you can't find the deed at all it may be difficult to win a case.

You will need to look at the deed to see how the land is described - is there a very clear description that can be relied upon. Probably not as most deeds refer to a plan. They will usually say one of two things:

- the property more particularly delineated on the plan attached - this means the plan should define the boundary. If there is a conflict with the description in the deed, the plan is relied on.
- the property shown for identification purposes only on the plan attached - this is the opposite situation - the deed description defines the land. If there is a conflict with the plan, then the description is relied on.

Sometimes both of these phrases are used together ie the land more particularly delineated shown for identification purposes only.

In any of these three situations, the court will look for clear evidence of what was intended at the time of the deed. If the description is not clear, and the plan is clear, then the plan will probably be relied upon, even if it is said to be "for identification only". In fact the clearer the plan, the more likely it will be relied on. However, many of those plans were drawn very poorly.

So what happens then?

If the deed is unclear, the court will look at other evidence around the time of the transfer to determine the boundary. This may be where the other evidence you have gathered comes into play (see keep your evidence above).

Increasingly, Judges will come and look at a site at some point in a trial. If they see large physical structures that look long standing, then they may reach a conclusion that is where the boundary has always been. You may need to gather evidence to show that those features are recent, or wrongly located.

If you can gather the evidence listed above (see "Evidence") then it may assist your case. Please remember that witness evidence can be unreliable. Whilst previous owners can be crucial to winning your case, they can also destroy it with a careless word or phrase.

Access/Rights of Way

These are essentially rights to cross other people's land. They are often called easements.

The most common ones are:

- access to walk or drive to your property
- drains passing from your house under other land and then into the drainage system/to a septic tank
- utilities that pass under other land to your house - gas, water, electric, telephone

Easements can be attached to a property in several ways:

- included in writing in a deed when the land is sold
- given in a separate deed that just deals with that particular easement
- if the easement was used immediately before the land was split off from common ownership
- if the property would be landlocked without the easement
- if the easement has been used for a long time, usually 20 years

Each of these possibilities needs detailed examination by a specialist. There are huge individual textbooks just on this issue of rights of way (see gale on easements for example).



How to Deal with Neighbour Disputes

However, to establish that an easement has been used for 20 years, the access must have been used without force, without permission and without being hidden (“nec vi nec claim nec precario”). So for example, forcing a lock off a gate, in the middle of the night, would not count towards the 20 years use.

One common area of dispute is whether someone has gained a right to park by leaving their car in the same spot on someone else’s land for 20 years. Recent cases suggest that this is possible, provided that the other owner doesn’t effectively lose complete ownership of that parking spot. So parking overnight is more likely to be gained than completely abandoning a vehicle in one place for 20 years.

Blocked Rights of Way

If an easement is blocked, then you may need to seek a court order. You have to prove the easement is legally in place (see access/rights of way above). You then have to show that there has been a “substantial interference” with your right. So if a road way is narrowed but still useable, you may not succeed in court. It has to be a substantial interference not just more difficult to use.



Similarly it may be possible for a landowner to divert the track on their land eg to go round an extension. If it is still useable, there may not be a substantial interference.

This is decided on a case by case basis, sometimes by looking at the easements on site. Experts may be required to determine whether an easement is still usable.

Nuisance

Nuisance goes beyond damage being caused to your property. It can also be caused when your neighbour uses their property or behaves in a way which has detrimental effect on your property. It does not necessarily have a physical effect - your neighbour may be creating noise, or their use of the land causes odours or vermin for example.



The standard the court will look at is the character of your neighbourhood. If you live next to a factory, it is likely to make more noise than a field of grain, or a field of sheep. So you should expect more noise and smell in an industrial area.

When there is no physical damage, it can often feel as though nobody else understands just how bad things are for you as a homeowner. However, making people understand just what life is like and how bad conditions at your property are is crucial. Whilst your own account about the nuisance and the effects on you is hugely important, it is only half the picture. Below is a checklist of the sort of evidence you need to succeed:

Keep a diary

Whilst we are not suggesting you let the dispute take over your life, keep a log of dates and times when the noise, odour etc is present. Note down the weather conditions or anything else which stands down as unusual about the day. These diary sheets can be sent to the local authority as evidence or can be used to back up your own statement. The diary needs to be consistent and regular. A good diary is invaluable evidence as often it is unlikely an opponent will have detailed knowledge of what happened on specific dates to counter you.

Take photographs

Seems obvious? Often clients come to us describing situations which would be far better explained by a photograph. Imagine a judge considering your case just sat in a courtroom. You need to show them what it’s like on the ground and make them understand the layout quickly. Photographs are also essential in showing any changes on site, for example, expansion or other developments, or items being moved around.

How to Deal with Neighbour Disputes

Do your research

Always try to establish the history of the sites and properties in question. Sometimes it may be obvious, for example if it is residential property in a street of houses. Sometimes, the history may be less clear, for example agricultural land. It is essential to work out if the land has any planning permissions or specific status of use. We can assist you with this.

Eliminate other possible causes

Sometimes the cause of the nuisance may be obvious – like your neighbour playing loud music into the early hours. But what if the nuisance is odour coming from a nearby farm? You need to be able to isolate that specific farm as the cause and eliminate all other potential sources, for example other farms even if further away, or fields nearby where crops are grown. Identifying the source of the nuisance is crucial if you are to succeed. It is usually a matter for the experts, which leads me onto point 5.

Call in the experts

Nuisance claims based on loss of amenity, like noise or odour, can win or lose depending on the quality of expert evidence. Whilst ultimately, it is up to a judge to decide whether nuisance exists, they will be led by an expert opinion. Selecting an appropriate expert is crucial. We cannot emphasise this enough. It is essential to choose someone with not only the relevant qualifications, but also experience in being an expert witness in litigation. Don't be fooled by those offering cheaper fees; it is often a false economy meaning you may need to pay for further expert evidence in the future, by when it may be too late. You need someone who knows the court rules and most importantly is prepared to stick by their opinion even when being cross-examined.

Stephensons can provide advice about expert evidence drawing on our extensive experience.

... and finally, don't hang around

In nuisance cases, it is essential that you act swiftly, as delay is a factor the court looks at when deciding what remedy to award.

Hedges

The right hedge is a great boundary feature. The wrong hedge can cause years of problems between neighbours.



If a hedge is encroaching you should offer your neighbour the opportunity to trim the tree or hedge first. If they don't respond within 21 days, or disagree with you, then you can act reasonably.

You are allowed to trim a hedge if it crosses your boundary. If the boundary is not clear then allow yourself a margin of error i.e. don't cut right up to the boundary! You also shouldn't cause fatal damage to a tree or shrub. You don't want to be accused of damaging the hedge beyond the boundary, or being ordered to pay money to your neighbour for the damage caused.

Any cuttings should be offered to your neighbour. If they don't want them then you can dispose of them (preferably using an appropriate recycling service).

However, some hedges simply get out of hand - allowed to grow entirely on your neighbour's land, but blocking out all your light.

In some cases a local authority can help - using their powers in part 8 of the Anti-social Behaviour Act 2003.

As set out above (see "pre action conduct") a local authority will expect you to have tried to resolve any dispute with your neighbour. They will also want you to have done that recently.

How to Deal with Neighbour Disputes

You will then need to apply to your council, and pay them a fee. This varies between local authorities, and you can't get it back usually. The local authority can help if all of the following are met:

- you must be the owner or occupier of residential property
- the hedge has to be growing on land owned by someone else
- it has to be made up of 2 or more trees or shrubs
- it has to be mostly evergreen or semi-evergreen
- it has to be more than 2 metres tall
- even though there may be gaps, is the hedge still capable of obstructing light or views

The Council will then decide if the hedge is affecting the reasonable enjoyment of your property. They may then force your neighbour to take action. Please note that this is not guaranteed, and that councils make a wide variety of decisions in these situations.

There is a useful leaflet at [Gov.UK High Hedges Complaining](#).

Tree roots

Funnily enough tree roots don't respect boundaries either. They just grow towards a water source. This can cause problems with walls, foundations, drains, drives or other paved areas.



Please beware that some trees are protected by Tree Preservation Orders (TPO). Any damage to them may be a criminal offence. You should have been informed of any TPOs when you bought the property, or when the local authority granted the TPO. You can check the position with the council. There is an application process with the local authority to deal with a tree affected by a TPO.

Speak to your neighbour first to try to resolve the issue amicably; they may be sick of the tree roots as well! However, if the tree is entirely on your land, it's your problem - you can sort it out.

If it's on your neighbour's land, or shared, then you can't simply cut it down. That would be a trespass and could lead to a damages claim against you.

You can seek that your neighbour repairs the damage caused by the tree. This may well lead to their insurers getting involved. Don't allow them to drag out the claim. They must stick to the same time limits as your neighbour.

You will have to prove that the damage is caused by the particular tree. Your neighbour may claim it is due to other trees on someone else's land (including yours!). Again, an expert may be required to assist you here.

It may be possible to install a root barrier. This will be a solid structure of some kind that prevents the roots encroaching again. The root barrier and any "surgery" to the roots must not destabilise the tree. We have seen cases where storms have caused large trees to fall following alterations to root structure. Again, you need to be careful to follow expert advice here.

Please note that several insurers have signed up to the Domestic Subsidence Tree Root Claims Agreement. This is a voluntary agreement that means the participating insurers won't sue each other for tree root damage. So if your house is damaged by roots, your insurer may not seek to recover the cost from your neighbour. This seems to only apply to the first claim. If the neighbour is warned, and fails to control the tree roots, then the Agreement may not apply.

Party Wall Act



The Party Wall Act requires you to serve a notice (PWA notice) if you are doing work on or near a boundary. The precise conditions are laid out in the Act, but essentially apply when:

- you are working on the boundary structure itself
- you need to overhang the boundary in any way
- you are excavating near the boundary

You should choose a specialist surveyor for this process, which aims to resolve these disputes without the need for lawyers.

If a PWA notice is served, your neighbour may simply agree the works proposed however they may object and appoint their own surveyor. You must then meet both surveyor's costs as they aim to agree a solution. If they cannot agree, then a third surveyor may be appointed to resolve the differences, and make an award under the Party Wall Act (PWA award).

Once a PWA award is in place, it protects you when you do development work. So if the notice says you are going to knock a wall down, even where it crosses the boundary, then you are ok to do so. Your opponent is unlikely to be able to challenge this in court, provided you act reasonably and make good any damage in accordance with the PWA award.

However, if you go beyond a PWA award, or indeed don't get one at all, then you may face substantial difficulties. Judges are increasingly willing to order that all work should stop in a case like this. So if the PWA award allows you to knock one wall down, but you demolish another, the court may well stop you doing any building work in the area of the second wall.

Breach of the Party Wall Act doesn't lead to automatic penalties; but you run the risk of a Judge making an injunction against you to stop building work. You also run the risk of other remedies being sought against you.

Remedies

So what are you seeking in your case? Judges will sometimes award damages for a neighbour's actions. However, these are not the sort of cases where huge amounts of money are made. Small boundary issues, can be awarded as little as £1.

On a nuisance case, again a Judge may award a very small amount if the damage is minimal.

If you are seeking an injunction at a final hearing then the same conditions apply as with Interim Injunctions, apart from undertakings in damages.

So the court will only grant an injunction if each of the following is met:

- you have a strong case
- money (damages) would not compensate you adequately
- the balance of convenience is in your favour
- the court concludes that the status quo should not be maintained

Please note the second condition – if the court concludes that money is an adequate remedy, then you may only get a small amount of damages, as opposed to the injunction.

If the court concludes that you have partially caused the problem, or been overly aggressive or inappropriate with your neighbour, then it may not grant an injunction. It is a discretionary remedy, giving a Judge a broad range to grant or refuse an order. The saying is that you need to come to court with "clean hands".

How to Deal with Neighbour Disputes

Enforcement

Sadly, obtaining a court order may not bring an end to the case. Your opponent may then refuse to comply. You may need to make a further application to court for a penal notice to be attached to the order. This is a warning that if your opponent fails to comply, they may face penalties which include fines or imprisonment. Funnily enough, Judges don't like it when their orders are ignored.

If an order with a penal notice is not complied with, then you need to make an application for a penalty to be applied. Ultimately this may lead to a prison sentence for a disobedient opponent.

If the court orders your opponent to pay costs or damages, you may again need to force payment from them. The County court produces a series of leaflets on enforcement of judgements, which are helpful - **Enfore a Judgment**

It may be wise to look at your opponent's assets before starting the case. This will give you an idea of whether they are worth suing. You may just be throwing good money after bad. This can be undertaken by obtaining a pre-sue report.

About Us

Stephensons specialist neighbour disputes solicitors and lawyers have extensive experience in successfully resolving all manner of neighbour disputes. Whether it is regarding boundaries, trees, blocked access or neighbour nuisance we have the experience to amicably resolve what can prove to be an extremely stressful and distressing situation.

Our neighbour disputes team are dedicated to finding quick and cost effective solutions to your situation, using alternative dispute resolution such as mediation to avoid court action if possible. Our solicitors recognise the importance of expert evidence and have built up a national network of contacts that can be called upon to help resolve your dispute the quickest and most cost effective manner.

If you have a legal concern we would welcome the opportunity to discuss it with you and provide some advice.

Working with you, for you

At Stephensons our clients are real people and they live and work in the real world - which at times can be an unpredictable place. But whatever it throws at them we're never far away to help. Because we're real people too and we understand our clients needs. Our similarities mean we can work side-by-side to get the best outcome possible. It also means we can tailor our legal costs and services to lots of different circumstances. Ensuring everyone gets the representation and result they deserve for their individual circumstances. Our business is to deliver legal services that work for our clients, you can trust our specialists to take care of things on your behalf.

Call us on **0333 344 4885** or email **enquiries@stephensons.co.uk**
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