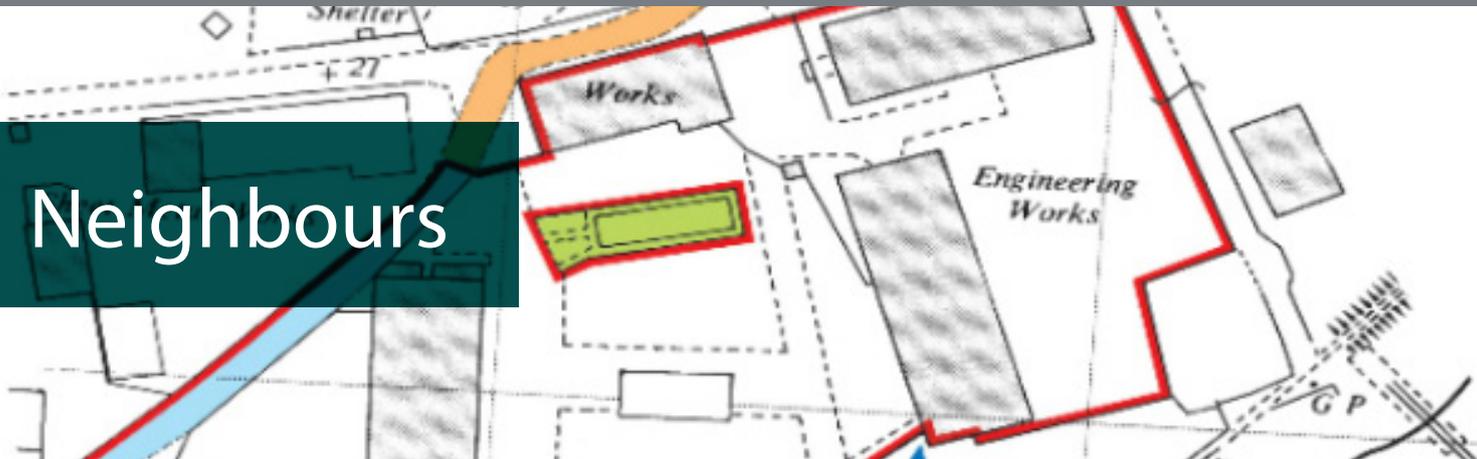


## Neighbours



Disputes with neighbours are tricky because you cannot escape the conflict when they are living close by or perhaps even next door to you. In this factsheet we look at common causes of disputes between neighbours, including boundaries, access to neighbouring land, nuisance neighbours and what the law says about these issues.

### 1. Boundaries

Neighbours can fall out over boundaries. They may dispute where the exact line of the boundary is and who is responsible for the repair of any boundary structure. This can affect not only relations between neighbours but sometimes the building of an extension or other enjoyment of the property. Here we address some of the common issues.

#### Plans

The starting point to establish any boundary is the title plan. Each property sold in England and Wales has the legal title registered at the Land Registry and a title plan is provided as part of that registration.

Whilst this is provided by the Land Registry the boundaries drawn on the plan are not guaranteed. The plan is stated as being provided for general information only. The exact extent of the boundary should have been detailed when the land was originally divided which may have been many years ago. If you do not have a copy of the filed title plan for your property you can get one from the land registry [here](#).

#### Boundary structures – walls, fences, hedges etc

Sometimes the law helps with the boundary line by providing a legal presumption which can apply. For example:

**Beaches:** If your property is bounded by a beach, the boundary is usually the high water mark.

**Fences:** These are generally presumed to be erected by the owner of the land on which they are situated and the boundary line is therefore the outer edge. With a usual panel fence the boundary is the 'good' side and the 'ugly' side will be on the side of the owner of the fence.

**Hedges and ditches:** These have a special rule that generally applies to agricultural land. In this case the boundary is the far side of the ditch from the hedge.

**Hedges:** In residential areas, hedges will be planted on the land to which they belong – the roots are usually on the land owned by the planter of the hedge. However, hedges are a living thing and over years it may have grown and the exact boundary line may be in the hedge itself.

**Houses:** Houses along a boundary line show a boundary as the outer face of the building with the eaves and footings being conveyed with the house but technically on adjoining land. The transfer of any land usually contains a right of way for the eaves and foundations on over/under adjoining property.

We often receive calls from property owners who may have a query about a boundary and how to establish where the true line is. Very often they may have fallen out with a neighbour about this. The resolution of such a dispute may require investigation. To do this:

- Obtain a copy of the title plan to your property (see above).
- Obtain a copy of the title plan to your neighbour's property (see above).



- Check that the fence or other boundary structure follows the line on those plans. NB remember that the plans are for general use only.
- Check if there are any other documents filed at the land registry that define the boundaries more accurately.
- Check any information provided by the seller of your property when you bought it.
- Try and reach an agreement with your neighbour. Sometimes a surveyor can help you do this and prepare a detailed plan.
- Agree this with your neighbour and send this to the Land Registry with an application to determine the exact line of the boundary - see [here](#).
- Apply to have your agreement added to your property details and that of your neighbour. See the Register details [here](#).

You can find out more about boundary agreements [here](#) on the Land Registry website.

## Repairing boundary walls and fences

We are frequently asked who is responsible for maintaining a boundary fence or wall. The first question is who does the wall/fence belong to? This means you will need to find out where the boundary to your property finishes.

Once you have done this you should check:

- Is there an agreement with your neighbour as to which property owner is responsible for the fence/wall. Is there, for example, a general acceptance in your road that the fence on the right/left belongs to you and is the same for all other home owners in your immediate neighbourhood?
- Is there anything on your deeds that refers to a responsibility for a fence/wall marked with an inward

'T'. This is very common with new build properties.

- Is there anything in your deeds referring to a responsibility to maintain/repair the boundary fence/wall?

Generally, even if there is clear evidence about who owns the fence or wall, there is frequently no legal requirement for that owner to maintain it or have any duty to repair it should it fall down. The exception to this may be party walls which are dealt with below.

## What can I do if my neighbour will not repair his fence?

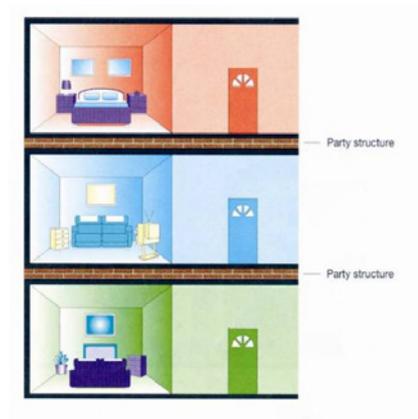
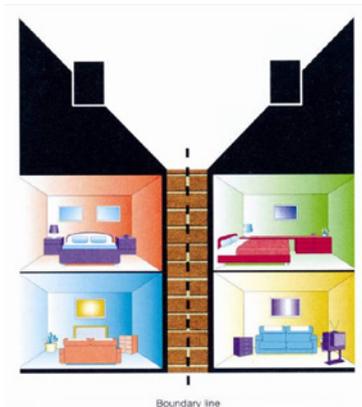
In short there is really nothing you can do to force a neighbour to repair a fence or a wall which belongs to him, is on his property and is not a party wall. The only remedy is to erect a fence on your side of the boundary line to be maintained by you.

## Retaining walls

These types of walls can form part of a boundary and by their very nature can be expensive to repair when things go wrong. These walls are used where one party's land may be lower than the other and the wall 'retains' the soil for the higher property to prevent loss of soil and prevent land slip from the higher property.

So if you have a retaining wall and there is a problem:

- Check your title plan to see on which land the wall is sited - does it belong to you or your neighbour (see above).
- Check to see if it retains the higher land – if so there is generally a duty to support the higher land.
- If you are the owner of the higher land and the wall is within your boundary your duty is to make sure the wall remains in good repair to prevent the land slipping on to the lower property.



If you are considering buying a property with a retaining wall always make sure that the ownership and responsibility is clarified in the deeds.

## Party walls

Party walls can be either vertical or horizontal and in simple terms divide the buildings of two owners. Any issues concerning work to the party wall are covered by the Party Wall Act 1996. The purpose of the legislation is to ensure that the adjoining owner is consulted about proposed works and has the opportunity to be reassured about any potential consequences of the work undertaken.

*Note: The Party Wall Act does not remove the need for the owner undertaking the work to use reasonable skill and care when doing the work. It is a general legal principle that if work is done negligently and causes damage to another property, the damage may be recoverable from the neighbour causing the damage.*

There is a very useful explanatory booklet, with template letters, available via the planning portal [here](#).

Generally, the Act provides a mechanism for ensuring that if a neighbour wants to do work which may affect a party wall, or in some cases foundations, certain things happen.

- The neighbour wanting to do the work (the owner) serves a Party Wall Act notice on the adjoining owner.
- This notice states the nature of the works and the proposed start date. Depending on the nature of the work this notice must be served between one and two months before the start of the work. If you are the neighbour needing to serve the relevant notice, you will find an example document [here](#).
- The adjoining owner may acknowledge the notice and accept the proposed works or object to them.

- Where there is an objection, it is usual for a party wall act surveyor to be appointed and for an agreement or an award to be made.

Failure by the owner to comply with the Act and issue the notice could result in the adjoining owner applying for, and being granted an injunction, to prevent the works going ahead. The result of this may be an order for costs and damages.

If you are affected by your neighbours failure to issue a party wall notice, check to see if you have legal expenses insurance which may help with any legal action.

## 2. Access to neighbouring land

It may occasionally be necessary to have access to a neighbour's land to undertake maintenance and repairs to parts of your property (this can include such things as exterior walls, chimneys or guttering).

With reasonable neighbours it is usually a matter of discussion with the neighbour and then granting access for the necessary work to be completed. In some cases, however, this may not be possible and in those cases it may be necessary to adopt a more formal approach. The Access to Neighbouring Land Act 1992 enables access to adjoining or adjacent land for the purpose of carrying out 'basic preservation works' to one's own property. Basic preservation works include:

- maintenance, repair or renewal of a building.
- clearance, repair or renewal of a drain, sewer, pipe or cable.
- filling in or clearing a ditch.
- felling, removal or replacement of a tree, hedge or other plant that is dead, diseased, insecurely rooted or which is likely to be dangerous.



If you need to be granted a right of access proceedings must be commenced in the County Court. The court will grant an access order if it is satisfied that the preservation works are reasonably necessary for the preservation of the relevant land and that they cannot be carried out, or would be very difficult to carry out, without entry to the adjoining land.

The access order will specify what work is to be carried out, when and where, and may also provide for any loss or damage to the owner or occupier of the land. This does not, however, allow access for the purposes of a new building or for any type of building works such as an extension.

The court can refuse access if it considers this would cause hardship to the occupier or significantly interfere with their enjoyment of the land in question.

### 3. Nuisance neighbours

These are the types of issues which can sometimes sour neighbourly relations and can often be the most difficult to deal with. Frequently the matter may be affected by personality, rather than legal issues. Here we highlight a few of those issues:

#### **CCTV**

CCTV is increasingly used to protect property. If the cameras are installed on residential property and are for personal domestic use, they are unlikely to breach the [Data Protection Act see further info here](#).

The use of a CCTV camera for domestic purposes, for example protecting a home from burglary, is exempt from the data protection principles even if the camera overlooks the street or other areas near the house. If you are concerned about the use of domestic CCTV, it may be worth contacting your local police or speaking with the

Information Commissioner's Office. Details can be found [here](#).

If you are considering installing CCTV you should also check with your local planning department whether planning consent is required. They should be able to advise you of the general planning guidelines applicable to your proposal.

However, if your neighbour is using CCTV for business purposes, they will need to comply with the data protection legislation guidelines.

### Children

#### **Noisy children**

Noisy children in themselves are not a 'nuisance'. If someone is disturbed by a neighbour's children, for example, a shift worker who wants to sleep during the day, the only real solution is a conciliatory approach to the neighbour.

#### **Balls and ball games**

If a child throws a ball into a neighbour's property, the neighbour should either hand it back or allow it to be collected. However, as it is a trespass for the ball to cross the neighbour's boundary, even if it was unintentional, the neighbour would be entitled to financial compensation if any damage has been caused.

#### **Damage by your neighbour or their builder**

It is sometimes the case that a neighbour may cause damage to your property by doing work on their own property. This may be work they are doing or work being done by their builder. A common problem is debris falling onto property which sometimes damages a car or parts of the neighbour's home.

In each case it will be the neighbour who may be responsible even if it is their builder doing the work. However, in each case you would need to be able to show that your neighbour/their builder was negligent when doing the work. In other words, did they pay enough attention to the matter and did they exercise the skill and care required taking into account all the facts.

## Light pollution

Light pollution is artificial light that lights areas not intended to be lit. It becomes intrusive if it is overly bright or directed to areas which may affect your right to enjoy your property e.g. they shine into your house.

If your neighbour has a light which does this, it is now possible for your local authority to assess whether the light is a statutory nuisance under the Clean Neighbourhoods and Environment Act 2005. See more [here](#).

## Japanese knotweed

The presence of Japanese knotweed on your property can have legal implications. It can mean that you may not be able to sell your home or get a mortgage until it has been dealt with. Read more about the plant [here](#).

The spread of the plant to your neighbour's property could also mean a claim in nuisance against you. If you are therefore aware of the problem, or should reasonably be aware of it, then as the owner of the property you may be liable for your neighbour's loss. In such a case, the claim is likely to be for damages for the cost of eradicating it from both your own and your neighbour's property.

The presence of this plant could also have consequences under the Anti-Social Behaviour Crime & Policy Act 2014. Whilst it is not specifically referred to in this act, the nuisance caused by this plant (and others) could form the basis of a community protection notice being issued by your local authority. This notice may require you to take steps to rectify the situation and remove the plant and prevent future anti-social behaviour by allowing any further growth. Failure to comply can lead to prosecution and a fine.

Additionally, should you wish to sell your house you will be required to disclose the existence of the weed as part of the standard property information form (TA6) see [here](#).

When having the weed removed, it is important to consider using recognised contractors who are experienced in this type of work. Often they will offer a

guarantee to cover removal should the plant return. An additional fee is generally payable for this.

## Noise

Issues concerning noise are usually dealt with by your local authority and generally action can be taken where the noise is having a negative effect on your health. In such cases the noise may relate to:

- aircraft noise.
- barking dogs – this often occurs where there is excessive barking from dogs and the noise reaches the statutory level. Whilst an owner can be prosecuted for this, often a council will seek to resolve the problem amicably.
- commercial noise frequently comes from a construction site and can include demolition works.
- licensed premises noise will relate to the noise coming from a pub or a club. Your local authority will have power to prevent the noise continuing where it exceeds the legally acceptable level.
- neighbourhood noise can include dog barking, continuous car alarms, DIY activities for prolonged periods at anti-social times and loud music/TV. It can result in a noise abatement notice being issued and a fine.
- burglar alarms - where an authorised officer from the local authority can enter the property they may switch it off. If force is required to gain entry the consent of a magistrate may be required. A local authority officer can only enter a building by force with a warrant. The authority can recover the cost of silencing the alarm from the occupier of the premises. Where the local authority cannot deal with the issue, it may be possible to obtain an injunction to stop this. However, this can be a very expensive action and should be considered with care.

With any noise nuisance your local authority should be your first contact if the matter cannot be resolved amicably with your neighbour. Where the local authority cannot deal with the issue, it may be possible to obtain an injunction. However, this can be a very expensive action and should be considered with care.

## Trees

A neighbour's trees can be a nuisance in a number of ways:

**Falling onto your land:** This usually happens as a result of storm-like conditions. The question is often asked



about who is responsible for removing the tree and for any damage caused. The answer to this is often 'it depends'. By this, we mean that if it can be shown that the tree fell over as a result of the negligence of its owner then it may be arguable that the damage is recoverable from that owner. If, for example, the tree was not properly looked after, was decaying or the owner knew it was ailing, then it may be possible to argue the owner has a responsibility to you.

In other cases there may be insurance cover for the damage, either yours or your neighbour's. In cases where there is no negligence by the owner of the tree, and no insurance cover, the cost of removing the tree and repairing the damage will be yours.

**Roots and branches:** Where these are 'trespassing' on your land the owner of the tree is potentially responsible for any damage caused by the overhanging tree or the roots.

If you are affected by either of these issues it is possible to take action and remove the branches or roots taking care not to damage the overall condition of the tree. If the tree is affected by a tree preservation order you will need to contact your local council for permission to do the work. Where branches are removed they can be offered back to the owner or disposed of.

In cases where the roots have affected foundations or other structures such as a patio, it may be possible to get your insurer involved. This type of case may also require the involvement of a specialist tree surgeon.

**Leaves:** The leaves from your neighbour's tree may fall into your garden. Whilst we are asked about this from time to time, it is not a matter which is actionable in law. Leaves falling is a naturally-occurring event and no claim is possible to recover the cost of dealing with these.

**High hedges:** Where there are hedges which are tall and block out your light these can be pruned provided the height is left intact.

Where the hedge is an evergreen/semi-evergreen and over two metres high it is possible to apply to your local authority for assistance. This may result in your neighbour having to reduce the height of it. However, this process is not without cost and the local authority may wish to charge you a significant fee before taking any action.

**Water leaks:** It can sometimes be the case that water escapes from your neighbour's property into yours causing damage. This can happen in such cases as a broken pipe, problems with a roof, or faulty pipe work in a flat above.

The principle here is that the neighbour is generally only responsible for the damage where it can be shown they are negligent in maintaining their property. So, for example, if the flat above has a burst pipe which could not have been foreseen and damage occurs as a result, the owner generally will not be liable for that damage. If, however, there is a slow leak which your neighbour is aware of and could have been dealt with earlier, there may be a potential claim for any resulting damage.

**Wood burning stoves and chimeneas:** Wood burners and chimeneas are increasingly popular features in a property. Both emit smoke and are therefore subject to the Clean Air Act 1993. Under this Act, local authorities can designate a 'smoke control area'. This means that you may have to use certain fuels unless the appliance is exempt. Most woodburners are exempt and you can find a full list [here](#).

Assuming the woodburner is lawful, it is still sometimes the case that smoke may affect the enjoyment

of your property. If that is the case it may be that the smoke is causing a nuisance actionable in law. In these circumstances your local environmental health officer may be able to help by visiting your home and assessing the issue. Otherwise, start by discussing the matter with your neighbour as this is by far the most direct way of addressing the issue.

## 4. Rights of way (easements)

An easement is a right which benefits one piece of land to the detriment of another. For example if your neighbour has a right of way over your land to access his garage, his land enjoys the benefit of that right and your land has the burden of that right by the exercise of that access.

The most common easements relate to the rights for services to cross neighbouring properties below ground to provide gas, electricity and water to a number of properties. This is particularly relevant for new build properties on an estate.

There are principally two means by which an easement can be created, either expressly within your title deeds or by prescription over a period of 20 years.

If you think you may have a case for a right by prescription you must be able to show use of the right during that 20 year period and have done so openly and without the landowner's express or implied consent.

Where an easement is established, by either method, the land over which the easement exists (the land with the burden) must not prevent the owner with the benefit from exercising that right. To do so could result in court action being taken to prevent further interference. For more information see the Land [Registry guide found here](#).

## 5. Right to light

Another common question is whether you have a right to light e.g. can you do anything if your neighbour's tree or extension blocks the sunlight into your property. Essentially there is no right to light except where it significantly impacts the light levels in your home. Specialist reports/evidence will be needed in order to establish whether you have a potential claim for the court. For further guidance see RICS consumer guide [here](#).

## 6. Adverse possession

Adverse possession is often referred to as squatter's rights. In brief it means the right of an occupier of land (which does not belong to them) to make a claim for the legal title of that land to be transferred to them. This frequently occurs in relation to boundaries where, perhaps, a neighbour has occupied a larger area of land than they technically own, and they subsequently apply to the Land Registry for their interest to be registered in preference to the existing owner.

Adverse possession requires factual possession of the land, with the necessary intention to possess and without the owner's consent. Generally you must show that the squatter and any predecessors through whom they claim have been in adverse possession for at least ten years ending on the date of the application to the Land Registry or that the squatter has been evicted by the owner, not more than six months before the date of the application, and that on the day before the eviction they and any predecessors through whom they claim had been in adverse possession of the land for a period of ten years ending on that date.

Different rules apply where the squatter notched up to twelve years adverse possession prior to 13th October 2003.

This is a complex area of law which requires some consideration and further information can be found [here](#).

*NOTE: Please be aware there are links contained within this factsheet that may take you to external sites, we are not responsible for their content. This is a general advice and information factsheet only and should not be treated as a definitive guide and does not constitute legal or professional advice. We are not a law firm and information is not intended to create a solicitor client relationship. Law Express does not accept any responsibility for any loss which may arise from relying on information contained in this factsheet. This is not a substitute for legal advice and specific and personal legal advice should be taken on any individual matter. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This factsheet is correct at time of going to print. The law set out in this factsheet applies to England and Wales unless otherwise stated.*