

IN THE COUNTY COURT AT CENTRAL LONDON

TECHNOLOGY & CONSTRUCTION LIST

Claim Nos: D20CL111 & E20CL228

Between :

NICHOLAS STEPHEN LACEY

Claimants /
Appellant

- and -

THERESE MARIE CLARE BAKER

Defendant /
Respondent

JUDGMENT

1. The Claimant, an architect and property developer, is the freehold owner of the land and buildings at 40-44 Farncombe Street, London SE16 4PT, registered under Title TGL418923. The Claimant has held the land in question since 1992. He has developed three houses to a high specification on the land, and not simply for investment purposes. At various times the Claimant's children have occupied one or more of the houses, and the Claimant himself lives at no.44.
2. The Defendant is the owner of land and former resident of the residential building at 46 Farncombe Street, London SE16 4PT, Title SGL397153. That building has now been demolished. The Defendant and her husband are in the process of building a new and more substantial house on the site where they intend to live. Construction is well under way but the house has yet to be completed. For the present both Mr and Mrs Baker live nearby.
3. This matter initially came before the court as an appeal against a Party Wall Award dated 6 September 2017 made by the Third Surveyor, Mr Andrew Schofield, in respect of the

Defendant's construction. Mr Schofield had been selected in July 2017 under s 10(1)(b) of the Party Wall etc Act 1996. There has subsequently been an Award produced by the two party-appointed surveyors. That Award is dated 23 July 2018 and it was not appealed.

4. Mr Schofield's Award determined three distinct issues concerning the rights available to the Building Owner under s.2(2)(1) and under s.1(5) of the Act. However, the making of this Award, and it would seem the primary difficulty encountered by the party-appointed surveyors which led to the referral to the Third Surveyor, was uncertainty as to the precise position of the boundary and in consequence the ownership of walls separating the parties' properties. This together with the ownership of a thin piece of land, rightly described as 'the sliver' situated between the buildings on the parties' respective properties. In short there was a boundary dispute between the parties.
5. Having appealed the Party Wall Award, the Claimant, who is the Adjoining Owner for the purposes of the 1996 Act, issued a claim under Part 7 of the Civil Procedure Rules to resolve the boundary dispute. In this claim the Claimant maintains that the walls in question (a front wall at the South West of his land and a rear wall to the South East) and the 'sliver' of land in between those walls (up to the flank wall of the Defendant's now demolished house) are owned by him. The Claimant states the walls are wholly on his own land, and seeks a declaration in this regard. In her pleaded case the Defendant asserted the opposite; the walls are on her land and so too is the sliver.
6. The two walls in question are of a rendered block construction and stand some 8 feet in height.
7. The house at 46 Farncombe Street, now demolished by the Defendant, was constructed in about 1860.
8. The earliest evidence of the Boundary between 46 Farncombe and the Claimant's land ("the Boundary") is provided in the 1875 Ordnance Survey map. This shows the Boundary as a straight line running from Farncombe Street to the western end of land described as "Pottery". There are buildings either side of the Boundary both immediately adjacent to No.46 (which is shown as a rectangular building abutting the Boundary and

with a building immediately to its rear) and continuing on the Claimant's side of the Boundary (no.40-44) towards the rear of the land behind both parties' plots.

9. By the date of the Ordnance Survey map of 1896, the buildings on either side of the Boundary have changed. The structures on no.40-44 have been cleared, so there is now no building adjacent to No.46. The large plot of land on which No.46 is situated is now described as a Timber Yard. No.46 is shown as a rectangular building set back from the street and abutting the Boundary. By the time of the Ordnance Survey map of 1919 part of the front section of the rectangular building no longer exists and there is a rear extension, but the extent of the flank wall of the building which is shown abutting the Boundary is unchanged. The shape of the building on No.46 then remained unchanged until its demolition in about August 2018.
10. The 1950 Ordnance Survey extract includes the 'mereing' information for administrative boundaries, which indicates that there was a wall at the front section and a fence along the rear section of the Boundary. It also shows 2 structures on no.40-44 and also identifies that no.40-44 was not part of the London Docklands Development Corporation's title.
11. Aerial photographs taken in 1951 show two buildings on no.40-44 and some materials stored against the flank wall on No.46.
12. In August 1951 Mr Ian Church, then aged 9, moved into 46 Farncombe with his father and mother. His grandfather had acted as house-keeper and caretaker for the Timber Yard, and Mr Church's father took over the position of caretaker on his father's death. Mr Ian Church himself moved out of No.46 in 1964 when he married at the age of 22. His parents continued to live at No.46, his mother continuing her residence there when a widow.
13. A further aerial photograph (and close up extract) from 1973 shows that No.46 has been enclosed on its southern and south-western boundaries and is the same shape parcel of land as later shown on the first filed plan in March 1984. Timber is stored all around the property. The photograph appears to show the physical boundary running in a straight line along the Flank Wall but the definition is insufficient for this to be stated with certainty. The end of the rear boundary feature bisects the 90° angle created where the

outer (eastern) wall of no.40-44 meets the outer boundary feature (southern) of no.46. This is also consistent with the filed plan.

14. The first filed plan of the property comprising solely No.46 was registered on 30 January 1984 on its acquisition by Mrs Violet Church from the London Docklands Development Corporation under the right to buy legislation.
15. For the purposes of this acquisition Ian Church took photographs of No.46 in 1982 to show its state of repair. These photographs show a fence comprising corrugated iron panels fixed to a series of posts measuring about 5 x 3 inches. At the rear all but the final post, which is fixed to the flank wall of No.46 just before this wall stops and the property is stepped back from the Boundary, are on the Claimant's side of the fence. The fence has by way of security 3 strands of barbed wire fixed above the corrugated iron panels on angle iron.
16. With regard to the measurements of the final post I have considered the arguments of Mr Baker to effect that the angle shown on the photograph at p.162 of the bundle indicates that the post was of greater than 5 inches in depth, ie the distance between the fence and the flank wall of No.46. I cannot accept Mr Baker's suggestion that this post was some 250mm in depth. 5 inches is a better estimate, one with which Mr Church concurred while giving evidence.
17. Mr Church's photographs show various items, including a motor bike, stored against or close to the Flank Wall of No.46 on the land now owned by the Claimant. This is consistent with an aerial photograph from 1984, which shows fences separating the two properties.
18. It is evident from Mr Church's photographs that the corrugated iron fence at the rear of No.46 did not run in a straight line projected from the flank wall of No.46. Rather it was set some 5 inches from the flank wall (the width of the post) from the point where it starts about a panel's length from the rear of No.46. The front fence was also set away from the front of the flank wall of No.46, but only by a very small distance. This fence began at the very front of the house; it did not start any distance behind the front of the flank wall.

19. The transfer from the LDDC to Violet Church in January 1984 records an agreement and declaration that: -

“the walls separating the premises hereby conveyed from the adjoining premises shall be party walls and rights and liabilities in respect thereof shall be in accordance with Section 38 of the Law of Property Act 1925”

20. This transfer does not reserve any right of way over no.40-44 for the benefit of No.46 for the purpose of inspecting the Flank Wall. The transfer plan shows that no.40-44 (and other land) did not form part of the LDDC title. So far as the declaration may have effect it can only be in respect of boundaries which were being formed by the transfer of part of the LDDC land, and cannot affect the Boundary.
21. Ian Church gave evidence at the trial. His evidence, which was compelling, was that the Front Wall and Rear Wall were built by Thames Water Utilities Ltd, ('TWU') which had acquired the land including no.40-44, shortly after its privatisation sometime in 1989/1990, and after Mrs Violet Church had refused its offer to purchase No.46. Mr Church's recollection was that although TWU informed his mother that it was building the front and rear walls it did not consult her about their positioning. Essentially the walls replaced the line of the previous fences. This was certainly the case at the rear. The front wall abutted part of the side wall of the external WC of No.46, which the fence had not done, but the difference in position must have been minimal. I note here that Mr Baker was of the view that the walls were built by Southwark Council rather than TWU. That is not my finding, but it is of little consequence who built the walls. What is important is where they were built and the fact that they were not built by the owner of No.46.
22. On 19 February 1992 the Claimant purchased no.40-44 at auction. The Barnard & Marcus particulars show the frontage to Farncombe Street with iron railings and a scalloped wall, and the Boundary running along the flank wall of No.46. The last pillar of this scalloped wall between no.40-44 and No.46 remains on site. An aerial photograph from 1992 shows the scalloped wall in front of no.40-44 only.
23. There were no deeds to support the sale. The vendors relied on a statutory declaration by a Mr Kemp, an employee of Thames Water, dated 15 January 1992. In this declaration Mr Kemp confirms that no.40-44 had been in the possession of TWU and its predecessors

since 1 April 1974. In the Enquiries before Contract in respect of the 1992 Transfer the vendor TWU stated “*Save for any contrary indication in the Deeds or in the Special Conditions of Sale, the Vendor believes that all boundaries belong*”.

24. The transfer from TWU to the Claimant was completed on 17 March 1992. Clause 3 of the transfer included a covenant that the transferor was to maintain the boundaries.
25. The transfer plan shows the Boundary as a straight line against the flank wall of No.46. TWU also provided a plan (annexed to the transfer as plan no. 2) which included the note “*all boundary fences are maintained by us*”. This was not intended to be a term of the transfer; the plan was being used for other purposes, but it is a contemporary statement of affairs and can be accepted as such.
26. On 1 October 1993 part of the land vested in the LDDC was transferred to the London Borough of Southwark and registered under title number SGL341358.
27. The Claimant obtained planning permission to redevelop ‘40-44 Farncombe’ on 30 March 1995. The Claimant encountered difficulty in raising funds for his proposed development. However sufficient ground works were commenced within the 5-year validity period to ensure that the permission remained alive.
28. Mrs Church died in 1999 and No.46 was put up for sale. The Defendant was interested in its purchase and she arranged for a survey of the property in August 1999 by the surveyors Downham & Hughes. In October 1999 Mrs Baker purchased No.46 and her title was registered on 25 November 1999.
29. Mr and Mrs Baker were only occasional occupants at No.46. It was their evidence that because Downham & Hughes had commented that there were air bricks to the base of the ‘main structure’ to provide ventilation, and that some had become blocked requiring the incorporation of additional air flow, they were at pains to keep the air bricks clear of debris. Mr and Mrs Baker’s evidence was that there were airbricks along the flank wall of No.46 and these were cleared of debris by them entering the land of no.40-44. Access posed no problem between 2000 and 2005, because “people went onto this area all the time”, evidence which the Claimant did not accept. After 2005 concrete slabs were laid, and blue containers were brought onto the no.40-44 site by the Claimant. As a consequence, Mr and Mrs Baker said the gates to the site were then locked more often,

but Mr Baker stated that he climbed over the wall without difficulty. Later on, between 2012 to 2015 Mr Baker stated that he gained access to no.40-44 by unscrewing the boarding which then surrounded the front of the site or getting builders to let them in.

30. All in all, Mr and Mrs Baker presented a picture of assiduous maintenance of the air holes in the bricks at the base of the flank wall of No.46. These would be airbricks inserted into the flank wall well after the property's original construction, for at that point it was immediately adjacent to a building on the no.40-44 side of the boundary. The flank wall was rendered and it is far from clear from the photographs that the rendering stopped short of the course of bricks (presumably the final course above ground level) in which any air bricks were situated. This is evidence I treat with considerable care. In evidence Mr Baker highlighted on a copy of photo 195 three airbricks in the flank wall. With two it is an article of faith that they are airbricks. The third does have some appearance of an airbrick but it is three courses of brick up from ground level in an area where the rendering has fallen away, not a position where an airbrick would ordinarily be situated.
31. There is a photograph of no.40-44 in 2012, with a dinghy and other materials against the flank wall of No.46.
32. On 16 November 2015 the Defendant obtained planning permission, on appeal, to demolish No.46 and build a more substantial property on the site. Solicitors acting for the Defendant took issue with the Claimant carrying out works up to the flank wall of No.46 in his development.
33. On 15 August 2016 the Defendant served Party Wall Notices on the Claimant, under sections 1(5), 2(2)(b)(k) and 6(1), later replaced by notices dated 7 November 2017.
34. For the sake of completeness, it may be stated that there is no evidence of any other boundary feature which might have represented the line on the filed plans for the titles. The flank wall of No.46 would have been the dominant feature and, as the 1950 map shows, the face wall was the administrative boundary.
35. It is also the case that if the Boundary ran from the mid-point of the Front Wall to the mid-point of the Rear Wall, this would not produce a single straight line. This would produce a boundary which would be inconsistent with all the maps and plans before the

court. The Front and Rear Wall are not in line, the Rear Wall being offset from the Front Wall.

The Claimant's case

36. The Claimant invites the Court to find that the Boundary extends in a straight line from along the flank wall of No.46 and, therefore, that the Front Wall and Rear Wall were built entirely on the C's land, with the Rear Wall set back from the boundary.
37. Alternatively, the Claimant argues that he and his predecessors in title have been in possession of, and have exercised the rights of an owner in respect of the control and maintenance of the sliver since 1974, such that the rights of the paper owner are extinguished pursuant to s.15 of the Limitation Act 1980. In this regard the Claimant submits that there is no evidence that either he or his predecessors in title were given permission to use the sliver. The land was enclosed by the fences and walls around no.40-44. It was used and controlled by TWU and then the Claimant. The Claimant accepted in closing that the Court was likely to find that the physical boundary was now the legal boundary, as the Defendant and her predecessor had been in possession of the land up to the outer face of the walls since their construction by TWU.

The Defendant's case

38. As originally presented the Defendant's case was that both the Front and Rear Walls are wholly on her land, alternatively they are party walls as agreed between LDDC and TWU. The basis of this argument is that LDDC built the Walls, as demonstrated by the fact that the Walls follow the use of London Yellow Stock brick topped with blue engineering brick which is to be found in a number of places in the surrounding area.
39. In the light of Mr Church's evidence however, Mr Kelly for the Defendant very properly concedes that the Defendant cannot maintain her case that the Walls are on her land. Rather, he contends, the Walls should be considered to be Party Walls. This is to be inferred from the fact that TWU built the walls with Mrs Church's implied if not expressed consent and, arguably, in the case of part of the Front Wall only (the section closest to No.46) did so on part of Mrs Church's land.

40. As for the sliver the Defendant's primary argument is that there was a concrete gulley at the base of the flank wall of No.46, a section of which can be seen (displaced if not actually broken) in the photograph at p.195. Such a gulley, the Defendant, argues must have been built on her land and was part of the protection afforded No.46 from damp in association with the air bricks.

The Legal Background

42. Before considering the evidence, I should make some observations on the law. Boundary disputes come before the courts on a regular basis, and there is no shortage of judicial observation to assist and encourage a trial judge. Counsel for the Defendant, Mr Kelly, offered the following background.
43. Any plan and description are important aspects when attempting to identify a boundary *Wiggington & Milner v Winster Engineering* [1978] 1 WLR 1462.
44. The relationship between the title deeds and the topography of the site should be considered *Pennock v Hodgson* [2010] EWCA Civ 873; *Dixon v Hodgson* [2011] EWCA Civ 1612; *Brown v Pretot* [2011] EWCA Civ 1421; *Taylor v Lambert* [2012] EWCA Civ 3; *Cameron v Boggiano* [2012] EWCA Civ 157; *Shaw v Grouby* [2017] EWCA Civ 233
45. In *Pennock* LJ Mummery said the following, when citing the leading case on boundaries and parcels of land:

‘...The opinion of Lord Hoffmann in *Alan Wibberley Building Limited v. Insley* [1999] 1 WLR 894 is now regarded as the leading modern authority on the construction of the parcels in a conveyance. The rest of the Appellate Committee agreed with it. It discusses the status of an Ordnance Survey plan attached to a conveyance "for the purposes of identification" and the inferences that may properly be drawn from physical features of the land existing and known at the date of the conveyance. They are all familiar themes in boundary disputes.

Ought the judge to have ignored evidence of the presence and position of the fence, when construing the parcels clause and the attached plan? The judge should, according to the claimants, have excluded the fact of the fence from the process of construction, because there was no ambiguity in the presence and position of the stream shown as a boundary feature on the attached plan.

Alan Wibberley supplies the solution. From it the following points can be distilled as pronouncements at the highest judicial level:-

(1) The construction process starts with the conveyance which contains the parcels clause describing the relevant land, in this case the conveyance to the defendant being first in time.

(2) An attached plan stated to be "for the purposes of identification" does not define precise or exact boundaries. An attached plan based upon the Ordnance Survey, though usually very accurate, will not fix precise private boundaries nor will it always show every physical feature of the land.

(3) Precise boundaries must be established by other evidence. That includes inferences from evidence of relevant physical features of the land existing and known at the time of the conveyance.

(4) In principle there is no reason for preferring a line drawn on a plan based on the Ordnance Survey as evidence of the boundary to other relevant evidence that may lead the court to reject the plan as evidence of the boundary....

46. With regard to the principle of 'adverse possession', there are two elements necessary for legal possession (1) a sufficient degree of physical custody and control ("factual possession") of the land in question and (2) an intention to exercise such custody and control on one's own behalf and for one's own benefit ("intention to possess"), see Lord Browne-Wilkinson in the leading case of *J A Pye (Oxford) Ltd v Graham* [2003] 1 AC 419 [40], where the Noble Lord added "What is crucial is to understand that, without the requisite intention, in law there can be no possession".
47. The basic rule, as it has been put, is that once established the boundary remains the same unless there is something which can be regarded as a boundary agreement or adverse possession, *Haycocks v Neville* [2007] EWCA Civ 78 [2007] 1 EGLR 78. I am not sure, incidentally, that *Haycocks v Neville* is authority for this 'basic rule' as counsel puts it. In giving the only judgment in the Court of Appeal Lawrence Collins LJ made four general points the only relevant one for these purposes is the second. This second point is that an agreement to demarcate an unclear boundary is binding on the parties and their successors without the need for a written agreement. However, as stated, the basic rule advanced by counsel can hardly be doubted.

48. *Horn v Phillips* [2003] EWCA Civ 1877 provides as an indication how extrinsic evidence is to be considered when faced with a 'straight-line' boundary. In giving the only judgment in the Court of Appeal Jacob LJ stated:

[8] It emerged eventually that it was common ground that if the evidence was admissible then the Recorder was right, but if it was not admissible he was not. This is because there was no dispute as to the legal principles. I can take them from the judgment of Cumming-Bruce LJ in Scarfe v Adams [1981] 1 All ER 843. He said this at page 847:

"And the starting point is that extrinsic evidence is not admissible as an aid to its construction [that is of the transfer] unless the relevant provisions of the deed are uncertain, contradictory or ambiguous."

...

[13] 'I would add this. The court of course can admit, and must admit, extrinsic evidence if it finds ambiguity or meaninglessness or the like, but the court should not be astute to go out of its way to find ambiguity or uncertainty where there is none. These documents are intended to affect not only the parties to them, but subsequent purchasers and surrounding land owners. Prima facie they are to be relied upon unless there is something fairly obviously wrong with them. There is nothing fairly obviously wrong with this one. It tells the Horns what they are going to get, 61 metres, and that is what they got. It tells others what the Horns got.'

49. Mr Kelly in particular commended the statement of the principles to be applied to boundary disputes offered by HHJ Barker QC in the case of *Acco Properties Ltd v Severn* [2011] EWHC 1362 (Ch) at [11]. The principles are:

- (1) Registered title filed plans usually show general boundaries rather than the exact boundary line.
- (2) Ordnance Survey (OS) plans are usually only a general guide to boundary features and should not be scaled up to delineate an exact boundary.
- (3) The starting point is the wording of the conveyance and the conveyance plan or, if the plan is stated to be definitive, guided by the plan.
- (4) If the conveyance is not clear then extrinsic evidence may be considered, for example, features which existed at the date of the conveyance.
- (5) Evidence of the parties' subsequent conduct may be relevant and admissible if it reveals what the parties intended.
- (6) Evidence of features after the date of the conveyance may be relevant.
- (7) The boundary needs to be clear rather than "fuzzy at the edges".
- (8) Even if the boundary is clear from the conveyance other evidence may show a different boundary as a result of adverse possession.

- (9) An informal boundary agreement need not be in writing as it demarcates an unclear boundary rather than operating to transfer an interest in land.
- (10) Boundary agreements are usually oral, but can be inferred or implied.
- (11) The court should have regard to three further yardsticks of rules of thumb: (1) when considering any acquisition of property, it is vital to consider what a reasonable layman would think that he was buying; (2) every case turns on its own facts; and (3) the task of the court is to assess all available and admissible material in arriving at its answer, and then to achieve the correct answer.

50. I would particularly commend “Principles” 11(2) and (3).

51. Applying the above principles, and the law, to the facts of this case.

52. It is evident that, originally, the boundary was a straight line which ran immediately adjacent to the main flank wall of No.46. I stress main as it is clear that at some point between 1896 and 1919 there were alterations to No.46 which resulted in there being an indent to that side of the property after the chimney (which does not protrude from the wall) and the rear part of the flank wall of No.46 is set back from the boundary.

53. It is quite plain from the 1875 OS map that there were buildings either side of the boundary. Quite what the position was when No.46 was originally constructed cannot be determined, but the likelihood is that it was immediately adjacent to buildings on no.40-44 with no space for a concrete gully or any use in having airbricks. If No.46 was set back from the boundary, even by a short distance, this would be shown on the OS map of 1875 and the boundary line would not run along the flank wall of No.46 in the subsequent OS maps.

54. In this regard I do not lose sight of the fact that the Defendant also relies on the fact that the window cill to the window at first floor level in the flank wall protrudes a few inches from the wall itself. But that does little to assist the Defendant. Such protrusions are regularly to be found on walls built along boundary lines. At most it indicates that the buildings on no.40-44 were only one storey high in 1875. It may however be that the window was not present in the original construction but was added when No.46 was remodelled between 1896 and 1919.

55. As for the gully, there is no evidence as to the circumstances or extent of its construction assuming indeed that there was a gully running the length of the flank wall. It would have been added at some point after the demolition of the building on the no.40-44 side of the boundary. It is possible that a gully was added at the same time as the flank wall to No.46 was rendered either on the removal of the buildings on no.40-44 or when No.46 was remodelled between 1896 and 1919. On the basis that any gully is fairly represented by the broken piece of concrete visible in the photo at page 196 of the bundle it would have offered minimal protection to No.46. The concrete section in the photo is the type of gully not untypically found at the edge of expanses of concrete to assist the running off of rainwater. Certainly, there is no basis on which the court can properly find that the placing of the gully represented a grant of land by no.40-44 to No.46 or in some other way served to effect an alteration in the line of the boundary.
56. Although the original boundary was a straight line between no.40-44 and No.46, it is clear that when the corrugated iron fences were put up, at some point before 1950, the straight boundary line changed. For at least 40 years these corrugated iron fences formed the physical demarcation between the two properties. The owners of both properties may be taken to have used the land on their side of the fence as their own. In the case of No.46 this land formed Mr and Mrs Church's back garden and the area immediately behind the house closest to no.40-44 was used by Mr Church as a tool shed. At the front this land formed Mr and Mrs Church's (modest) front garden. In the case of no.40-44 the court has the Statutory Declaration of Roger Kemp which covers the period from 1973 to 1992 when the property was sold to the Claimant. This declaration is that from 1973 first the Greater London Council, then the Thames Water Authority and finally Thames Water Utilities Ltd had sole uninterrupted use and occupation of the no.40-44 premises.
57. I accept Mr Church's evidence that the brick walls built by TWU in 1989-1990 were in the same position as the corrugated iron fences, with the minor exception that the front wall may have protruded very marginally beyond the line of the corrugated fence close to the front of No.46, which at this point was an outside water closet. This was de minimis. Certainly, Mrs Church made no objection and the wall stood until 24 April 2019 when, it appears, it was demolished by the Defendant's contractors in the course of their building works.

58. It follows that in my judgment the Boundary now runs along the outer face (ie the face on the No.46 side) of the Front and Rear walls. I can find no warrant for inferring an agreement between TWU and Mrs Church that these walls should be party walls. They were walls built by TWU on land which clearly both TWU and Mrs Church considered to belong to TWU and which, on the basis of the straight-line boundary shown on the early OS maps, was indeed land belonging to TWU. In all probability the building of the corrugated iron fences and their replacement with the walls resulted in the title at no.40-44 losing a small amount of land.
59. Accordingly, I find that the Front and Rear Walls belong solely to the Claimant and that the boundary between the Claimant's and the Defendant's property runs along the outer face of these walls
60. With regard to the sliver, I find that the boundary between the Claimant's and the Defendant's property runs along the line on which the flank wall of No.46 used to stand. It follows that the land forming the sliver belongs to the Claimant.
61. I will make a Declaration accordingly in the CPR Part 7 claim.
62. The Party Wall Award Appeal. Following delivery of my judgment in draft to counsel I have received submissions from counsel as to the effect my findings have on this appeal. It is plain that Mr Andrew Schofield's award of 6 September 2017 cannot stand in light of my findings on the Boundary. Accordingly I will allow the appeal and rescind the award.

HHJ Edward Bailey
17 May 2019