

Guideline Leaflet PC02: Boundaries, Fences, Hedges and Problems

Churches will want to maintain good relationships with their neighbours but there are sometimes difficulties with practical matters. Here is guidance about boundaries, fences, trees, encroachment, and much more.

This Guideline Leaflet is regularly reviewed and updated. To ensure that you are using the most up to date version, please download the leaflet from the BUGB website at www.baptist.org.uk/resources

The date on which the leaflet was last updated can be found on the download page.

PC02: Boundaries, Fences, Hedges and Problems

These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.

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[L17 Legal and Operations Team – Regulatory Information](#)

These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

If you want to ask questions about the leaflets and one of the Baptist Trust Companies are your property trustees, you should contact them. They will do their best to help.

If your church property is in the name of private individuals who act as trustees they may also be able to help.

RELATIONS WITH NEIGHBOURS

Churches always want to maintain good relationships with their neighbours but there are sometimes difficulties with practical matters including car parking, noise, litter and boundaries.

This leaflet is about boundaries, and is intended to help churches whenever they are in conversation with neighbours.

CHURCH PROPERTY DEEDS – OLD ONES

Many Baptist churches were purchased in the eighteenth and nineteenth centuries. The deeds that were prepared at the time often described property by reference to adjoining physical features and by the names of adjoining land owners. It is not unusual for a church property to be described as being 'bounded on the west side by the orchard' owned by a named person. The church may now be surrounded by houses, and nobody can remember anything about the owners of the adjoining land.

Many of the old property deeds are bulky, handwritten documents, prepared on parchment paper, and can be difficult to read. However, they should always be checked to see whether there is any information about a boundary line. However few documents dating from the eighteenth and nineteenth century contain information on who is responsible for maintaining a boundary, but sometimes there are surprises!!

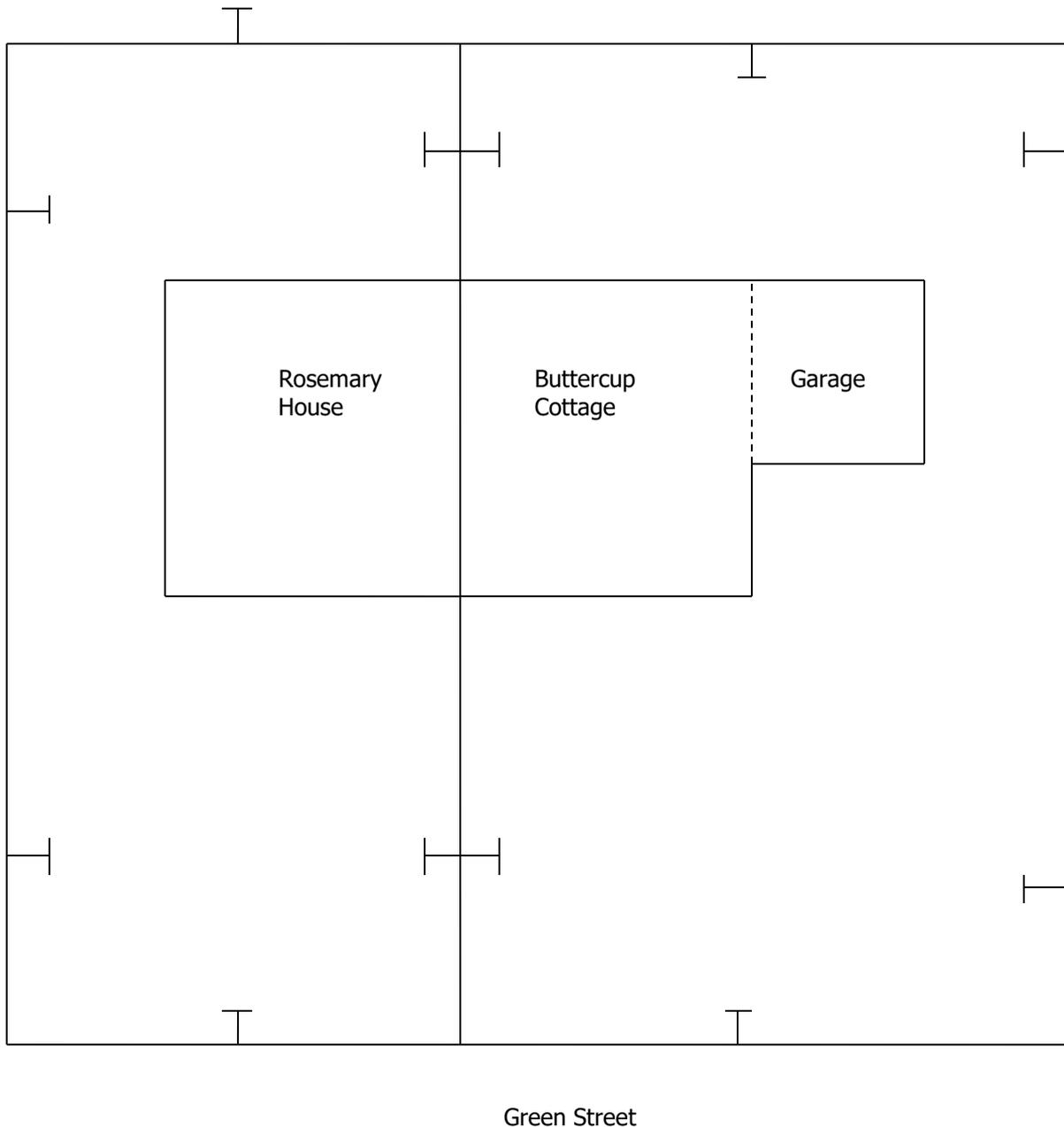
One church with a deed dating back to the late 1800s contacted the Baptist Union Corporation. They were receiving complaints from their neighbour that the church maintenance team had been too enthusiastic in cutting the hedge between the church and the neighbour's garden. We were asked to check whether there was any information in the deeds. We looked at them, but did not really expect there to be any useful information. To our surprise we discovered that very specific arrangements had been made about the maintenance of the hedge and that the deeds and documents stated specifically that the hedge belonged to the church, rather than it being a shared hedge where it might reasonably be assumed that the boundary was the midline of the hedge. Therefore, the church was able to cut the hedge to the height and depth that they wanted, and the neighbour had no legally valid cause for complaint.

Unfortunately this does not happen very often but it is always worth checking to see whether there are any specific arrangements for your particular church's property.

MODERN PROPERTY DEEDS

Modern property deeds are usually more helpful. They will often include a plan and wording that indicates who owns and has responsibility for maintaining boundaries. This is often the case when a new site is bought or a new house purchased.

Here is a typical modern plan and an explanation



The ownership of boundaries is often indicated by an inward facing 'T' mark. Where this is present on a particular boundary there is usually wording in the document to indicate the ownership of any fences or other boundary structures, and subject to wording to the contrary, responsibility for maintenance is usually with the property on whose side the 'T' mark is.

In our example (subject to there being appropriate wording in the document) Buttercup Cottage is responsible for the back boundary and, the boundaries on the right hand side, looking at the property from Green Street. Rosemary House is responsible for the left boundary looking at the house from Green Street but the back boundary is the responsibility of their next door neighbour.

There are inward facing 'T' marks on both sides of the boundary between Rosemary House and Buttercup Cottage. This means that the boundaries are a shared responsibility. These two properties are semi-detached but it is not always true that fences between semi-detached properties are always shared. This is only an example and it illustrates the kind of arrangements that can be put in place and recorded in property deeds.

Where there are indication of boundary ownership, by appropriate wording in the deeds (with or without 'T' marks) ownership can be mentioned by the Land Registry on the Register Entries for individual properties.

Where 'T' marks exist on a plan but they are not referred to by wording in the document to which the plan is attached, the presence of the 'T' marks alone will not necessarily be conclusive as to ownership of the boundary or responsibility for maintenance.

LEGAL PRESUMPTIONS

Where the deeds are not clear about the ownership of boundaries, certain legal presumptions may be helpful in determining their ownership.

These presumptions can, however, be rebutted. A presumption can be rebutted if there is other evidence that the normal rule does not apply in a particular case.

The main legal presumptions that could be relevant are the ones relating to hedges and ditches and rivers and streams.

Hedges and Ditches

Hedges and ditches are common features in the British countryside. There is a presumption that a ditch is dug to mark the boundary and the soil that is dug out is piled up behind the ditch, on the land of the person digging it. This presumption exists because the person digging the ditch should not be encroaching or trespassing onto his neighbour's land to dig the ditch, or to create a bank. Hedges are often planted on top of the bank, but the boundary is presumed to be on the edge of the ditch that lies on the far side of the hedge.

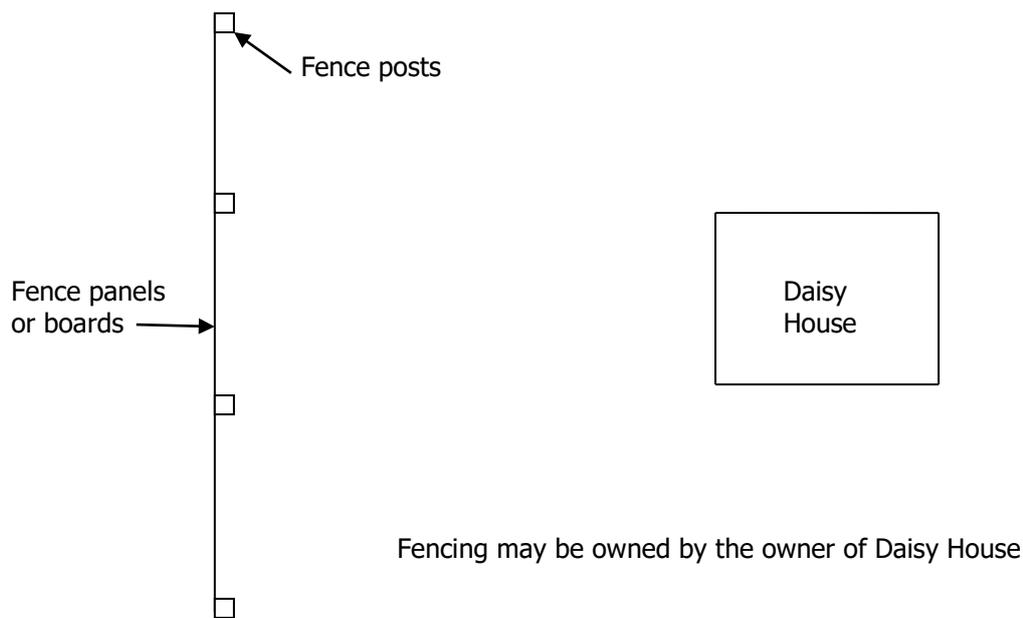
Rivers and Streams

There is a presumption that the bed of a non-tidal river belongs, where there is no evidence or acts of ownership to the contrary, to the owner of the land through which it flows. Where the lands of two separate owners are separated by the stream or river, each owner is, subject to any evidence to the contrary, seen as being the owner of the river up to its mid-point. Where a river or stream changes course, or flooding occurs, specialist advice will be needed.

If the deeds are unclear and one of the above presumptions do not apply, it might be possible to look to other evidence as to who owns the boundary and who has responsibility for it.

FENCE POSTS – WHERE ARE THEY?

It may be that fence posts can give a clue as to the ownership of the fence. One can argue that an owner will place the fence posts along the line of the boundary, and then attach any fence panels to that post. Therefore, the side on which the fence post is visible is arguably the property that owns the fence. This, however, is one of many factors on the ground that may need to be considered.



CHANGES TO ORIGINAL ARRANGEMENTS

Even if the deeds are clear, for example, there are 'T' marks on a plan with appropriate wording we cannot always rely on such matters with absolute certainty. This is because things can change over time.

Over time neighbours may have changed the arrangements, often for very good reasons.

Animals and Children

Let us imagine that the first owners of Rosemary House had a lively dog and the simple post and wire fences erected by the original builder were inadequate. They may have offered to install better fencing in the back garden so as to enable the dog to spend time outside, without escaping. The owners of Buttercup Cottage may have been pleased with this arrangement – especially if they were not fond of dogs. The original owners of Rosemary House may have said that they would accept responsibility for maintaining the fence in future and informally changing the arrangements that applied originally. It is easy to see that if the owners of Rosemary House moved, but the owners of Buttercup Cottage did not move, that there could be a misunderstanding about ongoing maintenance responsibilities.

Lack of Money

It may be that the owners of Rosemary House wanted to replace a broken fence and asked the owners of Buttercup Cottage to contribute half the cost, because it was a shared boundary. However, the owner of Buttercup Cottage was recently made redundant and is unable to contribute towards the cost, even though the deeds indicate this should be a shared responsibility. In all the circumstances the owners of Rosemary House may decide that improving the fence is so important to them that they will pay for the work to be done. Again, this could change the arrangements, as between the two owners, but it is likely that the deeds would remain unchanged because nobody would think this was important at the time.

Different Expectations

The owner of Rosemary House is a very neat and tidy person, but the owner of Buttercup Cottage is very laid back. Although the shared fence between the two properties is dilapidated the owner of Buttercup Cottage cannot see any reason to repair it. The owner of Rosemary

House has a very neat garden so decides to erect a new fence, not least to screen his neighbour's untidy garden.

HELP FROM THE LAND REGISTRY - POORLY DEFINED BOUNDARIES

There can be problems with poorly defined boundaries, where the boundary line is uncertain. The Land Registry can help, where a new agreed boundary line cannot be settled between neighbours. They will define the boundary in detail, through an arbitration process.

If you are able to agree a boundary line with your neighbour then this agreed boundary line can be registered with the Land Registry. It will, however, be necessary to have a scale plan (probably 1:500) drawn up by a qualified surveyor when registering the agreed boundary line.

DISPUTES AND LITIGATION

Solicitors are often consulted about cases involving neighbours fighting over the ownership of boundaries, or the height of hedges. No church would want to be involved in a dispute of this kind unless a clear matter of principle was involved, reaching a settlement with the neighbour would be cheaper and easier.

Court costs and legal fees can be very expensive. Where there is an important issue involved, then the church needs to protect their property. However, in many cases, especially where a neighbour is refusing to maintain a boundary, it is cheaper and easier and more cost effective for the church to undertake the work themselves, rather than attempt to force an unwilling neighbour to fulfil their responsibilities.

NEGOTIATION

If the costs are significant, and the church lacks confidence to discuss the situation with their neighbours, they may decide to appoint a surveyor to help them resolve problems. The RICS offer a Dispute Resolution Service for where there is a dispute over a boundary line or ownership of a boundary. Further information on the service and costs can be found at

<https://www.ricsfirms.com/residential/legal-issues/boundaries/rics-consumer-guide-boundary-disputes/>

and

<https://www.ricsfirms.com/media/1229/rics-consumer-guide-boundary-disputes-2018.pdf>

Before visiting the neighbour, it is important to obtain information about the church's title and the neighbour's title. Information is often available through the church's Property Trustee, or from the Land Registry.

The Land Registry can provide copies of title documents, and plans, to help identify the facts.

Sometimes it is important for a church to be absolutely clear with the neighbour that there is little room for compromise. On other occasions, problems with boundaries are better resolved with a bit of 'give and take'. Some creative thinking might help!

One church pruned the trees and bushes on their side of the boundary fence because they were overgrown. However, their neighbour felt that the removal of the hedges and trees meant that the people using upstairs rooms at the church were overlooking her garden. The church had not intended to upset their neighbour but there was a possibility that the situation would cause real problems. It was suggested that the church should visit the neighbour, with the intention of having a helpful conversation and to offer a gardening voucher to the neighbour so that she could choose and plant trees on her side of the boundary that would screen her garden.

OUR NEIGHBOURS HAVE PUT A FENCE ON OUR LAND! – ENCROACHMENT!

Another church was unhappy because the neighbour had extended their garden up to the back wall of the church. However, when they were able to point out the stumps of the old fence posts in the ground, this gave a clear indication of the original boundary line. They had clear evidence of the boundary line and needed to insist that the proper line was observed.

Sometimes a new boundary fence is put up, but not in the right place. If the difference is only a few centimetres, it may not be a major problem. However, there are situations where the church needs to ask the neighbour to put the fence back in the right place. Ignoring the problem could mean that the neighbour obtains possessory title to part of the church's land even though the original boundary lines are marked on the Land Registry records and paperwork for the church's title.

Occasionally, small encroachments or intrusions over the correct boundary line can be very significant. There are planning rules and regulations about the width of access ways onto a main road, or the distance between a building and the neighbour's boundary. For example, if a new window is to be installed the local Planning Department will check the distance between the proposed window and the neighbour's boundary – if the distance is not wide enough permission to install the new window may be refused. Even small infringements can have a disproportionate effect. Churches are encouraged to be realistic, but not to concede ownership of church property to others, without good reason.

Sometimes a neighbour will remove a fence and initially this will not seem to create a major problem. The church may be short of funds and be unable to contribute to the maintenance or replacement of the fence themselves. However, the fence is a key marker of the boundary line and some churches have found that when the fence has gone the neighbour has extended their garden!

THE PARTY WALL etc ACT 1996

A 'party wall' does not mean a fence in the usual sense. It is a wall that does not form part of a building but which does straddle the boundary of land belonging to two (or more) owners or it is one owner's land but is used by two (or more) owners to separate their buildings. A garden wall can also fall within the 1996 Act as a 'party fence wall'. A 'party fence wall' is one that stands astride the boundary line and separates the land of different owners.

The Party Wall etc Act 1996 must be complied with if you intend to undertake works to the party wall or structure, or build a new building on or astride the boundary line between two properties. The Act also needs to be complied with if you intend to excavate within three or six metres (depending on depth of foundations or hole) of the neighbour's building or structure.

Special care is needed if the boundary wall is a retaining wall, or the changes proposed are likely to change the level of the land, or undermine the neighbour's house or garden.

Further guidance on the Party Wall etc Act 1996 is available in an explanatory booklet which can be downloaded at www.communities.gov.uk/publications/planningandbuilding/partywall.

CASE STUDIES – PROBLEMS

What kind of problems can a local church experience in relation to boundaries? Here are some examples, indicating the nature of the problem and what was done about it.

Case Study – an unexpected new gate

New owners purchased a property near a Baptist church. The church was surprised when the new owners erected a new fence and included a gate that led directly onto to the church site. They were not happy about this but the neighbours explained that they wanted to create a quick way for their children to go to school. However, over time it became clear that the neighbours' children were making a great deal of use of the church grounds for ball games especially when the church building was not in use for other activities. The church was not happy about this and explained that this was not public land and asked the neighbours to stop. The church was even more surprised when they found that the neighbours had erected a spot

light on their property, angled in such a way that it shone directly onto the church grounds, so that children could carry on playing even when it got dark!

Case Study – the back wall of the church became damp

Many older church properties do not have a damp course. Where modern buildings have a damp course it is important that this is not bridged. Sometimes the neighbours of a church extend the flower beds in their own garden, creating rockeries or other raised features. One church found their neighbour had piled soil up against the walls of the church building creating a situation where the damp course is bridged and walls become very damp. The only solution is for the neighbours to be asked to remove the soil.

Case Study – support from neighbour's land

Churches and other buildings are supported by the ground around them. In modern legal documents there are likely to be written rights of support, but if your church has been in the same place for many years, and a neighbour removes so much of their soil that this undermines your property, there is a need to take urgent action. You will almost certainly need professional advice.

Case Study – taking a short cut

A church had good neighbours but were surprised when they put a gate in their back fence so that their child, who was moving to secondary school, could take a short cut across the burial ground to get to the main road and the bus stop. If something like this happens it is essential to take action promptly since allowing this kind of activity to continue could create a formal easement (right of way) that benefits the neighbour's property.

Case Study – overhanging doors or windows

A church had difficulty when their neighbour built an extension to their property with external walls that were right on the boundary with the church. French windows were installed, that extended over the church car park and the boundary whenever the doors were open. The church had to take action to avoid the neighbour having permanent ownership of extra land. This would have happened if they continued to use the land without the church raising an objection.

FINAL COMMENTS

All cases involving boundaries are different. This leaflet cannot cover all situations but we hope that some of the information and case studies help you to carefully work through your difficulties – or to avoid them altogether!

Remember – we will try to help, and may be able to put you in contact with advisors who can offer their advice. In matters relating to boundaries it is almost always better to negotiate than to pursue a formal court case.

ENVIRONMENTAL CONSIDERATIONS

As part of our call to share in God's mission to all of creation, when considering maintenance and development of church premises, manses and land, we should include a consideration of the environmental impact. Statutory requirements will mandate adherence to a range of environmental standards but churches are also urged to take a broader view of the impact of the use of their property and development of their buildings on the environment, seeking to make them and church life in general as sustainable and environmentally friendly as possible. Churches considering projects such as building insulation, solar panels or heat pumps should take a balanced view, giving thought not only to the proposed environmental benefits but also to any wider consequences, including costs, and seek professional advice before proceeding, to ensure that they are acting in the best interests of the church charity.

The Baptist Union Environmental Network ('BUEN') webpage [here](#) has links providing general advice regarding buildings and land. Further advice can be found in the Baptist Union's [Transform leaflets](#) in the "Environmental Issues" section. Churches may wish to undertake their own environmental audit using online resources such as the survey provided by A Rocha for their [Eco Church scheme](#) or BMS Worldmission's [Carbon Calculator](#), but appropriate professional advice should always be sought in connection with the planning of any building works or projects. Grants may be available from national and local governments.

Association Trust Company	Contact
Baptist Union Corporation Ltd East Midland Baptist Trust Company Ltd	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
Heart of England Baptist Association	Heart of England Baptist Association 480 Chester Road Sutton Coldfield B73 5BP Office Mobile: 0730 505 1770
London Baptist Property Board	London Baptist Association Unit C2 15 Dock Street London E1 8JN Telephone: 020 7692 5592
Yorkshire Baptist Association	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
West of England Baptist Trust Company Ltd	West of England Baptist Trust Company Ltd Little Stoke Baptist Church Kingsway Little Stoke Bristol BS34 6JW Telephone: 0117 965 8828

This is one of a series of *Guidelines* that are offered as a resource for Baptist ministers and churches. They have been prepared by the Legal and Operations Team and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

The staff in the Legal and Operations Team at Baptist House (or your regional Trust Company) will be very pleased to answer your queries and help in any way possible. It helps us to respond as efficiently as possible to the many churches in trust with us if you write to us and set out your enquiry as simply as possible.

The Legal and Operations Team also support churches that are in trust with the East Midland Baptist Trust Company Limited.

If your holding trustees are one of the other Baptist Trust Corporations you must contact your own Trust Corporation for further advice. A list of contact details is provided above. If you have private trustees they too should be consulted as appropriate.

Contact Address and Registered Office:

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