WHERE DOES THE HIGHWAY END?

A recent criminal law case - **Griffiths (Contractors) Ltd v Driver & Vehicle Licensing Agency** – reveals a property law issue which regularly crops up in property transactions: where does private land ownership end, and the public highway begin? In this case, the defendant, who had parked a dumper truck on a grass verge - apparently close to the highway, but behind a safety barrier - was convicted of keeping an unlicensed vehicle on a public road. The verge appeared to lack the characteristics of a road, and looked to the lay person more like private land. However, the court held that the verge was part of the road. “Road” is defined in the Vehicle Excise and Registration Act 1994 as a road that is repairable at the public expense. There was no doubt in this case that the public had access to the grass verge, and that the verge was maintained at the public expense. Hence, the safety barrier did not limit the extent of the road in question.

So where does the road or highway end, and private ownership begin? Ascertaining the width of a road is often relevant in property matters: a property owner will need to explore the extent of its adjoining land ownership if it wishes to develop close to the highway; it will need to be satisfied that access is available directly from the public highway, without the need for easements over third party land; it will need to explore the extent of public rights of way serving the property; it may need to accommodate a visibility splay; and it will also need to check that there is no ransom strip between the highway land and its adjoining land.

What amounts to the highway, subject to its public rights of way, is what amount of land was initially dedicated as the highway. Highways come about in various ways. A highway is a route over which all persons are entitled, at all times, to pass and repass without let or hindrance. They arise through ancient use (i.e. user established before 1835), by adoption on construction (where a highway or local authority itself constructs new roads), by dedication under section 37 Highways Act 1980 or pursuant to a section 38 HA 1980 agreement, or by simple dedication. A highway created by simple dedication arises through the dedication of the land by the landowner as a right of way for the public, and the acceptance by the public of that dedication. In most cases, simple dedication will have arisen as a matter of inference, taken from the circumstances of user existing over a period of time.

However, still the question arises: where does the boundary of land in private ownership end, and where does the highway begin? As we know, the exact position of a legal title boundary is often very hard to pinpoint. Land Registry Practice Guide 40 (Land Registry Plans) points out that ‘boundary’ has no special meaning in law. It has two aspects to it - the legal boundary (which is rarely identified in title deeds with any precision) and the physical boundary - fences, walls, hedges and other boundary features on the site. The boundaries of land shown on the Land Registry title plan have not

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If you require advice on insuring freehold covenants or other types of title issues for example village green and prescriptive rights to light please contact

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been determined to indicate their exact line. They operate under section 60 LRA 2003 as general boundaries only. What this means, therefore, is that the red-edging on the Land Registry plan is inconclusive as to where a title ends, and where the highway begins. Comparison can be made with plans produced by the highway authority to see what extent of land the authority confirms is the extent of the highway adopted and maintainable at the public expense, and to make sure both plans can be reconciled with each other. Where doubt remains, an inspection should be conducted, and certain legal presumptions regarding the location of boundaries may assist.

Inspection on the ground is a fundamental part of the process of identifying what extent of land appears to have been dedicated. What amounts to the highway is the amount of land that, as a matter of fact, was initially dedicated as a highway. Land maintained by the highway authority adjacent to the surface of the highway, such as a grass verge, may form part of the highway itself. Maintenance is strong evidence that the land in question was originally intended to be dedicated as part of the highway.

Where there are fences or hedges on either side of the highway, and the presence of these boundary features are referable to the highway, it may be presumed that the highway includes all of the land between the features. See Attorney-General v Beynon [1970] Ch 1. The “hedge to hedge” presumption is that a highway extends to the whole width of the space between fences on either side of the highway and is not limited to the metalled part of the roadway. The hedge is presumed to belong to the adjacent landowner, although the boundary probably runs along its root line. Where the highway is separated from private land by a ditch, the ditch is presumed to belong to the adjacent landowner (although there are statutory powers for the highway authority to fill in the ditch and fence the boundary).

The ad medium filum rule may also assist. This operates so that where a highway adjoins land, the adjacent landowner is presumed to own the soil of one half of the highway which is co-extensive with his land. In Berridge v Ward (1861) 10 CB (NS) 400, the court said: “Where a piece of land which adjoins a highway is conveyed by general words, the presumption of law is, that the soil of the highway usque ad medium filum passes by the conveyance, even though reference is made to a plan annexed, the measurement and colouring of which would exclude it.” The presumption may be relevant where a strip of land appears to separate the highway from land of an adjoining owner. If the land in question is not part of the highway, it may form part of the landowner’s title. However, if the land is not part of the highway, and is not part of the frontager’s title, it may be in third party ownership, or may be waste land of the manor, giving rise to questions of access to the frontager’s land. The presumption is also useful where land ceases to be a highway through stopping up or diversion. In such a case, the highway land reverts to the owners who first dedicated the land. In the absence of evidence to the contrary, those persons are taken to be the frontagers, so that, under the application of the ad medium rule, closure of the highway results in the addition of land. Land Registry should then correct the title plan.

Title News contains information about current legal topics affecting property law but does not give legal advice.

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