

CHURCHYARD BOUNDARIES

While I am happy to offer general advice on this sort of problem as the diocesan registrar, once I get involved in making specific enquiries, I think that parishes must accept responsibility to pay for my time. This is because I am going beyond the normal role of the diocesan registrar and taking on that of a solicitor to the PCC. The PCC is, of course, quite free to use a different firm.

I do not keep deeds for churches and churchyards, if, indeed, they exist at all. For most medieval churches and their original churchyards, there are no deeds whatsoever. More modern churches and extensions to churchyards may have deeds and if deeds exist they are essential to answer any questions about the ownership and responsibility for boundaries.

In attempting to uncover any deeds or other relevant correspondence that may cast light on the situation, I would normally enquire of the following:-

1. Church of England Record Centre
15 Galleywall Road
South Bermondsey
London
SE16 3PB
(This will be where the Church Commissioners have been involved).
2. Sheila Reed
Suffolk Record Office
Raingate Street
Bury St Edmunds
IP33 IRX
(Local records and old diocesan registry files are deposited here)
3. The strong room at Diocesan Office, Ipswich (this is where deeds and correspondence for property held by the DBF on behalf of the PCC may be found).

One starts with the legal presumption that boundary structures around churchyards were created by churches for their benefit and to satisfy the canon law duty to fence churchyards. There are various other presumptions about the ownership of particular boundary structures, e.g. where there is a hedge and a ditch it is assumed that the boundary line is on the hedge of the ditch furthest away from the hedge. However, any presumptions can always be rebutted.

I would always ask the adjoining owner to have a look at his/her deeds to see what they say and to provide copies. If he/she is unwilling to disclose them, then I would immediately smell a rat.

There are ways of getting access to documents for adjoining land that are held by the Land Registry without involving the owner but this only applies where the adjoining land is registered. Particularly in rural Suffolk, this is not always the case. Normally, solicitors are the best people to carry out such searches.

Ownership of the boundary structure carries responsibilities. If it is causing damage to adjoining property, then the church will be liable for that damage if the damage is reasonably foreseeable. The same applies to roots and trees, piles of spoil in the churchyard etc. that encroach across the boundary line.

Please feel free to contact me on 01473 406270 or by email to james-hall@birketts.co.uk.

James Hall