Neutral Citation Number: [2025] EWHC 136 (Ch)

Case No: CH-2024-000070

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (ChD)

On appeal from the order of His Honour Judge Saggerson dated 28 February 2024 at the Central London County Court in claim G01KT595

7 Rolls Buildings
Fetter Lane
London EC4A 1NL

Date: 27 January 2025

Before:
MR JUSTICE MARCUS SMITH

- -

Between:

(1) STIAAN VAN ZYL	Appellants
(2) TERSIA VAN ZYL	(Defendants below)
-and-	
PETER JAMES WALKER-SMITH	Respondent
	(Claimant below)

Heard on 21 January 2025

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MS LINA MATTSSON and **MR MICHAEL TETSTALL** (instructed by **Meadows & Co**) for the **Appellants**
MR JONATHAN WILLS (instructed on a direct access basis) for the **Respondent**

Approved Judgment

The judgment was handed down remotely at 10:45 am on 27 January 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives

MR JUSTICE MARCUS SMITH:

1. By an order dated 28 February 2024 (the **Order**), His Honour Judge Saggerson (the **Judge**) declared that "[t]he boundary between the leasehold land at 34 Albany Crescent, Claygate, Surrey KT10 0PF (registered at HM Land Registry under title number SY848473) (**No 34**) and the leasehold land at 36 Albany Crescent, Claygate, Surrey KT10 0PF (registered at HM Land Registry under title number SY826132) (**No 36**) is located as follows: on a straight line 500mm (measured horizontally) further from the patio area at No 34, measuring away from the line formed by the furthest edge of the jagged paving shown on the lower photograph on page 517 of the trial bundle and shown in blue on the plan attached hereto".

2. A number of consequential and other matters were provided for in the Order. It is unnecessary to set these out.

3. The Order was consequential upon an *ex tempore* judgment (the **Judgment**) rendered on 1 February 2024. The Judgment notes (at [2]) that:

> The dispute between these neighbours concerning principally, but not exclusively, the boundary between their two gardens involves a comparatively small area of land, but I entirely accept that it has become of some great significance to each of them. There are other ancillary property matters which would also be characterised as of a minor nature. Any damages one way or the other that might fall to be awarded will also be extremely modest in nature. Nobody is suggesting otherwise. The matter was originally allocated to the fast track and I venture the only reason it has been re-allocated to the multi-track is derived from the fact that it has necessarily taken more than one day to try. In fact, with all the necessary pre-reading and preparation, perhaps a more accurate estimate would have been three days.

4. The Appellants sought to appeal the Order and by my order of 13 May 2024 I gave permission to appeal. This judgment determines that appeal.

5. This is, therefore, a boundary dispute between neighbours, who are respectively leaseholders of No 34 (the Respondent's property) and No 36 (the Appellants' property). No 34 and No 36 are maisonettes, comprising the right half (standing on the road in front) of a larger building. No 34 is the ground floor property and No 36 the first floor property. The two other maisonettes – No 38 and No 40 – comprise the left half of the building, but they are not material for present purposes.

6. No 34 was first demised by a lease dated 30 November 1988 (the **No 34 Lease**), which predates by some months the lease for No 36 (the **No 36 Lease**), itself dated 17 March 1989. The No 34 Lease is thus the instrument which created the boundary to which this appeal relates, but since both leases are consistent with one another, nothing turns on this. As I understand it, the leases were extended, but on identical terms, and nothing turns on this either.

7. The No 34 Lease materially provides as follows:

i) The "Premises" are defined as "the property hereby demised as described in the Second Schedule hereto including for the purposes of obligation as well as grant the cisterns tanks sewers drains pipes wires cables ducts vents and conduits specified in the said Schedule": Recital (1)(d).

ii) The Second Schedule provides:

> ALL THAT self contained flat situate on the ground floor of the building comprising the Property and the garden ground both shown for the purpose of identification only edged red on the said plan known as 34 Albany Crescent Claygate aforesaid…

iii) The plan (the **No 34 Plan**) is a version of the plan used for the original conveyance of the whole building (with garden grounds) dated 24 December 1949. The following points can be noted about the No 34 Plan:

a) The extent of the original freehold property is outlined in a thick blue line. It forms an irregular circle (if one is generous about the meaning of "circle") around the building.

b) That circle is bisected by a line dividing the property into two (the **Bisecting Line**), creating a left-hand semi-circle (again, being generous about the meaning of "semi-circle") and a right-hand semi-circle. The left-hand semi-circle describes the property belonging to No 38 and No 40. The right-hand semi-circle describes the property demised to No 34 and No 36. The Bisecting line divides the building equally between No 38/No 40 (on the left-hand-side) and No 34/No 36 (on the right-hand-side).

c) Within the right-hand semi-circle, the property demised to No 34 comprises:

i) The ground floor of the building.

ii) The front garden, whose width is coterminous with the half of the building demised to No 34/No 36.

iii) The rear garden.

This area is identified on the No 34 Plan as an area edged red, consistent with the wording in the Second Schedule. There are grounds to the right and to the rear of these areas comprising the rest of the semi-circle allocated to No 34/No 36 which are demised to No 36 by way of the No 36 Lease.

d) Although obvious from the wording of the No 34 Lease, it is nevertheless to be stressed that the red edging does not differentiate between the three areas identified above as comprising the demise to No 34. The red edging does not differentiate between the ground floor, the front garden or the rear garden. The distinction is one that I draw for the purposes of exposition. The differentiation between these three areas is, however, marked on a plan attached to this judgment. This

plan formed part of a report by a Mr Anthony Bianchi, FRICS, a chartered surveyor instructed by the Appellants. I refer to it as the **Bianchi Plan**, which I am using not as an aid to construction or interpretation but for the purposes of exposition only. It obviously cannot assist in the determination of this appeal.

e) Neither the ground floor nor the front garden require any further consideration for the purposes of this appeal. The rear garden, however, lies at the heart of this appeal, and needs to be described further. The rear garden (the **No 34 Rear Garden**) comprises (I stress I am describing how the No 34 Plan appears to the reader) a triangle, whose hypotenuse runs from the right-hand-corner of the rear of the building to a point on the Bisecting Line that appears to be at the halfway point of the rear garden grounds of No 34/No 36 (the **Hypotenuse**). On the Bianchi Plan, the Hypotenuse is marked *D* à *A*, where *D* is the rear of the building and *A* the point on the Bisecting Line. The adjacent side of the triangle (*A* à *B* in the Bianchi Plan) runs along the Bisecting Line to meet the rear of the building at what must be the extreme left-hand point of the demise to No 34. The opposite side of the triangle (*B* à *D* in the Bianchi Plan) runs along the rear of the ground floor of the half of the building that is part of the No 34 demise.

iv) Included within the demise is a right of way specified in paragraph 1 of the Third Schedule:

> The right of way at all times on foot only to and from the Premises over that part of the Reserved Property shown coloured brown on the said plan subject to the payment of one half of the upkeep thereof.

v) It is unnecessary to go through the definition of "Reserved Property", save to note that this is a reference to the property that came to be created by the No 36 Lease. The area coloured brown on the No 34 Plan runs alongside and to the right of the right-hand edge of the (red-edged) area that represents the No 34 demise. From the No 34 Plan it is clear that the right of way extends beyond the end of the building (by what would appear to be a pathway's width) and extends left until it hits the hypotenuse line *D* à *A* that represents the boundary between the property demised to No 34 and the property demised to No 36. Given that the front door to No 34 is on the side of the building, it is obvious that the reason the right of way has been extended beyond No 34's front door is to provide access to the No 34 Rear Garden.

8. The No 36 Lease tracks the No 34 Lease, and can be dealt with briefly for that reason and because it is of secondary importance in terms of the question of construction that is the subject of this appeal. "Premises" are described in the Second Schedule (Recital (1)(d)), which states:

> ALL THAT self contained flat situate on the first floor of the building comprising the Property and the entrance on the ground floor and staircase leading thereto and the garden ground both shown for the

> purpose of identification only edged red on the said plan known as 36 Albany Crescent Claygate…

The plan (the **No 36 Plan**) again uses the plan from the original (freehold) conveyance and is the mirror of the No 34 Plan. The first floor flat and all garden grounds within the left-hand semi-circle apart from those demised to No 34 are edged red. The garden grounds are extremely irregular in shape and defy easy description. In very broad terms, the garden grounds subsist to the right of the front garden and building and to the right and rear of the No 34 Rear Garden.

9. The right of way in favour of No 34 is provided for in paragraph 4 of the Fourth Schedule:

> The right of way at all times on foot only for the Lessor and Lessee of the flat situate below the Premises to and from such flat and the garden ground belonging thereto over that part of the Premises shown coloured brown on the said plan subject to the payment by such person or persons of one half of the cost of upkeep.

10. This wording makes expressly clear by its reference to the "garden ground" of No 34 that the right of way is intended not only to provide access to the No 34 front door, but also to the No 34 Rear Garden.

11. By a claim form issued 5 October 2020, the Respondent (who was the Claimant below) sought a "declaration that the Claimant is the leasehold owner of the land edged in red on the lease plan of No 34, and that the southwest boundary of the said land lies along the line of the hedge between No 34 and No 36 Albany Crescent as it existed prior to the Defendant's actions in April 2019…".

12. The gardens to the rear of the building contained a hedge (the **Hedge**). The Judge was shown various photographs of the property over time, as was I. I will defer to the Judge's descriptions of and findings of fact in relation to the property, including as to the Hedge. No-one suggested that I could do otherwise on this appeal. The Judgment finds (at [28]):

> …Running diagonally across this photograph from bottom right towards top left is the hedge…One either side of the hedge in the top left quadrant of the photograph, we see on the left-hand-side the hut that was put in by the [Respondent], and on the right-hand-side a hut that belongs to the [Appellants]…

The Bianchi Plan shows what the Judge is describing. The Hedge can be seen running along a line more or less parallel to the Hypotenuse *D* à *A*, the Hedge line being identified as line *E* à *F*. The Respondent's hut (or, *pace* Mr Bianchi, shed) appears at the apex of the triangle, at point *A*, but crossing the Hypotenuse line *D* à *A*.

13. The Hedge was removed in circumstances that can only be described as contentious. The Judge describes the removal of the Hedge at [37] of the Judgment:

> In April of 2019, [the Appellants], at a time when the lower flat, the ground floor flat, No 34, was tenanted, instructed contractors to come

> in and to remove the hedge altogether, reposition the grey hut in the triangular garden in order to move that hut further into the garden, to remove the gate into the triangular garden, and replace the existing layout…with a new fence. In so doing, they effectively laid claim to all the land on which the hedge had been standing and a trifle more…

As I say, these actions were not done in agreement with the Respondent. The Judgment states (at [53]):

> Unfortunately, the work that was done with the new fence and gate was done – I was going to say "clandestinely", but that would not be entirely fair – it was done in the absence of the [Respondent]. It was done unilaterally. That is a great pity because in taking this unilateral action based on Mr Bianchi's surveying evidence and the [Appellants'] own – I am sure – honest belief, if perhaps somewhat wishful thinking-based belief, that they owned more land pursuant to their lease than they did, they went ahead and did this work never imagining for a moment that [the Respondent] would take action, cross though perhaps the [Appellants] would have anticipated him to be. In removing the hedge, they have made the task of the subsequent surveyors…and the court more difficult because there is yet another layer of activity that needs to be deconstructed in order for a conclusion to be drawn as to where the boundary lies.

14. The dispute between the parties was whether the boundary to the No 34 Rear Garden lay along the Hypotenuse line *D* à *A* (as contended for by the Appellants) or along the Hedge line *E* à *F* (as contended for by the Respondent). The Judge found in favour of the Respondent. The reason the Order cannot simply make reference to the Hedge line *E* à *F* is because the Hedge was removed. The Judge was therefore forced to adopt the more convoluted definition of the boundary that appears in the wording of the Order. But nothing turns of this: it was common ground that if the Judge's conclusion as regards the boundary was correct, then the manner in which the Order framed that boundary was unimpeachable. The critical question – and the focus of the Appellants' grounds of appeal – was where the boundary between No 34 and No 36 lay in regard to this specific part of the No 34 Rear Garden.

15. The grounds of appeal are admirably clear and concise. The first ground pleads:

> The Learned Judge erred in law by holding that a lease plan marked for "for the purpose of identification only" should be disregarded, notwithstanding the plan being the only means by which the extent of the demised premises could be ascertained from the lease.

16. The second ground pleads that the Judge was wrong to hold that the Hedge line marked the boundary, in particular because:

    i) The immovable topographical feature, namely the corner of the building (that is, point *D*) should be disregarded in favour of the "changing hedge" when construing the No 34 Lease and the No 34 Plan.

ii) The measurements on the No 34 Plan should be disregarded completely when ascertaining the position of the boundary.

iii) The triangle shape of the garden depicted on the No 34 Plan, running in straight lines from point *D* should be ignored as an aid of construction in favour of the "changing hedge", even though the result is a trapezoid shaped garden.

iv) What the reasonable layperson would think they were buying, looking at the No 34 Lease and No 34 Plan included half of the "changing hedge".

17. The critical first question in this appeal turns on what, exactly, the Judge was construing. The No 34 Lease and, to the extent it matters, the No 36 Lease, describe the No 34 Plan and the No 36 Plan as "for the purpose of identification only". Although it was at one time arguable that plans "for identification only" were to be excluded when seeking to ascertain a boundary, that point was put to rest by the Court of Appeal in *Wigginton & Milner Ltd v. Winster Engineering Ltd*, [1978] 1 WLR 1463 at 1473-1474 (*per* Buckley LJ):

> Mr Nicholls in the instant case has submitted that the plan attached to the 1921 conveyance cannot be looked at for the purpose of ascertaining any boundary; it is only to be looked at for the purpose of ascertaining the location of the property conveyed. When a court is required to decide what property passed under a particular conveyance, it must have regard to the conveyance as a whole, including any plan which forms part of it. It is from the conveyance as a whole that the intention must be ascertained. To the extent that the conveyance stipulates that one part of it shall prevail over another part of it in the event of there being any contradiction between them in the ascertainment of the parties' intention the court must of course give effect to that stipulation. So if the conveyance stipulates that the plan shall not control the description of the parcels, the court must have due regard to that stipulation; but in so far as the plan does not conflict with the parcels, I can see no reason why, because it is described as being "for identification only", it should not be looked at to assist in understanding the description of the parcels. The process of identification is in fact the process of discovering what land was intended to pass under the conveyance, and that is the precise purpose which the plan is said to serve. Accordingly, so long as the plan does not come into conflict with anything which is explicit in the description of the parcels, the fact that it is said to be "for the purposes of identification only" does not appear to me to exclude it from consideration in solving problems which are left undecided by what is explicit in the description of any parcel.

18. Thus, a plan "for identification only" is admissible as an aid to construction of (here) the No 34 Lease, but it is not, of itself, the document being construed. In this, it is very different from a plan that "more particularly delineates" the property. In such a case, it is the plan that has primacy over the words in the instrument. In *Strachey v. Ramage*, [2008] 2 P & CR 8, 154, Rimer LJ stated:

> [31] The formula "for the purpose of identification only" is one whose use is time-honoured. Its ordinary sense is that a plan so described is intended to do no more than identify the position and situation of the land: it is specifically not intended to identify its precise boundaries. The use of such a plan is therefore strictly only appropriate for a case in which the *verbal* description in the parcels identifies the limits of the land with adequate precision since it is a formula which indicates that the verbal description is intended to be decisive in that respect. Such a plan "cannot control the parcels in the body of any of the deeds" (*Hopgood v. Brown*, [1955] 1 WLR 213 at 228, *per* Jenkins LJ); it "cannot therefore be relied upon as delineating the precise boundaries and in any case the scale is often so small and the lines marking the boundaries so thick as to be useless for any purpose except general identification" (*Wibberley*, above, *per* Lord Hoffmann).
>
> [32] The use of this formula – "for the purposes of identification only" – is to be contrasted with the case in which the parcels clause gives a verbal description of the land but also refers to the land as being "more particularly delineated" on the plan. In such a case, in the event of any uncertainty as between the words and the plan, the latter will ordinarily prevail over the words and *will* control the verbal description…

19. In this case, therefore, the Judge was construing not the No 34 Plan, but the No 34 Lease, of which the No 34 Plan was a part. In other words, he was construing the words in the Second Schedule of the No 34 Lease, set out in [7(ii)] above. This was exactly what the Judge did: see [45], [46], [59] and [71] of the Judgment. I therefore reject the substance of the first ground of appeal (set out at [15] above). The Judge did not hold that the No 34 Plan should be disregarded. To the contrary, he took it into account. He correctly approached the question of construction before him as of the No 34 Lease (reading it as a whole). He did not commit the error of seeking to construe the No 34 Plan as if it "more particularly delineated" the boundary.

20. The first ground of appeal itself contains an error of law. It asserts that the No 34 Plan was "the only means by which the extent of the demised premises could be ascertained from the lease" (my emphasis). In *Pennock v. Hodgson*, [2010] EWCA Civ 873 at [9], Mummery LJ articulated the following propositions when construing an instrument such as the No 34 Lease (my emphasis):

> (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 the first in time.
>
> (2) An attached plan stated to be "for the purposes of identification" does not define precise or exactly 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.

The relevant features are themselves admissible evidence, and the first ground of appeal errs in failing to recognise this.

21. The Judge was perfectly entitled to look to the physical features of the land, specifically the Hedge and there was no reason in law why he could not prefer the evidence to the Hedge to the evidence of the No 34 Plan or *vice versa*, assuming that these pieces of evidence pointed in different directions (which, as I shall come to, is not a given). The No 34 Lease, the No 34 Plan and the Hedge (amongst other things) were all material that the Judge was perfectly entitled to take into account.

22. I turn now to the second ground of appeal (summarised at [16] above), which essentially pleads that the Judge erred when considering the evidence before him in locating the boundary along the Hedge line *E* à *F* and not along the Hypotenuse line *D* à *A*. This obliges me to consider how the Judge approached the significance of the No 34 Plan and the significance of the Hedge:

i) In *Alan Wibberley Building Ltd v. Insley*, [1999] 1 WLR 894,895-896, Lord Hoffmann stated:

> The first resort in the event of a boundary dispute is to look at the deeds. Under the old system of unregistered conveyancing, this means the chains of conveyances and other instruments, going back beyond the period of limitation, which demonstrates that the owner's title is in practical terms secure against adverse claims. These conveyances will each identify the subject matter in a clause known as the parcels which contains the description of the land. Sometimes it is no more than a reference to the land conveyed by an earlier conveyance, which will then have to be consulted. Older conveyances of farm property often describe the property as being the house and land in the occupation of the vendor or his tenant. The parcels may refer to a plan attached to the conveyance, but this is usually said to be for the purposes of identification only. It cannot therefore be relied upon as delineating the precise boundaries and in any case the scale is often so small and the lines marking the boundaries so thick as to be useless for any purpose except general identification. It follows that if it becomes necessary to establish the exact boundary, the deeds will almost invariably have to be supplemented by such inferences as may be drawn from topographical features which existed, or may be supposed to have existed, when the conveyances were executed.

ii) If the No 34 Plan forming part of the No 34 Lease had been a to-scale professional delineation of the boundaries between No 34 and No 36 – along

the lines of the Bianchi Plan, for example – then such a plan would be entitled to great weight and might very well (even if "for the purposes of identification only") be practically conclusive. But the No 34 Plan is much more like the type of plan described by Lord Hoffmann in *Wibberley*:

a) The plan is not to scale. It is also exceedingly small and hard to read. The demarcations and edgings are – particularly given the size of the plan – disproportionately thick. The Judge found (at [71]) that:

> One has to bear in mind that as far as the lease plan is concerned, it is transparently obvious that the plan or plans were only for the purposes of identification. It is dangerous in my judgment to step too far beyond that clear and inambiguous designation. Plans that are for the purposes of identification only should not be given primacy in terms of consideration as a strand of evidence where they are obviously limited in their purpose and intended effect from the very outset.

This is an apt description of the evidential significance of the No 34 Plan.

b) The Appellants placed reliance on the "measurements" on the No 34 Plan: see [16(ii)] above. This is a reference to an apparent measurement of (i) the length of the adjacent side of the triangle *A* à *B*, which is put at 22 feet and the length of the Hypotenuse line *D* à *A*, which is put at 30 feet. The problem is that these figures are not internally consistent. The Respondent's written submissions at [54] put the point very clearly:

> It has always been common ground that a right-angled triangle with a known side length of the rear wall of No 34 (which has of course always remained the same) cannot have two other sides with lengths of 22 feet and 30 feet…

The consequence is that a competent surveyor seeking to create a to-scale plan of the No 34 Rear Garden has got to pick-and-choose between a variety of metrics and can (within certain broad limits) create a whole range of different sized triangles, any one of which might be argued for. That is particularly the case when it is accepted that the 22 feet and 30 feet measurements will themselves be subject to margins of error of plus or minus half a foot. As the Judge noted, using certain measurements "with suitable margins of error, one achieves the result contended for by the [Appellants]…" (Judgment at [52]). But that result is only one of many that could plausibly be advanced. I reject ground 2(ii) of the grounds of appeal (set out at [16(ii)] above). The Judge did not disregard the measurements, but he recognised that they produced a range of answers – all equally good (or bad) – and he treated the measurements, as he did the No 34 Plan generally, as indicative and not determinative of the question before him.

c) The fact that the No 34 Plan is both small and not to scale means that the Appellants' contention that the Order produces a trapezoid shaped garden rather than a triangular shaped garden is simply wrong: see the ground of appeal at [16(iii)] above. Looking at the Bianchi Plan and taking the Hedge line *E* à *F* as the boundary between No 34 and No 36, the No 34 Rear Garden is still properly to be described as "triangular". The fact is that the corner of the triangle at point *D* is "blunted" (so as, at least at present, to accommodate a gate) does not change the shape of the No 34 Rear garden, even on a properly scaled and large-scale plan, like the Bianchi Plan. The point is *a fortiori* when one actually considers the No 34 Plan itself. The drafter has drawn a red line from a point that could equally be point *D* or point *F*. The plan is simply too "indicative" to be able to tell whether the line intended to be demarcated in the Hypotenuse line or the Hedge line (to use the terms I have adopted).

d) It follows from this that the Appellants' "immovable topographical feature" (see [16(i)] above) is actually no such thing. It assumes the very point in dispute. There is no warrant for reading the No 34 Plan as using any such point at all.

iii) It follows that the criticisms made of the Judge in regard to the weight he placed on the No 34 Plan are to be rejected. I turn, next, to the Hedge, which the Judge found constituted the boundary between No 34 and No 36:

a) The Judge was plainly entitled to consider topographical features as they existed at the time the No 34 Lease was executed, which was on 30 November 1988. The Judge found that there had been a Hedge in place since "at least 1970" and that that Hedge had been at all material times on the same line.

b) These are factual findings of considerable importance and so I will therefore quote extensively from the Judgment:

> [60] In my judgment, as the evidence has unfolded in this case and particularly in the light of the submissions that I have heard, it has become increasingly obvious to me that in my judgment, taking all the strands of evidence into account, the reasonable layman in the present case would think he was buying No 34 with garden grounds that included everything to the left of the - albeit from time-to-time growing and changing – hedge. Indeed in the circumstances of this case, in my judgment the reasonably layman would think that he was buying a garden that had a boundary that ran essentially down the centre of the hedge. I find that that is an obvious conclusion notwithstanding the assistance that Mr Powell [the joint expert] has endeavoured to provide.
>
> [61] I am satisfied on the balance of probabilities that a hedge was in existence on this diagonal line, as one had seen it in the photographs to which I have already exhaustively

> referred, from at least 1981. I would go further and say on the balance of probabilities a hedge of similar character, but not always of identical height or width, and sometimes including trees that have been lopped or even cut down as the years have gone by, but nonetheless a continuous hedge has run across this diagonal line since at least 1970. Therefore, at the time the relevant leasehold interest was created in 1988, it is more probable than not that a hedge of similar character to that which we have seen in the photographs is likely to have been in position already for some 18 years if not more.
>
> The repeated forensic reference in the grounds of appeal to a "changing hedge" (see [16] above) does not reflect the substance of the Judge's findings. The Judge had a solid basis for finding that the Hedge constituted the boundary between No 34 and No 36.

23. For all these reasons, the various limbs of the second ground of appeal are dismissed.

24. I should conclude by noting that it seems to me that the evidence of the No 34 Plan and the topographical evidence are – when properly considered – actually consistent and (on the whole) mutually reinforcing. The Judge was not faced with a choice between two inconsistent lines of evidence. He construed the evidence before him as a whole and reached the correct conclusion. The appeal must be dismissed and the Order affirmed.