

Neighbour disputes

Encroachment



Overview

There are unfortunately occasions where we do not see eye to eye with our neighbours for a variety of reasons. This fact sheet offers advice on boundary disputes.

What is encroachment?

Encroachment is a situation that exists where a structure is built by an individual and that structure is built or extended onto someone else's property. In this scenario, the neighbour's builder has constructed a foundation which has been extended onto your land without permission.

What steps can be taken to rectify encroachment?

- First and foremost, check your Title Deeds to know where your boundaries start and end. They are marked as a red line or red box on the map. Once you are aware of your boundaries and it is certain your neighbour has built on your land, you can take the following steps.
- Have an informal chat with your neighbour if it is possible to make them aware of your concerns and to understand how this situation may have occurred. Try to be as amicable as possible as you are neighbours and you would want to maintain a good relationship.
- If an amicable discussion cannot resolve the potential dispute, you should write a letter which sets out your position with any supporting evidence. If you wanted, you could get a letter written by a Lawyer to explain to your neighbour what the legal position is in this situation and what needs to be done in order to rectify it.

- Try considering a settlement or discussions to narrow the issues of dispute or limit costs should always be taken to try and limit any dispute between the parties where possible. Such discussions can be undertaken formally or informally, in either writing by telephone or face to face. One such example is mediation. This is where an independent third party would help you both reach a decision you are both happy with and consider
- If the above options do not work, you can take this to the court but in doing so you should be mindful of the cost vs the issue. The possible remedies are:
 - Getting an injunction: An injunction is a court order which tells a person certain actions that they must/must not take. An injunction is granted at the discretion of the court and they will consider a range of factors when considering your application.
 - Damages: This is where you may be awarded compensation. They are calculated by the court based on the loss to you, as the Claimant. They will look at what benefit was gained by the Defendant and what amount may have been agreed if permission were granted to use the land.
 - A claim for trespass against your neighbour and the builder: Trespass is the unlawful presence of one

person on another's land. Your neighbour's builder had no permission to encroach onto the land and to construct foundations within your boundaries. You may therefore seek specific remedies to resolve the issue and damages to compensate.

- A claim for private nuisance: Private nuisance is where your enjoyment of your land has been affected by the foundations causing damage to your land and how you can use it. The court will balance your interest in the enjoyment of your land against that of your neighbours with their land. The damages will be calculated from the difference in value.
- An action pursuant to the Party Wall Act 1996 ("the Act"): If the work your neighbour undertook for the foundation was around the party wall, you should have received notice of the work they were going to carry out on their land. If you did get notice but no consent was given, then a dispute has occurred under the Act. A jointly instructed Surveyor would have then drawn up a plan as to how the works should be undertaken. If these steps were not carried out pursuant to the statutory obligations set out within the Act, you can seek an injunction or damages through the court as detailed above.

Contact us:

Telephone: 0800 916 9015

Email: enquiries@slatergordon.co.uk

Website: slatergordon.co.uk

**Slater
Gordon**
Lawyers