Property

Sunshine and Sipps
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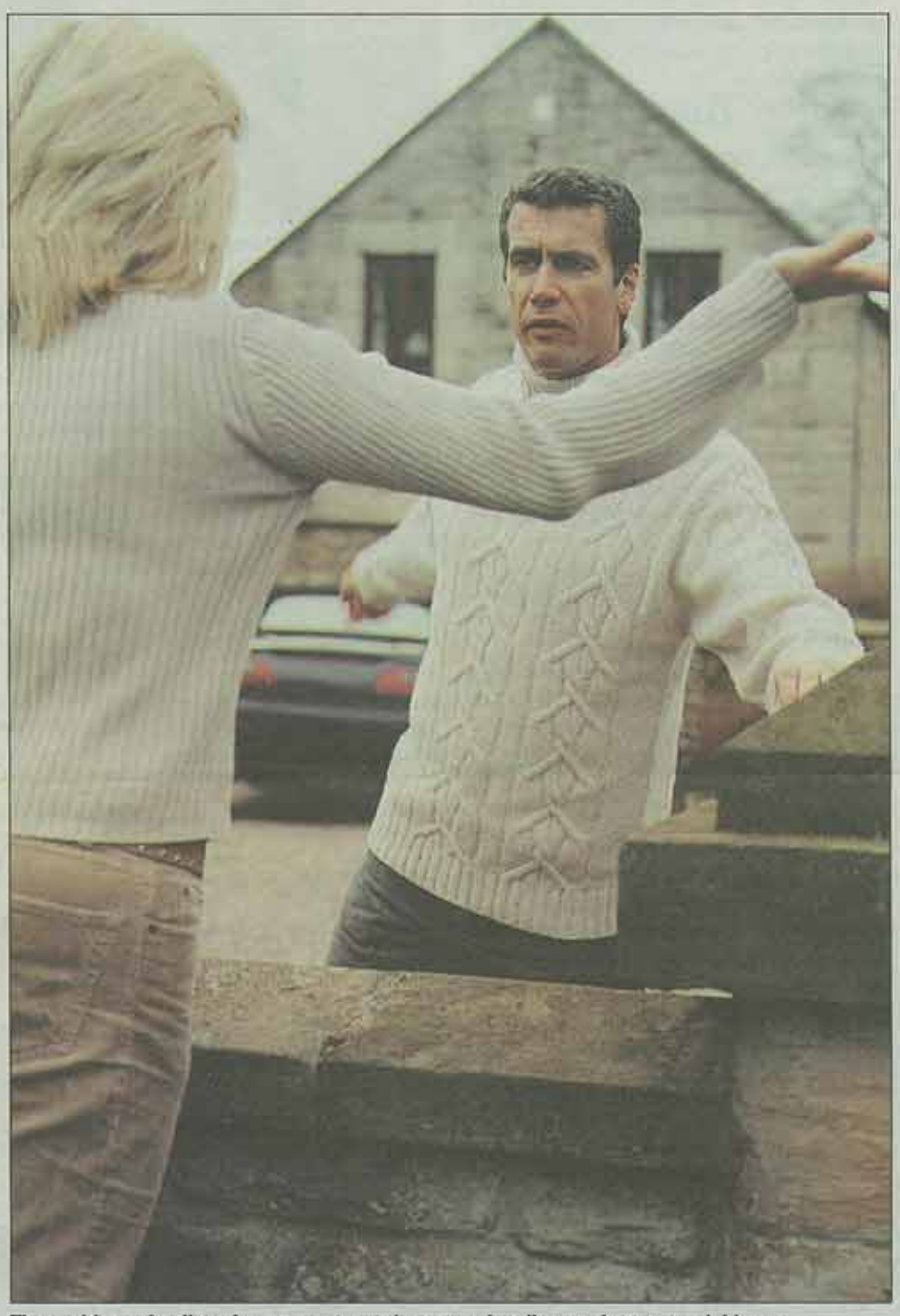
Is it really worth fighting over?

You don't need to go to court over a hedge or boundary. **Andrew Don** looks at better ways to end disputes with neighbours



The positions of walls or fences can cause long-running disputes between neighbours.

HUMANS have the territorial instincts of jungle beasts.

Boundary disputes costing thousands of pounds in legal and surveyors' fees are often fought over a few centimetres. A spiral of charges can be set in train over ownership of a fence, overhanging branches, dense hedges, party walls, shared drainage or driveways.

And they usually far outweigh the value of what is disputed – all because one person is not prepared to admit that he is wrong, says David Powell, a spokesman on boundary issues for the Royal Institution of Chartered Surveyors (Rics).

Boundary issues are not always clear-cut. A boundary's location can change over time for many reasons, such as a diverted water course or a wooden fence that moves slightly every time it is replaced. Powell says disputes often occur when someone new moves next door and takes issue with something previous occupants have put up with for years. 'There are rarely disputes over more than 30cm. Once you get above that, there's something obvious with which to solve it.'

Boundary disputes can be so ridiculous that they are downright comical. Take the case of pensioner David Jollands of Caythorpe, Lincolnshire, who, outraged about his neighbour's leylandii, urinated on them. This, over time, caused them to wither.

However, many of us can be stuck with our neighbours for years, so amicable resolution to disputes is always the best route. As Sioban Calcott, executive in litigation at Brethertons Solicitors, says: 'If one party has been landed with a legal costs bill of £20,000 following a two-day trial, it does tend to place a strain on the relationship between neighbours.'

It helps to know what rules apply before tackling a problem, and to try alternative solutions before heading to court.

Under Section 8 of the Anti-Social Behaviour Act 2003, owners of tall hedges can face fines of up to £1,000 if they fail to cut down their offending greenery when the council orders them to. However, hedges do not need planning permission and councils are likely to get involved only where they are more than 2m tall, evergreen and blocking a neighbour's light, access or reasonable enjoyment of their property.

Fences or walls, when not facing the street, should be no higher than two metres without planning permission. Those facing the street can be up to a metre without local authority consent.

Disputes over fence, wall or hedge ownership often raise blood pressure when it comes to maintenance and repair. In many cases, the deed plan of the property will show who is responsible, but not all plans indicate this.

An Ordnance Survey map on which boundary lines are drawn might help, but they are unlikely to be precise. And, contrary to popular belief, the house facing the side of the fence with the structural components is not necessarily the owner.

Sue Satchell, property litigation partner at international legal firm Withers, says certain presumptions will apply in absence of any indications on title deeds or other documents. 'For example, where there is nothing else to identify the boundary of land and there is a ditch or a bank, the presumption is that the person who dug the ditch dug it at the extremity of his own land and threw the soil on his own land to make a bank. Therefore the presumption is that the boundary runs along the edge of the ditch and belongs to the person on whose land it is sited.'

Peter Bolton King, chief executive of the National Association of Estate Agents, says it is sometimes possible to work out the likely ownership by looking at other properties in the road. He gives the example of his own house, built in 1850, where the deeds do not show who is responsible for what. But it was possible to deduce, by looking at old town plans, in what order individual houses were built and then work out the likely ownership of boundary walls.

Roger Grove, a partner at Yorkshire and Humberside-based Atteys Solicitors, says a large number of boundary disputes appear to be generated by builders and developers taking the law into their own hands.

He recalls an elderly client who returned home one day to find a large section of his hedge had been removed and a line of fence positioned about 10 metres on to his land. 'For some reason, the adjoining land owner believed the land was his even though for years and years the boundary had been marked by a line of hedges and trees.'

When the case went to court, the availability of aerial photographs showed clearly that the line of trees had been there for over 50 years and there could be no doubt about where the boundary was.

The Access to Neighbouring Land Act 1992 says that if you need access to a neighbour's land in order to carry out work, a court will order access if the neighbour is being unreasonable.

Common law dictates rules about overhanging branches. Anything that overhangs your land can be cut off and returned to your neighbour without trespassing.

Satchell says rules relating to shared driveways should be in the shared driveways' title documents ,which should specify the rights and obligations of both owners. Grove adds that common law recognises that the driveway should be used reasonably and, if there is excessive use – for instance, if a vehicle is parked for a long time preventing access – the neighbour would have a right to seek damages and an injunction.

Anyone wishing to separate two driveways by building a wall partly on their own land and partly on that of the adjoining owner would need the other person's permission. A wall that does not overlap with your neighbour's driveway does not need agreement.

People who live in semi-detached or terraced houses share a wall with neighbours known as the party wall. The neighbour's agreement must be sought before you start any work that affects this wall, such as extensions, damp proofing, some types of internal refurbishment and structural alterations.

USEFUL WEBSITES

- www.rics.org/property/propertymanagement/boundary_disputes
- www.adviceguide.org.uk/em/index/family_parent/housing/neighbour_disputes
- www.hedgeline.org
- www.boundary-problems.co.uk/
- www.gardenlaw.co.uk/boundaries.html
- www.landreg.gov.uk/

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