

# **OXFORDSHIRE COUNTY COUNCIL**

## **PROTOCOL WHERE DEDICATION IS PROPOSED AND DEVELOPER'S REGISTERED TITLE DOES NOT EXTEND TO THE HIGHWAY BOUNDARY**

Oxfordshire County Council ("OCC") wishes to facilitate development including dedication and adoption of new highways. This relates to both widening and improvement of existing highways (s278 works further to the Highways Act 1980) and creation and dedication of new estate roads (s38 works).

Much of these new works are being undertaken on former agricultural land and regrettably it is not uncommon for the Land Registry to identify a "gap" between the boundary of the land owner's ("the developer's") registered title and the existing highway boundary. Frequently this comprises a ditch. The Land Registry searches reveal this area as unregistered land (and in unknown ownership) although by virtue of the Land Registry's general boundaries rule, the boundary of land registered at the Land Registry as shown on Land Registry plans is not precise – it is a "general" boundary - and therefore the gap may be within the ownership of the developer (but it may not). However, in these cases the Land Registry has issued an unequivocal search result that there is an intervening section of unregistered land. In this note such a strip of unregistered land is referred to as a "gap".

Land may only be dedicated as new highway by the owner of the freehold of that land. Once a new road/new section of road is dedicated and adopted it must be recorded on highway records pursuant to the statutory duty on highway authorities under S36 (6) Highways Act 1980. Thus, where OCC accepts that a road/part of a road has been dedicated and then proceeds to adopt it, this is recorded on the public highway records as a correct statement as to highway status of the new road and OCC are confirming to all who enquire that the road/ part of the road is highway.

Indeed, public highway records form in practice the cornerstone of standard conveyancing searches when a person is proposing to purchase a property.

A land purchaser frequently relies on the information contained in these searches and derived from the public highway records in connection with his purchase and then if it transpires that the relevant road has not been effectively dedicated and adopted the "injured party", that is the land purchaser (house owners), may claim against OCC in consequence of providing incorrect information.

Therefore, before accepting that a road can be dedicated effectively and then adopted, due process needs to be followed and OCC must be reasonably satisfied that the developer's freehold ownership cannot be challenged.

Thus, where as part of the s38 process (including where additional land is being dedicated as an adjunct to a s278 agreement) property searches identify a gap between the developer's registered land holding and the highway boundary the

developer will be advised that he should carry out further work to ensure that he secures absolute registered freehold title (that is the best title that can be given by the Land Registry and which the Land Registry guarantee). It is for the above reasons that Possessory Title is not an acceptable option and likewise insurance cover, which cannot upgrade title where there is deficient title. For further detailed information as to application to the Land Registry - see appendix.

Note: Difficulties can arise for developers where the existence of a gap is not identified until a relatively late stage in the development programme. It can take some time to put together a good application to the Land Registry. It is essential that the developer investigates this issue at an early stage, ideally immediately following Planning Permission being granted. OCC cannot follow this protocol until a Dedication/ Adoption plan has been agreed and a Land registry search has been undertaken identifying a gap.

If the Developer is aware of a gap issue, OCC encourages application to Road Agreements Team for OCC to help in resolving the gap issue with Land Registry. For this to be undertaken the following steps need happen;

- Developer seeks confirmation of exact highway boundary from Highway Records
- Preliminary design plans are created and submitted to Road Agreements Team. These plans need to be in line with the granted planning permission, have the highway boundary detailed as well as dedication/ adoption areas and in cases where a ditch is present, a Topographical Survey of the ditch
- Road Agreements Team will carry out a preliminary audit on the submission and will liaise with OCC Legal Team to resolve. This may lead to direct communications between OCC Legal Team and the Developer's legal representative. The former's costs are to be covered by the Developer.

## APPENDIX

A developer frequently has grounds for claiming title to the gap applying one or both of the following legal presumptions: -

1. Presumption ad medium filum that is the presumption that the owner of land abutting a road also owns it up to its mid-point. This is a rebuttable presumption i.e. it can be rebutted if contrary evidence is produced.
2. Hedge and ditch presumption that is presumption that where there is a hedge with a ditch then the boundary extends to the far side of the ditch because the landowner will have dug the ditch to service his land creating a bank on which the hedge is then planted – again this is a rebuttable presumption although clearly it stands until evidence is produced to rebut that presumption.

Initially it appeared from Land Registry practice that a developer should seek to **extend** his registered title to secure absolute title to the gap by applying on form DB for registration of a precise (fixed/determined) boundary in place of a general boundary as set out in Land Registry Practice Guide 4 Supplement 4.

Several DB applications were accepted but the District Land Registry covering Oxfordshire have now advised that it will be their standard practice in these circumstances to reject them.

Whilst the reasoning for this has not been fully accepted by Oxfordshire County Council, it appears that Gloucester District Land Registry will accept applications on form AP1 to adjust the general boundary so as to coincide with the highway boundary provided it is accompanied by information set out on the attached note extracted from a letter from Gloucester District Land Registry and the evidence provided in support is accepted by the Land Registry. Clearly the Land Registry wish to retain the protection of the general boundaries rule which is understandable.

In the light of Land Registry requirements for revising the general boundary the County Council will be satisfied if it is adjusted and the resultant SIM search identifies that all the dedication area lies within the registered title.

It is anticipated that in addition to the evidence specified in the Land Registry note it may well be that they will also require the County Council to supply a letter in support of the application. Please see example attached.

As noted above, OCC can only be involved in resolving any gap after Land Registry have confirmed the presence of a gap (from SIM Search). In order to carry out this search OCC need to have agreed in principle a dedication/ adoption plan and started liaising with OCC Legal Team. OCC must be kept fully updated and informed regarding applications to the Land Registry.

## **EXCERPT FROM GLOUCESTER DISTRICT LAND REGISTRY LETTER**

I can however confirm that we would be willing to accept applications in form AP1 to alter the general boundary on the title plan to show a more accurate position. Such an application should be made in form AP1 supported by: -

1. A Statutory declaration confirming: -
  - Background circumstances
  - That the applicants are not aware of anything to rebut the presumption and also
  - That they are not aware of any adverse claims or interests affecting the area in question or if they are, setting out full details.
  
2. Pre-registration deeds and documents where available as these may contain matters which rebut or support the presumption.
  
3. Contact details for the owner of the title on the other side of the highway (if not registered) to allow us to consider whether it is necessary to serve notice.

I would however point out that if an application for alteration of the general boundary is completed and a subsequent application is made based on evidence that suggests the area in question is not part of the title then a further alteration to that general boundary may take place.

# EXAMPLE OF OCC LETTER OF SUPPORT



**OXFORDSHIRE  
COUNTY COUNCIL**

Date: [REDACTED]  
Our ref: [REDACTED]  
Your ref:

Corporate Services  
County Hall  
New Road  
Oxford OX1 1ND

HM Land Registry  
Gloucester District – CT4  
DX321601  
Gloucester 33

[REDACTED]  
[REDACTED]  
**Law & Governance**  
**Legal Services**

Dear Sir

Re: Land on [REDACTED] side of [REDACTED]  
Land Registry title number [REDACTED]  
Application by [REDACTED] to determine the exact line of boundary

This letter is in support of an application to Land Registry for the adjustment of the general boundary on the title plan for title number [REDACTED] to show more accurately the boundary line between the adopted highway and the adjoining land registered under title number [REDACTED]

1. Oxfordshire County Council (“OCC”) is the Highway Authority for Oxfordshire.
2. By virtue of section 263 of the Highways Act 1980 the top layer of every highway maintainable at the public expense vests in the highway authority.
3. I attach extracts of the Highway Record Map (“the HR Map”). The HR Map is the plan kept by OCC pursuant to 36(6) Highways Act which requires OCC to keep a list of streets maintainable at the public expense. The HR Map shows coloured [*golden brown*] the highway known as [REDACTED] Road, [REDACTED] Oxfordshire [REDACTED] HR Map is a key to the colouring which shows that the [*golden brown*] colouring indicates that [REDACTED] Road is an adopted *unclassified* road.
4. Although the HR Map shows the boundaries of the highway, these are only the general boundaries and not exact boundaries. Note 1 of the Guidance Notes provided with the HR Map states that “Our current highway record plan is derived from a variety of sources of different quality /accuracy, which to a large extent is inevitable given the piecemeal development of the highway network. Thus, my plan shows the general boundaries of the highway and does not determine the exact line of the boundary”.



5. There is a further caveat endorsed on the HR Map relating to the location of the highway boundary where there is a ditch alongside and which states “The colouring shows the extent of the highway [according to our current highway record plan] except that where there is a roadside ditch the highway boundary is usually the roadside edge of the ditch”.
6. That caveat is added because where there is a ditch and the records do not show that the land was acquired by OCC or dedicated to OCC for highway provision/improvement purposes, then the ditch is not part of the adopted highway and thus it is not vested in OCC as highway authority pursuant to s263.
7. I attach a further plan (“Plan 2”) on which is shown a strip of land coloured [yellow] alongside [REDACTED] (“the Strip”). There is a well-defined ditch in that Strip [REDACTED]
8. OCC’s Highway Records team have checked their records and the various map layers they have at their disposal. [REDACTED] dates from [at least] the [date] century and it appears to have been unchanged in the vicinity of the Strip since [REDACTED] when it was recorded on the [REDACTED] edition of the Ordnance Survey, nor has there been any acquisition of land by OCC/additional dedication in the vicinity of the Strip. On the basis of that investigation Highway Records can confirm that they have no information that indicates an exception to the rule that the public highway extends to the roadside edge of that ditch.
9. I can therefore confirm that the ditch falls outside the adopted highway and that the OCC, as highway authority, only claims that the land up to the roadside edge of the ditch is vested in the OCC by virtue of s263 of the Highways Act 1980.

Yours faithfully,

[REDACTED]  
Solicitor (Environmental)  
For and on behalf of Nick Graham  
Chief Legal Officer and Monitoring Officer

Direct line: [REDACTED]

Fax No: 01865 783362

Email: [REDACTED]

[www.oxfordshire.gov.uk](http://www.oxfordshire.gov.uk)