

RE: 99A CAMDEN MEWS

OPINION

1. I am asked to advise Mr Callum McClafferty as to the position of the boundary between his property at no.99A Camden Mews, London NW1 9BU (**no.99A**), and the property of Ms Sophie Adams at no.99 Camden Mews, London NW1 9BU (**no.99**).

Background

2. No.99 (registered under title no.271320), and no.99A (registered under title no.NGL315424) were previously in common ownership.
3. In March 1977, Gerry Badger & Ptr prepared plans for creation of a sculptor's studio at no.99, which appear to have included plans to create a workshop in the courtyard between what is now the main building at no.99 and the main building at no.99A. Effectively, the workshop would enclose on the flank wall of no.99A. Under the plans, the roof of the workshop would become a roof terrace. Planning permission, with conditions, was granted on 8 July 1977. Photographs said to be from 1977 show that work apparently underway.
4. In June 1977, plans were prepared by Mr Steve Robjant, architect, to create a self-contained house at what is now no.99A. Planning permission was granted on 17 June 1977.
5. On 20 October 1977, Ms Liliane Lijn executed a transfer of the land in no.99A out of the title of no.99 (**the 1977 Transfer**). The purchaser was Ms Ginette Elizabeth Bone. The boundary

between no.99 and no.99A is in the area of the north-eastern flank wall of no.99A, adjacent to no.99 (**the Wall**). The question I am asked is whether the Wall is wholly within no.99A, or whether the boundary runs through the middle of the Wall, or whether the boundary is in some other place.

6. Ms Adams bought no.99 on 4 November 2016.
7. In 2024, the London Borough of Camden granted Mr McClafferty planning permission to enlarge no.99A, adding accommodation above the existing accommodation.
8. Ms Adams initially told Mr McClafferty that the Wall was not a party wall, at least above the ground floor, and was wholly owned by Mr McClafferty. Mr McClafferty accepted what Ms Adams said, which meant that Mr McClafferty could not rely on rights under s.2(2) of the Party Wall etc Act 1996 (**1996 Act**) to raise the Wall and so could not exercise rights of access to no.99 under s.8 of the 1996 Act. He could, of course, raise the Wall since he was the owner of the Wall, but he could not rely on s.8 for access.
9. In the event, Mr McClafferty raised the Wall from no.99A.
10. Ms Adams is now alleging that the Wall is a party wall after all. She also says that, as it is a party wall, she is entitled to remove the new raised section of the Wall which was built without serving notices under the 1996¹.

Discussion

11. In my opinion, Ms Adams' contention that the Wall at first floor level is a party wall is wrong,

¹ Even if Ms Adams were right in saying that it is a party wall, I do not think she would have the right to remove Mr McClafferty's works. I do not consider that a court would make a mandatory order requiring removal in circumstances where (i) he would have the right to do the work if he served a notice, and (ii) Ms Adams had previously asserted that it was not a party wall. If a court would not order its removal, Ms Adams should not do so.

and her contention that the work carried out by Mr McClafferty is a trespass is also wrong.

12. The boundary was created by the 1977 Transfer. The boundary is not defined with any precision: the land transferred is said to be “the land shown edged red on the Plan attached hereto and known as Number 99, Camden Mews aforesaid being part of the land comprised in [title no.271320]”. The Plan showing the land edged red is small scale and inadequate to identify the exact position of the boundary. From the context of the transfer, the boundary must have been understood to be at the Wall, but the precise position was not expressly defined.

However, clause 2 of the 1977 Transfer provides as follows:

“It is hereby agreed and declared that the wall dividing the property hereby transferred from the Transferor’s said adjoining property at ground floor level shall be a party wall to be repaired and maintained as such but at first floor level the wall shall be the responsibility of the Transferee only”.

Although clause 2 does not refer to boundaries expressly, it seems to me useful in identifying the position of the boundary.

13. Under the 1996 Act, there are 2 types of party wall. First, a wall which straddles a boundary². Secondly, a wall which stands wholly on one side of a boundary but which separates buildings belonging to different owners³. The 1977 Transfer was, of course, prior to the 1996 Act, but the same definition of party wall was contained in s.44 of the London Building Acts (Amendment) Act 1939 for the purposes of Part VI of that Act, which is the Part of the Act which regulated rights between building owners and adjoining owners in relation to the inner London boroughs (including Camden) in 1977⁴. The 1939 Act, like the 1996 Act, conferred

² Often referred to as a type (a) party wall from paragraph (a) of the definition of “party wall” in s.20 of the 1996 Act.

³ Often referred to as a type (b) party wall from paragraph (b) of the definition of “party wall” in s.20 of the 1996 Act.

⁴ I am instructed that Ms Adams says the definition of a party wall was different prior to the 1996 Act. But s.44 of the 1939 Act is clear: “*party wall*” means—

various rights on building owners, such as a right to raise or repair a party structure (s.46(1)(a) of the 1939 Act).

14. Clause 2 of the 1977 Transfer states that (i) the Wall at ground floor level is a party wall, and (ii) at first floor level the wall is the responsibility of no.99A only. The distinction between the ground floor and the first floor is clear, and the fact that the clause 2 refers only to the Wall at ground floor level being a party wall indicates that the Wall is not a party wall above ground floor level. If it were intended that the whole of the Wall was to be a party wall, clause 2 would, in my view, have stated simply that “the wall dividing the property hereby transferred from the Transferor’s adjoining property shall be a party wall”.
15. This view is reinforced by the fact that clause 2 states that the Wall at first floor level is the responsibility of 99A only. The reason that 99A is solely responsible for the Wall above ground floor level seems to me to be because it is solely owned by no.99A. It would be odd for a party wall straddling a boundary to be wholly the responsibility of the owner on one side, regardless of what may happen in the future.
16. The Wall at ground floor level could have been a party wall of type (a) (ie a wall which straddled the boundary), or type (b), (ie a wall wholly on land within the title of no.99 but which separated buildings belonging to no.99 and no.99A). Given that it is only at ground floor level that the Wall is declared to be a party wall, the natural reading is that it is a type (b) party wall at ground floor level because it separated buildings at no.99A and no.99⁵. On this approach, everything

(i) a wall which forms part of a building and stands on lands of different owners to a greater extent than the projection of any artificially formed support on which the wall rests; and
(ii) so much of a wall not being a wall referred to in the foregoing paragraph (i) as separates buildings belonging to different owners;

This is materially the same as s.20 of the 1996 Act.

⁵ no.99 had evidently enclosed on or was in the course of enclosing on the Wall

falls into place: the boundary is at the outside face of the Wall (ie the face adjacent to no.99), so that the Wall is wholly within no.99A, but it is a party wall at ground level because it separates no.99 from the single-storey ground floor room at no.99.

17. If the Wall had not been enclosed upon by no.99 at the time of the 1977 Transfer and was not in the course of being enclosed upon, it could be said that the wall at ground floor level could not be a type (b) party wall, and so the boundary at ground floor level must be taken to be the centre of the Wall. In this event, and for the reasons set out above, I think that the boundary would be in the middle of the Wall at ground floor level; it would then step towards no.99 at the top of the ground floor and then continue up the outer face of the Wall at first floor level. But given that,

- a. a boundary will usually (though not always) be straight in the vertical plan, and
- b. plans had been drawn up and planning permission had been granted for the enclosure by no.99 on the Wall prior to the 1977 Transfer, and
- c. works were evidently underway during 1977,

the enclosure of the courtyard had probably taken place by the time of the 1977 Transfer⁶. Consequently, it seems to me far more likely that boundary is the outside face of the Wall from ground level upwards, and the purpose of clause 2 of the 1977 Transfer was to ensure that no.99 should pay half of the costs of maintaining the Wall that was being enclosed upon.

18. This analysis is reinforced by Sch.2 paragraph 2 of the 1977 Transfer, which provides that no additional windows shall be inserted into the Wall. There would, I think, be no need for such a provision if the Wall were a party wall because no.99A would have no right to create a new

⁶ The works of enclosure included bricking in a window in the Wall at ground level. Unless that had already happened by the time of the 1977 Transfer, the transfer would have needed to include the reservation of the right to do so. There is no such reservation in the 1977 Transfer.

window in the Wall in any event.

19. Ms Adams' argument seems to be simply that, since the Wall is a party wall at ground floor level, it must be a party wall over its whole length. For the reasons set out above, that contention is not correct. It can be a party wall at ground floor level and wholly within the title of no.99. Or (less likely) the vertical plane of the boundary could be different at first floor level from ground floor level. Either scenario seems much more likely than Ms Adams' contention.

20. It follows that Ms Adams is not entitled to remove the additions to the Wall. If she were to do so, it would be a trespass and/or a nuisance. There has been in a suggestion in Ms Adams' correspondence that she intends to remove the recent works. If she were to attempt to do so, Mr McClafferty can apply to the court for an injunction to prevent her. Ms Adams will also be liable for any foreseeable damage which she may cause, including damages for delay to the works.

21. It may be that Ms Adams seeks to argue that the Wall above ground floor level is a party wall because she would like to enclose on it – effectively extending her ground floor side addition upwards. In my opinion, she is not entitled to do so, for 2 main reasons:
 - a. First, the Wall is not a party wall.
 - b. Secondly, because no.99A has a right of easement of access over no.99 to maintain the Wall⁷. That right could not be exercised as conveniently if Ms Adams built upwards.

⁷ Although written permission is required, it cannot be unreasonably withheld and so is effectively a right of access on notice for maintenance of the Wall where such access is reasonably required.

Conclusion

22. In my opinion, and for the reasons set out above,

a. the boundary between no.99 and no.99A at first floor level is the outside face of the Wall.

The Wall at first floor level, and probably at ground floor level also, is wholly within the title of no.99A;

b. Ms Adams is not entitled to remove the additions constructed by Mr McClafferty on top of the Wall. If she were to seek to do so, it is likely that an injunction would be granted to restrain her.

Howard Smith,

Radcliffe Chambers,
11 New Square,
Lincoln's Inn.
23 December 2024