



Tuesday 24th June 2025

## PROPERTY CASE NOTE: WHITE V ALDER [2025] EWCA CIV 392

■ Laura Webster

### SUMMARY

The Court of Appeal has handed down judgment in the case of *White v Alder* [2025] EWCA Civ 392 in which Paul Wilmshurst of New Square Chambers acted for Mr White, the Appellant. The appeal was from the decision of His Honour Judge Duddridge, and it was heard by Lady Justice Asplin, Lord Justice Zacaroli, and Sir Launcelot Henderson. The judgment can be found at: <https://www.bailii.org/ew/cases/EWCA/Civ/2025/392.pdf>

The Court of Appeal had to decide **whether a boundary demarcation agreement can bind successors in title**, and if it is capable of doing so, whether it only binds them if they have knowledge of the boundary agreement.

### THE FACTS

In October 2005 the then owners of Willow Cottage and The Old Stores orally agreed the location of the boundary between their respective properties and that the owner of The Old Stores owned the physical boundary features ("**the Boundary Agreement**").

Shortly after this agreement in November 2005 Mr White purchased Willow Cottage and the Alders purchased The Old Stores. It is Mr White's position that he did not learn of the Boundary Agreement until after he had purchased Willow Cottage.

In 2016 Mr White, or others acting on his behalf, demolished a part of the boundary wall and began to construct an extension. The Alders alleged various acts of trespass and commenced proceedings in 2020 for damages, an injunction to remove goods trespassing on The Old Stores, an injunction concerning future trespass, and a declaration as to the position of the boundary and the boundary features.

### THE FIRST INSTANCE DECISION

District Judge Mills heard the preliminary issue of the existence and effect of the Boundary Agreement, and found that the Boundary Agreement was an agreement to clarify an uncertain boundary Mr White and the Alders were bound as successors in title

District Judge Mills followed the High Court decision in *Neilson v Poole* (1969) 20 P&CR 909 (endorsed by the Court of Appeal by way of obiter dicta) and did not consider that the later High Court case of *Gibson v New* [2021] EWHC 1811 (QB) changed the position articulated in *Neilson v Poole*. District Judge Mills held that the comments in *Gibson v New* were made by way of obiter dictum and the case never posited itself as being a revisiting of a long-established principle. Mr White appealed.

## THE DECISION OF THE HIGH COURT

His Honour Judge Duddridge granted Mr White permission to appeal on the effect of the Boundary Agreement, however he then dismissed the appeal. His Honour Judge Duddridge found:

- *Gibson v New* did not change the position in relation to whether a boundary agreement binds successors in title, and that the court was required to follow *Neilson v Poole*.
- Mr Justice Murray in *Gibson v New* thought he was following *Neilson v Poole*, not departing from it, and he did not give full consideration to the question of whether or not boundary agreements in general bind successors in title or whether he should follow *Neilson v Poole* in that respect.

Mr Wilmshurst also made an alternative submission; that the Boundary Agreement was not binding on Mr White because he did not know about it.

His Honour Judge Duddridge commented that the decision in *Gibson v New* did not make knowledge a pre-condition for a successor in title to be bound by a boundary demarcation agreement. Mr White appealed.

## THE GROUND OF APPEAL

Lord Justice Snowden gave permission to appeal. The following grounds of appeal were before the court:

1. That the judge was wrong not to apply *Gibson v New* to the effect that boundary agreements are not binding on successors in title; and
2. The judge was wrong to apply *Gibson v New* in the circumstances in which Mr White did not have any knowledge of the boundary agreement prior to acquiring Willow Cottage.

## THE SUBMISSIONS

Mr Wilmshurst submitted that:

- the comments in Gibson v New were not obiter dicta
- boundary agreements do not have proprietary effect
- the cases in which successors have been bound also contained other factors such as adverse possession or some form of estoppel
- public policy is best served by restricting the effects of boundary agreements to the parties to them
- alternatively, it is inequitable and unfair that successors in title are bound in circumstances where they have no knowledge of the agreement and notice should be a requirement

Counsel for the Alders submitted that the proposition is supported by binding precedent (Burns v Morton [2000] 1 WLR 347 (CA) and Stephenson v Johnson [2000] EG 92 (CS) (CA)) and compelling policy reasons.

## THE DECISION OF THE COURT OF APPEAL

The decision of the Court of appeal was handed down by Lady Justice Asplin (with whom the others agreed). In respect of the authorities that had been cited, the Court of Appeal found

- Burns concerned with an implied agreement and the point about successors in title was not specifically argued, however it was an example of the Court of Appeal endorsing the approach adopted in Neilson v Poole
- Stephenson concerned an implied boundary agreement and successors in title, and it appeared that the implied boundary agreement alone was sufficient to bind successors in title
- Joyce v Rigolli [2004] All ER (D) 203 (Feb) did not concern successors in title, but it was a further endorsement of Neilson v Poole with Lady Justice Arden describing that case as the leading authority on boundary agreements
- Haycocks v Neville [2007] EWCA Civ 78 contained obiter dicta comments about the effect of a boundary agreement on successors in title which are a clear and firm endorsement of the approach in Neilson v Poole
- Nata Lee Ltd v Abid [2014] EWCA Civ 1652 although it did not concern boundary agreements, approved the judgment in Neilson v Poole and the approach adopted by Lady Justice Arden in Joyce v Rigolli

- *Gibson v New* did not change matters, with the real question for the judge being whether it had been wrong to grant declaratory relief and it was in that context that Mr Justice Murray had observed "*the declaration simply establishes the contractual position as between the parties,...it has no proprietary effect between third parties.*" Mr Justice Murray was concerned with the effect of the declaration and not with boundary agreements in general.

Having reviewed the authorities as set out above, the Court of Appeal reached the conclusion that the appeal should be dismissed. The court held that **an agreement, the purpose of which is to define a previously unclear or uncertain boundary, has proprietary effect and, as a result, also binds successors in title.**

The Court of Appeal reasoned that a boundary demarcation agreement binds successors in title because of "*its very nature*" as:

*"It defines and delineates the boundary between the properties as from the root conveyance or transfer. Such an agreement is, of its very nature, a delineation of the property transferred or conveyed and is so for all purposes. As no one is able to transfer or convey more than they own, such an agreement effectively "binds" successors in title whether or not they have knowledge of it. It does so because it defines what they purchase...As Megarry J explained at 919 of Neilson v Poole, the boundaries established are, in the words of Lord Hardwick L.C. in Penn v Lord Baltimore, "presumed to be the true and ancient limits". In other words, a boundary demarcation agreement establishes on the ground the physical extent of the respective legal estates created by the conveyance or transfer. The boundary is presumed always to have been in that location."* (underlining added)

It was observed that the underlying principle concerning implied agreements should not be any different, and that the conclusion was consistent with the decisions in *Burns* and *Stephenson* where the boundary agreement which bound successors in title was implied from the conduct of predecessors.

It was further commented that this was consistent with the public policy of a boundary demarcation agreement being "*an act of peace which should be encouraged*". Lady Justice Asplin stated that:

*"It avoids uncertainty and the risk of litigation. It does not undermine the formalities for the transfer of land because its purpose is not to effect such a transfer. As Arden LJ pointed out in Joyce v Rigolli at [32], where trivial amounts of land are transferred it avoids the disproportionate expense of a survey and avoids the preparation and execution of a written contract which would be contrary to the principle of public policy identified by Megarry J in Neilson v Poole. It also avoids the time and expense involved in making a formal application for the determination of the exact line of a boundary pursuant to Rules 118 and 119 of the Land Registration Rules 2003."* (underlining added)

The Court of Appeal concluded that as a result of the very nature of a boundary demarcation agreement, **a successor in title is bound by it even if they had no knowledge of it.**



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