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Why are Property Boundary Disputes increasing in Ireland?

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Abstract:

Recent anecdotal evidence has shown that property boundary disputes have been on the increase over the past number of years (Prendergast 2008 and 2011). This paper will highlight results from a questionnaire to Irish property professionals in an effort to understand what they have been dealing with over the past number of years, including the impact of the PRAi Digital Mapping Project on their work, the most common type of dispute they deal with, the length of time they devote to property boundary disputes in the past 10 years and the number of Boundary Surveys conducted between 2007 – 2011.

Keywords:

Boundary Surveying. Ireland. Property Boundary Disputes. Property Professionals.

1. Introduction

Boundary disputes have caused countries to be divided, towns to be split up and neighbours to fall out. People value land for spiritual, social, & economic reasons, it is not just something people walk on. Irish society for instance, has had a long affection with land and boundary disputes have been famously depicted in literature and film. This connection to land has been highlighted by Patrick Kavanagh in his 1938 poem, “Epic”, which described a violent row between neighbours. More recently the 1990 Hollywood movie, “The Field” which written by John B. King, featuring “The Bull McCabe” who did all he could to save (murdering the purchaser) the land he loved from being sold at public auction. These issues continue to be applicable in modern Irish life and have not lost relevance where one witnesses numerous land and boundary disputes cases in the courtrooms of modern Ireland.

This research has focused on these property boundary disputes that have caused much strife in Irish society. The aim of this research is to attempt to capture the number of disputes occurring in Ireland during the past number of years and the reasons behind their frequency. Throughout the recent past, property boundary disputes have seen to be quite prevalent within the Irish High Court with eighteen reported cases. They have indeed kept Land Surveyors, Engineer, Architects and other property professionals busy on the ground with a number of issues continuing to appear.

2. Days Worked on Property Boundary Disputes

Participation for this research was from property professionals located within Ireland. Emails to the relevant professional bodies were sent in an effort to obtain the most experienced professionals to complete this survey and assist with this research. The number of respondents represents only a small portion of the work being carried out in relation to property boundary disputes.

Table 1: Number of Respondents

Professional Body	Membership Numbers
Irish Institute of Surveyors	375
Society of Chartered Surveyors Ireland (Linkedin members)	806
Engineers Ireland (Civil Division)	400
Royal Institute of Architects of Ireland	2,415
Law Society's Conveyancing Committee	22
Total Emailed	4,018
Total Number of Respondents	125 (3.1% response rate)

With the increasing numbers of court cases in Ireland today, one of the aims of this research was to identify the number of High Court case law judgements within the past number of years. In addition, this survey required professionals to supply the number of days of their total workload that related to disputes over property boundaries for the past ten years. Data required was for legal disputes (not boundary problems which were resolved without surveys or litigation) where parties engaged property professionals. Respondents were also required to omit boundary surveys for transfer of property.

The days inclusive from 01/01/2002 - 01/01/2012 were calculated. During this period of 3,653 days, there were 81 public holidays, and 1,044 weekend days, leaving a total of 2,528 working days. Personal holiday dates were not accounted for. Of the property professionals who completed the survey, a total of 1,136 days were devoted solely on boundary disputes.

With 1,136 days of boundary dispute work professionals undertook in the past ten years, 1,447 boundary surveys were conducted as part of a dispute in the past five years of those professionals surveyed (see Section 5). This would indicate that there were more boundary surveys as part of dispute in the past five years than the days professionals worked in the past ten years.

3. Most Common Type of Dispute

In an effort to discover what category of dispute the professionals dealt with most frequently in relation to their workload, different categories of disputes were investigated, Inaccurate Measurement/Mapping Dispute, Property Boundary Dispute, Right of Way, Encroachment, Adverse Possession and other. These category choices were chosen because of the level of frequency they occurred within the Irish court reports and also because of their historical significance within Irish culture. Certain professionals may see a certain scenario as a boundary dispute, such as when one acquires title to land or property by occupying it for a period of time, however in fact this is known as Adverse Possession. Also, many people may see a legal right of passage over another persons land that comes into conflict as a Right of

Way, however this is not a property boundary dispute and as such a distinction needed to be made. These are however vital components to all matters relating to land law and disputes over land, however not necessarily a property boundary dispute upon which this research is concerned. There was also a need to differentiate between Property Boundary Disputes and Inaccurate Measurement/Mapping Disputes. Mapping disputes needed to be singled out on its own because this was identified to be a key factor in creating issues over property boundaries in previous questionnaires designed for this research. Of the options given, the most frequent categories are ranked and described below.

3.1 Inaccurate Measurement/Mapping Dispute

Inaccurate Measurement/Mapping Dispute was the most common choice among the professionals as to the types of dispute they deal with most frequently. The Land Registry in 2005 announced that all existing paper based maps would be converted into electronic form over a five-year period, known as the Digital Mapping Project (Prendergast, 2011). In August 2010, the mapping project was completed with all 26 counties fully digitized. The digital mapping project now provides easy access to data, which is viewed by clicking the seed point on the map to give information on the property, including the folio number and details of the folio. However, these newly digitized property boundaries are not quite the same as old paper maps and one of the impacts is that landowners cannot take new digitized PRA boundaries at face value as they must be checked on the ground by a qualified and competent surveyor to verify their position (Prendergast, 2008).

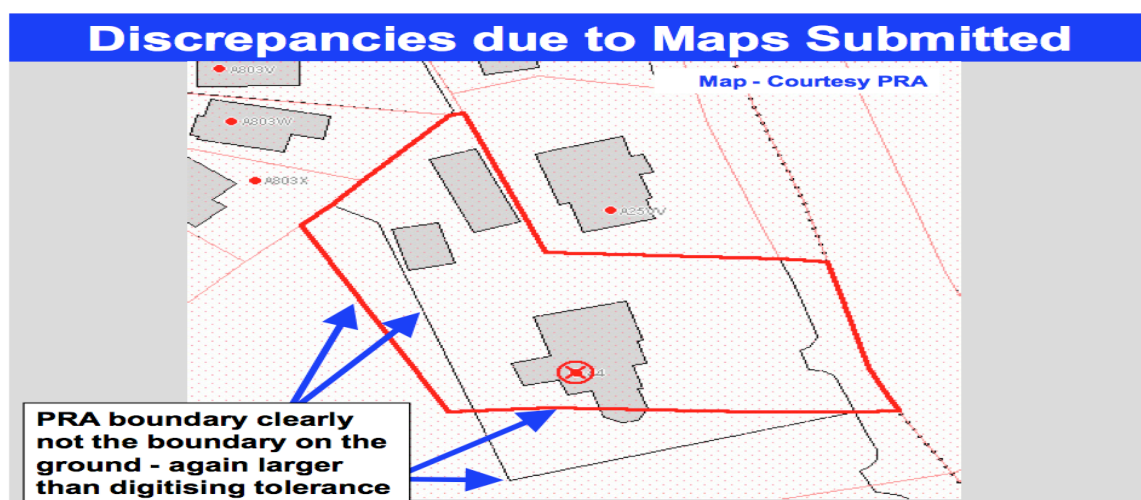


Fig. 1. Example of the new digital mapping discrepancies (Prendergast, 2008)

3.2 Property Boundary Dispute

Disputes over property boundaries were the second most frequent type of dispute encountered by property professionals. Boundary disputes between neighbours can be wretched affairs known to destroy neighbour relations where the financial cost of litigation frequently exceeds the value of the land concerned. In some cases the area of land in dispute will be very small but litigation may ensue because of its critical location or its strategic importance to the owners concerned. In some other cases the dispute may become a proxy for another issue dispute because the land concerned may not be worth much at all. The two categories of Inaccurate Measurement/Mapping Dispute and property boundary disputes accounted for eighteen reported High Court cases from 2000 - 2011.

Encroachment (3rd), Right of Way (4th) and Adverse Possession (5th) were the other most popular choices of dispute category professionals dealt with.

4. Impact of Digital Mapping Project from 2003 - 2011

The question posed, how many requests/recommendations for property boundary surveys arising from boundary disputes did you encounter from 2003 - 2011?

Through previous research surveys, the most common problem and area of concern identified by landowners was that of the new PRAi digitized mapping where the digital property boundaries did not match the property boundaries on the ground. Thus by asking professionals the estimated numbers of disputes they encountered in 2003, 2005, 2007, 2009 and 2011, it would highlight if there was an increase in disputes and if this increase correlated to the provision of digital mapping by the PRAi. That is not to say that all the disputes were digital mapping PRAi related, however, it cannot be just a coincidence if in fact disputes rose significantly during this period from 2007 - 2011 when the newly digital mapping was released by the PRAi between 2006 and 2010.

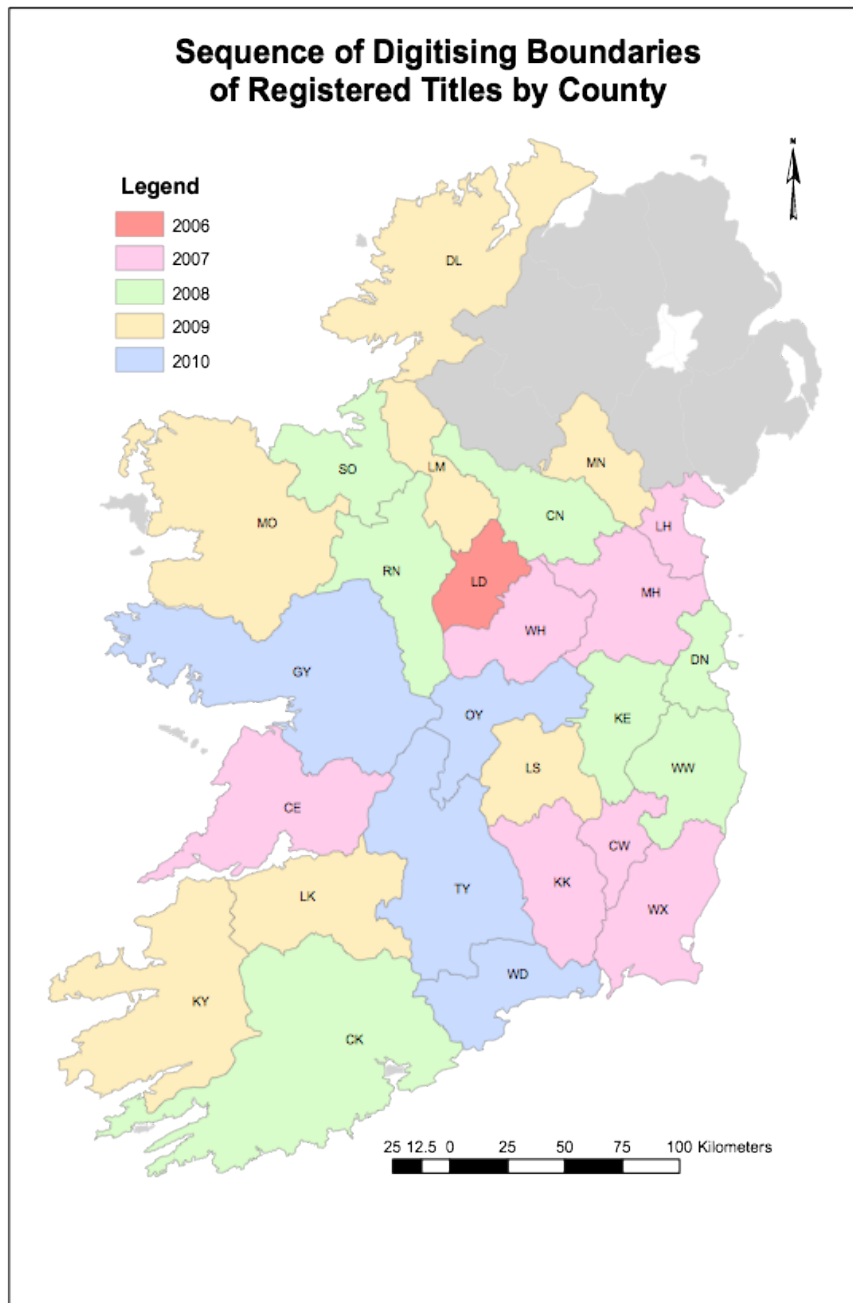


Fig. 2. Counties digitized from 2006 - 2010 (Prendergast, 2011)

Table 2: Year and Number of boundary surveys recommended between 2003 - 2011

<i>Year/ No. of Surveys</i>	<i>1-2 (x 1.5)</i>	<i>2-3 (x 2.5)</i>	<i>3-4 (x 3.5)</i>	<i>4-5 (x 3.5)</i>	<i>> 10 (x10)</i>	<i>Total</i>
2003	23 (34.5)	14 (35)	5 (17.5)	4 (18)	3 (30+)	49+ (135+)
2005	26 (39)	12 (30)	8 (28)	2 (9)	4 (40+)	52+ (146+)
2007	23 (34.5)	15 (37.5)	11 (38.5)	5 (22.5)	4 (40+)	58+ (173+)
2009	24 (36)	14 (35)	9 (31.5)	6 (27)	5 (50+)	58+ (179+)
2011	24 (36)	15 (37.5)	8 (28)	6 (27)	7 (70+)	60+ (198+)

The level of requests/recommendations for property boundary surveys arising from boundary disputes is strikingly high in 2011. If in 2011 the seven respondents who conducted more than ten surveys in that calendar year, then one could estimate that over seventy requests/recommendations for property boundary surveys arising from boundary disputes occurred in 2011. The increase in these requests/recommendations for property boundary surveys arising from boundary disputes could be from a number of reasons.

4.1 Digital Mapping Project

The table (Table 2) suggests that when the digital mapping project was introduced in 2005 an estimated number of boundary surveys recommended as part of disputes was over 146 and these numbers have increased steadily by 2011 with over 198 disputes. That is a 36% increase from when the digital mapping project was introduced in 2005 to its conclusion in 2011.

From all the good work the PRA have done in the past number of years seems to feel inadequate if the numbers are gradually rising from 2003 before it began, to 2005 when it started, to when the digitizing of property boundaries was completed in 2011. The digital mapping project claims to define property boundary parcels for every land parcel in the country, yet the land registry claim no responsibility and are not in a position to advise if an issue or a problem arises because of their work, “I have a dispute with my neighbour over where the boundary lies. Can you tell me who is right? No. The Land Registry map is an index map and identifies property, not boundaries. Therefore, we are not in a position to advise” (PRA, 2010).

A great number of professionals claim that their work to date is full of disputes that correlate to inaccurate digitizing property boundaries, which, do not correspond with the parcels boundaries on the ground. In 2003, three respondents had more than ten disputes, i.e. estimated to be more than thirty, before any digital mapping project was initiated. In the intervening years there seems to be a steady increase in the amount of disputes taking place. Is this a coincidence? This research attempted to knock out the suggestion that this is just an assumption based on a few research questionnaires. The level of disputes need to be examined thoroughly and especially so for the landowners who spend their money on

needless disputes that could easily be fixed by having a property boundary system that accurately defined property boundaries.

The increase in disputes in the recent years is a stark reminder that the digital mapping project did nothing to curtail disputes. It many have improved the cartographic quality of their index maps and the use of GPS compatible ITM coordinate reference system (Prendergast, 2011), however it does not have seem to have dealt with an underlining problem with the quality of mapping and it seems to be giving rise to more and more of them rather than reducing them.

4.2 Land Value and Economic Impact

With disputes and boundary surveys seemingly on the rise, another suggestion as to why this is so, would be to assess if the land values and property values over the past number of years have had an influence. Land in Ireland has always been sacred. Over the past decade, Ireland's farmland market has witnessed an extensive change with soaring average land values in 2006 where the average value was €26,000 per acre, followed by the recession and drop in prices of 56.8% in 2010 where the average price per acre was €8,741 (Savills, 2011). Property Values have seen a similar trend. Ireland experienced one of Europe's biggest property booms in 2007, to become the world's biggest property crash in 2008 when the property bubble inevitable crashed. From its peak in 2007, the national average property price was €366,000, compared to the most recent valuation of properties, the average property price was €177,000 in 2012 (Global Property Guide, 2012).

With property values being at such a reduced rate in 2012, purchasers of property are taking no chances when it comes to buying property. Boundary surveys of the property and full due diligence are now essential when buying distressed property (Morgan, 2012). Could the correlation in the reduction of property and land value over the past ten years be a key factor in the increase of property boundary surveys and disputes?

4.3 Increase in Litigation

As this research has shown there have been eighteen reported High Court cases from 2000 - 2011. From 2000 - 2003, there were four reported property boundary dispute cases, with fourteen property boundary dispute cases from 2007 - 2011. This was a stark increase in the reported court judgements from 2007 - 2011, Irelands recessionary years. According to Harris (2012), litigation in Ireland has been busier than ever and stem from the underlying factor of the financial recession where commercial litigation is rising. Kirwan (2011) Solicitors in the UK have seen the number of neighbours disputes over boundaries during the recession period rising because of the financial pressures people have and thus want to take action on their neighbours. Landowners are very passionate and protective of their property and what they perceive to be their land. If one then adds in other external factors such as stress at work or financial trouble, one then has a potent cocktail for a property boundary dispute with the most prominent dispute often being over some seemingly minor issue such as a fence being erected or a hedge being planted on the boundary line (Kirwan, 2011). Could the significant rise in litigation be correlated to the gradual rise in the amount of boundary survey requests/recommendations during this period? Or are people are becoming more litigious in recessions over boundary disputes?

5. Boundary Surveys conducted from conducted 2007-2011 as part of disputes

This research and other research conducted by the Irish Institute of Surveyors (IIS) and the Inter-Professionals Task-Force on Property Boundaries (IPTFPB), has shown that there is growing anecdotal evidence of a significant increase in the numbers of boundary disputes in Ireland during the past decade. In Europe and in particular Denmark, where the land area is smaller and has a slightly larger population than Ireland, it has had an average of forty boundary dispute cases per year in all courts during the 1990s (Enemark, 2005). This could be because of their Cadastre system and or the role of professional Land-inspectors who conduct the boundary surveys on behalf of the state. In contrast, IIS research has identified one survey company in Dublin that had eighty-seven boundary survey requests arising from disputes in the first eleven months in 2007 (Prendergast, 2008). The IPTFPB identified that 87% of professionals had boundary disputes because of the mapping issues (Prendergast, 2011). This evidence and others suggests that the incidence of boundary disputes in Ireland is significantly more than the international norm and there is a need to confirm if this is correct and if so, the reasons why it is.

The vast majority of work carried out on a daily basis by Land Surveyors, Engineers, Architects is executed without any sign of conflict or dispute attached to their work. However when such occurrences happen they need to be armed and ready to defend their work. In an effort to confirm these figures over the past five years respondents were asked a) how many boundary survey were conducted/recommended as part of a dispute and did not proceed any further and b) how many boundary surveys were conducted/recommended and proceeded for mediation/litigation. Five years was the chosen timeframe as there were fourteen cases in the High court reported from 2007 - 2011. The property professionals who participated were Land Surveyors, Engineers, Architects, Legal Professionals and other land professionals including a GIS specialist and an Urban Planner. An estimated 1,447 boundary surveys were carried out from 2007 – 2011 as part of a property boundary dispute that was resolved and did not go any further once the survey was completed. A further 252 boundary surveys were conducted as part of a property boundary dispute that went to an official dispute resolution service, either litigation or mediation. From 2007 - 2010, there was a slow and steady increase in the amount of boundary surveys as part of disputes. There was however a significant jump in the number of boundary surveys as part of disputes from 2010 - 2011, a 31% increase in one calendar year.

Table 3: Boundary Surveys as part of Property Boundary Disputes 2007 – 2011

Year	Boundary Survey complete and dispute resolved on site	Boundary Survey conducted as part of litigation/mediation	Total Boundary Surveys
2007	264	51	315
2008	271	42	313
2009	277	47	324
2010	275	49	324
2011	360	63	423
Total	1447	252	1699

These numbers seem quite high, as do the number of surveys as part of a dispute that went to litigation/mediation, especially in 2011. As this research has established, the number of reported boundary disputes cases in court has been seen to be quite low, eighteen in the past number of years. This survey was hoping to further elaborate on this data and see if it was similar to those being reported in the courts. As the results show, there has been far more activity outside the courts to resolve potential disputes without litigation. The above numbers are extraordinarily high and are not in proportion to those disputes being reported in court.

Fourteen property boundary dispute cases have been reported from the High Court compared to the 252 encountered by property professionals from 2007 - 2011. In effect, 238 property boundary disputes were not reported. This could be mainly because of two reasons, i) that some of the cases that proceeded to mediation were not be reported and not public knowledge because this process is private or ii) that a portion of these cases that went to litigation would have been a result of a case that was of a similar nature previously occurred in the courts i.e. precedent, which indicates that 6% of the cases are reported, thereby raising new issues and creating new precedent/common law. Interviews with a number of respondents will be conducted shortly to examine the frequency of litigation/mediation and whether property professionals use case law/precedent to advise their clients. There is a stark increase in the number of disputes that went to litigation/mediation from 2010 - 2011. Can this be explained?

6. Conclusions/Recommendations

The number of boundary surveys recommendations/requested as part of a dispute from 2003 - 2011 has increased by 47%, the number of boundary surveys conducted and resolved the dispute on site increased 36% from 2007 - 2011 and the number of boundary surveys as part of boundary disputes that went to litigation/mediation, have soared from 2007 - 2011 by 34%. These figures highlight the dramatic increase in number of boundary surveys conducted in the past number of years. Sections 4 and 5 have made suggestions as to maybe why these numbers are exceptionally high, such as the impact of the digital mapping project and the economic impact of land and property prices. However, other reasons such as difficult neighbours, the use of new surveying technology being continuously updated and used or even the access landowners now possess to the PRAi digital mapping and thus are able to identify discrepancies more easily than before, could also be a factor to these high numbers.

This research has shown that the level of disputes in the past number of years has been on the increase and that the cases being reported within the Irish High Court are only a small portion of all the disputes i.e. 252 Boundary Survey conducted as part of litigation/mediation vs 14 Reported High Court Cases in the same five years (6% reported). As stated this could be from a number of reasons, including, some cases proceeded to mediation where these are not reported to the public as this is a private process or in fact that a portion of these cases that went to litigation may have been a result of a case that was of a similar nature previously occurred in the courts i.e. precedent.

With the high number of boundary surveys as part of disputes in the past five years and the gradual increase in boundary surveys as part of disputes in the intervening years of the digital mapping project, ways in which to minimize disputes need to be made. There have been suggestions and calls for a cadastre like system to be implemented where all property parcels would be conclusive and guaranteed by state however with current economic climate, this approach seems unlikely. One ideal and cost effective way to minimise disputes would be to improve landowners and property professional's knowledge on the problems that are currently on going with boundary disputes.

This research has previously noted how case law could be an influential factor in minimizing disputes over the next coming years in the form of a 'Guidebook' and with this paper highlighting the compelling data of how many disputes are currently going on in Ireland, this seems like an opportune time to implement one incremental change of reform. The 'Guidebook' would examine previous case law and detail the cases in the case briefing manner. The reasoning behind making case law a fundamental criteria for surveyors to acknowledge and understand in disputes is highlighted by the high volume of boundary surveys and the number of disputes that are heard in the High Courts of Ireland. With the reported eighteen High Court judgements in the past ten years specifically on property boundary disputes, each one offers a different and novel solution for these most avant-garde issues. With this in mind, it is anticipated that this 'Guidebook' will help assist and benefit how property boundary disputes are resolved in the future.

In addition, assistance and support will be required from the professional bodies who will be required to generate the awareness needed for the 'Guidebook' to be implemented into practice. This survey also highlighted the most effective way of resolving disputes with Neighbour Negotiation deemed the most appropriate choice in resolving disputes. Further detailed data is needed to show how and why ethical standards and a Code of Practice for surveyors is required as of the level of disputes that have taken place over the past number of years within the category of inaccurate mapping/measurement disputes is notably high.

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