SUBMISSION FROM THE COCKBURN ASSOCIATION

The Cockburn Association is Edinburgh’s Civic Trust, established in 1875. The Association campaigns on planning and environmental issues and our remit is to protect and enhance the City of Edinburgh and its setting. We have a longstanding interest in all issues relating to transport, the planning process and the safeguarding of Edinburgh’s civic amenity.

The Association supports the objectives of the Bill to move to completion of the Land Register and to support electronic transactions. However, we feel that the opportunity must be taken to redress injustices enshrined in the 1979 Act in light of the Human Rights Act with regard to property. We also have comments about the working of the mapping process and the registration of multi-storey buildings.

1. We are wholly supportive of Andrew Wightman’s comments regarding prescriptive claimants and a non domino titles, which at present we agree is little more than legalised theft. It is not the purpose of the Register to deny any person of their legal rights in order to satisfy efficiencies in the working of the register. We would point out that this must have implications with the Human Rights Act. We do not support the principle behind clauses 42, and would wish to see them abolished or at least tightened up further. The notion of occupying land to establish ownership is flawed, as the very act of appearing to be the owner can suggest to neighbours that there is no question over title. A more honest way to deal with the matter would be to insist on non-occupation and the placing of a noticeboard or plaque on the site for the duration of the notification period setting out the basis for the claim and parties involved. Advertisements only placed in newspapers or by the Keeper are inadequate in the face of a claimant behaving like an owner.

We would like to see the timescales for advertising extended. One year appears to be too short for legitimate owners who may be out of the country or ill. We would suggest that five or ten years would be more appropriate. We see no benefit in speeding the process up as it is only likely to lead to more costly injustices which then need to be taken through the courts.

2. We wholly support Andrew Wightman’s comments on Common Land.

3. Regarding map-based titles we would draw attention to the very poor quality of existing titles in the Sassine Register, the general lack of dimensions or angles between boundaries and the requirement to read several titles in sequence to understand how land is divided up. We feel this will inevitably lead to inaccuracies in the mapping of title deeds. We wholly support the move towards allowing such errors to be redressed through the civil courts, again because of the Human Rights implications.

We would suggest that a sensible way to move forward would be to only recognise title boundaries when both plots either side of a boundary had been registered and when any discrepancies had come to light.
We agree that financial remuneration is not always a satisfactory means of resolving disputed boundaries, when there could be implications for access, services, daylighting, fire distances in relations to openings in walls facing boundaries, and other general requirements for the beneficial use of land.

4. Regarding tenement and other multi-storey titles we suggest it may be misguided to register each floor of a multi-storey block as if it were land. It is not, it is a type of air rights. In certain circumstances such as the destruction of a building in fire it may well be the case that the owners could not gain planning permission for rebuilding the properties which had been destroyed. This would present a peculiar legal conundrum. A more appropriate way would be to record a percentage ownership of the land given to each flat. In that way the situation where the building was destroyed could be dealt with. Similarly if one of the tenements was extended or sub-divided and this changed the ratio of floor areas this should not affect the percentage ownership of the owner as that would have been determined when the building and plot was sub-divided. A value-based sub-division is less easy to justify over time, where a shop floor might have much higher value than the upper floors.

Therefore we do not agree with commentators who have recommended including detailed tenement plans as part of the land registry process.

Marion Williams
Director, Cockburn Association
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