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Updated RICS Guidance on Japanese Knotweed

Tom Carter

1. The consultation draft of the updated RICS guidance note on Japanese knotweed has recently been published.
2. It has been anticipated by claimants and defendants for well over a year now and it has been written by Philip Santo who wrote the well-known article, "*Assessing diminution in value of residential properties affected by Japanese knotweed*" in 2017. That article provided a detailed framework for assessing diminution in value.
3. Defendants were hoping the updated guidance would be a silver bullet for defeating claims for diminution in value but on my reading, it does not do much to change the status quo.
4. That may be unsurprising because the previous RICS guidance dates from all the way back in 2012. A lot has changed since then and the updated guidance reflects this. It may be a useful starting point to those unfamiliar with knotweed but for lawyers litigating in this area, most of this has been known for some time.
5. For instance, the guidance recognises that the dangers of physical damage to property from Japanese knotweed have previously been overstated. The exception being walls, patios and lightweight garden buildings like sheds. In my experience, this has been the opinion of experts in knotweed claims for many years now.
6. It also encourages mortgage lenders to lend against properties provided there is a proper treatment plan with insurance-backed guarantee in place. Again, this has largely been the case for some time. Even if some lenders remain reluctant to lend, plenty will. For that reason, surveyors with experience of this area have put less weight on this when assessing diminution in value. The focus has moved in recent years to purchaser stigma because of the widely publicised problems with knotweed.
7. The guidance recognises that the 7 metre-rule is probably overstated and that generally, Japanese knotweed rhizomes may extend up to 3 metres from above-ground growth. Again, knotweed experts have acknowledged this in litigation as long ago as *Network Rail Infrastructure Ltd v Williams* [2018] EWCA Civ 1514 which went to trial in 2017.
8. At pages 26 to 28 of the guidance, there is a discussion of purchaser stigma. The guidance advocates the approach that competent valuation experts have been using for some time now in knotweed claims.
9. The end result is that the status quo seems likely to remain the same. A claimant will be able to recover treatment costs plus residual diminution in value, that diminution mostly being based on purchaser stigma due to the need to declare the presence of knotweed on the TA6 form when selling the property.

10. One additional point of interest from the guidance is the discussion of the standards of inspection for surveyors carrying out mortgage valuation reports, homebuyer's reports or building surveys.
11. In professional negligence claims against surveyors, the scope of the inspection is often hotly contested where knotweed was visible on adjacent land. For instance, it might have been growing in the neighbouring garden and could be seen over the fence from the upstairs windows.
12. The updated guidance suggests a surveyor should identify and report this:

"The inspection should include consideration of adjoining properties where reasonably possible, especially along the boundaries, when standing at ground level within the boundaries of the site, when standing at the various floor levels within the property and from adjacent public/communal areas. If views are unduly restricted this should be noted."
13. There is also discussion of carrying out pre-inspection checks. An obvious one may be looking at historic images on Google Maps. In inspection in December may reveal a garden with no visible knotweed if dead winter canes have been cut back. A satellite image from Google Maps from June may reveal a garden full of live knotweed.
14. It remains to be seen what changes may be incorporated before the final draft but at least for diminution in value, not much as changed.

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Tom Carter's book 'A Practical Guide to the Law in Relation to Japanese Knotweed and Other Invasive Plants' is available now. To purchase, please [click here](#). Use to code KH9R2Q for a 10% discount.

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