

Knot all it seems

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Philip Santo considers diminution in value when assessing residential properties affected by Japanese knotweed

The principle of diminution in value is long established and well understood, but its application still regularly poses challenges for practitioners and the courts. Where an individual sustains an actionable loss due to a property defect, the proper measure of that loss is the difference between the value with the defect and as it stands without it.

Frequently, the loss will be equivalent to the cost of remediation, but successive cases have demonstrated that diminution in value is the appropriate measure. This applies even when the diminution is significantly less than the cost of remedying the defect ? a principle that sometimes results in claimants arguably being undercompensated.

Where properties are affected by Japanese knotweed, the opposite might appear to apply. This invasive weed poses particular problems, current public perception of which can mean that the impact on market value is out of all proportion to the cost of remediation.

When instructed to advise on diminution in value in such cases, the valuer must not take a simplistic approach if the assessment is to reflect the impact of the problem in the market accurately. The cost of remediation is clearly one important factor but it is inappropriate to base a diminution assessment on this alone.

An alternative, but still basic, assessment is to apply a standard percentage reduction in value, but such a broad-brush approach does not adequately reflect the differing effects of the many factors that may need to be taken into account in each case.

Full knowledge

The valuer's challenge is to establish the extent to which a potential purchaser, in full knowledge that a property is, or perhaps has been, affected by Japanese knotweed, will try to reduce their bid. The expression 'full knowledge' in this context includes a proper understanding of all the implications of an infestation and not merely, for example, knowing the basic quoted cost of remediation. This reflects the [Red Book](#) definition of market value, which requires the assumption that 'the parties had each acted knowledgeably, prudently and without compulsion'.

The impact on market value is out of all proportion to the cost of remediation

A prospective purchaser with full knowledge will consider many factors when determining their bid. If the valuer assesses each of these and applies their cumulative effects to the open-market value of the defect-free property, this will provide a reasoned and objective indication of possible diminution in value. Each factor will have a range of potential outcomes, which will depend on the individual property and the nature of the infestation; these can be considered in detail and individually assessed for their contribution to the reduction in purchase bid. In some instances, it might be appropriate to assess the contribution as a proportion of the defect-free value, in others as a proportion of the remediation cost, while in others still it might be considered more relevant to use a simple capital sum.

Counterintuitively, potential purchasers of more desirable and exclusive properties are less likely to be deterred by an infestation than would-be buyers of more standard properties, where many similar alternatives unaffected by knotweed may be available. The proportional effect on the value will therefore differ, depending on the type and quality of the property. Where impact is minimal, a purchaser may make very little or no adjustment in a bid; at the other extreme, there may be a very significant reduction.

If the infestation is restricted to a particular area, there may be little or no practical impact on the use of a garden, for example, but in other cases a significant part of it may be unuseable. The assessment should reflect the amount by which a prospective purchaser would reduce a bid if a proportion of, say, a rear garden will not be useable for 3 or 4 years.

Impact during remediation

A prospective purchaser who fully understands the potential problems of Japanese knotweed will take into account all implications of the remediation options: the disruption faced by the owner of a detached house undertaking chemical remediation will be a fraction of that affecting the owner of a mid-terrace basement flat where physical removal of an infestation would involve tonnes of material being carried through the dwelling. The valuer's assessment should reflect the extent of the impact.

Adjoining properties

A particular problem is that of infestations on adjoining land, over which the owner of a purchased property may have no control. The prospective purchaser will want to consider the following:

- whether an adjoining infestation is extensive or limited;
- its proximity and the risk that the adjoining infestation will spread to the purchased property; and
- the likelihood of the adjoining owner undertaking effective remedial action.

The risk levels can be assessed by the valuer. Sometimes there may be little risk and correspondingly little effect on value, but an extensive nearby infestation where the adjoining owner shows no interest in treatment could be a major deterrent to a purchaser.

Future saleability

A prospective purchaser with full knowledge will also recognise that, in future sales of the property, the presence of Japanese knotweed must be declared on the [Law Society Property Information Form TA6](#) even after successful remediation works. Current experience demonstrates that the stigma of Japanese knotweed in public perception can have a residual impact at the time of a resale, even when an effective management plan has been established.

The degree of impact will again be influenced by the property type, the sort of remediation undertaken and the presence and extent of any Japanese knotweed on adjoining properties. The longer the period since remediation, the lower the impact is likely to be.

The stigma of Japanese knotweed can have a residual impact at the time of a resale

Having assessed each of the 5 individual elements and applied appropriate figures, the valuer must add them to the cost of remediation to give a total for the potential impact on value. They must then consider this in the light of the wider market at the time of purchase.

Does this figure lead to a realistic assessment of what the prospective purchaser with full knowledge would have paid at the time, or were there other factors that should be reflected? Was there, for example, a booming house market or was it flat? Either of these could have affected the purchaser's negotiating power. At what level might a vendor opt to undertake and pay for remediation and remarket rather than settle at a disagreeably reduced selling price? Having undertaken this sense check, the valuer can then finalise the assessment of diminution in value.

The specific figures or percentages applied to the components of an assessment might be debated, but this reasoned process provides an objective and robust foundation for the valuer's opinion. It also gives a strong rationale for the assessment of diminution in value of residential properties affected by Japanese knotweed. Although it has yet to be validated by the courts, this process sets out a logical argument with which they are likely be sympathetic.

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Further information

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- Related categories: [Japanese knotweed and giant hogweed: Valuation](#)