Browne Jacobson

The risk of encroachment is not a nuisance: Davies v Bridgend County Council

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Another nuisance case was recently considered by the Court of Appeal, involving the invasive plant Japanese Knotweed.

The Court of Appeal held that where the plant remained on the defendant's land, there was no actionable nuisance, even if the plant was close to the boundary of the claimant's land and therefore caused a diminution in value because of the *risk* of encroachment.

However, once the boundary had been breached and the plant was present on the claimant's land, a recovery for diminution in value was possible because the plant represents a natural hazard that impact's a landowner's ability to fully use and enjoy their land. Following **Network Rail v Williams** (2018), physical damage to property caused by the plant is not a requirement.

Whilst here the Claimant's appeal was successful (there having been physical encroachment), **Davies** operates as an appropriate restriction on what would otherwise represent a significant broadening of the law of nuisance, and which would likely have had implications flowing beyond the realms of invasive plant encroachment.

Readers will probably recall that Japanese Knotweed was a huge issue a few years ago, with the Police and Local Authorities given powers to require landowners to control and limit the spread. Owing to eradication difficulties once the plant is established, and the plant's propensity to damage physical property, it is a criminal offence not to dispose of it correctly.

In turn, it can prove an obstacle to property transactions, although lenders have cautiously returned to the market, especially where there is evidence of a professional remediation scheme in place, backed by a warranty.

Last year the Royal Institute of Chartered Surveyors ("RICS") updated its Professional Standard, "reflecting improved understanding" of the plant, and which identified that media exaggeration had caused an adverse public perception "disproportionate to the actual problem". Indeed, contrary to popular opinion, research has found Japanese Knotweed is less capable of causing significant structural damage than trees or many woody plant species such as buddleia.

Returning to the **Davies** case, whilst the losses claimed were low, at less than £5,000, we understand that these claims relating to the presence of Japanese Knotweed have been farmed by claims management companies and therefore we anticipate that there were a number of claimants waiting in the wings, readying themselves to pursue similar claims. The Court's decision should help to stem the flow of such cases in those instances where there is no physical encroachment by the invasive plant, but we suggest insurers continue to carefully monitor judicial treatment in this arena.

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