Parking The Bus: New RICS Guidance Notes & Adopting Them To Minimise Risk

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It is no secret that professional valuation opinion frequently differs, the so-called 'margin of error'. Just because another surveyor reaches an alternative valuation conclusion does not guarantee success in a PI claim. Rarely do Claimants rely solely on an expert's end result. More often than not, the expert will also be asked to consider the relevant valuation standards and highlight any evident deviations.

So it pays to be alive to any new material released by RICS, and to ensure that not only is the guidance adopted during the valuation process but also that such is unequivocally evident from either the report produced or the surveyor's retained papers.

Two of the latest Guidance Notes issued by RICS cover topics which have featured heavily in PI claims in the last decade; comparable evidence and the assessment of new-build homes. If evidently adopted, the chances of successfully defending a PI claim can be dramatically improved; conversely if the adoption is opaque, let alone ignored, those chances can plummet.

Comparable Evidence In Real Estate Valuation (October 2019)

Comparables are crucial to any valuation, informing the tone of value and supporting the final conclusions. As noted, different surveyors may reach different conclusions based on their individual interpretation of the data, but even if the conclusion under scrutiny is deemed to fall outside what a Judge regards as the reasonable range, it remains possible to still refute negligence if the correct approach and methodology were applied. That option, of course, disappears if poor, inappropriate or simply unidentified / unidentifiable comparables are used without obvious rationale.

The Guidance Note emphasises the key requirements for having strong comparables: there needs to be several rather than relying on just one; they should be very similar to the subject and from the same locality; they need to be recent, arm's length basis transactions, verifiable from other sources; and they should be consistent with the local market. Departure from these requirements can prove fatal without appropriate reasoned and justified explanation.

To reflect the fact that rarely are there perfect matches, RICS has set out further advice to surveyors. From a claims defence perspective, the most relevant to us are:

- The need for clear analysis and interpretation of the available evidence, tailored to the specific valuation and allowing for any differences and variations. This analysis needs to be recorded, either in the report or at the very least within the file, and clients should be warned if there is an unusual degree of uncertainty in the assessment
- This may seem obvious, mere good risk management practice, but our experience reveals that frequently such evidence is not available. Negligence claims can be brought years after the event, memories fade, and Judges usually view recollections which are not supported by contemporaneous evidence with cynicism.
- The use of recent and publicly available transactional market evidence, which has been verified. Recent open market sales of similar properties in the same locality are the best and most accurate evidence. This is normally far easier to source for residential rather than commercial valuations, but in all instances it is vital to verify the information to fully understand the transaction.
- Unreported valuations, such as remortgages drawn from an internal database, carry little weight. Similarly, asking prices may broadly show market sentiment, but do not represent transactional evidence available at the time. A recent case also highlighted the dangers of relying on information provided by a fellow professional if not capable of being independently verified.
- Consistency of analysis so that the comparables and the subject are assessed on a 'like for like' basis, particularly as regards size and floor areas. The difference between GEFA and GIFA in the valuation of flats, for example, can be pivotal especially where a devaluation methodology has been applied.
- Adapting to allow for the lack of direct comparables, by expanding search criteria to cover a broader geographical range and type of property, and then applying reasoned and sensible adjustments so as to reflect the subject. Again, much of this comes down to comprehensive research, valuation notes and ideally a warning to the client that there is a greater degree of uncertainty in the assessment due to the unusual nature of the property.

Valuation of Individual New-Build Homes (December 2019)

During the last cycle of lender claims, new-build properties featured regularly, fuelled by a cocktail of high Loan to Value ratios, potentially distorted vendor ‘Price Lists’, hidden incentives, the likely loss of ‘new build premium’, the prevalence of off plan buying and immediate sub-sales on practical completion and rapid growth of the buy to let market.

It is fair to say that lending criteria tightened in the aftermath of the global financial crisis, a Disclosure of Incentives requirement has improved transparency and enables true prices to be identified and RICS Red Book revisions oblige surveyors to look beyond the subject development.

The Guidance Note aims to build on these steps, with the aim of increasing consistency when valuing properties that are either brand new or have been subject to comprehensive conversion.

Concepts of ‘First owner benefits’ and ‘Resale benefits’ are introduced. The former includes potential access to finance initiatives, full 10 year warranties, incentives from the developer and the frequent ability for purchasers to have input into and/or choice of final finishes. In contrast, the latter includes such transferable benefits as enhanced energy efficiency, modern construction standards and reduced maintenance requirements.

Again picking out some of the most relevant points in the context of defending claims:

- Surveyors are entitled to make a series of assumptions and special assumptions that should be included in the terms of engagement, for example as to construction according with all planning permissions and statutory approvals, carried out under a recognised warranty scheme, and that all infrastructure will be satisfactorily completed.
- If there has been restricted access to the property, this should be recorded in the report or the notes, making it clear what assumptions have been made as a result in order to carry out the valuation. It is particularly important to be certain that the unit valued is the correct one, given that the Courts have applied strict contractual liability where an incorrect property has been valued, even if the surveyor was deliberately misled.
- Surveyors should obtain a copy of the UK Finance disclosure form prior to submitting the valuation, which should detail key issues about the construction, warranties, tenure and any incentives that have been offered.
- Valuers need to have regard to supply and demand, including whether the scale of the development will saturate the local market, reducing prices. Similarly, care has to be taken over those developments where the primary purchasers are speculative investors rather than owner-occupiers, or else where the initial sales are not open-market transactions and have instead been used to create a level for future prices.
- Surveyors need to be aware of the use by some developers of leasehold rather than freehold title, and the inclusion of potentially onerous ground rent provisions. Such clauses can, for example, effectively change the nature of ownership or else escalate significantly over time to become disproportionate, which inevitably has an impact upon value. This is currently a hot topic, particular in the context of claims against conveyancing solicitors, and reforms are being considered by the Government.
- New methods of pre-manufactured construction are emerging, which surveyors must ensure are accredited and acceptable to a client lender when reporting upon suitability for mortgage. From experience, lenders often focus upon the market value rather than the wider commentary.
- When choosing comparables, surveyors should have regard to a number of sales drawn from on-site, off-site from other new-build developments, and resales / second sales in the locality. This is to ensure that the valuer has as complete a picture as possible of the market, taking into consideration the reported values on site, the impact of ‘first owner benefits’, and gauging the general tone for older properties in the vicinity to help establish if the prices are sustainable.
- The comparables should support the assessment of market value and the methodology employed, ranked according to relevance and any adjustments that have been made. The surveyor’s file should also record the rationale for the valuation, to demonstrate how the figure has been built up from the underlying value, by reference to any incentives, enhanced specification and ‘first owner benefits’.
- It is prudent to include a statement that the valuation is of the property as new and may not be achievable on second sale, so that both the lender and purchaser can be in no doubt about the possible impact upon value of it being new.

Summary

Both Guidance Notes draw together a number of self-explanatory but important valuation considerations. There is nothing revolutionary, although the guidance reiterates the importance of surveyors making a detailed record of the thought processes, analysis and research that goes into any valuation, which can be difficult particularly when busy. However, If the guidance is followed it should prevent some future claims ever emerging; even if that does not happen, it will at least make the task of understanding, assessing and justifying a valuation to a client and/or the Court far easier, and improve the chances of success.

Authors

Charlie Bending
Bristol
+44 (0) 117 918 2289

cbending@dacbeachcroft.com