



Beyond COVID-19:
Inspections and visits linked to
neighbour disputes



Contents

1	Introduction and general considerations	1
2	Recommendations for inspections under the Access to Neighbouring Land Act 1992 (including scaffolding licence inspections)	3
3	Recommendations for inspections under the Party Wall etc. Act 1996	4
4	Recommendations for inspections under the RICS DRS Neighbour Disputes Service.....	6
5	Recommendations for inspections and measured surveys as required for boundary disputes.....	7
6	General guidance.....	8

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1 Introduction and general considerations

The purpose of this practical guidance is to enable RICS professionals and RICS regulated firms to deliver services to clients safely, consistently and in line with the UK government guidelines.

Neighbour disputes create a mix of reporting needs for RICS professionals, for instance, as both the instigator and the technical reviewer of the access inspection. RICS professionals may be advising:

- the building owner or
- the adjoining owner or
- the court as expert witness or
- may be acting as a neutral agreed surveyor under party wall legislation or
- as single joint expert.

It is critical that, before any inspections are undertaken, RICS professionals and RICS regulated firms consider and assess the most up to date government guidance. In addition, RICS has produced a series of documents relating to access during COVID-19, setting out specific technical support linked to property sector type:

- [RICS recommendations on inspections and visits for non-domestic properties COVID-19 \(England\)](#)
- [RICS recommendations on physical inspections for the purpose of residential valuations and condition-based surveys during COVID-19 \(England\)](#)
- [Beyond COVID-19: Reopening of commercial buildings](#)
- [Beyond COVID-19: Data protection and reopening the property market](#)
- [Guidance on client visits and inspections](#)
- [Guidance for estate and letting agents](#)

Guidance has also been produced by the UK government on construction and building maintenance.

Owing to the nature of neighbourly matters, RICS professionals undertaking inspections could therefore find themselves inspecting a construction site, a residential property and a commercial building, all in the process of just one site visit. The neighbourly matters sector therefore requires a holistic approach to all the current issued guidance and its application. For example, in relation to movement between zones, changes in Personal Protective Equipment (PPE) and compliance with public health guidance (PHG) (such as hand washing, etc.) might need to be repeated during the transition between distinct properties.

Consideration must be given to whether a physical visit or inspection is necessary when judged against the technical risk. RICS professionals and RICS regulated firms should consider whether the inspection or viewing can be undertaken remotely. When working on larger projects with multi-disciplinary teams, consideration should be given to the question of whether every member of the design and contractors team needs be party to the inspection.

Simply put, it does not take four Chartered Building Surveyors to inspect one party wall for a pre-development schedule of condition if those RICS professionals communicate and exchange information in a manner more appropriate during the COVID-19 outbreak. Consider when working under a statutory appointment if it is reasonable for one RICS professional to record the inspection and share site notes, images, and video file clips of the visit.

As the situation and guidance in this area is constantly evolving with a government briefing occurring daily, RICS will update this information and the associated documents regularly. Therefore these documents should be reviewed in the latest online version before every inspection.

2 Recommendations for inspections under the Access to Neighbouring Land Act 1992 (including scaffolding licence inspections)

Work under this heading can fall into two distinct stages. First, the professional work undertaken before the granting of consent via licence or the award by the court of an Access Order. Secondly, those inspections required to be undertaken once the access is live, either under licence or under the court imposed Access Order.

During the COVID-19 outbreak, RICS professionals need to exercise considerable care if seeking to evidence the trigger of the refusal of a request for access under the legislation. The legislation expressly empowers the courts to reject a request for an Access Order in the following circumstances under section 1(3):

‘The court shall not make an access order in any case where it is satisfied that, were it to make such an order—

(a) the respondent or any other person would suffer interference with, or disturbance of, his use or enjoyment of the servient land, or

(b) the respondent, or any other person (whether of full age or capacity or not) in occupation of the whole or any part of the servient land, would suffer hardship,

to such a degree by reason of the entry (notwithstanding any requirement of this Act or any term or condition that may be imposed under it) that it would be unreasonable to make the order.’

When reporting on the ability to seek an Access Order, RICS professionals therefore need to be careful to give weight to the needs of the owner or occupier who is the subject of a request during the COVID-19 outbreak. While it might be convenient for the dominant owner to undertake routine and non-urgent repairs at this time, the court might support a refusal to agree scaffolding access into a residential back garden if the servient owner or occupier was in a period of self-isolation or lockdown restriction. The test of enjoyment and hardship is shifting towards the servient land due to the greater importance of private recreational space during the COVID-19 period.

This balance of the respective parties’ rights under the legislation might adjust if the repair was deemed urgent or vital as emergency repairs. Considerable weight might be placed on the report issued by a Chartered Building Surveyor expressing an opinion on the want and need for the repair. RICS professionals are reminded of their obligations under [Surveyors acting as expert witnesses](#) (4th edition) RICS practice statement and guidance note, which have not been diminished due to COVID-19.

3 Recommendations for inspections under the Party Wall etc. Act 1996

The *Coronavirus Act 2020* does not affect the normal operation of the *Party Wall etc. Act 1996* with all the provisions and time frames continuing to function as normal. However, the implications of the *Coronavirus Act 2020* together with the associated regulations cannot be ignored by party wall practitioners. Decisions that may be appropriate during normal market conditions might not be appropriate in the context of the restrictions imposed on society as a result of COVID-19. Therefore, RICS professionals should consider the implications of section 7(1) of the legislation, which states:

‘A building owner shall not exercise any right conferred on him by this Act in such a manner or at such time as to cause unnecessary inconvenience to any adjoining owner or to any adjoining occupier.’

Assessments of the rights of the adjoining occupier or the owner in occupation need to be considered carefully by the surveyors in the light of the current circumstances. The question of what is reasonable and the test of the ‘time and manner of the works’ should be reviewed.

It is open to argument whether an award agreed in a period of normal market conditions, with standard risk assessments, might also need to be reviewed if work or access is to proceed during a period of COVID-19 control. Section 7(5)(a) requires the following:

‘Any works executed in pursuance of the Act shall—

(a) comply with the provisions of statutory requirements...’

The impact of the wider public health and safety legislations adjustments on society as a result of COVID-19 must not be ignored. Neither can the safeguards in the legislation for adjoining owners and occupiers. Consideration of the wider COVID-19 legislation and the reasonableness of seeking access are vital if considering using section 8 of the Act. Caution should also be exercised during the COVID-19 period when proposing the exercise of a section 8 right against an adjoining owner/occupier who has expressed concern over access to their land or property during the COVID-19 period. Assess whether sufficient safeguards can be put in place, and whether an adjoining owner/occupier is vulnerable.

It is reasonable for both adjoining owners and occupiers to expect an RICS professional to demonstrate safety compliance with both government and RICS guidance for the correct conduct of an inspection. Chartered Surveyors should also remind themselves of their professional practice and conduct obligations as outlined within [Party wall legislation and procedure](#) (7th edition) RICS guidance note.

While nothing in this guidance should frustrate the proper administration of the legislation, the implication of the reference to ‘time’ should be given weight during a period of exceptional market conditions. Ask whether this is the right time to exercise the section 8 rights or could a judge reasonably determine that a normal access request has become unnecessarily inconvenient in a period of exceptional market conditions.

Please also consider whether a pre-works condition record is necessary. While good practice might normally require such a record, it will be appropriate for a Chartered Surveyor to exercise his or her professional judgement on whether they will be able to determine the cause and nature of any damage alleged to have been caused by neighbouring construction works, without reference to a pre-work condition survey.

Although a pre-work condition survey has been shown to help considerably and is certainly a great asset to a surveyor in determining damage, it may be that, during the period of lockdown and the gradual lifting of lockdown restrictions, a surveyor should consider whether an external survey will suffice. This is particularly relevant to domestic surveys.

4 Recommendations for inspections under the RICS DRS Neighbour Disputes Service

The first phase of the [RICS DRS Neighbour Disputes Service](#) is that the appointed surveyor undertakes an inspection of the boundary from both sides and then prepares a report for the consideration of both neighbours on an independent expert evaluation basis. This inspection is feasible under the latest RICS and government guidance, providing that the necessary safeguards and risk assessments are undertaken.

Should the parties fail to reach agreement, the second phase is that the parties undertake a quasi-mediation to try and settle the dispute. This is traditionally undertaken on site or in the surveyor's office. The undertaking of a practical mediation respecting social distancing is conceivable but might place the parties under greater strain. While in commercial ADR this is sometimes viewed as a good thing, in a domestic dispute the additional pressure on parties, who are already experiencing the stress of lockdown, could be counterproductive to a successful mediation. RICS professionals should consider the merits of deferring this type of mediation meeting until post COVID-19, or conducting it using electronic means in line with the [RICS online mediation service](#).

Should phase 2 have already have been completed and a surveyor is called upon during the COVID-19 pandemic to issue the expert witness report, this does not under the scheme trigger a need for a further site inspection as the report is generated from the notes and recommendations of the initial phase 1 report.

5 Recommendations for inspections and measured surveys as required for boundary disputes

Where requests are received for a survey to review boundary positions in relation to an established dispute, these inspections can now proceed subject to the necessary wider safeguards being in place. However, as with the access requests discussed previously, in these non-standard times a request for access to the third-party land/property might be rejected.

As underlined in [Boundaries: Procedures for boundary identification, demarcation and dispute resolution](#) (3rd edition) RICS guidance note (to be updated 2020), it is best practice for a surveyor to inspect a boundary from both sides, as features, markers and evidence can sometimes only be clear when viewed from the neighbouring property. During COVID-19 restrictions, a request for what would normally be reasonable access might be refused on perfectly reasonable grounds and for good neighbourly reasons. It is therefore vital in both terms of business, client care and management of client expectations, that file notes recording the request and any refusal of access are recorded in a neutral manner, unless the owner makes their view expressly clear that access at any time is unacceptable.

6 General guidance

Although it remains entirely uncertain whether precautionary measures will be completely lifted in the longer term, COVID-19 is a timely reminder that other potentially infectious diseases pose hazards. These may be present in environments customarily visited by surveyors who should be aware that the people they encounter may be a source of, or vulnerable to, infections transmissible in either direction during the course of work.

Environments that might involve susceptible livestock or vulnerable persons may demand long term reconsideration of biosecurity measures as a matter of more general practice. Attention in particular is drawn to locations where bats, vermin, livestock or domestic pets are present and the associated dangers in particular of Weils Disease (Leptospirosis) passed through animal urine or Lyme Disease, spread by ticks. Dirty and neglected environments harbouring insect pests can also pose hazards.

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