

Japanese Knotweed - The legal consequences

As solicitors, Japanese Knotweed has moved from being a warning in the legal press to an issue in day to day practice. It is a non-native invasive plant with incredibly strong root systems (the roots can extend to a depth of three meters and up to seven meters laterally). It has distinctive red stems and flat green leaves. It lies dormant in winter months but grows aggressively from April to October. Recent European Legislation (European Invasive Alien Species Regulation 2014) obliges member states to control and manage invasive alien species, of which Japanese Knotweed is one.

The fundamental problem is that this plant can cause physical damage to buildings and land, is expensive and time-consuming to eradicate, damage bio diversity and result in criminal and civil liabilities for owners and occupiers of property.

The legal implications of Japanese Knotweed are real. Local authorities have the power under Section 215 of the Town and Country Planning Act 1990 to require land owners to remedy the condition of land - failure to comply can result in prosecution, a fine and the costs of undertaking the necessary works. In addition, Local Authorities and the Police can potentially serve community protection notices under the Under-Social Behaviour Crime and Policing Act 2014 for failure to keep Japanese Knotweed under control. It is notable that it is also likely to be classed as a controlled waste during the removal process creating a potential liability under the Wildlife and Countryside Act 1981.

Over and above the potential liabilities listed above, an owner or occupier should not allow Japanese Knotweed to spread onto neighbouring land, because the owner of the neighbouring land may be able to take common law private nuisance proceedings for compensation for the loss and enjoyment, the costs of removal and a continuing injunction against reinfestation. More and more clients are raising

concerns about Japanese Knotweed, both with regards to their own property, but also worried about its presence on neighbouring property. If you have Japanese Knotweed on your land, you need to act fast to prevent it spreading onto neighbouring property and exposing you to a potential claim in nuisance or action by the Local Authority or Police. If your property neighbours another plot with Japanese Knotweed, you may be able to take action to force the owner to deal with it and thereby limit the risk to you.

The potential implications for the value of a property affected by Japanese Knotweed are significant as it can affect the ability to sell the property or obtain a mortgage. Some lenders will not lend against a property affected and others place restrictions on the mortgage. Buildings insurance policies generally do not cover damage and problems caused by Japanese Knotweed.



Saul Kelleher is a Solicitor-Advocate (Higher Courts Civil Proceedings) and can advise you if your property is affected and assist you in dealing with any potential claims against you. If your property is affected by a neighbouring property Saul will assist you in requiring your neighbour to take treatment action and dealing with a claim for the diminution in the value of your property.



If you are experiencing problems with Japanese Knotweed, please call Saul on 01308 422 313 or email saul.kelleher@nantes.co.uk



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