

Getting in a knot

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A recent case offers a pointed reminder of surveyors' responsibilities for dealing with Japanese knotweed, writes Laurence Cobb

Since it was brought into the country for horticultural purposes in Victorian times, Japanese knotweed has become prevalent throughout the UK and has, for a number of years, struck fear and loathing into property owners' heart (see *Building Control* journal September/October 2016, pp.8-9).

It featured in a recent case in Maesteg, Wales, *Waistell v Network Rail Infrastructure Limited [2017]*, when, after a protracted legal battle, a homeowner won a claim for compensation based on the fact that Network Rail had ignored requests to tackle the invasive weed that had taken anchor spectacularly at the back of his bungalow.

The owner, hoping to move to sunnier climes, struggled to sell his property and received compensation of ?15,000 from the courts, part of which was to go towards an insurance-backed guarantee on a herbicide programme to tackle the knotweed.

Knotweed problems

Japanese knotweed is notoriously difficult to eradicate, and categorised as an invasive non-native species (INNS), a classification of plants and animals that have been introduced into a natural environment where they are not normally found, deliberately or otherwise, with serious negative effects for their new surroundings.

INNS can cause a number of problems. Not only do they physically damage buildings and land, they are costly and difficult to eradicate, to remove and to discard; they put biodiversity at risk; and they potentially result in liability for owners, occupiers and persons handling the INNS where they do not do so legally. There are various EU regulations governing INNS as well as some offences under UK law.

It is also worth noting at this juncture that, while Japanese knotweed may be the most notorious plant among INNS, others in this category include giant hogweed, Himalayan balsam and rhododendron.

Liable and responsible

It is actually an offence if someone allows an excluded plant to grow, either by planting or causing it to grow in the wild.

Schedule 9 of the [Wildlife and Countryside Act 1981](#) lists certain plants and animal INNS established in the wild in Great Britain that the law seeks to prevent spreading further. It is actually an offence if someone allows an excluded plant to grow, either by planting or causing it to grow in the wild. There is a defence to show that all reasonable steps were taken and due diligence was exercised, but a custodial sentence is possible in extreme circumstances.

There are also offences for disposing of such plants as controlled waste. Local authorities have powers including those under section 215 of the [Town and Country Planning Act 1990](#) to serve a notice on occupiers of land that requires them to remedy the condition within a specified period, failing which they could be prosecuted.

When it comes to the commercial risk, an owner or occupier of land has no general duty to control, remove or report plant INNS. However, as Waistell shows, there is potential liability for private nuisance under common law where a plant has spread on to neighbouring land, and proceedings may be initiated for loss of enjoyment or cost of removal ? which could be protracted and expensive ? and a continuing injunction possibly taken out against reinfestation.

In the context of property transactions, as Waistell again demonstrated, both the ability to sell a property and the ability to get buildings insurance may also prove to be a problem, as policies generally do not cover Japanese knotweed or other INNS plant issues.

This highlights how important it is for those carrying out surveys on such properties relating to a possible sale or development of a site to take responsibility for identifying potential knotweed issues.

Whether Waistell causes a rise in attempts to eradicate Japanese knotweed to protect property owners, it clearly makes sense to be aware of the risk of various INNS ? and of the consequences of not dealing with them effectively.

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Further information

- Related competencies include [Legal/regulatory compliance](#)
- This feature is taken from the RICS *Building control journal* (June/July 2017)