



## IT'S THE LAW: Japanese Knotweed

This edition of IT'S THE LAW looks at Japanese Knotweed and the problems it can cause. In the time it takes you to read this edition, a Knotweed plant may have grown by up to 0.6mm. And that's one of the biggest problems.

### Immigrant destroys house prices in the UK

There can't be many more promising headlines for a copy editor at the Daily Mail. Japanese Knotweed manages to combine two of their favourite topics. A non-native to the UK which can cause serious damage to homes, so reducing their value.

### Big mistake

Japanese Knotweed arrived in the UK in 1850 as a gift from a Dutch guy (Philippe von Siebold) to the Royal Botanical Gardens in Kew. How nice, they thought, and planted it out. Big mistake. Big. Huge. It has now spread to almost all of the UK (although more so in England – another tick for the Daily Mail).

The reason it is not as popular as Kew's Victorian gardeners first anticipated is twofold.

Firstly, it is an incredibly quick grower. It can grow by up to 10cm a day. It doesn't really have any natural enemies in the UK, so it's unchallenged in the natural environment.

Secondly, its strong growth can damage concrete, buildings and other hard surfaces. Scare stories often centre on it attacking foundations. More often, the damage is to pipes, sewers, outbuildings and garden walls. Less dramatic, but real nonetheless.

### How to spot

As can be seen from the picture above, JK has quite a distinctive appearance (one of the reasons the Victorians liked it so much). Look for:

- a lush green colour;
- a heart-shaped leaf;
- a bamboo like stem; and
- pretty white flowers in the autumn.

We'd advise you to look for it as a fundamental aspect of due diligence on any potential site acquisition. Remember, it spreads quickly. So even if the site you are acquiring is clear, if you notice it on an adjoining property, it may be only a matter of time before it pops up on your land. The fact that a site is clear one year does not mean you are no longer at risk. As referred to, it is now present across the UK – so landlords would be well advised to periodically check all of their stock. The sooner it is spotted, the easier it will be to deal with.

### Do you care?

Yes. Well, you ought to. Here are some of the reasons why:

Whilst the Royal Institution of Chartered Surveyors suggests that the risks it presents to the built environment have been blown out of proportion, even RICS acknowledge that it can



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cause damage.

That damage is rarely covered by buildings insurance. Most policies would class it as a general maintenance issue and so the responsibility of the insured.

A particular concern in the news in recent years is that it has a track record of thriving near rivers and streams thereby interfering with flood defences.

If it spreads onto neighbouring land you may be susceptible to a claim for damages from your next door neighbour. Expense and bad PR.

Regardless of the actual physical impact, a number of mortgagees have policies that restrict or prohibit lending on sites impacted (whether currently or historically). Our experience is that these policies have not yet been applied on Registered Provider lending, but that may only be a matter of time. Also, if you are developing for outright sale or shared ownership, you will be reducing the pool of mortgagees willing to lend to your future leaseholders.

And last, but not least, the presence of JK triggers a number of statutory obligations and potential criminal offences – either specifically related to JK or, by implication, because once cut down it becomes what is known as “Controlled Waste”.

### ... and now for the (statutory) law bit

S14(2) of the Wildlife & Countryside Act 1981 makes it a criminal offence to plant or otherwise cause to grow, in the wild, Japanese Knotweed. It's generally accepted that gardens are not “the wild” – so you won't necessarily go to jail or be fined for not tackling the problem in your back yard.

S33 of the Environmental Protection Act 1990 creates a number of criminal offences relating to Controlled Waste. It is an offence to dispose of Controlled Waste without a permit. It is an offence to keep or dispose of Controlled Waste in a manner likely to cause pollution of the environment.

S34 of the Environmental Protection Act 1990 goes on to impose a statutory duty on anyone who disposes of Controlled Waste. That duty is to ensure that no one else disposes of that waste unlawfully or in a manner likely to cause pollution of the environment and to ensure that that waste is only transported by a carrier that is registered (or exempt from registration) under the Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991. This impacts you because it means that if you cut down JK, then you have a statutory duty of care to ensure that it's disposed of correctly and in accordance with the law. Failure to comply with a statutory duty is a criminal offence.

From the above, you will see that if you discover JK on your site and you want to get all technical about it:

- there is no statutory requirement that you control or eradicate it;

- there is no statutory requirement to notify anyone about it; and
- there is no statutory duty to prevent it from spreading to someone else's land (as long as you don't cause it to escape to “the wild”).

### That's such a nuisance

So does that mean that you've just wasted 5 minutes of your life reading this far? We'd like to think not. Although the statutory implications may be seen as slight – the main legal issue that flows from the discovery of JK on your land is the potential for civil liability that might arise if it escapes and causes damage to a neighbour's property.

A private nuisance is an “unlawful interference with a person's enjoyment of land”. It's generally accepted that failing to deal with JK on your land, such that it spreads to someone else's land, will fall squarely within that definition. That means a neighbour would be able to sue you to be compensated for any damage caused to their property and/or seek an injunction ordering you to take action to stop the nuisance by eradicating the JK.

### A knotty problem

If you buy land which already has a thriving JK crop which has already spread to your neighbour's land then you have a bit of a mess. Each situation would need to be carefully assessed, but a sweeping generalisation would be that:

- You are not liable for the damage that has already occurred.
- You do “inherit the problem” and you are potentially liable for allowing the nuisance to continue even though you might not be liable for it arising in the first place.
- So, you would be liable for any new damage occurring after you've acquired the land. You will also, in practice, be faced with the eradication costs unless you've secured an indemnity from your seller.

### The tiny print

This is one of a series of leaflets published by Devonshires Solicitors' Real Estate & Projects Department aimed at our developer clients. No action should be taken on the matters covered by this leaflet without taking specific legal advice.

Find out more

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