



Japanese Knotweed - lessons from the Network Rail case

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You won't be alone if you have never heard of Japanese Knotweed, but any property owners who have had experience of this large bamboo-like herbaceous perennial plant will understand the potential damage it can wreak. Knotweed can grow incredibly quickly in Guernsey, and is able to colonise most habitats within a matter of weeks. Japanese Knotweed is listed by the World Conservation Union as one of the world's worst invasive species, and it is an offence in the UK under the Wildlife and Countryside Act 1981 to plant Knotweed or otherwise cause it to grow in the wild. As of October 2014, people in the UK who fail to control Japanese Knotweed in their gardens can be prosecuted and fined for anti-social behaviour.

The relative severity of the punishment reflects the significant cost of removing Knotweed once it takes hold. In 2012, the UK government had to spend £70 million to remove Knotweed from the site of the Olympic Games. The main problem is the plant's roots, which can grow up to 65 feet wide, forcing their way through patios, paths and even walls and floors. Once it takes hold, it is incredibly difficult to eradicate, taking up to five years of aggressive chemical treatment to remove fully. A Knotweed infestation can therefore seriously impact the value of your property, and in the UK you may find that you will be unable to secure a mortgage or lending against your land.

Given the costs and potential damage involved with a Knotweed invasion, a recent decision of the English Court of Appeal has ignited public interest, with potential implications for Guernsey property owners too. The English Court of Appeal recently upheld a decision against Network Rail that made them liable for Japanese Knotweed that had invaded property neighbouring their railways lines. Two property owners had taken Network Rail to court to seek removal of the large amount of Knotweed growing alongside the railway and to seek damages. They won the case on the grounds that although the Knotweed had not damaged their property, it had caused a high level of concern and loss of amenity, which amounted to a breach of the right to quiet enjoyment.

Network Rail appealed, arguing that Knotweed was endemic in the local area, and that in the

absence of property damage they were not liable. This was to no avail however, with the Court of Appeal finding that having Knotweed on your land caused damage to the land itself, even if no structures had been damaged, and that therefore somebody who permits Knotweed to spread from their land to their neighbours' would be liable for the cost of remediation and damages.

In Guernsey there is currently no legislation requiring a land owner to deal with Knotweed on their land, but if Knotweed is coming onto your land from an adjoining property the best course of action is to co-operate with the neighbouring landowner and coordinate your efforts in removing it. If the neighbour refuses to co-operate, then the Network Rail case may prove to be of assistance in making an application to the Guernsey Court seeking damages or an injunction.

Property developers should also be mindful to check a site for Knotweed (bearing in mind it may not be visible above ground yet) and if it is present, attempt to manage the situation well before development.

For legal advice on this issue or any other local property issue, please contact the Ogier property team at gsy@ogierproperty.com or call +44 1481 721672

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