

A knotty problem - the dangers of Japanese Knotweed

The presence of the Japanese Knotweed plant on property can cause physical damage to buildings and structures and can be very expensive and time-consuming to remove. It also affects the value of the property, its marketability and insurability.

Criminal sanctions

The Wildlife and Countryside Act 1981 (WCA 1981) provides that it is an offence for any person to grow, or cause to grow, in the wild any plant listed in the WCA 1981, including Japanese Knotweed.

The consequence of being found guilty of an offence under the 1981 Act is a potentially unlimited fine and/or imprisonment for up to two years. These penalties can also be imposed on a company director, manager or company secretary, if it is proved that the offence was committed with that person's consent, or is attributable to that person's neglect.

How to avoid the problem?

Japanese Knotweed has a number of key habitats, and careful surveys of those areas should always be undertaken. Brownfield sites are a common habitat for Japanese Knotweed, particularly where fly-tipping or dumping may have introduced stem fragments. Roads, rivers and railway lines also assist in the spreading of Japanese Knotweed, and careful attention must be paid on any site inspection.

Before acquiring land, a developer should carry out a Japanese Knotweed survey to ensure it is not present. If it is discovered, then the developer should consider whether to proceed with the acquisition or re-negotiate the purchase price and/or provide as a condition of the contract that the seller will eradicate the Japanese Knotweed prior to completion, to the buyer's satisfaction.

Environment Agency guidance

The Environment Agency has published the Code of Practice for the Management, Destruction and Disposal of

Japanese Knotweed. The code provides an outline of the main techniques for the disposal and treatment of Japanese Knotweed, such as burning and burial, off-site disposal and herbicidal treatments.

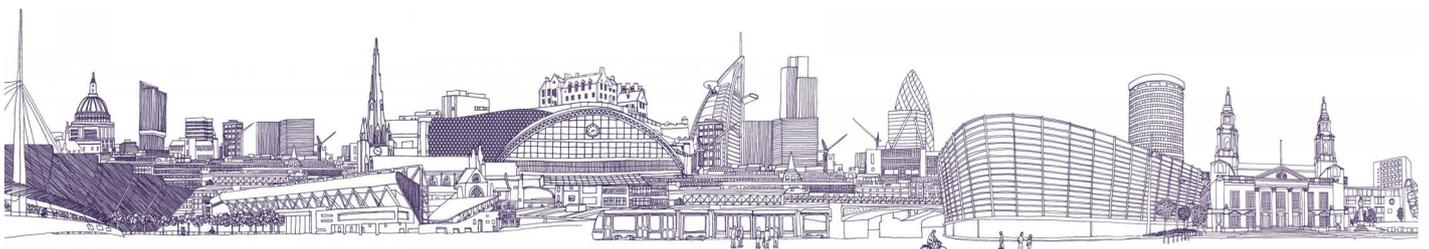
The code also offers more practical advice for developers including:

1. If there is Japanese Knotweed on a site, you will need to consider eradication costs when working out how profitable a development is likely to be.
2. If a site has been skimmed or treated, look for evidence of Japanese Knotweed. Consider some form of protection from the potential subsequent cost of managing Japanese Knotweed within the purchase agreement.
3. If there is Japanese Knotweed, consider whether you will be able to treat the material on site. For example, have you acquired enough space to shift soil and create a bund.
4. If you think there is no Japanese Knotweed on the site, consider getting an indemnity from the seller to this effect before you acquire the site.

Land Remediation Relief Scheme

Land remediation tax relief (LRR) is available for the cost of removing Japanese Knotweed, unless the material is sent to a landfill for disposal as waste. The tax relief includes the costs of remediation of land that has become contaminated by Japanese Knotweed after it came into ownership of the company seeking LRR.

The LRR allows companies to claim a deduction in corporation tax for revenue and capital expenditure incurred in remediating certain contaminated or derelict sites. Companies can deduct an amount equal to 150% of the qualifying clean-up cost when calculating their taxable profits for corporation tax purposes.



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Summary

Japanese Knotweed is just one of various environmental and ecological issues that a developer must be aware of when acquiring a site. Newts, orchids, bats and slow worms (amongst others) are all protected by environmental legislation. The presence of any of these protected species could cost the developer a significant amount of time and money in addressing. Therefore, careful site inspections should be carried out so that any potential environmental issues are identified and dealt with appropriately prior to exchange and within the viability of the proposed development.

If you would like to discuss any of the issues raised in this update, please contact:



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