

Beacon

Invasive Plant Intelligence

Authored by
leading invasive
plant experts,
Environet



Japanese knotweed: Does the new RICS Guidance affect developers of residential property?

The long-awaited RICS Guidance Note, Japanese Knotweed: **Guidance for Professional Valuers and Surveyors**, was published in January 2022 (effective 23 March 2022), replacing their previous Information Paper IP27.

The new guidance scraps the “7-metre rule” and gives surveyors more leeway to use their professional judgement. But does it alter the way developers should tackle Japanese knotweed on affected sites?

The new guidance is aimed at surveyors providing advice to banks and lenders for residential lending purposes, so provides some useful insights but does NOT alter the way developers should tackle knotweed on development sites.

Herbicide or removal?

Where land is to be developed, removal of the underground rhizome system remains the only safe, quick and reliable method.

Herbicide is a very risky solution owing to rhizome dormancy and the risk of regrowth. In addition, treatment timeframes seldom fit tight construction programmes.

Knotweed regrowth & Breach of Contract

Where knotweed remediation works have proved unsuccessful, partially or otherwise, developers have been sued for breach of contract by buyers who have discovered knotweed growing on their new property.

It's perhaps surprising that most buyers' conveyancers don't ask new-build developers if the developed land had knotweed, or if any knotweed remediation work was carried out. That would help both the unsuspecting buyer and mitigate the litigation risk for the developer.

KEY LINKS

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Japanese knotweed removal on a residential development site

How can the IBG protect developers?

The IBG, the infamous insurance-backed guarantee issued by the remediation company, protects the property owner against the risk of regrowth typically for 10 years. The “insurance backed” element means that the insurer steps-in if the remediation company is unable to honour its obligations due to insolvency. The mere existence of the IBG should make the homebuyer aware that regrowth is a possibility and that a mechanism is in place to deal with it, making it difficult for them to bring a “misrepresentation” or “breach of duty” claim against the developer.

“The IBG makes it difficult for homebuyers to bring a “misrepresentation” or “breach of duty” claim against the developer.”

The cost of removal methods

Off-site disposal is expensive, particularly with Landfill Tax and cost of haulage, but the good news is that tried and tested on-site remediation methods are available which are more cost-effective and better for the environment, plus are eligible for land remediation tax relief. Read our previous Beacon paper for more information about eco-innovative removal methods on commercial or development land.

RICS Guidance Note

What’s actually changed?

The blunt ‘7 metre rule’ has been scrapped in favour of a more nuanced approach that allows surveyors to use their own professional judgement in determining the potential impact of Japanese knotweed. Quite rightly, the focus is no longer only on the structure of the property and the risk of damage, which is rare, but also on amenity value – in other words, the effect of knotweed on the use and enjoyment of the garden. In our view mistakenly, it also places a greater emphasis on the goal of ‘control’ of knotweed through herbicide treatments when appropriate, rather than aiming for eradication.

What’s the Environet response?

We believe the new guidance to be on the whole cautious and sensible, recognising the very real risk Japanese knotweed poses while giving greater clarity to surveyors, but we don’t agree that control of knotweed might be a more appropriate goal than eradication. While herbicide treatment can be an effective approach in certain cases, there are often very good reasons to make eradication the goal – and by settling for ‘control’ the bar is lowered for the sake of a lower initial cost. Herbicide treatment is particularly inappropriate on development sites, where the plant’s location could impact neighbouring properties and be subject to potential legal claims, or on more valuable properties where the diminution of value justifies the higher cost of removal.



Bamboo



Horsetail



Himalayan Balsam

What about other invasive plants?

Japanese knotweed is the plant with the most fearsome reputation, but it’s not the only invasive that can cause serious problems for homeowners. Bamboo, horsetail and Himalayan balsam are all highly invasive. Despite the fact there’s no regulation around the sale of property impacted by these plants, they may be flagged up in a surveyor’s report and since there is an expectation that a new home comes free of defects, the appearance of any invasive plant could result in a legal claim further down the line if the problem is not dealt with.

Summary

Off-site disposal is expensive, particularly with Landfill Tax and cost of haulage, but the good news is that tried and tested on-site remediation methods are available which are more cost-effective and better for the environment, plus are eligible for land remediation tax relief.

Read our [previous Beacon paper](#) for more information about eco-innovative removal methods on commercial or development land.



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