

Beacon

Invasive Plant Intelligence

Authored by
leading invasive
plant experts,

Environet



Legal cases against developers relating to Japanese knotweed are on the rise.

We explain how best to mitigate the risks.

Reluctance to confront the possibility that Japanese knotweed could be present on residential development sites is putting developers at risk of expensive litigation if the invasive plant emerges post-sale.

Find out how to know for sure if a site is affected by knotweed, and if it is, follow best practice to ensure there's no chance of litigation further down the line.

What's the problem?

Keen to get new build projects underway and keep schedules on track, residential developers are in some cases failing to carry out the appropriate knotweed checks and remediation works, leading to misrepresentation and breach of contract claims being brought against them by new home buyers.

In the last Budget the chancellor confirmed almost £2bn investment in bringing brownfield land back into use for housing and related infrastructure.

Brownfield sites tend to carry a higher risk of contamination by Japanese knotweed, making it even more important for residential developers to carry out the appropriate checks.

KEY LINKS

[Commercial solutions](#)

[Detection Dogs](#)

[Insurance-backed guarantees](#)

Mitigating knotweed risk on site



Dog survey



Remediation



Disclosure



IBG

The Legal Situation Explained

Developers who find themselves in the unfortunate position of having knotweed appear in the gardens of new homes they've sold, may face legal claims from buyers via two routes: misrepresentation or breach of contract.

The Law Society's TA6 Property Information form, completed by sellers of second-hand homes which contains a direct question about whether a property is affected by knotweed, is not routinely completed by residential developers. Yet this 'loophole' doesn't serve developers well, since avoidance of the issue leads to failure to check for knotweed, leaving developers exposed to future claims.

Misrepresentation claims, where the buyer's solicitor has posed a direct question about Japanese knotweed - either by requiring the developer to complete a TA6 or as part of their additional enquiries - and the developer has responded that the property is not affected, are more common and usually more successful. They leave the developer open to bills not only for removal costs and legal expenses, but also, more importantly, diminution of the property's value if knotweed regrows.

Breach of contract claims, whereby the buyer is able to prove the developer was in breach of the expressed or implied terms of the sales agreement, are usually more difficult to prove but can be notoriously expensive to defend.

Mitigating the risks

With awareness of knotweed growing every year - now at 82% of people according to our latest survey with YouGov - increasing numbers of buyers are asking the knotweed question of residential developers, and to avoid future litigation it's crucial it is answered correctly.

All sites should be assessed for knotweed prior to building works beginning, and if found, it should be properly remediated and insurance-backed guarantees (IBGs) provided to every buyer.



Hidden Japanese knotweed canes

These guarantees provide the buyer and their lender with the level of reassurance required and, importantly, they also protect the developer from any future breach of contract or misrepresentation claim.

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.



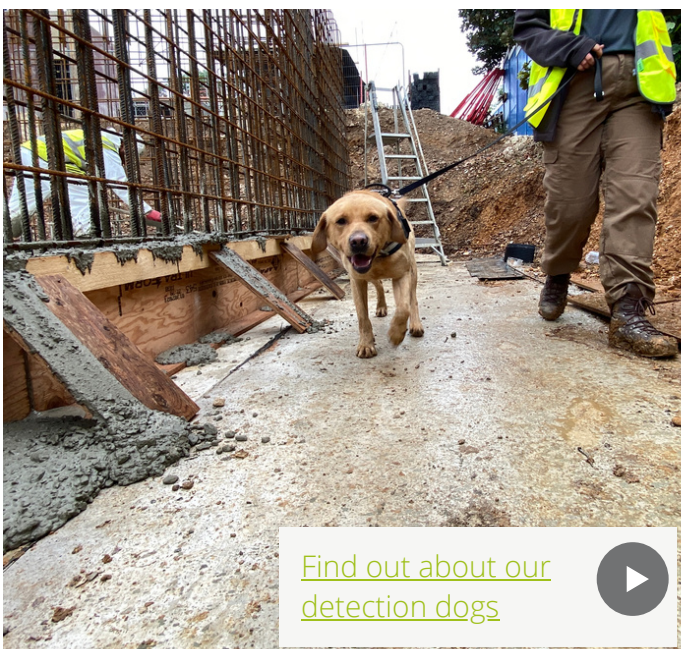
Japanese knotweed shoots emerging on a construction site where rhizome was disturbed

Call in the dogs

Knotweed detection dog surveys are now available to check land for knotweed which may not be visible to the human eye or has been induced into dormancy by previous herbicide treatment, an ideal solution where there is uncertainty as to whether knotweed may be present.

The detection dogs can cover a site in a matter of minutes and will indicate by 'freezing' or showing 'heightened interest' when the scent of Japanese knotweed is detected, enabling fast and efficient remediation.

With a 99% accuracy rate, it's the most effective way to determine if a property is affected by Japanese knotweed rhizome being present in the ground.



[Find out about our detection dogs](#)



Japanese knotweed removal on a development site

Summary

Failure by a buyer's solicitor to ask about knotweed risk does not mean a developer is off the hook if the plant regrows, since a breach of contract claim could still be brought – and if several homes on a development are affected, a developer could be forced to defend multiple claims at once.

Acknowledging and dealing with the problem from the outset, being transparent with future buyers and providing IBGs that cover them should the plant regrow, is the correct course of action and the most effective way residential developers can defend themselves from the risk of litigation.



Read our previous Beacon paper for information about our eco-innovative removal methods.

Can you confidently answer this question for all of your sites?

“Is there any knowledge of knotweed being present on any part of the development site upon which this property lies, prior to, during or after the development works? If so, please provide details of the remediation works and evidence of a 10-year insurance-backed guarantee (IBG) for the benefit of the purchaser specific to this property.”

Sign up for our CPD webinars!

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How to deal with Japanese knotweed effectively on construction sites:

TUE 13 SEPT 2022



Lead by
Nic Seal

TUE 17 JAN 2023

How to identify invasive plants and understand the risks they present:

TUE 15 NOV 2022



Lead by
Emily Grant

TUE 14 MAR 2023

Authored by experts, Beacon is a series of information papers providing insights into the removal and treatment of invasive plants in the UK.

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