



Authored by
leading invasive
plant experts

Environet



Understanding the risks around invasive plant encroachment



Japanese knotweed infestation at a
residential property

[Japanese knotweed management plan](#)



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It isn't illegal to have invasive plants growing on your property, but when they spread across boundaries into adjoining properties they can cause damage, negatively impact values and prompt legal disputes between neighbours. We weigh up the risks and explore the implications for property professionals when such properties are bought and sold.

The law around Japanese knotweed encroachment

Where Japanese knotweed is growing, it's the landowner's responsibility to ensure that the plant does not spread into adjacent properties, causing nuisance, impacting that homeowner's enjoyment of their home/garden and potentially its value.

There are now numerous legal cases relating to knotweed encroachment, where the victim has successfully sued the offending homeowner.

The mere presence of knotweed is enough to support a nuisance claim, because it restricts the owner's use and enjoyment by limiting their ability to develop the property, and by unfairly placing an immediate burden on them to take steps to eradicate it.

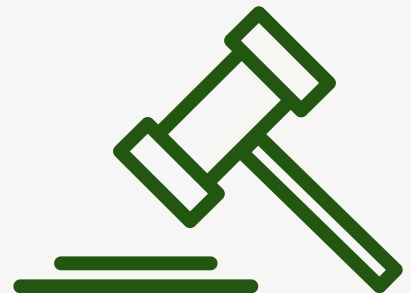


Repair to damage caused, for example to homes, outbuildings, paths, driveways and patios, can also be claimed for, but it does not need to be proven that knotweed is causing physical damage – its mere presence is enough.

Davies v Bridgend Council *(February 2023, Bridgend, Wales)*

Mr Davies sued the council for allowing knotweed to encroach into his property. Liability was proven but the claim for diminution of property value was dismissed.

This decision was overruled at the Court of Appeal which decided that diminution could be claimed in a nuisance case. Mr Davies was awarded £4,900 damages, but Bridgend Council was also forced to pay over £300,000 in legal costs that could have been avoided.



What about Bamboo?

Bamboo rhizomes spread further and faster than those of knotweed and there is no reason why the tort of nuisance can't be applied to cases of bamboo encroachment. As yet, nuisance arising from bamboo encroachment has been less rigorously tested in court than Japanese knotweed, despite the fact that evidence of damage to properties and gardens arising from bamboo is just as strong. This is most likely due to much lower awareness of the risks arising from bamboo. A recent survey we carried out with YouGov showed that while 82% of people would take some kind of action if knotweed began to encroach into their garden, only 24% would be concerned to find bamboo growing on the border of their property.



While knotweed is rightly the more notorious of the two plants, being by far the more difficult to remove, bamboo can potentially cause greater damage due to its long lateral roots that can extend 30ft or more from the parent plant. Legal cases relating to bamboo are already on the rise and we anticipate they will increase further as awareness grows.



5% of households in the UK are affected by Japanese knotweed – that's **1.4 million** homes.

12% of households are affected by bamboo – that's **3.4 million** homes!

Protections for buyers

Buyers of property under immediate threat or impacted by encroachment of knotweed have two lines of defence. The first is the TA6 form. In order for a seller to tick "No" to the Japanese knotweed question, they ***"must be certain that no rhizome (root) is present in the ground of the property, or within 3 metres of the boundary, even if there are no visible signs above ground."*** This clearly takes into account encroachment risk and paves the way for a legal claim against the seller if they answer dishonestly.

Sellers are also required to declare if there have been any disputes with neighbours, or if the seller is aware of anything that might lead to a dispute – which may provide a further safety net for buyers where invasives are growing on or near a border and the issue has been raised by the previous owner.

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"There is no direct question about bamboo on the TA6 form, therefore sellers are not obliged to declare it. But as legal cases relating to encroachment of bamboo become more common, I wouldn't be surprised if mortgage lenders start to look more closely at the issue and impose lending restrictions in the future."

Nic Seal, MD of Environet

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The second line of defence is the surveyor, who is obliged to highlight any identifiable risk or potential defect that could impact their client's decision to purchase the property. Japanese knotweed growing on and near the property certainly falls into this category, as would any significant stand of invasive bamboo. In such instances, further professional advice should be recommended.

Defence in encroachment claims

Ishmael v Clark

Dr Clark owned a London property affected by knotweed and employed Environet to treat and remove it, following failed efforts by another knotweed specialist. Her neighbour, Mrs Ishmael, brought a claim against Dr Clark for allowing the knotweed to spread into her property, alleging nuisance and claiming loss of value to her property of £150,000.

We advised our client, the defendant Dr Clark, that by employing us to remove the knotweed she was evidently doing everything reasonable to mitigate the nuisance and that should be her defence. Representing herself, Dr Clark took our advice and at the beginning of 2023, the Judge found in her favour. The claimant was ordered to pay legal fees amounting to £100,000.

The verdict from RICS

It's Environet's view that RICS have failed to give enough weight to encroachment risk to property buyers in their revised Japanese knotweed Guidance Note, issued to surveyors last year. The 7-metre rule was scrapped but under the new guidance, even if knotweed is within 3 metres of the property's border, which is clearly an encroachment threat, surveyors are only required to flag it in the lowest-risk category 'D'. This could provide a false sense of security to a potential buyer.



Summary

Buyers should be made aware of the problems associated with buying a property affected by Japanese knotweed or bamboo. Furthermore, they should be made aware of the risks if knotweed or bamboo is about to spread across the border into a property they intend to buy, bringing with it the expense of professional removal, diminution in their property's value and potentially the stress of bringing a legal case against their new neighbour.

Guidance from surveyors and conveyancers is essential to help buyers assess encroachment risk and obtain information from the seller that may support a legal claim if encroachment later occurs.

Diligent surveyors may follow up with some further context and an overview of the risks, recommending a [JustCheck™](#) survey to determine the presence of knotweed on or near the property and provide peace of mind if the 'all-clear' is given. It would also be prudent for buyers wishing to proceed with the purchase of a property that is under threat of encroachment to write to the neighbour alerting them to the problem and giving them the opportunity to take action, thereby laying the groundwork for a future legal case if they should fail to prevent it.

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FOR JAPANESE KNOTWEED

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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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