

CLLS Planning & Environmental Law Committee response to Environmental Audit Committee (Commons Select Committee) Inquiry on Invasive Species Consultation

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The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees. This response in respect of the Parliamentary Environmental Audit Committee Inquiry on Invasive Species Consultation has been prepared by Paul Davies, Macfarlanes LLP and Valerie Fogleman, Stevens & Bolton LLP on behalf of the CLLS Planning & Environmental Law Committee.

We understand that the Environmental Audit Committee is launching a new inquiry on the prevention and management of the introduction and spread of invasive alien species. This response intends to examine one particular invasive species, Japanese Knotweed, in light of the following question raised in the terms of reference:

Question 8: The case for any change in the law regarding invasive species.

1 Japanese Knotweed: What is the extent of the problem?

1.1 Japanese Knotweed can cause physical damage to buildings as it has the potential to infiltrate through cracks and gaps in concrete and tarmac, expanding with enough force to cause serious structural damage. It can damage underground sewers, block drains and there have even been incidents of Japanese Knotweed growing within cavity walls.

1.2 In 2010, it was estimated that the **annual** cost of dealing with Japanese Knotweed in Britain was in the region of £165million. To give a recent high-profile example, at the Olympic site in East London, the Royal Horticultural Society estimated that the cost of removing and disposing of Japanese Knotweed was £70million.

2 The current law in the UK

2.1 Section 14(2) of the Wildlife and Countryside Act 1981 states that “if any person plants or otherwise causes to grow in the wild any plant which is included in Part II of Schedule 9, he shall be guilty of an offence”. Japanese Knotweed is contained in Part II of Schedule 9, however, rather unhelpfully, the Act does not define the term “in the wild”. DEFRA has published guidance on the matter stating that “the wild” can “be broadly described as the general countryside/open environment”. The guidance would seem to exclude domestic

gardens, but does not clarify whether, for example, a company's car park, a railway embankment or a verge on a public highway would fall into the definition of "open environment".

- 2.2 Under the Environmental Protection Act 1990, Japanese Knotweed (and soil contaminated with rhizomes), is considered to be a "controlled waste" and is subject to more stringent controls. However, Japanese Knotweed is not a "notifiable" weed under the Weeds Act 1959, which means that notices cannot be served by local authorities requiring that land owners prevent its spread.
- 2.3 In addition to the legislation mentioned above, it is also possible for a landowner to bring a common law (private) nuisance claim against a neighbouring landowner where Japanese Knotweed is encroaching over the property boundary. However, if Japanese Knotweed is present on adjacent land but has not crossed the property boundary, it will be very difficult to bring a claim for nuisance.

3 **What is the problem?**

- 3.1 Japanese Knotweed has been a problem for landowners for years. However, more recently the stakes are being raised, not by legislative authorities, but by lenders. We have seen evidence of situations where Japanese Knotweed has been identified at (or even in close proximity to) a property, and as a direct consequence financing on that property has been declined. This is particularly difficult for "innocent" landowners, where Japanese Knotweed is growing on a neighbouring land, but has not yet encroached (see below).
- 3.2 The Royal Institute of Chartered Surveyors has published guidance in relation to Japanese Knotweed and residential property which encourages valuers/surveyors to "consider the implications of a Japanese Knotweed infestation on or near a dwelling". Whilst no specific guidance has been published in relation to commercial property, surveyors would typically have the same considerations.
- 3.3 The Council of Mortgage Lenders has stated that there is no blanket policy that prevents lenders from providing mortgages if Japanese Knotweed is identified. However, we have seen statistics where Japanese Knotweed has been identified in a survey and mortgage lenders have taken the following actions:
 - 3.3.1 making the loan offer conditional, for example, on a remediation plan being in place;
 - 3.3.2 reducing the loan to value ratio; or
 - 3.3.3 refusing to provide the mortgage.

- 3.4 ***To emphasise this point, we understand that lenders have refused financing on properties where Japanese Knotweed has been present on neighbouring property, but had not yet impacted the property itself. This raises the important issue that a current owner could be left with unsellable property and has no legal course of action against the owner of the neighbouring property.***

4 **Call for change in the law regarding Japanese Knotweed**

- 4.1 Clear guidance on the legislation surrounding Japanese Knotweed is urgently required, for example, further guidance Section 14(2) of the Wildlife and Countryside Act 1981 and consideration of whether Japanese Knotweed should now be included as a notifiable weed under the Weeds Act 1959.
- 4.2 Moreover, a change in existing legislation in relation to Japanese Knotweed in order to plug the gap between lenders and borrowers would be welcomed and would not be unprecedented. Under the scheme for tax relief for the remediation of contaminated land, companies are able to claim a deduction in corporation tax for capital expenditure incurred in the remediation of certain contaminated sites. The Corporation Tax (Land Remediation

Relief) Order 2009 extended the relief to cover the costs of remediating land contaminated by Japanese Knotweed.

- 4.3 If action is not taken to address the issue of lenders being reluctant and some even refusing to provide finance on land which is either infested with Japanese Knotweed or at risk of such infestation, some unfortunate landowners will find themselves in an impossible situation.

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