THE LEGAL, FINANCIAL AND TECHNICAL IMPLICATIONS OF DISCOVERING JAPANESE KNOTWEED ON A DEVELOPMENT SITE

By Alison Boothby

Part C of the Building Regulations (Site Preparation) states clearly that a site should be adequately prepared so as to minimise the hazard of damage to the building from existing vegetation, contaminated top soil or pre-existing foundations. Under the 2010 updates to the Building Regulations, site investigation is now recommended in order to determine how much unsuitable material should be removed before building begins and, where Japanese knotweed is concerned, determining the extent of the problem is a job for a specialist.

Nic Seal of Environet UK, one of the UK's leading experts on Japanese knotweed explains: 'If you have a site you intend to develop you should *completely* eradicate the knotweed before any construction works commence. Japanese knotweed is simply one of the things in life that should not be brushed under the carpet with a botched attempt at eradication unless, of course, you want to incur delays and major expense at a later stage in the project. The earlier the problem is identified and dealt with correctly, the less expensive the remediation.'

Legal implications

Alongside the practical frustrations of having Japanese knotweed on site, there are legal implications too. If you cause the knotweed to be spread off site, you could find yourself at the wrong end of criminal proceedings under either the Wildlife and Countryside Act 1981, or the Environmental Protection Act 1990 'duty of care'. Offences under these Acts can result in custodial sentences. Soil contaminated with Japanese knotweed is considered 'controlled waste' and must be disposed of at an appropriate licensed landfill site. If you consign knotweed infested soils off site other than strictly in accordance with these legislative requirements, whether intentionally or not, you will run the risk of prosecution.

Financial implications

Whilst Japanese knotweed poses no threat to human health, its impact on building and development can be considerable. It is virtually impossible to secure finance on land with the invasive plant on or near it and its discovery can cause unwelcome delays in building plans. Once dealt with by a 'reputable contractor' and the appropriate guarantees provided, finance is forthcoming and work can commence on site.

Imagine a site where viable knotweed rhizome remains hidden in the ground, possibly to a depth of 2m or more, having laterally spread into areas you might imagine are unaffected. Once you disturb these soils whether by ignorance, accident or intentionally, you would almost certainly fragment and spread the knotweed rhizomes to other areas of your site. This would significantly increase the scale of the problem, and hence the cost of remediation. Specialist intervention at an early stage will correctly assess the scale of the problem and advise on the available treatment options.

Technical implications

A site investigation will accurately map out the scale of the infestation and assess the situational context of any treatment options. As well as budget and timeframe, boundaries, ground water levels, proximity to water courses, TPOs and more can all have an impact on the best available treatment option.

Broadly, the treatment options fall into two main categories – in situ herbicide treatment or physical removal. The most common treatments are detailed below:

In situ herbicide treatment

In situ herbicide treatment is usually the most economic approach but does attract a time penalty, so may not be suitable where site works are due to commence and fast track eradication is required. At best it will take one growing season to complete, for which the ground needs to be undisturbed, in a safe location and the plant in good health. Situations where the above conditions are not met reduce the efficacy of herbicide treatment and increase the required treatment period to two or more years. While it is possible to achieve complete eradication using herbicides, verification is not easy and post-treatment management is required. There is always a risk that viable rhizome remains after herbicide treatment so if you are likely to disturb the soils in the area, and re-growth cannot be tolerated, then you should look at a physical removal method.

Physical removal

Physical removal is usually undertaken by a 360 track mounted excavator under the supervision of a Japanese knotweed specialist trained in correct identification of knotweed rhizome. The supervision element is essential to ensure that all and only infested soil is removed, the process is carried out in accordance with the law and rhizome is not spread on or off site during the process. Common problems that may arise to impede total excavation include close proximity of protected trees, boundaries, underground obstructions, utility services and groundwater. If the rhizome