

---

## Japanese Knotweed Case Law

Over the past few years Japanese knotweed has raised concerns, perhaps disproportionately, among residential surveyors. This is not due to any changes in the law, but due to a small number of cases where surveyors have been found negligent for failing to spot knotweed. And court cases do, of course, represent a minute proportion of disputes.

Surveyors and valuers are also alert to cases where allowing the spread of knotweed has given rise to successful private nuisance actions. This clearly concerns the defendant landowner, but can also impact and needs to be recognised in property values (e.g. *Raymond v Young* [2015] EWCA Civ 456 where an order of over £150,000 for diminution in value due to nuisance was upheld in the Court of Appeal).

Additional unrest has resulted from the RICS Information Paper on Japanese Knotweed (2012) having been expressly withdrawn pending further research and consultation, as has the Environment Agency Code of Practice (2006). The RICS guidance is the subject of continuing discussion and doubtless a revised paper will appear in time.

There are various causes of action with regard to knotweed, from criminal liability for allowing it to escape into the wild under the Wildlife and Countryside Act 1981, or not disposing of knotweed appropriately (under the controlled waste provisions of the Environmental Protection Act and the Waste Management Licensing Regulations 1994), but this note concentrates on civil liability in negligence.

Firstly, it's worth mentioning that there are over 100 plants categorised as non-native invasive species and Japanese knotweed should not be singled out to the exclusion of all else, and some plants which cause structural or ecological problems are not within this classification, such as certain species of bamboo, but are still giving rise to claims when not spotted or advised upon.

Introduced as an ornamental garden plant by Philip von Siebold in the 1850s, knotweed was still being sold commercially well into the twentieth century, but it was eventually realised to be a pest rather than appropriate for active cultivation.

For valuers, the key issue is to ensure knotweed (and any other potentially destructive plant) is spotted and noted to avoid any successful negligence claim and to ensure householders and purchasers are informed such that they can address and avoid any actions in nuisance.

There has been a plethora of discussion in the professional press over recent years, so this is just to summarise court action to illustrate the potential consequences of ignoring Japanese knotweed.

***Davies v Marshalls (Plumbing and Building Development) Ltd and Connells Survey and Valuation Ltd [2018]*** Birmingham County Court

The purchaser of 27 Waterlily Close, Cannock, brought a negligence action against a valuer for

---

failing to spot Japanese knotweed which, she asserted, devalued the property. The mortgage valuation assessed the property to be worth £115,000. It was claimed that the surveyor failed to inspect an adjacent communal area or, if he had inspected it, failed to spot knotweed. A claim that he failed to identify knotweed on the property itself was abandoned when it was established that it would not have been visible on the property at the time of inspection.

The claim failed but is worthy of comment which might be useful for practitioners on a number of counts.

Firstly, as can so often be seen from court transcripts, one or more of the experts are less effective, and this is usually due to preparation or understanding of their role, and the specific requirements of reports, rather than any technical shortfall in their area of expertise. In this case, the claimant's expert was found to have used 'arbitrarily chosen' comparables with insufficient evidence, along with errors in their explanation of methodology.

Secondly, on the facts, bearing in mind that this was a mortgage valuation only, the valuer was found to have exercised reasonable care in his inspection. Evidence of reasonable care included site photographs, having appropriate kit (e.g. a ladder) and a CPD record of training on knotweed recognition. There is no requirement in the RICS Red Book to expressly inspect adjacent land. Indeed, such a requirement would be impractical given possible access issues. There is an expectation to view across boundaries from all available levels but, on the facts, a cursory view from the first floor would have revealed nothing.

### ***Ryb v Conways Chartered Surveyors [2019]*** Central London County Court

The claimant, Mr Ryb, brought an action in negligence regarding the valuation of Mendip House in Bloomfield Road, Highgate, for failure to identify Japanese knotweed. Mr Ryb purchased the property for £1,275,000. A full building survey was commissioned, not least due to Mr Ryb's poor eyesight.

The court asked three questions:

1. Was Japanese knotweed present at the time of purchase?
2. If so, should a reasonably competent surveyor have identified it?
3. If so, what damages should be awarded?

It was found that, as a matter of fact, knotweed was present at the date of inspection. The surveyor, per the judge, "came across as a surveyor of what might be described as the 'old school'." He had taken no photographs (which may have aided a defence), no measurements, and had drawn no plans. When probed on CPD attended he produced a flyer but no confirmation of booking, attendance or notes. In light of this, the evidence of expert witnesses was particularly influential.

The judge was satisfied "well beyond the standard of the balance of probabilities" that the surveyor was negligent. Damages for diminution in value of £50,000 was awarded, including remediation costs.

## Takeaways for valuers

- The importance of contemporaneous notes and photographs.
- The importance of CPD, ensuring adequate and up-to-date training on any matters pertinent to the nature of work undertaken.
- If undertaking expert witness work, ensuring, as a starting point, familiarity with the contents of the RICS Practice Statement, Surveyors Acting as Expert Witness (2014) and the Civil (or Criminal, as appropriate) Procedure Rules of the courts.
- Considering the impact on value of neighbour disputes, i.e. private nuisance.