



## **APPENDIX 2:**

### **Rhondda Cynon Taf County Borough Council Approach to dealing with Japanese Knotweed on Private Land**

#### **Introduction and Background**

The purpose of this document is to outline the procedures followed by Rhondda Cynon Taf County Borough Council when dealing with complaints of nuisance Japanese Knotweed on private property within the County Borough.

#### **What is Japanese Knotweed?**

Japanese Knotweed is an invasive non-native plant which has been 'introduced' to areas of the UK by humans. It is a problem because it has the ability to spread easily via rhizomes and cut stems or crowns, it thrives on disturbance and the smallest piece can regrow. It is difficult to control and eradicate and poses serious threats to the economy. It can, for example, grow through tarmac, cause structural damage to property and its presence can devalue property making it difficult to sell or remortgage.

#### **Legal Position**

Japanese Knotweed is listed in Schedule 9 of the Wildlife and Countryside Act 1981 and is subject to Section 14 of this Act, whereby it is an offence to plant or cause it to grow in the wild. The Environmental Protection Act 1990 also lists it as 'controlled waste' to be disposed of properly. This means that actions which cause the spread of Japanese Knotweed, e.g. dumping material contaminated with Japanese Knotweed (e.g. soil and grass cuttings), mowing, strimming and flailing above ground growth, may constitute an offence.

The Local Authority is only responsible for controlling Japanese Knotweed that is growing on land that it owns or manages. It does not have the ability or the authority to treat private land. Responsibility for controlling Japanese Knotweed nearly always lies with the Landowner unless the Leaseholder is responsible for land management. Land ownership details can be found at [www.LandRegistry.gov.uk](http://www.LandRegistry.gov.uk).

Landowners do not have to control Japanese Knotweed and other invasive Knotweeds on their own land unless it is causing an issue to neighbouring properties. Encroachment of Japanese Knotweed on to neighbouring property may give rise to a liability under a private nuisance claim.

However, where individuals are acting unreasonably and persistently in a way that has a detrimental effect on the quality of life of those in that locality, for example by allowing the unmanaged growth of Japanese Knotweed, Local Authorities and the Police have the power to

issue Community Protection Notices under the Anti Social Behaviour, Crime and Policing Act 2014.

Community Protection Notices are discretionary and can be issued to compel individuals or organisations to control invasive species in situations where they are having a detrimental effect on the quality of life of others.

Further guidance can also be found on the [Home Office website](#).

### **Advice for Landowners**

If an individual or business has Japanese Knotweed on their land, they may be causing a private nuisance to surrounding properties. If approached by neighbours, they should control the Japanese Knotweed to prevent further spreading.

If Japanese Knotweed on a neighbouring property is causing a nuisance, RCTCBC recommends that the affected party attempts to speak with the Landowner and tries to deal with the problem amicably, rather than resorting to legal action.

Cost effective methods of control and eventual eradication are achievable through the use of appropriate pesticides applied to the plant at the right time of the year. Landowners can undertake the eradication themselves, however, once the cost of the pesticide and the equipment required to apply the pesticide has been calculated and the potential risk of pollution is taken into account, it may be best to employ a specialist contractor. By using a Specialist Contractor, there is also the reassurance that the works have been carried out to approved codes of practice and guarantees will be provided.

When looking for a contractor, the following accreditations and registrations are recommended: Amenity Forum Membership, BASIS Professional Register, BASIS Amenity Training Register, BASIS Nominated Storekeeper (NSK) Professional Register.

Membership of one of the following trade associations is recommended: Property Care Association (PCA), Invasive Non-Native Specialists Association (INNSA).

If Japanese Knotweed is not controlled by the Landowner, the Local Authority may in extreme cases be able to take action under the [Anti Social Behaviour, Crime and Policing Act 2014](#). However, this is a discretionary power and action will not be considered until the affected party has exhausted all other avenues to resolve the issue with the Landowner.

When all available routes have been exhausted, the Anti Social Behaviour, Crime and Policing Act 2014 enables the Local Authority to serve Community Protection Notices against individuals who are acting unreasonably and who persistently or continually act in a way that has a detrimental effect on the quality of life of those in the locality.

### **Knotweed Process for Complainants**

The affected party should speak to the Landowner and explain the problems that the Japanese Knotweed is causing them i.e. damage to property, reduction in property value, making the property unmortgageable etc. If the Landowner is uncooperative or it is proving difficult to have a conversation with them, the complainant should communicate by letter.

If the details of the Landowner are unknown, a Land Registry Search can be undertaken by complainants at [www.landregistry.gov.uk](http://www.landregistry.gov.uk).

A first letter should:

- Outline the situation i.e. where is the Japanese Knotweed located, include pictures if possible, the location of the complainant's property in relation to the Japanese Knotweed and any other relevant information.
- Explain the issues that the complainant and fellow neighbours are facing i.e. any damage to property, the effect that the presence of Japanese Knotweed is having on property value or the ability to remortgage the property etc.
- Include a link to the RCTCBC guidance for Japanese Knotweed eradication procedures. <https://www.rctcbc.gov.uk/EN/Resident/EnvironmentalHealthandPollution/JapaneseKnotweed/JapaneseKnotweed.aspx>
- Provide a timescale for reply (at least 28 days).
- Be sent by Record Delivery.

If the landowner's reply is positive then they will need to provide information about how, when and who will undertake the treatment of the Japanese Knotweed. If they are going to use a Contractor, their details should be given to the complainant as this information will be required by prospective buyers/mortgage providers.

If the response is not positive, or there is no response to the first letter within 28 days, a second letter will need to be written to the Landowner. This letter should make reference to the information in the previous letter and inform the Landowner that if they do not respond within the next 14 days, all correspondence will be forwarded to the Public Health and Protection Department, who have powers to take enforcement action against Landowners who fail to control the growth of nuisance Japanese Knotweed on their land with the use of Community Protection Notices (Anti Social Behaviour, Crime and Policing Act 2014).

If a negative, or no reply is received from the Landowner within the timescale, the complainant can contact the Local Authority's Public Health and Protection Department who will review the case. The powers that the Local Authority can use to deal with nuisance Japanese Knotweed on private land are discretionary and the Local Authority is not legally required to take any action. The Local Authority will only intervene once the complainant has tried and exhausted all other avenues for resolving the issue with the Landowner. Written evidence i.e. copies of correspondence, suitable photographs and other evidence to demonstrate the nature of the Japanese Knotweed issue and the actions that have been taken to resolve the matter will be required to support the complaint. **Without appropriate evidence the Public Health and Protection Department will not act on the complaint and additional evidence will be requested.**

### **Japanese Knotweed Referral Process**

Complaints of Japanese Knotweed issues will only be accepted by the Public Health and Protection Department through the RCTCBC Contact Centre (01443 494700).

The information passed to the Customer Services Agent will be forwarded to a single point of contact (SPOC) in the Community Safety Department via the Flare Case Management

Programme. A Japanese Knotweed Information Pack will be sent to the Complainant (See appendix 1).

The Japanese Knotweed Pack will include information about Japanese Knotweed, advice on the steps that the complainant should take before the Local Authority will consider reviewing the case and a list of the evidence that they will need to provide before the Local Authority will proceed.

When the Complainant has exhausted all of the steps required of them, but have still not had positive outcome, they should recontact RCTCBC via the Contact Centre. The Public Health and Protection Department will allocate the case to an appropriate Officer who will contact the Complainant.

The Complainant will be asked to provide details of the case so far, including all correspondence that has been undertaken between the parties, suitable photographs to demonstrate the nature of the Japanese Knotweed issue and any other actions that have been taken to resolve the issue with the Landowner.

When these documents have been received and reviewed by the Officer, if the Officer is satisfied that the Complainant has exhausted the options available to them to resolve the issue, they will contact the RCT Countryside Manager to request that a member of their department visit the property and undertake an inspection of the nuisance Japanese Knotweed. If the information provided by the Complainant is not sufficient, they will be provided with a plan of action which they should follow before resubmitting their request.

Following the RCT Countryside Manager's visit to the property, (assuming that the facts presented to the Local Authority by the Complainant are confirmed to be accurate) a letter will be sent to the Landowner explaining that the Public Health and Protection Department have been contacted by the Complainant, have assessed their case and are satisfied that the Landowner has a responsibility to eradicate the Japanese Knotweed growing on their property. It will outline that the Complainant has suitably attempted to resolve the issue themselves and explain the legal processes that the Local Authority will be forced to take if they do not take steps to eradicate the nuisance Japanese Knotweed within 28 days. A copy of the RCT Japanese Knotweed advice sheet will be included with the letter.

If no correspondence is received by the Complainant or the Public Health and Protection Team to prove that steps are being taken to treat the Japanese Knotweed on their land, the CSP Officer will begin to take action against the Landowner using the powers that they have been given to issue Community Protection Notices under the Anti-Social Behaviour, Crime and Policing Act 2014, in cases of Japanese Knotweed nuisance.

### **Japanese Knotweed Community Protection Notice Process**

A Community Protection Notice (CPN) can be issued against individuals who are acting unreasonably and who persistently or continually act in a way that has a detrimental effect on the quality of life of those in the locality. The Local Authority can use the powers bestowed on them in the Anti Social Behaviour, Crime and Policing Act 2014 to stop or prevent any behaviour that meets the legal test in the powers.

The CPN can be used to require someone to control or prevent the growth of Japanese Knotweed or other plants that are capable of causing serious problems to communities. The

test is that the conduct of the individual or body is having a detrimental effect of a persistent or continuing nature on the quality of life of those in the locality, and that the conduct is unreasonable. Under section 57 of the Act, “conduct” includes “a failure to act”. See the CIEH guidance on the use of CPN’s (<https://www.cieh.org/media/1238/guidance-on-the-use-of-community-protection-notice.pdf>).

The CPN can place restrictions on a person’s behaviour (in the case of an individual, as long as they are aged 16 or over) and, if necessary, force them to take steps to rectify the behaviour that is having a detrimental effect on the quality of life of the community. I.e. if an individual, or organisation, is not controlling Japanese Knotweed and could be reasonably expected to do so.

Breach of any requirement of a Community Protection Notice, without reasonable excuse, is a criminal offence, subject to a Fixed Penalty Notice (a penalty of £100) or prosecution. On summary conviction, an individual would be liable to a level 4 fine. An organisation, such as a company, is liable to a fine not exceeding £20,000.

Before a Community Protection Notice is considered, it is imperative that the Landowner has been contacted by the complainant in the manner referred to previously in this document and that every effort has been made to resolve the situation amicably and without having to resort to Local Authority intervention.

The Public Health and Protection Department will have sent out a letter to the Landowner which explains that the Local Authority have assessed the case and are satisfied that the Landowner has a responsibility to eradicate the nuisance Japanese Knotweed (See appendix 2). An information pack providing advice on how to proceed with treatment of the land will have been included as well as contact details for the Officer dealing with the complaint.

It is only on receipt of a negative response, or lack of response after 28 days that the Local Authority will consider taking steps to utilise the powers given to them by the Anti Social Behaviour, Crime and Disorder Act 2014 and the process of issuing a CPN will begin.

Once a decision has been made to apply for a Community Protection Notice, the Officer dealing with the case will compile the relevant evidence that will make up the CPN file.

### **Stage 1 Community Protection Warning**

In the first instance, a Community Protection Warning (CPW) Letter will be sent to the Landowner. (see appendix 3). This letter will outline the problem behaviour, the actions that the Landowner is required to take and provide a set timescale for the Landowner to act within. It will also ask for evidence of action to be provided to the Local Authority and the Complainant. This is an opportunity for the Landowner to modify their behaviour without any formal sanctions being taken.

### **Stage 2 Community Protection Notice**

If the Landowner ignores the Community Protection Warning Letter or fails to provide evidence of action within the set timeframe, a full Community Protection Notice will be issued (see appendix 4). The full CPN will mirror the requirements set out in the CPW, but on this occasion, if the Landowner does not act within the timescale, the letter explains that breach of a Community Protection Notice is a Criminal Offense.

## **Fixed Penalty Notice**

In the event that the Community Protection Notice is breached, a Criminal Offense has been committed and as such, the Local Authority will issue a Fixed Penalty Notice of £100 to the Landowner (see appendix 5).

## **Works In Default**

If after a Fixed Penalty Notice has been issued, the Landowner still refuses to treat the nuisance Japanese Knotweed on their land, the Public Health and Protection Department may consider utilising the 'Works in Default' process to undertake the work necessary and recover the costs from the Landowner. See CIEH Guidance above.

## **Appendices**

Appendix 2.1	Japanese Knotweed Advice Letter to Complainant
Appendix 2.2	Japanese Knotweed Advice Letter to Landowner

## Appendix 2.1: Japanese Knotweed Advice Letter to Complainant

Dear Sir/Madam,

Thank you for contacting RCTCBC regarding nuisance Japanese Knotweed on private land.

The Local Authority is only responsible for controlling Japanese Knotweed that is growing on land that it owns or manages. It does not have the ability or the authority to treat private land. Responsibility for controlling Japanese Knotweed nearly always lies with the Landowner unless the Leaseholder is responsible for land management.

If Japanese Knotweed is not controlled by the Landowner, the Local Authority may in extreme cases be able to take action under the Anti Social Behaviour, Crime and Policing Act 2014. However, this is a discretionary power and action will not be considered until the affected party has exhausted all other avenues to resolve the issue with the Landowner.

When all available routes have been exhausted, the Anti Social Behaviour, Crime and Policing Act 2014 enables the Local Authority to serve Community Protection Notices against individuals who are acting unreasonably and who persistently or continually act in a way that has a detrimental effect on the quality of life of those in the locality.

We hope that by following the process detailed in this letter, you will be able to resolve the issue amicably with the Landowner, without having to resort to legal action. Please find enclosed a 'Controlling Japanese Knotweed Information Guide' and advice about the steps that you must follow before RCTCBC can get involved in the case on your behalf.

Regards,

RCTCBC Public Health and Protection Department

## Japanese Knotweed – A Step by Step Guide for Complainants

If you are concerned about Japanese Knotweed on land neighbouring your property, please follow the steps outlined below and attempt to resolve the issue amicably with the Landowner.

Firstly, ensure that the plant that you are concerned about is Japanese Knotweed (see Welsh Government Advice Sheet at <https://gov.wales/japanese-knotweed-controlling-it-your-land>).

If the plant is confirmed as Japanese Knotweed, you should attempt to speak to the Landowner and explain the problems that the nuisance Japanese Knotweed is causing you i.e. damage to property, reduction in property value, making the property unmortgageable etc (if details of the Landowner are unknown, a Land Registry Search can be undertaken at [www.landregistry.gov.uk](http://www.landregistry.gov.uk)). If the Landowner is uncooperative or it is proving difficult to have a conversation with them, you should communicate formally by letter.

A first letter to the Landowner should:

- Outline the situation i.e. where is the Japanese Knotweed located, include pictures if possible, the location of your property in relation to the Japanese Knotweed and any other relevant information.
- Explain the issues that you and fellow neighbours are facing i.e. any damage to property, the effect that the presence of Japanese Knotweed is having on property value or the ability to remortgage the property etc.
- Include a link to the RCTCBC guidance for Japanese Knotweed eradication procedures. <https://www.rctcbc.gov.uk/EN/Resident/EnvironmentalHealthandPollution/JapaneseKnotweed/JapaneseKnotweed.aspx>
- Provide a timescale for reply (at least 28 days).
- Send the letter by Record Delivery.

If the landowner's reply is positive and they agree to treat the nuisance Japanese Knotweed on their land, they will need to provide information about how, when and who will undertake the treatment of the Japanese Knotweed. If they are going to use a Contractor, they should give you their details as this information will be required by prospective buyers/mortgage providers.

If the response is not positive, or there is no response to the first letter within 28 days, a second letter will need to be written to the Landowner. This letter should make reference to the information in the previous letter and inform the Landowner that if they do not respond within the next 14 days, all correspondence will be forwarded to the Public Health and Protection Department, who have powers to take enforcement action against Landowners who fail to control the growth of nuisance Japanese Knotweed on their land with the use of Community Protection Notices (Anti Social Behaviour, Crime and Policing Act 2014).

If a negative, or no reply is received from the Landowner within the timescale, you can then contact the Local Authority's Public Health and Protection Department who will review the case. The powers that the Local Authority can use to deal with nuisance Japanese Knotweed on private land are discretionary and the Local Authority is not legally required to take any action. The Local Authority will only intervene in extreme circumstances, once you have exhausted all other avenues for resolving the issue with the Landowner.



The Public Health and Protection Department can be contacted through the RCTCBC Contact Centre on 01443 494700 or via the 'Report It' tool on the RCTCBC website ([www.rctcbc.gov.uk](http://www.rctcbc.gov.uk)). Your case will be allocated an appropriate Officer who will contact you to discuss the case and the steps that you have taken.

You will be asked to provide details of the case so far, including all correspondence that has been undertaken between the parties, suitable photographs to demonstrate the nature of the Japanese Knotweed issue and any other actions that have been taken to resolve the issue with the Landowner. **Without appropriate evidence the Public Health and Protection Department will not act on the complaint and additional evidence will be requested.**

## Appendix 2.2: Japanese Knotweed Advice Letter to Landowner

Dear Sir/Madam,

I understand that you are the private owner or the landlord of [ADDRESS]. This property has been identified by the RCTCBC Public Health and Protection Division as containing Japanese Knotweed which is causing a nuisance by encroaching onto neighbouring properties.

I believe that you have been formally contacted on a number of occasions by [COMPLAINANTS NAME] who has brought the presence of Japanese Knotweed on your land to your attention and has requested that you take steps to control the nuisance, but you have failed to do so.

As the landowner or landlord, you have a responsibility to prevent Japanese Knotweed on your land spreading to the land of adjoining properties. As such, I urge you to begin to take steps to eradicate the Japanese Knotweed on your land within 28 days and contact me as soon as possible to discuss your treatment plans before the Local Authority is forced to take legal action against you.

Rhondda Cynon Taff CBC have powers bestowed on us by The Anti Social Behaviour, Crime and Policing Act 2014 which enables a Local Authority to serve Community Protection Notices against individuals who are acting unreasonably and who persistently or continually act in a way that has a detrimental effect on the quality of life of those in the locality. This includes the growth of Japanese Knotweed on private land which is causing a nuisance to neighbouring property.

I have enclosed an advice sheet and some guidance in relation to the issue of Japanese Knotweed eradication on private land and your responsibility as landowner. It is important that you follow the guidance outlined in the attached document. YOU MUST NOT pull up, dig up, cut down, flail or burn the plant as all such actions will only aggravate it's growth and complicate the eradication process, doing so may also constitute an offence under The Environmental Protection Act 1990.

I must stress that if we do not hear from you in the next 28 days then we may be forced to look to take legal action in the form of a CPN "Community Protection Notice" to address the matter.

My contact details are as follows -

Yours faithfully,

RCT Anti Social Behaviour Coordinator

## Japanese Knotweed – Advice for Landowner

You must now put in place a programme of treatment to remove the Japanese Knotweed on your land. This plan must remain in place until the Japanese Knotweed has been eradicated. This may take between 3 and 5 years.

Cost effective methods of control and the eventual eradication of Japanese Knotweed are achievable through the use of appropriate pesticides applied to the plant at the right time of the year. In order to have any validity, treatment must be undertaken by a contractor that is affiliated to either the **Property Care Association** (PCA) or **Invasive Non-Native Species Association** (INNSA).

When looking for a contractor, we advise that the contractor is BASIS registered. The following accreditations and registrations are recommended: Amenity Forum Membership, BASIS Professional Register, BASIS Amenity Training Register, BASIS Nominated Storekeeper (NSK) Professional Register. This is a request of mortgage lenders following the guidance of RICS the institute of chartered building/land surveyors. <http://www.rics.org/uk/knowledge/professional-guidance/information-papers/japanese-knotweed-and-residential-property-1st-edition/>

Contractors must provide written evidence of treatment which details when, how and what type of treatment has been undertaken and this confirmation should be sent to the Local Authority as proof that the work has been undertaken.

You **MUST NOT** pull up, dig up, cut down, flail or burn the Japanese Knotweed as all such actions will only aggravate it's growth, complicate the eradication process, doing so may also constitute an offence under The Environmental Protection Act 1990.

If you require further advice to find a suitable contractor, please contact the Local Authority.