

Japanese Knotweed & Invasive Weeds – Advisory Note to DHES

Section 1. The Law

1.1 Invasive Weeds Law.

Section 14(2) of the Wildlife and Countryside Act states that *“Subject to the provisions of this Part, 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.”*

Part II of Schedule 9 of the Act includes Japanese Knotweed (*polygonum cuspidatum*)

It is a defence against any proceedings under Section 14 to demonstrate that *“the accused took all reasonable steps and exercised all due diligence to avoid committing the offence”*.

In 2010 DEFRA issued ‘Guidance on Section 14 of the Wildlife and Countryside Act’ in order to offer its opinion on the application of the statute. The guidance tackles a number of issues, which had previously caused confusion in the application of the Act. In particular, it considers the interpretation of ‘causes to grow in the wild’ and it offers the following opinion;

“It would follow that planting in private gardens would not be considered planting in the wild and, in general, this is also likely to apply to larger scale gardens, estates and amenity planting. Conversely, where the plant is inadequately managed or contained and is likely to have an adverse effect on habitats and their native biodiversity, it is more likely that the offence will have been committed. Therefore, whether or not planting is an offence should be judged on a case-by-case basis”.

it may be possible to argue that a landowner who knowingly allows a Schedule 9 species that he did not introduce, to accumulate on his land and create a problem as it spreads to other areas of the wild, and who makes a conscious decision to do nothing about it, is ‘causing it to grow’. However, this interpretation has not been tested, and whether the offence could apply in these circumstances would have to be established in the courts.”

The penalty for a breach of Section 14 on summary conviction is imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both,

1.2 Nuisance Law

Section 79(1)(a) of the Environmental Protection Act states that *“any premises in such a state as to be prejudicial to health or a nuisance”* can be deemed to be a statutory nuisance. The definition as to what constitutes a nuisance has developed over more than 100 years of case law and it is continually evolving and changing as new cases go through the courts. The general interpretation is that a statutory nuisance exists where the nature, frequency and duration of the nuisance causes a material interference with the use or enjoyment of neighbouring land.

Where a statutory nuisance is considered to exist then the local authority can serve an Abatement Notice on the person having control of the nuisance. Alternatively the aggrieved person can apply to court to get an Abatement Order issued on the person responsible. Failure to comply with the requirements of an abatement notice is a criminal offence. However, I can find no examples in case

law where this has been used to address Japanese Knotweed, although it remains a theoretical possibility.

Similar cases to this exist in civil law where aggrieved plaintiffs have taken action using private nuisance proceedings to protect their interest in land. For example, there are a number of historical cases relating to actions for nuisance due to damage from tree roots (e.g. Davey v Harrow Corporation 1958) where the main determinant of culpability appears to be based on the evidence of actual damage caused plus the reasonable foreseeability of the damage.

1.3 Planning Law

Section 215 of the Town and Country Planning Act 1990 provides local authorities with a discretionary power to require landowners to clean up 'land adversely affecting the amenity of the neighbourhood'. Generally this is interpreted as being where land is visible from the street and where the visual condition is such that it is deemed to be adverse to the local amenity. It is highly unlikely that Knotweed growth would be held to be causing a visual detriment to local amenity.

1.4 Anti-Social Behaviour Law

Section 43 of the Anti-Social Behaviour Crime and Policing Act 2014 enables local authorities and the police to issue a Community Protection Notice (CPN) on any individual or body if it is satisfied that their conduct is;

- having a detrimental effect on the quality of life of those in the locality, and;
- the conduct is of a persistent or continuing nature, and
- the conduct is unreasonable.

The application of this new law is potentially very wide. Generally it takes a number of years for the detailed interpretation of such a broad piece of law to be formed through court decisions. So far there have been no court cases which have set any legal precedent and therefore all regulators are still testing the way with this law to establish where it's use is considered to be proportionate and reasonable.

Section 2 Enforcement of the Relevant Legislation

2.1 Invasive Weeds

Section 19 of the Wildlife and Countryside Act 1981 discusses the enforcement powers of constables, which seems to suggest that the Act is primarily enforced by the Police. However, Section 18 also discusses 'Wildlife Inspectors' who must be authorised in writing by the Secretary of State and who I believe are employed either by the Police or Natural England.

Section 25 of the Act states that "A local authority in England and Wales may institute proceedings for any offence under this Part (which includes section 14)".

I've spoken to Natural England who confirm that they provide an advisory role, but no formal enforcement involvement. Their view is that generally it will be a civil matter between the two respective land-owners but that in very serious cases either the Police or (where authorised) the local authority may also get involved in a criminal law capacity.

I am aware that Derbyshire Constabulary have, on occasions, become involved with possible offences under the Wildlife and Countryside Act. However, whilst a few forces across the UK have dedicated wildlife enforcement units I do not believe that this is the case in Derbyshire and therefore I suspect that it will be down to the discretion of the local operational units as to whether they consider it an appropriate use of their resources to investigate.

I've reviewed South Derbyshire's constitution and there is no reference within it to any Director being given authorisation to act on behalf of the Council in regards to wildlife and countryside law. The nearest equivalents are 'public nuisance' (DHES), 'anti-social behaviour' (DCPS) or 'public parks and open spaces' (DCPS). I suspect that we therefore do not have any existing power to instigate action under section 14.

2.2 Nuisance

Environmental Health enforces statutory nuisance powers.

Private nuisance is a civil proceeding between the two landowners.

2.3 Planning

Planning law is enforced by the District Councils Planning Enforcement team

2.4 Anti-Social Behaviour

South Derbyshire DC currently authorises a number of officers in the Environmental Health and Housing services to issue CPNs. SDDC has a local agreement with the Police to issue CPNs on their behalf as part of a joint working relationship.

Section 3 Conclusions

The views of both Natural England and the Environment Agency are that Knotweed spreading from one location to another is a civil matter between the two respective landowners.

SDDC could investigate the case as a possible statutory nuisance or community protection matter, but if we were to take formal action it would be stepping into largely uncharted legal territory with all of the challenges that this presents.

Never the less, if the neglect of a landowner is compromising a wider resource which is benefitting residents of South Derbyshire, we have previously taken the view that we have a moral obligation to provide what support we can in protecting the public asset. We have in such instances previously acted informally on behalf of partner agencies by confirming that the invasive species is Japanese knotweed, confirming the extent of the growth and, where appropriate identifying the landowner and writing to them to advise them of their legal duties as set out above.

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