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Marshall Hall Levy
SOLICITORS

JAPANESE KNOTWEED AND CONVEYANCING

Japanese Knotweed or Fallopia Japonica was first introduced to Britain by the Victorians as an ornamental plant.

In Spring the plant will emerge with new red or purple shoots which will then grow into canes and turn green. By summer they will grow to approx. 3m tall with heart shaped leaves, thick hollow red flecked canes, and white flowers. By Autumn and going into winter the leaves will turn yellow and will drop after the first frosts, leaving dead looking hollow canes.

So why is this such a problem?

Essentially Japanese knotweed is fast growing and has an invasive root system that will overpower other plants and is capable of damaging buildings (including concrete foundations) and blocking ditches, drains and pipework, so much so that some lenders will not lend and insurers will not insure on properties which have this.

Under the Environmental Protection Act 1990, Japanese Knotweed is classed as 'controlled waste' and as such must be disposed of safely at a licensed landfill site according to the Environmental Protection Act (Duty of Care) Regulations 1991.

Under the Wildlife and Countryside Act 1981, planting it or dumping it can lead to two years in prison, a large fine, or both.

How does this affect me?

If you are selling your home, you are under an obligation to disclose the presence of this plant if known.

Recent changes have been made in the conveyancing process to make the presence of the plant known in the initial enquiries. When you complete your Property Information Form you will now be asked if the property is affected by Japanese Knotweed. You can answer either Yes, No or Not Known.

If you answer Yes then you should be prepared for any buyer to ask many questions and insist on action being taken to have this removed. Alternatively, they may not decide to buy at all in which case you may find it hard to sell your property unless a management plan is put in place.

If you answer No and it transpires that it is present, then you may leave yourself open to a compensation claim by the buyer for misrepresentation.

If you are unsure then the best answer would probably be to answer not known. You may wish to add that you do not provide any warranty of this and that the buyer should rely on their own searches, survey and inspections.

If you are buying a property and you suspect that the plant may be present, then the best course of action would be to undertake a Homebuyers Survey. A Surveyor is trained to identify whether there is Japanese knotweed at the property and there are currently no conveyancing searches that will do this.

Although a survey can cost a little more at the outset, treatment and eradication of the plant and indeed repairing any damages could cost thousands of pounds. Therefore, commissioning a survey and finding out about this sooner rather than later could lead to a huge saving in the long run.