Japanese Knotweed – A recent development

A decision by the UK Court of Appeal on 3 July last dismissed Network Rail’s appeal of the decision of Mr Recorder Grubb in Cardiff County Court on 2 February 2017 in relation to a number of private nuisance claims.

As previously discussed in an earlier article here neighbours Stephen Williams and Robin Waistell received damages for nuisance caused by Network Rail’s failure to control the Japanese Knotweed that had encroached on to their land.

The Court of Appeal upheld the Recorder’s decision, but for different reasons to those given by the Recorder. The Master of the Rolls stated:

“I do not agree with the analysis and decision of the Recorder rejecting the claim in nuisance based on the spread of the knotweed rhizomes on to the claimants’ respective properties from NR’s land.

Its presence, and indeed the mere presence of its rhizomes, imposes an immediate burden on the owner of the land in terms of an increased difficulty in the ability to develop, and in the cost of developing, the land, should the owner wish to do so.

For all those reasons, Japanese knotweed and its rhizomes can fairly be described, in the sense of the decided cases, as a “natural hazard”. They affect the owner’s ability fully to use and enjoy the land. They are a classic example of an interference with the amenity value of the land.”

The Court noted that an allegation of diminished property value due to the presence of Japanese knotweed is not sufficient to ground a claim for damages. In this case, the plant’s rhizomes had extended beneath the two properties and therefore affected the claimant’s ability to enjoy the amenity and utility of their respective properties.

While most of us are well aware of the potential effect of this plant species to property, this decision shows that failure to identify and control this plant can lead to far reaching consequences for building owners and their neighbours.