

Cabinet Member for Policing and Equalities

24 September 2015

Name of Cabinet Member:

Policing and Equalities - Councillor Townshend

Director Approving Submission of the report:

Executive Director of Place

Ward(s) affected:

All

Title:

Invasive Non-native Plant Species

Is this a key decision?

No - Although this matter may affect all wards of the City, the impact of the proposals is not expected to be significant

Executive Summary:

Recent changes in legislation have given local authorities powers to take legal action, where necessary, against the owners of private land where non-native invasive plant species (namely Japanese Knotweed and Giant Hogweed) are invading neighbouring properties. Both species spread easily and are difficult and expensive to treat.

The Council has always treated these plant species when located on its own land and this report looks at options and suggestions for using specific legislative powers against private landowners.

Recommendations:

The Cabinet Member is recommended to:

- (1) Endorse the three stage approach suggested by officers in assisting residents in dealing with the encroachment onto their land of non-native invasive plant species.

List of Appendices included:

None

Other useful background papers:

[Home Office Guidance on dealing with Japanese Knotweed](#) and other invasive non-native plants
[How to control Giant Hogweed](#)
[How to control Japanese Knotweed](#)

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No

Will this report go to Council?

No

Report title:

Invasive Non-native Plant Species

1. Context (or background)

- 1.1 Japanese Knotweed and the Giant Hogweed are two of the most prevalent invasive non-native plants that were introduced into Britain in the 19th Century. Both can colonise an area and very quickly dominate a habitat so as to exclude other plants from growing.
- 1.2 From a nuisance point of view, Japanese Knotweed's root system can cause structural damage to buildings, whilst the Giant Hogweed can lead to human skin irritation. Eradication of these plants is not straightforward.
- 1.3 An "Information Paper on Japanese Knotweed and Residential Property" published by the Royal Institute of Chartered Surveyors in December 2011 estimates that control of a single significant knotweed infestation could cost in the region of £15K. Treatment of Giant Hogweed is not dissimilar. Consequently, the presence of these non-native invasive species can blight land and the owner's ability to obtain a mortgage of that land. The Council of Mortgage Lenders and Building Societies Association specify that before lending, the owner has committed to a treatment plan with follow-up action where required, which could extend to 3-4 years.
- 1.4 Whilst it is not an offence to have these plant species on land, owner/occupiers have a duty to prevent their spreading to neighbouring properties. Under the Environmental Protection Act 1990 plant material from these species is considered to be "controlled" waste, so disposal could be only via a licensed waste contractor. Until recently, these non-native invasive species were the sole responsibility of the Police, although their powers were limited and most people used civil legislation. However, recent legislative changes (Anti-social Behaviour, Crime & Policing Act 2014) (and [Home Office guidance](#) publicising this fact) have made clear that local authorities also now have suitable powers to deal with these plants.

2. Options considered and recommended proposal

- 2.1 **Legislative Powers.** Officers have examined current legislation and powers potentially available to the authority. These are discretionary powers and not duties. Residents can also take their own civil action.
 - 2.1.1 **Anti-social Behaviour Crime and Policing Act 2014.** The local authority or the Police have powers to issue Community Protection Notices (CPN). A CPN could potentially be issued to landowners who are failing to take reasonable measures not only to control non-native invasive plant species on their land, but also to monitor and manage them on an on-going basis.
 - 2.1.2 Where a notice has not been complied with, a local authority could prosecute and seek a remedial order requiring the owner/occupier to complete the works. Breaching this would bring the owner/occupier in contempt of court and this could result in a prison sentence.
 - 2.1.3 The order could also allow the local authority to complete the 'works in default', but only after estimated costs have been provided to the owner, who can challenge the specified amount: the challenge would be resolved at a hearing in the Magistrate's Court. Furthermore, whilst the owner/occupiers are liable for any costs associated with the works, non-payment would have to be pursued by the local authority as a civil debt with the risk of non-recovery.

2.1.4 **Civil Action by Land Owners.** Alternatively, the affected landowner or occupier could take action themselves through civil proceedings. A non-native invasive plant species spreading into another property could amount to a common law nuisance. A successful action would result in the Court awarding damages to compensate for any loss and/or granting an injunction to prevent a recurrence of the issue.

2.2 **Recommendations.** Dealing with these non-native invasive plant species and the cross boundary/garden logistics is highly problematical and because of this, many residents will have chosen to take no action. Therefore, it is likely that there will be a degree of latent demand which could place a strain on the enforcement team. It is therefore proposed that the Council uses a variety of tools to manage this demand and to a degree copy the process used in dealing with “high hedge” disputes.

2.3 **Stage 1: Information and self-help.** To create a ‘web based’ self-help guide for those affected by these non-native invasive plant species. The purpose of the guide would be:

- To enable landowners/occupiers to identify these non-native invasive plant species on their land, and to encourage them to take reasonable measures to control the plants so as not to cause a nuisance to others.
- To advise residents affected by non-native invasive plant species on adjoining land and how to engage with their neighbour/land owner on a ‘step by step’ basis, to resolve the matter informally. The information would include suggested forms of correspondence.
- Only when these routes have been explored by the resident should the matter be referred to the Council for formal investigation.

2.4 **Stage 2: Council Action:** To consider service requests from the public on a case by case basis (subject to the above process) and take:

- Informal action where possible and seek the cooperation of the property owner in undertaking ‘appropriate measures’, or
- Formal action by use of relevant legal powers and prosecution where co-operation is not gained. This would then provide a platform for the neighbours to take their own civil legal action.

2.5 **Stage 3: Civil Action. To secure** a criminal conviction the Council would need to prove the case ‘beyond a reasonable doubt’; consequently any subsequent civil action should be straightforward since the civil court burden of proof (“on the balance of probabilities) is lower. Again the Council will provide a ‘step by step’ guide for residents in how they can take their own civil action against their neighbour to secure ultimate remediation of the problem.

2.6 Cabinet Member is recommended to:

- (1) Endorse the three-stage approach suggested by officers in assisting residents in dealing with the encroachment on their land of non-native invasive plant species.

3. Results of consultation undertaken

3.1 None.

4. Timetable for implementing this decision

Officers already have the necessary powers and this process can be implemented immediately if Cabinet Member supports the recommendation.

5. Comments from the Executive Director, Resources

Finance: No additional resource will be required to implement the new powers granted within the Act.

Legal: The Council's Constitution is drafted in such a way as to authorise officers to use powers under specific legislative themes i.e. anti-social behaviour offences, waste offences, food safety offences etc. Cabinet Member is therefore not required to authorise officers to use this specific piece of legislation. The legislation referred to above does not confer specific duties on the Council to take action to deal with the relevant species.

6. Other implications

None

6.1.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

6.1.2 There are clear research findings that show that the local environmental quality in a person's living environment has a significant impact on their health and well-being. The Home Office views the non-control of non-native invasive species as a type of anti-social behavior. Residents in areas which have a low environmental quality often have an increased "fear of crime". This particular tool will contribute to the Council's key objectives to 'create an attractive, cleaner and greener city' and 'make communities safer together with the police, to reduce crime and anti-social behaviour'.

6.2 How is risk being managed?

None

6.3 What is the impact on the organisation?

None

6.4 Equalities / EIA

None

6.5 Implications for (or impact on) the environment

See 6.1.1

6.6 Implications for partner organisations?

None

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