



## Green space duty of care



How to ensure your land – whether a festival site, campus, pasture or park – is safe for visitors and users.

**Please note:**

All views and opinions expressed in this proposal are purely those of the author. The content cannot necessarily be taken to represent the specific policy of any of JP Associates' developer clients.



While the legal obligations are not always clear-cut, it is widely accepted that anyone responsible for land, estate or holding that is managed for private or public access – be it urban or rural, commercial, industrial, residential or amenity – has a responsibility to ensure that it is managed effectively to protect both people and the natural environment. Here we run through the key elements to consider when planning the long-term responsible management of a green space.

## Your legal and other obligations

### Trees

Various statutes and regulations have established the level of duty of care required from owners or managers of land supporting a tree population, however small, to ensure that foreseeable damage or harm caused by tree failure does not occur.

According to the Health & Safety Executive, if you have trees on land that constitutes public space, you have a duty of care to do 'all that is reasonably practicable to ensure that people are not exposed to risk to their health and safety'.

Under the [Health and Safety at Work Act 1974](#), owners or managers of commercial premises have the additional obligation to undertake regular tree surveys.

There are other rules affecting tree and hedge management. For example, it is an offence under Section 1 of the [Wildlife and Countryside Act 1981](#) to intentionally take, damage or destroy the nest of any wild bird while it is in use or being built. Therefore, the RSPB recommends that hedge cutting is avoided between March and August.

You should also make sure you are aware of any other conditions that apply to trees on your land, such as a Tree Preservation Order (TPO) or a designated Conservation Area, and abide by the relevant rules.

**“ Their UK ‘poster boy’ is Japanese knotweed, which some commentators say costs British landowners £166 million each year ”**

### Injurious or invasive plant species

Invasive and injurious plant species are collectively accepted as one of the biggest threats to the UK's native flora and fauna, but there is no catch-all law governing their management.

According to current guidelines, the key injurious species are:

- Common ragwort – *Senecio jacobaea*
- Broad-leaved dock – *Rumex obtusifolius*
- Curled dock – *Rumex crispus*
- Creeping thistle – *Cirsium arvense*
- Spear thistle (other common names: Scotch Thistle, Bell Thistle) – *Cirsium vulgare*

'Injurious weeds' are technically categorised as those that harm agriculture – ie constrain the growth of crops or are poisonous to farm animals – and include ragwort, docks and thistles. These are largely controlled by the [Weeds Act 1959](#). There are legal requirements around disposal, too, with fines (and even imprisonment) the penalty for non-compliance. For disposing of larger quantities of ragwort, for example, you must use an on-site biomass facility or an incinerator that holds an Environment Agency permit. If you take it off-site, you must use a registered waste carrier.

'Invasives' are typically categorised as non-native, wild and rampant growers that seek to dominate any space in which they exist.

The headline invasives are:

- Japanese knotweed
- giant hogweed
- Himalayan balsam
- rhododendron ponticum
- New Zealand pigmyweed (this is banned from sale).

Their UK 'poster boy' is Japanese knotweed, which some commentators say costs British landowners £166 million each year. While it is not illegal in the UK to have knotweed on your property, it is contrary to both the [Wildlife and Countryside Act](#) and the [Environmental Protection Act 1990](#) to cause knotweed 'to grow in the wild'. More specifically, knotweed is listed in Schedule 9 of the [Wildlife and Countryside Act](#) as an invasive plant that should be controlled. This places the onus on landowners to manage knotweed responsibly and not to allow it to spread.



Further, any material that contains either the rhizome or live top growth is classed as controlled waste under the UK waste regulation framework and the [European Waste Framework Directive](#) that the regulations seek to enforce. As such, the regulations dictate that knotweed material not disposed of on-site must be transported to a landfill facility licensed to receive knotweed material.

However, as with many invasives, the most powerful incentive for controlling Japanese knotweed is financial: it can be so persistent that it can damage hard surfaces and structures by exploiting any weaknesses and small gaps, and its uncontrolled presence can hinder a mortgage application or sale.

**“ Clearly, there is a reputational as well as moral incentive to ensure that public open spaces don’t expose people to this risk ”**

Other invasives can harm people: for example, the sap of giant hogweed contains harmful chemicals which can cause human skin to become hyper-sensitive to sunlight, resulting in blistering, pigmentation and even persistent scarring. Clearly, there is a reputational as well as moral incentive to ensure that public open spaces don’t expose people to this risk.

Less obvious is the duty of care with regard to some invasives that most of us consider not only benign but desirable, such as horticultural favourites rhododendrons, buddleias, dogwoods, cotoneasters and crocosmias. However, their propensity to dominate the native natural ecosystem, destroy native flora and impoverish the habitat of many native fauna, means responsible managers have a moral duty to prevent such non-natives from becoming ‘too’ well-established in an area.

## Duty of care

So while the law might not always be the most powerful whip for responsible management, it is clear that managers of any place of common public attendance – such as a housing estate, school, business park or campsite – will be expected to take their duty seriously. Your management team will garner little sympathy from the courts of law or public opinion if they fail in this. Moreover, your insurance company will likely expect you to show you have taken ‘reasonable steps’ to minimise all risk to your pupils, parents, staff and visitors – and therefore your risk of costly liability.

For both trees and injurious/invasive plant species, these steps include:

- cataloguing and mapping
- condition and risk assessment
- remedial works
- ongoing management.

### Cataloguing and mapping

In order to demonstrate that you responsibly manage all your ‘green’ assets – trees, hedges and other significant flora such as invasive or injurious weeds – you must first catalogue them, and ideally plot them on a map.

Some organisations, such as local authority-run schools, likely have service agreements through which they can access digital OS maps for this purpose, but most do not, and the free maps available from the OS are not detailed enough for this purpose\*.

### Condition and risk assessment

The next step is to assess the condition of your green assets, and the risk they pose to people and property.

**Trees** – there are various recognised systems for assessing the condition of trees. JPA prefers the [Quantified Tree Risk Assessment \(QTRA\)](#) system because it applies proven risk management principles to tree safety management\*\*. Instead of focusing solely on a surveyor’s descriptive assessment of a tree’s condition, it takes into account its condition plus its value and risk to the site and the users of that site, then numerically quantifies the level of risk on an industry-accepted scale.

In this way, QTRA can help prevent unnecessary removal of trees and is particularly useful for sites where trees are an integral part of the visitor experience.

The risk to people posed by trees is actually very low in this country. According to the Royal Society for the Prevention of Accidents (RoSPA), five to six people are killed by falling trees or branches each year; around three of these deaths are caused by trees in public spaces. To help put that into perspective, 1,754 people were killed and 23,039 seriously injured on our roads in 2012 [RoSPA]. Danger to property from trees is equally rare.\*\*\*

However, fear and ulterior motives can lead to the danger from a tree being exaggerated, sometimes resulting in avoidable felling – with the loss of amenity and other environmental and ecological benefits.



**Injurious or invasive plant species** – because this is such a wide-ranging group of plants, with varying degrees of legal redress, and there are few recognised specialists in this field, there is no single industry-accepted approach to assessing the condition and risk of injurious or invasive plants.

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**...poor surgery will strip a tree of its energy, facilitate decay and result in its early demise //**

However JPA founder Jeremy Peirce is a qualified amenity agronomist with a specialism in invasive and injurious weeds, and is one of the few experts on the BASIS Professional Register located in the South West. He has developed an 'invasives audit' – a systematic approach for the risk assessment of such species that incorporates not just the direct threat posed by the plants but by any deficiency in the way in which they are managed. This involves reviewing:

- high-level internal policies that state how land and interests will be managed
- levels of staff awareness, knowledge and commitment to best practice management of invasive and injurious species
- relevant land, plant supply/disposal, compost and supply chain policies, processes, practices and documentation
- current legislation, community expectations and threats.

The combined conclusions, along with the initial site surveillance, not only inform a plan of remedial action, but highlight any ongoing risk factors in site operation, higher-level management practices, policies and documentation, so that these can also be addressed to minimise risk (and associated cost) over the long term.

### Remedial works

*Trees and hedges* – felling should always be the last resort. There is a range of less drastic control measures you can take to address any assessed risk while meeting your legal and moral obligations. These include:

- formative pruning
- canopy reduction – to clear space around power lines or remove some less healthy branches
- crown thinning – to allow more light penetration or improve the health of a tree

- crown lifting – which increases the clearance between the ground and the lower branches to improve, for example, vehicular access, views or light penetration
- coppicing – a traditional method of [woodland management](#) in which young tree stems are repeatedly cut near ground level to encourage multiple shoots from single stools. There are a number of commercial benefits to this high-density growing method, but a bonus is that it also keeps the stools young and healthy, so trees never die of old age
- pollarding – similar to coppicing but at a higher level, and is typically done to manage the size of trees.

Ensure you have a qualified and knowledgeable arboriculturist undertake these works: poor surgery will strip a tree of its energy, facilitate decay and result in its early demise.

*Injurious or invasive plant species* – if removal of these species was a simple case of identification, trim and spray, they would not pose quite the threat they do. Many of these plants are so persistent that seeds or roots can remain viable after many years of dormancy, so their sites can never be deemed clear of them. Professional advice should be sought as soon as possible to minimise the spread of these species, and to fulfil your duty of disclosure to your insurers as well as duty of care to the public.\*\*\*\*

Typical control measures include timely repeat spraying via an agreed management plan, on-site containment and/or disposal using protective barriers and bunding. Education and training of staff at all levels is critical, too.

### Ongoing management

The management of green space must be considered a journey not a destination. To ensure that best practice is adopted throughout a site, regardless of changes in staff or competing budget pressures, it is important to document a clear management policy stating overarching objectives that account for the desired balance between risk and retention. A management plan, to include a programme of checks and works, would describe how this policy is to be consistently and sustainably executed.

**Tree management policy** – the policy would determine the desired condition and mix of trees and hedges in your care such that you can meet your legal and/or moral obligations, as well as your long-term site management objectives.



As well as repeat seasonal activities such as pruning, mulching, watering regimes or soil aeration, a management plan would include directives that would inform other site activities such as development: for example, it would ensure that a landscape designer considers no-dig options near trees, and that a site team knows to establish and maintain tree protection zones.

The management plan would also include a programme of follow-up surveys, which might result in the recommendation of new remedial works, or inform future plans. These surveys might include:

- ongoing assessment. This involves regular and systematic checks of all your natural assets for signs of obvious damage or poor health – say once a season, plus after any event that might affect them such as a storm or development project. All observations should be logged and filed. This may be undertaken by someone without arboricultural training, although initial guidance by an expert in what to observe, note and act on would be preferable
- a thorough condition assessment of trees by a qualified arboriculturist, using a system such as QTRA described above. This should be undertaken ideally every year, unless there is an obvious event which could cause change to the condition of your natural assets and site, such as a construction project, disease, flood or storm.
- pest and disease review.\*\*\*\*\* This can be undertaken alongside QTRA, or ad hoc to deal with a specific threat such as Ash dieback, when you're developing a landscape, or planning future tree stock requirements.

It is cost- as well as time-effective to get professional advice when (re)designing landscape. An arboriculturist will:

- plan the right stock, and put species in the optimal place not only for their own health but also for their potential contribution both to the natural ecosystem and the rest of the site, for example, to help with flood mitigation. The key requirement here is a good understanding of the interactions between site, species and climate (predicted not current)
- advise the best source and mix of species for defence against pest and disease and climate change
- advise on complementary hardscaping, such as tree-friendly permeable surfaces.

“ The management of green space must be considered a journey not a destination ”



\* JPA is able to licence the appropriately detailed OS master map data for clients, and we provide these at cost as part of our asset mapping and surveying service. In addition, in order to achieve optimum location accuracy we use the top-class Global Positioning System (GPS), the SXBlue II GPS. This is a compact, real-time receiver that reliably delivers sub-60cm positioning information to our Geographical Information System (GIS) and drawing programme. We can then use these programmes to create detailed and accurate maps, condition reports and management plans without time-consuming and error-susceptible replication – and of course with the ability to print off as many copies as required.

\*\* One of our consultants is an Advanced QTRA licence holder. We are also one of only a handful of commercial arboricultural consultancies using the cutting-edge Arborcheck system which allows us to read the intensity and nature of a tree's fluorescence, and also measure the foliar chlorophyll concentrations in its leaves (leaf greenness). Combined, this allows us to make an early judgement on a tree's true health, regardless of its appearance, and either take timely remedial action to save that tree, or 'prove' that it poses low risk. Together, QTRA and Arborcheck enable us to take a more common sense approach to risk assessment that ensures duty of care obligations are met while more trees are preserved to perform their vital amenity and environmental roles.

\*\*\* We debunk some of the most common myths about the dangers of trees in our Myth Buster series >>>

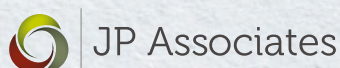
\*\*\*\* Read more about Japanese knotweed in our definitive technical paper >>>

\*\*\*\*\* Our plant health surveying work for the Forestry Commission has kept us up-to-date with pest and disease developments so we are well placed to help you manage your stock and plan for potential problems as effectively as possible.

You can find guidance on how to develop a common-sense tree management plan from the [National Tree Safety Group](#), [Arboricultural Association](#) and the [Forestry Commission](#).

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#### About JP Associates

JP Associates provides impartial, quality-assured consultancy to clients involved in development projects, or the management of woodland, open land or urban spaces across the south of the UK. Founded in 2000, the company is known for its friendly, responsive service and for delivering pragmatic solutions. Its three units are:

**JPA Arboriculture** Independent consultants helping clients assess, plan, develop and manage sites with trees and hedgerows

**JPA Trees & Development** Expert arboricultural partners for residential or commercial development projects

**JPA Land & Habitat** Trusted advisors helping clients balance commercial, aesthetic and regulatory requirements, and manage invasive species such as Japanese knotweed.