

Disclosing knowledge of knotweed needs to be more transparent

Nic Seal tells SJ what all solicitors should know about Japanese knotweed during the conveyancing process

What has been the effect of the Japanese knotweed question on the TA6 form?

With pre-contract enquiries, vendors would be unwise to attempt to conceal knotweed as it needs to be disclosed on the TA6 form. Vendors that do not disclose run the risk of a misrepresentation claim. This has without doubt reduced the number of attempts at concealment but not eliminated them. Many misrepresentation claims are now being settled out of court in favour of the buyer.

Believe it or not, the old version of the TA6 form (which does not include the knotweed question) is still being used by some conveyancing solicitors. Check that your old stock is destroyed.

Could the TA6 knotweed question be improved?

The TA6 question simply asks: 'Is the property affected by Japanese knotweed?'

Japanese knotweed is known to lie dormant for up to 20 years, especially after poor herbicide treatment. We therefore believe that the question should be re-phrased to ask: 'Are you aware of the presence of

Japanese knotweed on the subject property and or in immediately adjoining property at any time during your occupation/ownership of the property and of your predecessors in title?'

How common is encroachment of Japanese knotweed from one property to another, and what is the legal redress?

It has been estimated that over 1 per cent of domestic properties are or have been infested with Japanese knotweed. Each of these properties could have three or four neighbours, all of which could suffer from encroachment. So that could make 5 per cent of the housing stock potentially affected by Japanese knotweed.

The legal redress of course is found in private nuisance.

How does Japanese knotweed affect property sales?

This will be well known among those solicitors who have been involved with the sale or acquisition of an affected property. Lenders can put up a lot of hurdles, but there is a way forward that will satisfy the majority of lenders.

The answer lies in the

insurance backed guarantee (IBG) underwritten by Lloyd's of London. This guarantee provides protection against regrowth, and being underwritten by an A rated insurer satisfies a growing number of banks.

Environet UK Ltd has a number of methods for eradicating Japanese knotweed. These include herbicide methods suitable for the summer growing season, to physical removal methods that allow knotweed to be eradicated at any time of year. An IBG underwritten by Lloyd's of London for up to 10 years is offered on all eradication projects. The guarantees can be assigned to a future owner of the property.



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