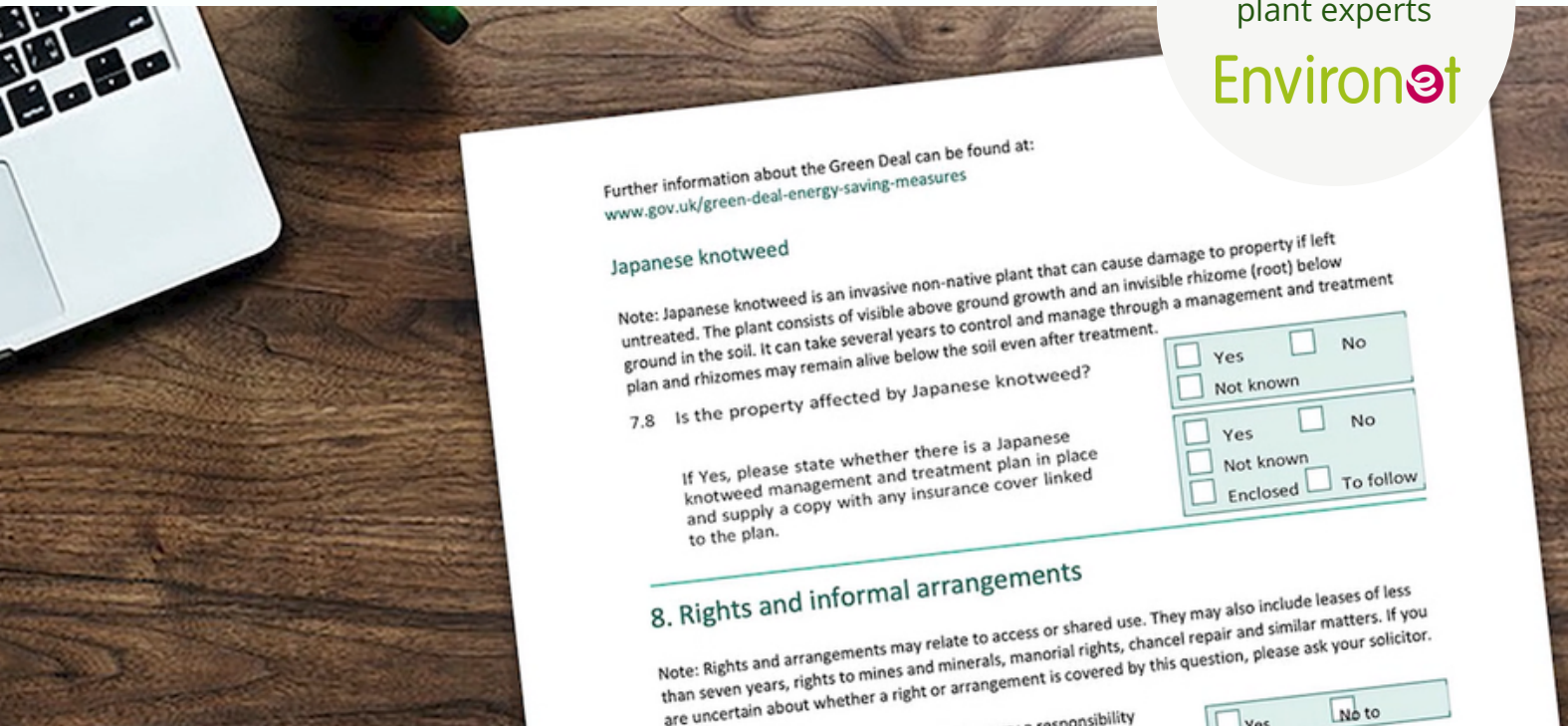


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The TA6 Form: Understanding and mitigating knotweed risk

The nuances of the TA6 Property Information form can leave buyers and sellers confused. We explain the pitfalls for conveyancers to look out for - and how to help clients stay on the right side of the rules.

The Law Society's amendment to the Explanatory Notes accompanying the TA6 conveyancing form changed in 2020. In order for a seller to tick "No" to the Japanese knotweed question, they must be certain that no rhizome (root) is present in the ground of the property, or within 3 metres of the boundary, even if there are no visible signs above ground.

Clearly, if knotweed is visible or if the seller is aware of its presence, the answer to the knotweed question is definitively "Yes". But for the vast majority who aren't certain, the question poses two notable problems for sellers and the property professionals advising them.



Japanese knotweed infestation at a residential property

[Japanese knotweed management plan](#)



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Rhizome hidden in the ground

Knotweed that has been herbicide treated can be induced into a state of dormancy lasting several years. Often no above ground growth is visible, but the plant is technically alive and could start to regrow if the ground is disturbed through excavation or building work. Without digging up the garden to check for dormant rhizome, it's practically impossible for a homeowner to state categorically that their home is not affected by knotweed.



Hidden Japanese knotweed rhizome

Knotweed risk on adjacent land

A homeowner who is concerned about the presence of knotweed on an adjoining property can alert their neighbour to the risks, and once encroachment occurs, legal redress can be found in private nuisance which aims to compensate for detrimental impact on the use and enjoyment of the land. But until the knotweed encroaches across the boundary, the adjoining owner is under no obligation to act, making it difficult to force any action.

Rather unfairly, this leaves homeowners who wish to sell a property that is at risk of encroachment, relatively powerless. If the knotweed infestation is on adjoining property within 3 metres of the boundary, the TA6 form requires them to answer "Yes" on the TA6 form stating that their property is affected, making it harder to sell and negatively impacting its value.

Case Study - Misrepresentation case costs seller £200,000

In January this year, a homebuyer in Raynes Park, southwest London, successfully sued the seller for misrepresentation after he failed to declare that knotweed was present behind the shed in the garden of the property. The seller had answered 'No' to the knotweed question on the TA6 form and argued that he 'reasonably believed' he was telling the truth when he did so.

The judge stated the seller's case was undermined by his stating that he did not know what was behind the shed, and the fact that there was evidence the knotweed had been herbicide treated in the past. He was ordered to pay £32,000 damages plus £95,000 legal costs in addition to his own £100,000 legal bill.



"It's the seller's duty to disclose if their property is affected by knotweed and a cursory glance around the garden by an untrained eye is unlikely to be sufficient to say it's not."

"The best way to limit the risk is to commission a professional knotweed survey, that comes with a warranty to cover the cost of treatment should knotweed emerge."

"Even if no knotweed is identified, due to the underground rhizome risks, it's still safer to answer, 'Not Known' to the Japanese knotweed question."

Nic Seal, MD of Environet



5% of properties in the UK are affected by Japanese knotweed - but which ones?

Advising sellers who have responded "No" on the TA6

Proving a negative can be fraught with difficulty, but not so when knotweed emerges in the first spring after the sale. Conveyancers acting for sellers who have responded "No" to the knotweed question on the TA6 form are advised to query how they can be so certain, especially bearing in mind the dormancy risks, and alert them to the potential legal implications if the information they have given is false.

A safer response would be to tick "Not known" and provide accompanying evidence of a professional knotweed survey showing the property to be knotweed-free to the best of their knowledge.

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"Responding 'Not known' is the safest option for property sellers who don't know for certain whether their property is affected by knotweed, placing the onus on the buyer to make their own enquiries and take the risk."

Nic Seal

Advising buyers who have received a "Not Known" response

Where a seller has ticked "Not Known", the onus moves onto the buyer to carry out further investigations. It's recommended that conveyancers advising buyers in this case should flag the risks and advise their client to carry out further checks via a professional knotweed survey before progressing.

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If the conveyancer ignores a "Not known" and fails to recommend their client carries out further checks, they themselves could be at risk of a professional negligence claim if knotweed later emerges.

“

"The Raynes Park (Downing v Henderson) case highlights why you should tell the truth and nothing but the truth on your property information form.

"But it also serves as a reminder that as a seller's conveyancer, your client relies on you to tell them the TA6 is more than just a yes or no or checkbox exercise."

Tariq Phillips

Director and Solicitor, TP Legal Solicitors



Knotweed legal cases are a hot topic in the press

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How JustCheck™ can help

JustCheck™ is a bespoke Japanese knotweed survey aimed at sellers who are unsure whether their property is affected by knotweed and want a high level of certainty before completing the TA6 form. It also offers peace of mind to buyers who have received a “Not known” response and want to investigate further before proceeding with their purchase.



Environet's expert surveyors will check the property for any sign of knotweed, and where possible on adjoining land within 3 metres of the boundary. As it's still not possible to be 100% certain that knotweed rhizome is not present beneath the ground, the report includes a 5-year warranty to cover the cost of up to £20,000 of treatment in the unlikely event the plant should later appear.

Authored by experts, Beacon is a series of information papers providing insights into the removal and treatment of invasive plants in the UK.

Summary

The Raynes Park legal case demonstrates the importance of completing the TA6 form's Japanese knotweed question accurately and honestly, and the considerable risk of stating a property is categorically knotweed-free without carrying out the appropriate checks.

Guidance from conveyancing professionals is vital to helping sellers understand the potential implications of answering “No” or “Not known” – and ensuring buyers understand how to mitigate the risks if they receive an ambiguous response.

JustCheck™

If no knotweed is found or suspected, we'll include a **5-year warranty** to cover the cost of up to **£20,000** of treatment



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