

Rural Economy Update

Spring 2010

Welcome to our regular update service for rural businesses and landowners. We hope you find this update of interest and would be delighted to hear any feedback you may have. Please feel free to pass this on to any of your colleagues and contacts.

If you have any queries relating to anything in this update or would like to speak to one of the team, please email rural@berryman.co.uk or contact Lisa Cawdron on 0115 945 3700.

Beware of the Sign

Everyone is undoubtedly aware that a landowner can be held liable if due consideration is not given to the protection of the public from grazing animals. In fact Section 59 of the Wildlife and Countryside Act 1981 bans bulls of recognised dairy breeds from fields crossed by public rights of way.

A landowner must take all reasonable steps to ensure dangers to the public are minimised and an obvious way of alerting the public to be aware of risks is the erection of signs at the field entrance. However, care still needs to be taken here as it is a criminal offence to display signage which is erected with a view to deterring people from the use of a public right of way. This could be either by stating information which is untrue or deliberately intended to mislead. In addition signs should be removed or securely covered when the animals to which they refer are not present in the field and failure to do so will almost certainly be deemed to be an obstruction. Any safety signs erected should conform to BS5499. The use of symbols may be useful to assist children or those unable to read. Supplementary text can also be used and suggestions include CAUTION : COWS WITH CALVES or FARM LIVESTOCK – KEEP DOGS UNDER CONTROL. Be aware however that the supplementary text should not suggest the animals are aggressive or threatening therefore words such as “beware” and “danger” should not be used.

Assured Shorthold Tenancies

It is becoming increasingly common for farmers to make use of Assured Shorthold Tenancies (AST's) when housing their employees. There is no issue with this but anyone using an AST should be aware of the notice provisions.

Under the Housing Act 1988 if an AST was required a prior notice had to be served on the prospective tenant. Failure to serve this notice would result in an assured tenancy with all the protected rights this gave. Many assured tenancies were therefore inadvertently created. As a result the position was reversed by the Housing Act 1996. This provided that, subject to certain limited exceptions, any tenancy would be an AST and a prior notice was now only required if an assured tenancy was intended. The trap is that the letting of a dwellinghouse to an agricultural worker falls within the list of excepted circumstances and a prior notice is therefore required in all such circumstances if the tenancy is to be an AST.

TUPE (in brief)

Generally, whenever a business is transferred between owners, TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006) applies to protect the interests of the employees. Their employment is automatically transferred to the new owner, and they are protected from suffering any detriment in relation to the transfer (including dismissal) unless the new employer has good reason to impose changes. The employees also have a right to be consulted about the transfer (and any changes it entails) prior to it taking place. In an agricultural context, TUPE is likely to apply in particular wherever managed land passes between owners. If you are transferring land, and are in any doubt as to your obligations towards your employees, contact a member of the team by emailing rural@berryman.co.uk.

Family issues

Berryman's family team have considerable experience of dealing with farming cases on divorce. Rachel Brennan heads up the family team and has acted for a number of farmers or farmer's spouses in Leicestershire. Angela Davis, an associate, worked in Lincolnshire for a period and dealt with farming cases in that area. Rachel points out that farming cases are somewhat unique in that both spouses have usually been involved in the farm and their work is intrinsically linked to their way of life. Farms have often been inherited by one of the parties and farmers may feel that they are caretakers for the next generation. Getting good legal advice is essential, as is instructing the right experts. Rachel recalls one case where the farm had diversified. The solicitors representing the other party insisted on valuing the farm as a visitor attraction. Rachel instructed a surveyor who was a specialist in farms and rural property. She obtained an order that the other spouse pay a proportion of her client's costs because 2 days of a 4 day Court hearing was spent on valuation evidence. The Judge accepted her expert's evidence and did not accept that the valuer instructed by the other side was an appropriate expert.

A brief guide to agricultural diversification projects and the planning system

Conversion of farm buildings: You will need planning permission for a conversion to use other than for agriculture, even if there are no structural alterations.

Holiday accommodation: You will need planning permission if you are converting old farm buildings or erecting new buildings. The use of a farmhouse for bed and breakfast accommodation will only need planning permission if the essentially residential nature of the property is changed - it is generally a question of the scale of activity.

Stables for horses: You will need planning permission for stables if they are for horses for riding or breeding. However, working horses used for agriculture count as livestock and their stabling comes under the provisions of the General Permitted Development Order (GPDO), in which case you might not need permission.

Caravan sites: Generally yes.

Farm shops: It is normally assumed that the use of a farm shop only for the sale of unprocessed goods produced on that farm is a use which is ancillary to the use as a farm, and therefore does not require specific planning permission. However, use as a farm shop selling a significant amount of produce from elsewhere is a separate use and therefore requires planning permission.

Food processing: The size and nature of the processing is significant. For example, a small unit to wash vegetables grown on the farm would be less likely to need planning permission

than a larger business which might bring in produce or raw materials from surrounding farms or suppliers. The potential local impact of the particular development will be an important consideration.

Farm visits, 'Pick your own', Farm trails: It depends on scale and the volume and type of traffic likely to be generated.

Amenity lakes: Planning permission will be required unless the construction is for the purposes of agriculture, for example, an agricultural irrigation reservoir.

Advertisements: Some advertisements may be displayed subject to various considerations.

The Planning inspectorate has released a report which identifies local authorities that cannot demonstrate a five year housing land supply.

National Planning Policy advises that where local authorities cannot demonstrate a five year supply of deliverable housing land, they should consider planning applications for residential development favourably. The lack of a five year supply has been a decisive factor in a number of recent appeals, where planning permission has been granted for development on green field and even Green Belt land.

The report reveals that, of the appeals where an Inspector had determined that five-year housing land supply was not present, 56.5% were allowed and 43.5% were dismissed. This compares with a long term trend that 34% of planning appeals are allowed and 66% are dismissed.

According to the report, only 41% of local authorities across the East Midlands could demonstrate a five year supply. Disappointingly, 25 local authorities in the region have not supplied housing land supply information. AMA has been monitoring five year housing land supply figures for some years and can look beyond the figures produced by local authorities. If you or your clients have land which may be suitable for residential development, there is a significant, but time limited opportunity to achieve a valuable planning permission. Please contact a member of the Planning Team planning@amamidlands.com for further advice.

HM Land Registry

These days many titles to agricultural land are registered at HM Land Registry. However, when there have been no dealings, purchases or sales for a period of time titles are often unregistered. HM Land Registry is attempting to persuade everybody to register their titles. Indeed they are assisting in the registration formalities by giving a reduced fee when there is an application for voluntary first registration. It is strongly recommended by us that titles to your land are registered if they are not already registered. Titles will then be available quickly, it is anticipated future conveyancing costs will be less and there will be fewer delays. In addition it negates the problems of losing deeds and the cost of storage.

If you proceed to have the titles registered you will easily be able to identify boundaries and prevent other people claiming title over your land. Further, if you have manorial rights these can be registered before time runs out.

If you are interested in pursuing the matter further please contact us and we will be delighted to discuss the matter with you and consider your deeds.

What will happen to CAP Reform Post 2013. It is generally thought matters will proceed as before until agreement is reached in Europe. However, it is important that the coupling remains as farmers are ore likely to receive payment direct for Europe than relying upon the UK Government distributing monies received from Europe. The new agricultural commissioner is Dacion Ciolos and he is the Romanian Commissioner. We understand he has a history in agricultural but we anticipate he will be keen for monies to be distributed more fairly now Europe has expanded since the previous CAP Reforms were made.

In order to prevent set aside being imposed it is understood that everybody should renew their ELS application which should satisfy the government that farmers are maintaining the rural environment which hopefully should prevent the re-imposing set aside with all bureaucracy that that entails.

Clearly agricultural land values increased dramatically up to mid-2008, subsequently fell a bit but rallied 2009. It would appear there are plenty of people wishing to purchase land but there is little on the market. Indeed the volume of farmland traded would appear to have shrunk over the last thirty years. If you would like to purchase additional land or sell any of your existing land please discuss it with us, we are also happy to talk before you place the land on the market whether openly or covertly.

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