



Farming Matters

BRABNERS CHAFFE STREET LLP AGRICULTURAL UPDATE | ISSUE 1 | SEPTEMBER 2009

Welcome to the first edition of Farming Matters

Brabners Chaffe Street LLP has had a distinct and dedicated agricultural team for many years and this has continued to be boosted by good organic growth and lateral hires from both outside and within the industry.

Our commitment to the importance of the agricultural sector is what prompted us to launch "Farming Matters", a periodic review of some issues affecting the farming industry, with expertise drawn from our specialist team of property, corporate/commercial, dispute resolution and environmental specialists.

Feedback, comment or enquiry in relation to anything in this issue is welcomed.



Rupert Jackson
Head of Department
Agriculture, Liverpool



Crisis in Farming – a thought on alternative diversification solutions?

Diversification has been a key word for many years and this helps certain farms survive and certain farms expand where possible. We are seeing both which is good, but also seeing the sale off of more and more farms due to survival issues both for financial reasons and farms being sold as the next generation simply don't want to be farmers – not because they don't want to follow the family tradition (in some cases going back generations) but because they don't want to struggle in today's climate running a business which is not financially viable.

There is light at the end of some tunnels with alternative sources of diversification including bio-diversity fuels and the crops required to provide this. Some farmers and manufacturers of food substances are joined together to co-ordinate the provision of the relevant crops which is an alternative form of diversification and use of edible crops, although it is uncertain as to how this market will proceed with the continuous wet weather we are having and lack of crop availability.

Farm anaerobic digestion is another alternative solution, although initial set up costs are high despite grant aid being available, supply contracts need to be negotiated to ensure a regular supply of organic material and the lack of understanding and awareness between planners, financiers and the general public can lead to resistance, not to mention the lengthy and complex regulatory processes to operate such a process.

Diversification is hard work – no-one ever said farming was easy and farmers are well versed to putting in the extra time and effort and turning their hand to most things but the combination is even more difficult when margins are often very small making some question the viability. Not supporting any viability is of course the way farming has been appropriated on the Governments agenda and the lack of positive support and direction farmers need.

Rupert Jackson, Head of Department, Agriculture, Liverpool.

For more information on diversification options please contact Rupert on 0151 600 3000



Land Registration – the benefits

The Land Registry is still keenly promoting the benefits of registration – but what are the benefits to the landowner?

Although the majority of the land in England and Wales is already registered, this is not always the case, particularly in rural areas where it was previously possible for land to pass from generation to generation within farming families without the Land Registry having to scrutinise the title deeds.

This is not a problem until you actually want to do something with your land: sell it, sell part of it, grant a lease or transfer



title following business restructuring. It is almost always necessary to check the title, and that is where registration is an advantage.

The alternative is to trace back the title - sometimes as many as three or four generations back - relying on old conveyances, incomplete documents and poor quality plans, leading to serious delays in completion of transactions.

Are you sure that no one else is claiming ownership of your land?

Voluntary registration of your land at the Land Registry will uncover any such claims. In a recent example, where a client was very sensibly registering a farm in anticipation of a sale, the property had been advertised and the sale agreed when the Land Registry advised that there was a problem with one of the fields. An adjoining owner had registered a Caution against this field, on the basis that they regularly walked across it and used the area to exercise their dogs. If your land is not registered, the Land Registry cannot warn you of the problem. (Fortunately, in this case, we put forward very convincing evidence to rebut the claims of the adjoining owner. The purchaser was reassured, the Land Registry removed the Caution and the sale went through without any more hitches).

This cautionary tale is also relevant to landowners who are not thinking of selling. Registering your land at least means you are aware of any approaches to the Land Registry, giving you the opportunity to prevent an adverse entry on the Register in the first place.

As part of the voluntary registration process, the Land Registry will normally map your land and they may send a surveyor out to inspect it. The advantage of having your land plotted on the OS Map is that this is the basis used by the Land Registry, solicitors and surveyors, utility companies and Local Councils and again this makes any future dealings with the land much easier. It is important to check the Registered Title and make sure it accords with your own understanding of the limits of your property as poor original plans can result in errors which can be quickly rectified by the very helpful Voluntary Registration Unit.

On the balance of the experience which I and my colleagues in the Agricultural Team at Brabners Chaffe Street have built up, I would say the registration is generally a good thing. Some people will still possibly be wondering whether it's right for them, however. I would suggest that anyone with doubts about how registration could impact on problems such as missing deeds or existing boundary disputes should get in touch.

In an age of increasing regulation of the farming industry, it's certainly better to know how best to make the system work to your advantage.

Helen Ryan, Head of Department, Agriculture Preston. If you wish to know more on Voluntary Registration please contact Helen on 01772 823921.

Quick comment:

The Agricultural Waste Regulations

The Regulations extended waste management controls to the agricultural sector so that the uncontrolled on-farm disposal of agricultural or horticultural waste (now classified as “controlled waste”) by burning/burying/spreading etc would be prohibited unless licensed, permitted or exempt. The Regulations gave farmers until 15 May 2007 to comply (and to register exemptions with the Environment Agency). Over two years after the compliance date there are

still a considerable number of farmers who are not registered or permitted by the Environment Agency and who now face investigation. That said even registered exemptions are subject to ‘appropriate periodic inspection’ and the obligation for Hazardous Waste to be pre-treated before going to landfill introduced in October means that waste management issues are and will continue to be a significant issue for farmers for years to come.

Quick comment:

Flooding and Water Management

Historically only a small percentage of Government funds have been spent on maintaining flood defences and keeping waterways flowing in rural areas despite numerous announcements since 2007 that funds would be allocated to manage flood risks. It is therefore down to the farmer to seek the opportunities that good water management may bring.

Adopting practices to help land absorb water or slow

the flow above ground should help in stopping soil erosion and protect land against flooding. Creating adaptation measures can result in financial savings and maintaining good soil condition will help store water correctly and will support healthy yields or minimize livestock health problems. Checking soils and factoring in measures to reduce or capture run-off and having flood plans could prove invaluable as extreme weather events increase.

Nitrate Vulnerable Zones – How a little can mean a lot.

According to the Environment Agency 55% of England is designated as a Nitrate Vulnerable Zone (NVZ).

Nitrate Vulnerable Zones are areas of surface water or groundwater that are at risk of having a high nitrate concentration (greater than 50mg/l). High concentrations can lead to contamination of surface or ground water and can be toxic to plant, fish and animal life and can contaminate drinking water resources.

60% of nitrate pollution incidents come from organic fertilizers and manure applied to the land which is washed into rivers, lakes and groundwater.

The consequences for farming businesses in not complying with the Action Programme for Nitrate Vulnerable Zones (England & Wales) Regulations 1998 can be extremely severe as breaches often not only breach the Nitrate Vulnerable Zone Regulations but also breach waste

legislation (as this is a controlled waste requiring a licence or exemption), water legislation including the Water Resources Act and/or the Groundwater Regulations and also constitute a pollution offence under the Environmental Protection Act.

One incident can therefore result in a catalogue of offences not only with fines of tens of thousands of pounds,

but also as seen in cases earlier this year can result in substantial penalties to any single farm payments and can impact on the continuation of any permits or licences required to lawfully operate.

Checking whether you are in a NVZ and ensuring compliance if you are need not be a difficult process but it could save your business.”



Meet The Team

brabners chaffe street

The Brabners
Agricultural Team

Brabners Chaffe Street has long-standing expertise in acting for the farming and land-owning community. The Agricultural Team work closely with landowners, agri-businesses, land agents, planning consultants, surveyors and other agricultural professionals.

The team is able to draw on a wide range of expertise and knowledge of both contentious and non-contentious agricultural issues.

Our services include:

- Sale and purchase of farms and agricultural land
- Succession issues
- Rights of way and boundary disputes
- Agricultural litigation and dispute resolution
- Equine matters
- Employment
- Farming partnerships
- Landlord and Tenant
- Environmental and regulatory issues or offences including nature conservation, waste management and water law
- Planning and development
- Health and safety
- Tourism and leisure
- Tax and financial planning
- Matrimonial



Rupert Jackson

Head of Department Agriculture, Liverpool

Direct Line: 0151 600 3396

rupert.jackson@brabnerscs.com



Helen Ryan

Head of Department Agriculture, Preston

Direct Line: 01772 229801

helen.ryan@brabnerscs.com



Peter Liptrott

Agricultural and Property Consultant

Direct Line: 01772 823921

peter.liptrott@brabnerscs.com



Lawrence McDonald

Partner, Property Litigation

Direct Line: 0151 600 3058

lawrence.mcdonald@brabnerscs.com



Mark Feeny

Partner, Private Client

Direct Line: 0151 600 3450

mark.feeny@brabnerscs.com



Matt Brown

Corporate

Direct Line: 0151 600 3059

matt.brown@brabnerscs.com



Kevin Halewood

Planning

Direct Line: 0151 600 3365

kevin.halewood@brabnerscs.com



Julie Goulbourne

Environment & Regulation

Direct Line: 01772 229830

julie.goulbourne@brabnerscs.com



Joanne Holbrook

Environment & Regulation

Direct Line: 01772 229826

joanne.holbrook@brabnerscs.com



Deborah Turner

Property

Direct Line: 01772 229802

deborah.turner@brabnerscs.com



Sian Moore

Property

Direct Line: 01772 229827

sian.moore@brabnerscs.com



Brabners Chaffe Street LLP is a leading corporate and commercial law firm based in the North West. Its business focus is on providing the full range of legal services to the mid corporate sector, specialised services to the plc and larger corporate, plus private client services to business owners and other high net worth individuals.

For further information about Brabners Chaffe Street please go to www.brabnerschaffestreet.com. Contact Rupert Jackson in Liverpool on 0151 600 3396.

Brabners Chaffe Street is a Limited Liability Partnership

Also in Manchester and Preston