



Farming Matters

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Planning for the Future – Options and Possible Solutions

Now is as good a time as any, maybe better, for those looking to maximise their assets and their income in agricultural circles. By looking to secure your assets for the future you can use the opportunities now to prepare for the future and its future.

By taking stock of your buildings and land you can consider the most appropriate options to maximise your income for the future. Have you considered using your buildings for weddings, third party events, B&Bs, development (both residential and commercial depending), or using your land for wind or water farming, telecom masts, waste, livery, third party activities or again development for both residential or commercial.

Location, location, location is most definitely the appropriate strap-line.

Having considered your options, of which there are many, depending on your assets then you need to consider the feasibility of what you would like to do.

Do you have in place the correct legal structure to follow through with your ideas? Is there in place the correct planning regime to be able to achieve them? Do you actually need planning permission.....probably, but not always! Now is time to review, take stock and plan ahead for the future. The best way to do this is to be well informed and well advised. Consider all the options and chose the one best suited to you and your assets to secure your future and that of your future's future!

We would be more than happy to assist with any proposals you may wish to consider with regard to the options, legalities and planning considerations.



In the first instance please contact Rupert Jackson, Partner and Head of Agriculture at Brabners Chaffe Street, on 0151 600 3396 or rupert.jackson@brabnerscs.com

Government 20 Year Food Strategy



In the Government's new 20 year food strategy they propose to "borrow" land off landowners for use by the community to enable them to grow more food and be self productive. For those at risk the

Government proposes to pilot healthy cooking classes to tackle obesity.

The strategy is all about healthy options, smaller portion sizes, seasonal selections and less waste. The Government says it is not a question of the increased costs that may be incurred by the British family but a question of responsible choices based on the right information and it is the Government that is proposing to give the people the right information.

Is this strategy sustainable, we are not sure but only time will tell.....

Environmental Stewardship

December 2009 saw the release of the 3rd Edition of the Environmental Stewardship Handbooks from Natural England which will become operational as the legal basis for all environmental stewardship agreements from 1 February 2010.

Environmental Stewardship is the agri-environment scheme that provides funding of from £30-700 per ha to farmers or other land managers in England who deliver effective environmental management on their land. There are already over 21,000 agreements currently in place across the three levels of the scheme, Entry Level Stewardship, Organic Level Stewardship and Higher Level Stewardship (which requires the production of a Farm Environment Plan). Only land on the Rural Land Register can be entered into Environmental Stewardship and new land registration requests or amendments to existing registrations need to be referred to the Rural Payments Agency. This can be done by contacting the RPA on 0845 603 7777 and requesting a RLE1 Form or by making a land charge request at www.rpa.gov.uk. Applications for Environmental Stewardship then need to be made to Natural England office for your region which can be found at www.naturalengland.org.uk/ourwork/farming/funding/es/contacts.aspx. The Natural England website also contains downloadable copies of the new handbooks.

We would recommend taking advice from your professional advisers before making, amending or surrendering an agreement under environmental stewardship to maximise the benefit of the scheme or to avoid unrealistic obligations.

For further information or advice please contact Julie Goulbourne or Joanne Holbrook on 01772 823921 or julie.goulbourne@brabnerscs.com or joanne.holbrook@brabnerscs.com

Data Protection – Beware changes are afoot

The Information Commissioner's Office ("ICO"), the entity charged with overseeing and enforcing the Data Protection Act 1998 (the "Act"), is set to get greater powers to fine organisations for breaches of the Act.

Any business that collects personal data about identifiable individuals such as its customers, suppliers or employees is potentially a "data controller" for the purposes of the Act and, in light of the ICO's new powers, would be advised to review its policies and procedures to ensure that it is fully compliant with the Act. This includes, where necessary, notifying the ICO that it is a data controller and ensuring that it processes (i.e. stores, manages and uses) all personal data fairly and takes the necessary measures to ensure the security of the information.

At the moment, the powers of the ICO are somewhat limited as it can only impose fines in the following limited circumstances:

1. Where a data controller persistently breaches its obligations under the Act and has been served with an enforcement notice it can be prosecuted for failing to comply with that enforcement notice
2. A person fails to notify the ICO of the processing being undertaken or of any changes to that processing can be prosecuted. This means that if a data controller has to notify, it must notify
3. A person knowingly or recklessly obtains, discloses or procures the disclosure of personal information, without the consent of the data controller.

As such, at the moment if an organisation simply breaches the data protection principles set out in the Act, no matter how severe that breach might be, the ICO currently has no power to impose a fine unless that organisation is subject to an existing enforcement notice.

Whilst financial organisations regulated by the FSA may face distinct sanctions imposed by the FSA and high profile organisations may suffer significant adverse publicity as a result of any breach, many simply escape without any punishment from the ICO other than a slap on the wrist and perhaps the imposition of an enforcement notice to limit the chance of further breaches. As a result the ICO has been lobbying for additional powers for some time.

The new powers were actually included in The Criminal Justice and Immigration Act 2008 which became law in May 2008. However, the relevant section has not yet come into force but it is almost certain to do so at some point this year.

The powers give the ICO the ability to levy a fine against organisations that knowingly or recklessly fail to apply the data protection principles when dealing with personal data.

Further details about the level of the fines (although they are expected to be substantial and potentially unlimited) and the process are expected over the coming months and there is still some uncertainty as to when the provisions will actually come into force although, according to the ICO, it is likely to be April 2010.

In addition the changes to the Act introduce the possibility of custodial sentences of up to 2 years where a person commits the existing offence, referred to above, of knowingly or recklessly obtaining, disclosing or procuring the disclosure of personal information, without the consent of the data controller.

Businesses should be aware that the Information Commissioner's Office is going about its business with increasing zeal following the high profile losses of data and it is unlikely that it will shy away from using its new powers.

Finally, provisions in the Coroners and Justice Act 2009 give the ICO additional audit powers in relation to public sector bodies which allow the ICO to carry out detailed compliance audits and to interview staff. The ICO will no doubt continue pushing for equivalent audit powers in relation to the private sector organisations and those calls will only become louder if there are any further high profile breaches in the coming months.

In conclusion all businesses would be well advised to put their house in order sooner rather than later.



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Section 106 Agreements in the Credit Crunch

Kevin Halewood, Director of Planning at Brabners Chaffe Street, looks here at the changing view on Section 106 Agreements from Local Planning Authorities.

Across Britain, land owners are reviewing Section 106 Agreements that are required to be entered into with the Council so as to reduce development costs. As the credit crunch continues to bite, the negotiation and renegotiation of Section 106 Agreements is becoming evermore important.

Local Planning Authorities (LPAs) whilst sympathetic to a more sustainable pattern of development in rural areas should be considering making concessions for

planning obligations. Making concessions for economic viability reasons, however, is a concern for LPAs, as they argue that the viability justification may be undone over time by changing market conditions. In order to get around this concern, LPAs are often insisting on periodic viability reviews and for there to be an uplift on the base line planning obligations agreed at the outset.

LPAs that are also making concessions for economic viability reasons are also in some cases proposing that planning obligations be discounted or deferred for a time limited period. Whilst mainly appropriate to large scale developments, this highlights the need for parties to discuss matters in more detail with the

LPAs before submitting any scheme for funding, large or small.

Landowners who request concessions to a Section 106 Agreement on economic viability grounds will have to provide robust evidence to justify reduced planning obligations, but the indications are that LPAs are agreeing to such requests and will increasingly in the future.



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Boundary Disputes: A Perennial Problem

As everyone knows, boundary disputes keep lawyers in business. We are increasingly asked to advise landowners on boundary disputes. Some clients are even finding that part of their land has been registered by the Land Registry in favour of someone else. What can be done about this, and how can the problem be prevented from arising in the first place?

It is important to appreciate that the Land Registry, the government agency in charge of compiling and maintaining the public register of land ownership, will only act upon evidence put before it. Therefore, if the Land Registry receives an application in respect of unregistered land, this must be supported either by evidence of title (the deeds); or by a Declaration on behalf of the person applying, stating that they own the land even though they may not be able to provide documentary evidence of this. Sometimes an area of land may have been fenced off, maintained or used as access by someone other than the actual owner.

The Land Registry will review each of these cases on its facts. It may send a surveyor out to inspect the land. The Registry might then accept the

application as it stands and register accordingly – but what if the ‘extra’ area of land actually belongs to you?

There is no easy answer in this situation. The most important factor is the evidence which the true landowner can produce to counter what the other party says. You may well have documentary evidence of title. Alternatively, you or someone in your family may be able to make a formal Declaration stating that the land has been in your ownership for perhaps several decades, and the boundaries on the ground have never been altered.

Unfortunately, unless the other party backs down, there is no way of concluding the dispute without going through the Land Registry’s adjudication procedure, or resorting to court proceedings. Both these avenues are time consuming and can generate significant legal costs.

How can you prevent this happening to you? Prevention is most definitely better than cure. If your land is already registered, keep an eye on the boundaries. You should walk them at least once a year. Any discrepancies can then be noted and action taken straight away.

If your land is unregistered, the message is clear: apply to register it as soon as possible. Registration will strengthen your hand in the event of any subsequent dispute.

Clients should note that the Land Registry is backed by a government guarantee and the Land Registry is liable to correct the Register and possibly pay compensation to the injured party, if they have completed a registration incorrectly.

The wise landowner will keep his or her landholdings under regular review. In practice, this means physically inspecting the land on a regular basis and involving the legal profession if any problems threaten or arise.

We have acted on a number of these cases and are well placed to advise if you have an existing or potential boundary dispute.



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Agricultural Property Relief

Agricultural Property relief can exempt the whole of the value of agricultural property, including buildings, from 40% Inheritance Tax and is thus an incredibly valuable relief.

Because of the amount of tax that can be saved, HM Revenue and Customs have been taking an increasingly tough stance when ‘granting’ the relief in recent years. We’ve detailed below some of the topical issues that need to be addressed and concluded to the satisfaction of the Revenue if you want them to grant you relief.

In a nutshell, this relief applies to agricultural property which was either occupied by you for agriculture throughout the 2 years immediately prior to a transfer (your death or gift) or which was owned by you throughout the 7 years immediately prior to the transfer provided it was occupied by someone for agriculture throughout the 7 year period.

Agricultural property means agricultural land or pasture and importantly includes any farmhouses, cottages or buildings which are of a character appropriate to that property. There has been an ongoing battle between the taxpayer and the Revenue as to what farmhouses are of an ‘appropriate character’.

The Revenue is keen to ensure that so-called ‘lifestyle farmers’ do not qualify for relief from Inheritance Tax. If you have a mansion on a farm of 20 acres, you are going to struggle to get the Revenue to agree that such a property is of a character appropriate to the farm. They are keen to prevent the wealthy from playing at being farmers and in the meantime avoiding Inheritance Tax on their large and valuable houses.

A recent case has held that ... “[the house] was larger, grander, more elaborate and more expensive than was required for the reduced farming

purposes for which it was in fact used. Its size, content and layout, taken in conjunction with the farm buildings and the particular area of farm being farmed points to the conclusion that it was primarily a rich man’s residence rather than a farmhouse”.

The Revenue are also getting much stricter and reviewing in much more detail the position of the farmer. A recent case held that the farmer of the land is the person who farms it on a day to day basis rather than the person who is in overall control of the agricultural business conducted on the land. Thus, there is the increasing possibility that to qualify for relief from Inheritance Tax a farmer will need to virtually die on his tractor!



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Peter Clare, Managing Director of Environmental Crop Management Limited, being presented with the 'Green Hero' award by Lord Plumb, the ex-President of the European parliament

Environmental Crop Management Limited – a Multi-Award Winning Company

Environmental Crop Management Limited, a client of Brabners Chaffe Street for 6 years, has recently been recognised for its overwhelming success. ECM, based in Appleton Thorn, Warrington, is a pioneering company specialising in environmentally friendly farming techniques. Their aim is to enable farmers to produce safe and healthy food whilst not damaging the environment.

They have been awarded two prestigious 'Green Apple' Awards for Environmental Best Practice. These awards highlight the excellent work done by ECM for agriculture in Cheshire and Lancashire. The winning projects included a scheme to ensure that farmers do not use pesticides routinely but only when necessary to ensure crop protection. Another scheme that was highlighted was a joint project between ECM and Manchester Metropolitan University to study how hedgerows

develop and are colonised by birds and wildlife. The 'Green Apple' awards are sponsored by the Environment Agency, The Chartered Institute of Environmental Health and the Chartered Institute of Waste Management.

ECM has been recognised with 5 Green Hero awards and 11 green apple awards in the past for its ongoing excellent work. The Green Heroes shield is an annual award presented exclusively to councils and companies that have not only won a Green Apple Award for environmental best practice but have also demonstrated their commitment by helping others to follow their lead. "It recognises not just our environmental work, but more importantly the foresight of farmers in the North West for adopting the environmentally friendly approach to agronomy that we are advocating", says Peter Clare, Managing Director at ECM Ltd.

Seminar – A Great Success!

In October we held a seminar in the spectacular setting of Knowsley Hall entitled 'How to maximise your assets - and your income'. The presentation focused on how to make the most of your land and property in today's economic climate, taking a fresh look at your existing assets and how to increase your returns. Knowsley Hall was a particularly appropriate venue and we were given a behind-the-scenes tour offering our 75 attendees a unique opportunity to see first-hand how, and why, this modern, dynamic estate continues to thrive by best utilising its assets.



During the day, our expert speakers ran short presentations identifying many of the most common issues and offering solutions, including an overview of the latest financial incentives available to landowners.

Led by Rupert Jackson, Partner and Head of Agriculture at Brabners Chaffe Street, our team of expert speakers included Douglas Chalmers, Director CLA North, CLA, Martin Harker, Estate Manager, Knowsley Hall, Pat Powell, Taxation and Rural Business Adviser, CLA and Roger Halle, Director, CLA Independent Financial Planners.

Details of our events for 2010 can be found by visiting

www.brabnerschaffestreet.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.

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