



**WINTER/SPRING
2021/22**

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WELCOME TO OUR NEW LOOK RURAL NEWSLETTER

After the challenges of the last two years, we relished the chance to take stock, review and refresh the look and feel of our newsletter. I hope you enjoy reading the articles, and look forward to hearing your feedback, as well as any suggestions for further improvements.

It is fair to say that, as a sector, farming has faced a turbulent time, from the ongoing implications of Brexit on trade deals and employment, to the long-awaited Agriculture Act and more recently the Environment Act, not to mention the increasing focus globally on the importance of tackling climate change. You have however continued to deliver, providing food for our tables with passion and perseverance that is beyond that of any job, but as a calling.

At Stephens Scown we are on our own journey to become carbon zero by 2025 and where possible moving to digital. Therefore, I have a request that you share your email address with us to ensure you don't miss out on event invitations, important updates and our next issue of our newsletter. Meanwhile, I am happy to report that this edition has been sustainably printed by St Austell Printing Company on an FSC accredited paper and is 100% carbon-balanced publication.

I wanted to say 'Thank you' for your ongoing support of Stephens Scown and for all that you do for our very special region.



A stylized, handwritten signature in white ink that reads 'Phil Reed'.

Phil Reed
Head of Rural
Stephens Scown

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DEVELOPING LAND OR FARM BUILDINGS INTO HOLIDAY ACCOMMODATION



Are you thinking of making the most of the staycation boom by developing unused land or farming buildings into holiday accommodation?

The restrictions on travelling abroad has meant an influx of tourists holidaying in the UK, especially in the South West, creating many opportunities for the entrepreneurial farmer or landowner.

Does your farm have old barns or unproductive farming buildings that you are considering converting into temporary holiday accommodation? Or are you considering changing an unused field to a camping or glamping site? If so, there are a number of things you should consider before undertaking costly works.



Legal considerations for developing land or farm buildings into holiday accommodation

Restrictive covenants and planning restrictions

Check your title deeds beforehand for planning conditions or restrictive covenants; these dictate what activities can or cannot be carried out on the property.

If there are restrictive covenants or planning conditions, you may be able to explore the possibility of getting these amended or removed. It is best to be aware of and look to address any restrictions before work starts.

Mortgage

Check the terms of any mortgage you have over the property and whether the lender's consent is required for the property to be used as holiday accommodation. If such a use is prohibited you may need to consider re-mortgaging.

Access

If access to the holiday accommodation is required over third party land that you have a right of way over you should check that the right is not limited for example to agricultural use.

Services

Check if you will require any new services such as electricity or water to service the holiday accommodation. If these need to come across third party land, you may need to negotiate easements with the third party land owners. There are other matters you should also consider, such as health and safety, insurance and holiday accommodation terms and conditions.

If you're thinking about developing holiday accommodation out of your unused land or buildings, please get in touch and we can support you.

Brittany Allen,
solicitor, rural property

E: b.allen@stephens-scown.co.uk
T: 07545 646607



THE SOLAR MARKET

Given the continued, steady growth in the solar power industry over the past couple of years, it is no surprise that solar energy is expected to account for 60% of new renewable capacity additions by 2025, according to the International Energy Agency (IEA). UK solar capacity is set to more than double by 2030 as we push towards the net-zero target by 2050.

Solar continues to become more affordable too, with the cost of solar panels having fallen by over 82% in last 10 years. The market is thriving and this is great news for landowners.

To take advantage of this opportunity, landowners will need to have or be located near a grid connection to the National Grid with a large amount of free capacity nearby (anything from 5MW – 120MW).

Why choose solar?

The rental incomes from solar farms continue to perform well, with current subsidy free solar rents at around £1000 – £1100 per acre per annum. 'Top up' revenue rents offer another incentive for landowners, with many achieving percentages of around 6%. This means that where 6% of the developer's revenue exceeds the acreage-based rent, the landowner is paid a top up between the two figures.

The caveat is that achieving these rates depend on the amount of solar radiation the site receives and various costs including connecting to the national grid, planning, installation and the cost of finance. It is also worth remembering that in general legal and development costs are paid by the developers, leaving the landowner free to accrue the rental income.

Another benefit is the guaranteed income available from solar. Leasing arrangements are generally long-term, meaning that solar can provide guaranteed, index-linked rental income for 30-50 years.

Solar farms are also generally constructed in such a way that the land can also be grazed, primarily by sheep or poultry, therefore making the site dual use, however caution should be had when negotiating lease agreements to ensure the developer takes on the risk of insuring the solar array against any damage caused by sheep, for example. It can also be used to increase diversity, as the ground can be sown with grass mixes and wild flowers. This in turn attracts bees and pollinators and means that lower grade land can be put back into productive use.

Solar Farms have a much lower visible impact than other renewable energy technologies, such as anaerobic digestion and wind turbines. They can also be screened by fences or hedging and do not emit any noise. Operation and maintenance, as well as security, can be monitored remotely.

If the land is required for other use after the end of the leasing period, a solar farm can also be easily decommissioned, however caution should be had when negotiating lease agreements to include a decommissioning bond or otherwise and this is one of several key areas in which we can offer our expertise and assistance.



What to expect

With costs continuing to fall, we are now seeing large ground mounted solar schemes being developed. More generally across the UK, 175MW of solar PV capacity has been installed in the first quarter of 2021, meaning that subsidy-free capacity installed now exceeds 1GW. We expect that large-scale solar farms will continue to dominate UK solar for the next decade, at the 80% plus capacity level. We are seeing an increasing pipeline of new sites every month which continues to fuel the growing solar industry. Solar farms will now need to increase in size to drive down the costs and the norm will be anything from 5MW to 120MW, with approximately 20 acres being required for a 5MW solar farm. This now means landowners are joining together with neighbouring landowners to provide an adequate amount of land for development.

What about battery storage?

The business case for grid-connected energy storage continues to build, now providing multiple revenue streams and proving essential to deliver the services offered by National Grid. With an 'extraordinary' solar and battery storage boom underway in East of England according to the UK Power Networks, this offers landowner's another revenue stream as many solar developments are now run with battery storage in tandem.

Next steps for landowners

Landowners who are interested in leasing their land for solar power generation will need to find out if they have a grid connection located on their land or neighbouring land with surplus power in the local area and provide details of the potential site to land agents or developers involved in subsidy free solar. The land agent or developer can then assess the potential solar generation capacity, the likely grid connection cost and whether or not local planning laws are favourable.

The next stage is to agree the heads of terms for the option and lease of the land. It is crucial to seek legal advice when drafting the heads of terms setting out the agreement upon which the option and lease will be drafted. Although not legally binding for the most part, heads of terms are difficult to move away from once signed and dated.

Once agreement has been reached an option (which includes the lease) will be negotiated. Once entered into this gives the developer the sole right to seek planning permission, grid connection and other consents required to develop the solar farm with a certain timeframe. The construction of the solar farm should, if the costs of solar continue to fall, take place within one to three years of the option being completed.

If you're interested in using land for a solar project as your own development or leasing land, please get in touch and we can support you.

Jack Saunders,
solicitor, energy

E: j.saunders@stephens-scown.co.uk
T: 07792 503173



THE HIGHWAYS STATEMENT – PUBLIC ACCESS TO PRIVATE LAND

What is a Highways Statement and how does it work?

Over the pandemic and multiple lockdowns, there has been an increase in members of the public enjoying the countryside and public access over privately owned land.

With this increased use of public rights of way it is important that landowners take steps to ensure that new public highways (public rights of way) aren't dedicated over their land. There are relatively simple steps which can be taken to try to reduce the risk, such as erecting signs stating there is no public access and keeping gates closed and locked to prevent access.

Still, these steps do come with their own limitations; there is however a relatively simple formal process which offers protection and involves the submission of a Highway Statement to the Local Authority.

How are public highways created?

If members of the public can establish use of a route over land (and this can be as informal as walking a path across a field) for an uninterrupted period of 20 years, and that use is without force, secrecy or the landowner's permission, then it will be presumed that a public highway (i.e. a public right of way) has been established.

What is a Highways Statement?

Under section 31(6) of the Highways Act 1980 a landowner can deposit an application known as a Highways Statement with the Local Authority declaring which public rights of way currently exist over their land (if any) and that no additional public rights of way, or none at all, have been dedicated over their land.

How does it work?

The Highways Statement makes it clear that the landowner has not dedicated any land as a public highway which rebuts the presumption that a public highway was intended to be created through uninterrupted use. Notice of the Statement is then published on the Local Authority website and a physical notice erected on the entrance to the land or near the boundary.



I have previously submitted a Highways Statement – am I protected?

A Statement deposited with the Local Authority prior to 1st October 2013 needs to be updated within 10 years, a Statement deposited after that date within 20 years. In order to continue to rebut the presumption that a public highway was intended to be dedicated over the land it is important to update the Statement by depositing a Highways Declaration with the Local Authority within the relevant time period (10/20 years).

It is also important to note that a Statement or subsequent Declaration rebuts the presumption, effectively resetting the 20 year clock, and does not stop time accruing towards the required 20 year period altogether.

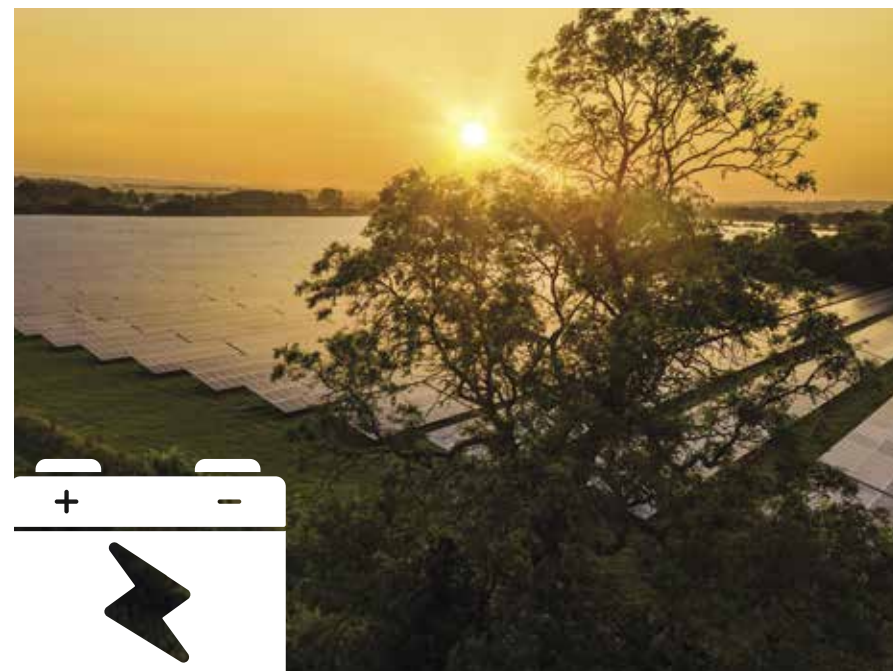
The important distinction being that the 20 year period necessary to dedicate a new public highway starts accruing from the time the use by members of the public starts and could start immediately after a Statement is deposited rather than freezing time until 20 years after the Statement was deposited.

It is therefore important to ensure a Declaration is deposited within the relevant time period to continue to prevent a new public highway being created.

If you would like advice on Highways Statements and public rights of way, please get in touch with James Snell in our Rural team below.

James Snell,
solicitor, rural property

E: j.snell@stephens-scown.co.uk
T: 07715 076669



HOW WILL THE ENVIRONMENT BILL IMPACT RURAL BUSINESSES?



The new Environment Bill has finally become law this year. What impact can we expect it to have on farms, estates and rural businesses?

After a tortuous five-year journey through Parliament (during which its progress was repeatedly set back by general elections, changes in government, Brexit and Coronavirus), the Environment Bill has now finally become law as the Environment Act 2021.

The new Act of Parliament is likely to have significant and wide-ranging consequences across a range of sectors. This article looks at what the potential impacts are likely to be for farms, estates and other rural businesses.



The new Environment Bill has finally become law this year. What impact can we expect it to have on farms, estates and rural businesses?

Mandatory biodiversity net gain

The requirement that all new development should provide a 10% net gain in biodiversity is probably the most significant “concrete” change for the rural sector, and is likely to offer both challenges and potential opportunities.

Firstly, if you are planning to develop your property in a way which will require planning permission, then you will need to demonstrate how you will secure the 10% net gain in biodiversity.

Small developments

If your project is small (constructing a new holiday cottage, for example, or replacing a substantial agricultural building) this might just be a case of installing some bird boxes and creating new green spaces nearby. However, you will need to factor in the cost of both the work itself and of obtaining a report from a suitable professional to satisfy the planning authority that the biodiversity measures are sufficient.

Larger developments

Larger projects are likely to require more biodiversity enhancements, which might include permanently dedicating areas to nature.

If you are selling land for residential or commercial development then that possibility may be a significant issue, since the developer might need to set aside parts of the site for biodiversity enhancements like parks, wildflower meadows or orchards. That will reduce the number of houses or commercial units which can be built, which may lead to developers offering a lower price for your land.

Opportunities created by Environment Bill

The need to dedicate land for biodiversity enhancement does present an opportunity. Although on-site biodiversity enhancement is preferred, developers will in many circumstances also need to “offset” their development’s impact by supporting biodiversity enhancements nearby. Local landowners who are already managing their land for wildlife (or considering converting unproductive agricultural land) may therefore be able to secure funding for both capital works and ongoing maintenance and management costs in exchange for dedicating land to nature for an extended period.

The Act also provides for developers to be able to buy “credits” from DEFRA to satisfy the need for biodiversity net gain – the proceeds would then be re-invested by DEFRA into suitable wildlife projects. This option seems most likely to be of interest to landowners (or collectives of landowners) with substantial projects in mind, such as extensive re-wilding.

Conservation covenants

The Act allows for landowners to give “conservation covenants” to local councils, some charities (such as the National Trust and county wildlife trusts) and statutory bodies like the Environment Agency and Natural England.

These covenants are legally-binding promises that the landowner and future owners will manage some or all of their land in a certain way, such as in accordance with an agreed management plan. The intention is to ensure that investments in nature, wildlife and biodiversity enhancements are secured for an extended period, preventing the land being developed or immediately converted back to intensive cultivation.

Conservation covenants are reasonably flexible tools, but their most obvious potential use is to protect the off-site biodiversity enhancements mentioned in the previous section. Local planning authorities and developers will need to ensure that the enhancements they pay for are maintained for the long term and a conservation covenant provides the perfect mechanism.

We may also see conservation covenants used to protect capital investments made by DEFRA through Environmental Stewardship and other agri-environment schemes.

Tom Graham,
solicitor, rural property

E: t.graham@stephens-scown.co.uk
T: 07548 224496



Water abstraction licences

Abstraction licences allow licence holders to abstract certain volumes of water from rivers, lakes and groundwater.

The Environment Act introduces new powers allowing the Environment Agency to vary abstraction licences without paying compensation when:

- *The proposed variation (including outright cancellation of the licence) is necessary to protect the environment; or*
- *The licence holder has routinely abstracted much less than allowed by their licence (defined as less than 75% of the maximum volume in each of the preceding 12 years).*

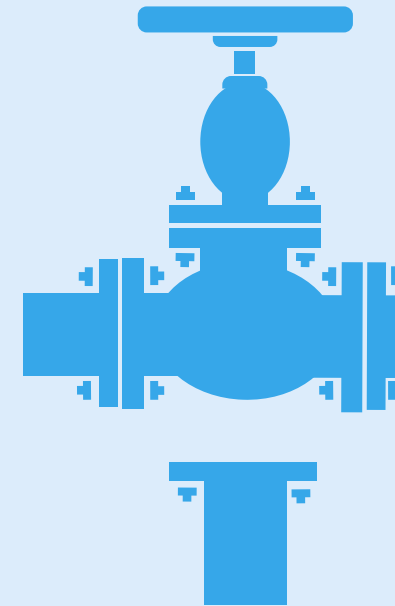
These powers come into effect on 1 January 2028. You can read more about water abstraction licences in this article.

Targets and principles in the Environment Bill

The new Environment Act requires DEFRA to set legally-binding environmental targets in several key areas. It also obliges all government departments to take environmental principles and considerations into account when drafting legislation and setting policy.

Given how important environmental matters have become to the general public, these commitments might be just a formalisation of what is already taking place in practice. However, they do confirm that environmental considerations are here to stay, and are likely to be given very significant weight when the government comes to consider matters of crucial importance to the rural economy, such as agricultural subsidies.

If you would like to discuss the impact of these changes on your business, please get in touch.



WATER ABSTRACTION LICENCE – UNDER CONSULTATION

The Environment Agency has announced a consultation on its proposals to change the way it charges for a water abstraction licence.

What is an abstraction licence?

An abstraction licence gives you a right to take a certain quantity of water from sources such as rivers, streams or groundwater. The government has a detailed guide available [here](#).

Who does this apply to?

Anyone who takes more than 20 cubic metres of water a day from a surface or underground source of water will probably need an abstraction licence. Doing so without a licence is a criminal offence. So the proposed changes should be of interest to any farmers who take (or plan to take in the future) significant volumes for irrigation or to water livestock.

Anyone who operates or intends to develop a hydropower scheme is also likely to be affected.

Why is the Environment Agency reviewing the scheme?

The Environment Agency’s justification for the proposals is that the current charging scheme was designed in the early 1990s and since then, the cost of operating the licensing system has increased substantially.

The Environment Agency are also seeking to correct an imbalance whereby the fees charged often bear little relation to the amount of work involved in considering an application or monitoring an existing licence. The proposals therefore seek to make a more complex application more expensive than a simpler one, and to introduce a similar structure for ongoing monitoring costs. If the Environment Agency have to do more work (because, say, the water is coming from a source with limited water availability) the licence holder will pay a higher fee.

This consultation is a prelude to further changes which are intended to follow in the next couple of years and will see water abstraction licensing absorbed into the wider Environmental Permitting system. That system is currently used to control and regulate potentially polluting activities like waste disposal, incineration and industrial operations, but the longer-term objective appears to be a more “joined up” system which also governs non-polluting activities like water abstraction, which nonetheless can cause harm to the environment. The current consultation has closed and we await the results of the findings.

If you need advice on how this affects you or your business, Tom Graham from our rural team can help.

Tom Graham,
solicitor, rural property

E: t.graham@stephens-scown.co.uk
T: 07548 224496



MEET THE TEAM

Kate Theophilus



Learn more about our rural sector team members, their area of expertise and a little about what they get up to outside of work. As this edition is focused on property and land, to get the bale rolling, we spoke to Kate Theophilus, partner and head of rural property.

Can you share with us a little bit about your role and a typical day?

As head of rural property, I'm known for being able to tackle the more complicated cases, meaning there is no such thing as a typical day, which I enjoy as it keeps things interesting and varied! My time is balanced between client work and team management. This includes supervising and mentoring the team to ensure we are delivering great client service, and providing advice on more complicated transactions. I particularly enjoy days that involve visiting a client's farm and learning more about their business.

Why did you specialise in rural property law?

My Uncles and Grandparents were farmers in mid Wales, so I spent all my childhood literally "down on the farm". As well as being a lovely memory for me, this is what has steered me to want to use my qualifications for the benefit of other rural businesses. What is fascinating about the rural sector for a property solicitor is that although in essence the same as any other property sale, a rural property sale becomes more complicated because of the various laws associated with the land and business, from covenants and shooting rights, to company structure and grant funding – rural businesses keep you on your toes and no deal is ever the same.

I'm always telling my team that they should never take title deeds on face value. Farming set ups are such that partnership and trusts behind the scenes can often mean that the individuals named on the title deeds may not be the ones who ultimately have the authority to give instruction or make the final decision. Tax plays a big part in our work as property solicitors and an understanding of the concepts along with working closely with accountants is key.

Tell us about your most interesting case?

There have been many over the years, some to do with the nature of the title or timescales – which I love the challenge of – and others to do with the people and personalities involved. Just as a flavour, one which springs to mind was looking at how a rescued peacock was to be transported to my client's new home. Another time my clients were moving from Scotland at the start of the first lockdown with a number of horses and we had to complete within a short time of just three weeks. As well as the time pressure we were getting used to remote working – and I'm pleased to say we achieved the goal and made it happen in the timeframe.

What do you love most about your role?

Achieving the goals for my clients – I will always go the extra mile, and this is the most important aspect for me. Also on the management side, I enjoy seeing the junior members of my team grow with knowledge and confidence.

What do you think are the biggest challenges and opportunities for rural businesses?

I always see challenges as opportunities, the sector is at a crossroads of great change with Brexit and the desire to become greener due to climate change. The whole subsidy regime is changing and for some farmers it will be the difference between being able to continue or not. The ability for new entrants to join the sector is a problem; the price of land is such that many youngsters cannot afford to get on the ladder; the tax regime means the older generation cannot retire without the fear of no roof over their heads and large tax bills, so they stay on until they die to avail themselves of tax reliefs. The new regimes being proposed by the current government will not, in my opinion, be enough and they are slow to put the meat on the bones. The opportunities are for us, with other professionals in the sector, to help guide our clients through this minefield of change.

You've been a member of the Agricultural Law Association (ALA) for a number of years, can you tell us more about this and why it is so important to you?

The name would, on first glance, imply it is an organisation just for solicitors. In fact that is not the case. It is an organisation for all professionals who operate in the rural sector. It is the only organisation whose members cross the various professions. It is aimed to help with education within the sector, there are not many training courses which would be specific to the issues we face. The ALA run two residential courses and I have been fortunate to have tutored on one and been on its national council. Going forward the ALA are looking to run webinars and have a precedent bank, which is more tailored to the rural sector than just general commercial property.

You're a keen singer and are part of our Cornwall office choir the Scown Roses, what has been your favourite performance?

Without question the Sea Shanty Festival in Falmouth. I have sung for years and been involved in light opera and also grand opera with what is described as a "semi-professional" group although I would not regard myself as that, it is more the standard of performance given. Singing sea shanties is a technique all of its own, I did not find it easy. We were well received and the novelty was we were predominantly (sorry to the brave chaps in the choir) a female ensemble. Since the pandemic we have not been able to perform and I look forward to the day when we can. Our aim is to have good wellbeing for employees and bring joy to the community in which we work wherever we can. Singing in the main ring of the Primestock show in Truro comes a close second!

How do you spend your time outside of work?

I have what some call a Noah's Ark of animals at home consisting of dogs, cats, goats, chickens, ducks and miniature donkeys. They take a lot of my time and I love being able to escape to the sanctuary of my animals.

If you weren't a property lawyer, what you be and why?

That is difficult, if I had a free hand I would have loved to have done something creative, a singer/actor or to work outdoors with the land and animals.

What does it mean to work for Stephens Scown, what makes us different?

We are employee owned and the feeling is that we are all in it together. I know that sounds cheesy but it is so true. I would never have imagined myself in my current role before coming to Stephens Scown. However, I know with their support and empowerment, I have stretched myself and grown further than I expected, I look forward to helping others in the same way.

Kate Theophilus,
partner, head of rural property

E: k.theophilus@stephens-scown.co.uk
T: 07712 583435





What are the most common situations that can give rise to farming disputes over inheritance, and how can you avoid them?

Disputes following the death of a loved one are on the increase. When a farm is involved it may mean the farm has to be sold or split up. This article discusses the most common triggers for disputes and highlights how to avoid them.

We advise clients every day on inheritance disputes. Although each dispute is unique, there are often common themes. Disputes will frequently arise where a farm or family business is involved. This is particularly the case in circumstances where the owner of the farm has not considered the implications of their death on the running of the farm, or how relationships in the family will be affected by their own death.

Farms are often a family affair and provide both a family home and income. They are therefore often subject to disputes, particularly where the family disagree on the future of the farm after the older generation have passed away.

Common situations which can cause farming disputes

Remarriage

Many people don't realise that when someone gets married it revokes any earlier Wills. It is not uncommon for a farmer to prepare a Will following a divorce providing for the farm to pass to one of their children or a number of them on their death. Some years later they may meet someone new and get married again. Most people will think: 'I have prepared a Will and the farm is going to my child/children so I don't need to consider that thorny subject with my new partner'. However, marriage revokes that previous Will.

This means that the estate will be distributed under the intestacy rules. These are the statutory rules which govern the distribution of an estate where there is no Will or no valid Will. The intestacy rules favour a spouse over your children and so the result will often be the farm not passing solely to the deceased's children as intended. A dispute often ensues between the step parent and the deceased's children.

Unmarried partners

Many people believe in the concept of common law marriage which can often prompt difficulties among farming families. For example, your son or daughter may work on the farm and their boyfriend or girlfriend may move onto the farm to live with them. The couple may have children but not get married. If their relationship unfortunately breaks down, the family may feel relieved they do not have to get divorced, but you need to be wary of such assumptions. It is possible for someone to acquire an interest in a property where they have invested money or 'monies worth' in that property. If so, they can force the sale of that asset on the relationship breakdown or the death of their partner.

Such a dispute could result in the farm making a substantial payment to someone not even viewed as part of the farming endeavour. To avoid the disruption and anxiety this could cause, it is strongly recommended for the child and their partner to enter into a cohabitation agreement which not only deals with arrangements on the event of death but also the breakdown of their relationship.

Disappointed beneficiaries

The bulk of farming disputes that specifically arise on death are prompted by someone not receiving what they anticipated or had been promised. These claims are wide ranging and can often take years to be brought to a conclusion, costing vast sums of money. Claims can be made against the validity of the Will itself and result in that Will being struck out.

A claim could also be made for financial provision, even if there is a Will and it is valid but fails to provide for a spouse, child or dependent. This could result in part of the farm or estate passing to an unintended beneficiary or being sold to make a lump sum payment.

Another situation could be a claim to remove an asset from the estate entirely, for example, if it was promised to someone else. There are various legal tests and requirements to be satisfied for a claim to be successful. If a claim is successful it could result in the farm or part of it passing outside the terms of the Will or intestacy rules.

Top tips to avoid disputes

Many disputes arising from a death in a farming family can be avoided, protecting key assets for the benefit of the farm as a whole. In a bid to avoid your family being propelled into a costly dispute there are some easy steps you can follow:

1. Prepare a Will and make sure it is updated as life changes

Anyone who is involved in a farming business, partnership or family would benefit from preparing a Will.

If you are planning to marry remember the act of marriage revokes a Will so ensure you seek legal advice in good time before the marriage, including advice about pre-nuptial agreements and preparing a Will in specific contemplation of that marriage.

2. Consider a cohabitation agreement

If an unmarried partner is moving into the farm, make sure the nature and extent of their occupation is recorded in a properly prepared document, such as a cohabitation agreement, to avoid any unwelcomed claims against the farm or family assets if that relationship goes sour or one of the couple unfortunately passes away.

3. Is a partnership agreement required?

Make sure your business arrangements are clear and any partnership agreement or shareholders agreement is regularly reviewed and updated.

4. Encourage your professional advisers to liaise with one another

Encourage your accountant, lawyer and financial adviser to speak and liaise with one another to ensure your ultimate aspirations are achieved. There may be a way forward which is great from a tax perspective but not if a relationship breaks down or on death. The only way to ensure your aims are met from both a legal and tax perspective is for your appointed professionals to speak to one another.

5. Engage in family discussions

A dispute rarely presents itself in a transparent situation where everyone is fully aware of what is going to happen on the death of a member of the family. If you have plans for the farm, make sure you discuss them with your family and take steps to have all the necessary documents in place to ensure your wishes are carried through.

If you are concerned about any family disputes which could arise in the future then it is always sensible to seek legal advice to ensure you do what you can to minimise the possibility of a dispute. It is not unheard of for a farm to be sold or split up as a result of a claim or to ensure someone receives a proportion of what they feel they were due.

James Burrows,
partner, inheritance trust disputes

E: j.burrows@stephens-scown.co.uk
T: 07800 972351



FISHING RIGHTS – WHO OWNS THEM?



We often act for clients where one or more of their boundaries is a non-tidal river and they often ask us whether or not they own the fishing rights. To answer this, there needs to be an investigation into the registered title or unregistered title deeds of the property.

Who owns the fishing rights in rivers and streams?

In non-tidal rivers and streams, the right of fishing attaches to the ownership of the soil. There is a presumption that the owner of the land adjoining a non-tidal river or stream also owns the bed of the river to the middle line.

However, where a river is bounded by land in different ownerships, it is a trespass to cast beyond the middle line of the river. And, although the owner of the land owns the bed of the river to the middle line, they do not own the water which flows through but is entitled to the usual flow for ordinary or domestic purposed connected with the ownership of the land. Riparian ownership also comes with its own responsibilities i.e. letting water flow through without any obstruction, pollution or diversion.

Unless there is something in a historic conveyance or transfer, which refers to the fishing rights being “reserved” or “excluded”, it is assumed that a riparian owner has the sole right to fish in the water within their boundary.

Can you sell or lease the rights?

The right to fish can be sold, leased or licensed by an owner to a third party or can be reserved out of a transfer/lease.

A licence in respect of these rights is a convenient way to grant fishing rights especially where the rights are only to be exercised for a short period of time i.e. a season. However, a disposal of fishing rights may also be by way of a disposal of a ‘several fishery’ or by the grant of a profit à prendre of fishing rights.

Fishing rights (along with other sporting rights) are potentially very valuable, and care should be taken to ensure that, where appropriate, they are reserved out of any sale because otherwise they will pass with the land.

Susan Reynolds,
associate, rural property

E: s.reynolds@stephens-scown.co.uk
T: 07523 916562



FARMING & DIVORCE – VALUING THE FARM PROPERTY

When a farm is involved in divorce proceedings, there are often additional issues that need to be considered, such as valuing the farm and distributing the business.

Farms are often inherited and have complex ownership structures where different parts of the farm may be owned by various members of the family who may have competing interests.

Individuals who are not involved in the divorce proceedings initially may seek to assert an interest in the farm and intervene in the proceedings. This can pose additional challenges and add a further layer of complexity.

This article looks at the different elements that will need to be considered when valuing a farm as part of the divorce process.

Why is valuing the farm important?

Before any meaningful divorce negotiations can progress it will be essential to ascertain the value of the farm, the extent of the parties' interests and whether discounts should be applied if a minority interest exists. Great care needs to be taken to avoid significant conflict arising when determining these issues.

What does valuing the farm involve?

Valuing a farm is not a straight forward process and it will be necessary to involve an expert with the appropriate expertise in order to do so, ordinarily a Chartered Surveyor with particular experience dealing with farms will be instructed on a joint basis in the first instance. The parties may not always agree with the joint valuation and may decide to instruct shadow experts in order to explore any concerns they may have regarding the valuation provided.

Each farm will have its own nuances in the way in which it is owned, tenanted, run and how it generates an income. Often, the various elements of the farm will need to be considered individually and it may be necessary to instruct a number of specialists to ascertain the value of each aspect.

The expert may also be asked to take into account the various options that could potentially be explored in order to maximise the value of the farm, for example, the farm may be more valuable if it is partitioned and sold in different lots or there may be further income streams that need to be looked at, such as farm shops, holiday lets, renewables or other developments. It is becomingly increasingly common for farmers to diversify and the ability to do so can affect the potential value of a farm.

What else should we be aware of when valuing the farm?

There are other factors that can affect the value of the farm, such as having the benefit of the Basic Payment Scheme, planning permissions, quotas, or being subject to agricultural ties, limiting who may be able to occupy the property. External factors may also be particularly relevant, such as Brexit and Coronavirus.

A further issue to which due consideration must be given is the incidence of Capital Gains Tax. It may be necessary to take measures to mitigate liability in this respect, taking early advice is therefore essential.

The letter of instruction being sent to the single joint expert is likely to be incredibly important and a failure to adequately explore all of the necessary issues could potentially lead to an unsatisfactory valuation being prepared.

How will the financial settlement affect the farm?

When deciding the most appropriate way to achieve a financial settlement there will be a need to consider viability. It can sometimes be a balancing act of ensuring that the vacating spouse's needs are funded, whilst preserving the farm as a home and business for the other, particularly under circumstances where the farm has been inherited. A decision to sell particular holdings or machinery in order to fund a potential settlement can have a detrimental impact on the farm's ability to derive a profit if the matter is not approached correctly. The assistance of a farming consultant may be required to scrutinise the accounts and consider the different avenues that could be explored. In light of the various complex issues that will need to be considered, it is of the utmost importance to instruct a solicitor with specialist experience dealing with farming divorces as they will have an awareness of particular issues that will need to be addressed within the valuation. This is going to be the case whether you are party with ownership and an intricate understanding of the farm, or the party who has married a farm owner.

If you would like further information on farming and divorce, please get in touch with our experts.

Kai Whicker,
solicitor, family

E: k.whicker@stephens-scown.co.uk
T: 07874 860902





RETIRING FROM FARMING – THE EXIT LUMP SUM & DELINKED PAYMENTS

Thinking about retiring from farming but concerned about the tax implications?

Throughout my time acting for farmers with their property matters, conversations about when a farmer retires and passes the farm to the next generation have always been difficult. However, with the average age of farmers increasing, these conversations are likely to become more and more common.

There is so much emotion tied up with the farm; it is not only the farmer's home, that extends beyond just the four walls of the farmhouse, but their business and an enterprise, which has, in many cases, been developed by a number of generations of the family.

Legislative changes in the farming industry

The industry is also facing major changes from all directions, with the Agriculture Act 2020, Environment Act and Brexit all playing their part.

It is clear that as part of these changes the Government wants to encourage new entrants to the industry and allow those wishing to retire to do so with dignity.

For many farmers, the main concern when disposing of land (including by passing it down to the next generation) is the tax treatment of that disposal. Currently, farmers are able to claim Agricultural Property Relief (APR) on death, but only if they are still actively farming. This results in farmers remaining in the industry until they die to secure the tax benefit, leaving the next generation or new entrants waiting in the wings.

Retiring from farming – the exit lump sum scheme

One of the Government's proposals to address this issue is the Exit Lump Sum Scheme, the consultation period for which closed on at midnight on the 11th August 2021. The outcome of that consultation and finalised Government proposals are expected in October 2021.

The consultation proposals were clear that in order to receive the lump sum, farmers must dispose of their land either by selling it, renting it out or gifting it away – the crucial point being that they are no longer actively farming it. However, any disposal of this nature will affect the ability to claim APR (if, for instance, the farmer retains and lives in the farmhouse) and if the land is sold there will be concerns about potential liability to Inheritance Tax (IHT) on the cash lump and Capital Gains Tax (CGT).

Whether the lump sum payment would be sufficiently enticing when considering retiring from farming will undoubtedly depend on:

- *The size of that payment (there is talk of a cap being imposed);*
- *How it is treated for tax purposes (a subject which, astonishingly, the consultation barely addressed); and, I suspect,*
- *The tax treatment of any gift disposal or renting of land as part of the retirement incentive.*

As solicitors, any transition period from one regime to another means we have to consider the advice we give and the documentation we draft with even greater care, bearing in mind the effect which such proposals might potentially have on our clients. This can be challenging, given that the detail of the proposals is not yet available or even decided, meaning that we need to do what we can to protect our clients from that uncertainty.



Delinked payments

Another area where we are increasingly being asked to advise our clients is in relation to the proposed “delinking” of payments under the Basic Payment Scheme (BPS). The Government has proposed that BPS payments between 2024 and 2027 (when BPS will be phased out entirely) should be “delinked” from the land farmed and instead simply be paid to the person who holds the BPS entitlements.

These proposals would have an impact on clients who are both buying and disposing of land. If you are buying land, is it worth buying entitlements either from the seller or on the market? On a disposal, we will instead need to be advising clients (in association with their accountant and land agent) on whether they should sell any entitlements to the buyer or retain them either permanently or to be sold separately. Delinking also poses a question for new Farm Business Tenancies – should the tenant be able to delink the BPS payments if the entitlements have been leased to them along with the land?

In the current climate, never has it been more important for farmers and landowners to have a good professional team behind them in the form of solicitors, accountants and land agents.

Kate Theophilus,
partner, head of rural property

E: k.theophilus@stephens-scown.co.uk
T: 07712 583435



THE RE-INTRODUCTION OF BEAVERS INTO THE WILD



Following the success of the Government's trial re-introduction of beavers on the River Otter, further releases are being considered.



It was announced in August 2020 that the UK Government considered the trial re-introduction of beavers on the River Otter to have been a success.

The Government have as a result issued a consultation concerning its proposed approach to further releases and management of beaver in the wild. That consultation was open until 17 November 2021, the details being available on the Department for Environment Food & Rural Affairs (DEFRA) website here.

Consultation on approach to re-introduction of beavers

No doubt there may be some strong views expressed on either side; for the environmental benefits on the one hand and concerns about the potential adverse impact of the beavers' 'ecosystem engineering' work on the other.

The stopping-up of watercourses and felling of trees, amongst other points, can cause issues. In North America, in some areas where there are thriving beaver colonies, arrangements are made for wildlife rangers to relocate some of their local beaver population as it expands and begins to cause more friction with the local human population.

Whatever your views, there are clear potential implications for landowners and farmers, particularly those who own or border inland lakes and watercourses. It may therefore be worth taking a look at the consultation and its supporting documentation and expressing a view on what is proposed.

Legal implications

From a legal perspective, there are a number of potential implications, including the interaction with the new scheme for subsidising public goods in substitution for the basic payment scheme, where the reintroduction of beaver could fit well with sustainable farming, local nature recovery and landscape scale regeneration. The detail of that remains to be seen but on the downside there are also, for example, the potential implications for requiring compensation for losses, including localised flooding caused by beaver activity and the loss of timber.

All in all, it is one to watch but it is clear the reintroduction of beavers does fit well with the general direction of Government environmental policy and is therefore likely to become a feature of our landscape in future years.

If you would like to discuss how this may impact you or your property, please get in touch.

Scott Mitchell,
partner, rural property

E: s.mitchell@stephens-scown.co.uk
T: 07800 971879



NEWS ROUND UP

Client service praised in Chambers & Partners' UK guide and top ranking for Legal 500

We're delighted to have produced another strong performance in the legal rankings this year, being praised in the Chambers & Partners' UK 2022 guide and Legal 500. In the latest editions of the independent guides to the legal profession, we confirmed our position as a regional heavyweight and have been recognised for providing excellent client service.

The firm's Family, Rural and Corporate teams have once again topped the rankings in Chambers & Partners', with the Family team being the only top ranked firm in both Devon and Cornwall.

Specialist in agriculture law, Kate Theophilus, has also maintained her top ranking a specialist in rural land and agricultural tenancy matters, alongside property disputes specialist, Richard Bagwell.

Managing Partner, Richard Baker, says: *"With a strong focus on delivering an outstanding client experience, it is wonderful to receive such high praise in the latest Chambers and Legal 500 guides. Every ranking is testament to the hard work put in by all our teams, who go above and beyond to offer each of our clients with a personal and individual service tailored to their needs, helping them through the good and tough times."*

Talking Influence Top 50

Congratulations to Amy Ralston in our Intellectual Property team for being ranked on the Talking Influence Top 50 list. Great to see Amy being recognised for 'pushing boundaries' in the influencer marketing space.

Carbon zero journey

Sustainability has been one of our core values for a while now in particular, doing things efficiently without waste. Because we want to leave behind a world that the next generation can enjoy.

We're confident that we can hit our net zero carbon emissions target by 2025 and we're proud of the progress we've already made on that journey. We have implemented our Green Travel Policy which encourages and facilitates green forms of travel such as public transport, car sharing and the use of electric vehicles.

For more info on our Green Travel Policy and our net zero carbon journey request a copy of our Giving Back report by emailing marketing@stephens-scown.co.uk

Our next rural newsletter will be a green edition. We'd love to hear from you about what you are doing in your rural businesses to make a difference, as well any topics you would like us to cover, please email marketing@stephens-scown.co.uk or your Stephens Scown point of contact.



RURAL PROPERTY TEAM

Kate Theophilus Partner and Team Leader

07712 583435
k.theophilus@stephens-scown.co.uk



- Farm sales and purchases
- Farming partnership, family arrangements and succession
- Finance and funding arrangements
- Farm business tenancies
- Complex land interests
- Overage agreements

Scott Mitchell Partner

07800 971879
s.mitchell@stephens-scown.co.uk



- Farm sales and purchases
- Farming partnerships, family arrangements and succession
- Finance and funding arrangements
- Leases of commercial and rural property
- Mineral rights
- Coastal/marine property
- Landed estates

Nigel Coveney Partner

07715 073458
n.coveney@stephens-scown.co.uk



- Renewable energy projects
- Farm sales and purchases
- Farming partnership, family arrangements and succession
- Finance and funding arrangements
- Farm business tenancies
- Complex land interests
- Overage and promotion agreements
- Development land
- Commercial leases

Brittany Allen Solicitor

07545 646607
b.allen@stephens-scown.co.uk



- Farm sales and purchases
- Farming partnership, family arrangements and succession
- Finance and funding arrangements
- Farm business tenancies
- Overage and promotion agreements
- Commercial leases

James Snell Solicitor

07715 076669
j.snell@stephens-scown.co.uk



- Farm sales and purchases
- Farming partnership, family arrangements and succession
- Finance and funding arrangements
- Farm business tenancies
- Overage and promotion agreements

Sue Reynolds Associate

07523 916562
s.reynolds@stephens-scown.co.uk



- Farm sales and purchases
- Farming partnership, family arrangements and succession
- Finance and funding arrangements
- Farm business tenancies
- Complex land interests
- Overage agreements

Tom Graham Solicitor

01392 210700 / 07548 224496
t.graham@stephens-scown.co.uk



- Residential, rural and equine property sales and purchases
- Land sales & purchases, including to developers
- Acting for landowners entering into options and promotion agreements with developers
- Electronic communications code work (such as leases for mobile phone masts)

Stephen Alcock Paralegal

01872 229628
s.alcock@stephens-scown.co.uk



- Residential and rural property sales and purchases
- Land sales & purchases
- Finance arrangements
- First registrations
- Assisting senior legal advisors

Jericha Perry-Darlison Legal secretary

01872 229662
j.perry-darlison@stephens-scown.co.uk



Jericha provides administrative assistance to the team and works closely with the rural property advisors on matters and are able to assist with enquiries when an advisor is unavailable.

Judy Reski Legal secretary

01726 74433
j.reski@stephens-scown.co.uk



Judy is part of our experienced team of legal secretaries who work closely with the rural property advisors on matters and are able to assist with enquiries when an advisor is unavailable.

Caroline Siford Legal secretary

01392 210700
c.siford@stephens-scown.co.uk



Caroline is part of our experienced team of legal secretaries who work closely with the rural property advisors on matters and are able to assist with enquiries when an advisor is unavailable.

Helen Watson Legal secretary

01872 265100
h.watson@stephens-scown.co.uk



Helen is part of our experienced team of legal secretaries who work closely with the rural property advisors on matters and are able to assist with enquiries when an advisor is unavailable.



ARE YOUR CONTACT DETAILS CORRECT?

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www.stephens-scown.co.uk • rural@stephens-scown.co.uk

Stephens Scown LLP Exeter
Curzon House, Southernhay West,
Exeter, Devon EX1 1RS
Tel: 01392 210700

Stephens Scown LLP St Austell
1 High Cross Street, St Austell,
Cornwall PL25 4AX
Tel: 01726 74433

Stephens Scown LLP Truro
Osprey House, Malpas Road, Truro,
Cornwall TR1 1UT
Tel: 01872 265100

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