

# Agriculture Focus



## Rollits and Agriculture

With our roots in East and North Yorkshire, it is perhaps not surprising that we have a long history of assisting farmers and landowners in relation to their farming and other legal issues. This includes the sale and purchase of farmland, and the granting and taking of leases, tenancies and grazing licences. In recent times there has been a need to advise on single payment issues and agri-environment schemes. There has also been the advent of renewable energy and the legal issues that surround these. This includes advice in respect of wind turbines, anaerobic digesters, and solar schemes but also hydro schemes, the new carbon captive scheme affecting landowners in East Yorkshire and the easements required to enable electricity generated offshore to reach sub-stations from the point of landfall.

Farmers and Landowners clearly need other advice; from wills and trusts to business advice including the method of trading (farming partnerships, companies etc) and also the refinancing of the business operation with a Bank.

All these issues, and many more, are ones that our team deal with on a regular basis and the years of experience we have in agriculture enable us to provide an exceptional service to those we advise.

Neil Franklin

## Partnerships agreements why it's important to get them right

The scenario is common in the farming sector: The son or daughter have been working on the family farm since they were knee-high to a grasshopper, working during the school holidays and when home from college. They then return to the family farm working full time and eventually become a partner in the family business. In this scenario it is understandable why farming families may think that the partnership agreement will be "about right" if it reflects roughly what the partners have agreed. At the end of the day this is family and they're not going to fall out about it – or are they?

Sadly the recent case of *Ham v Ham* has illustrated why getting the partnership agreement "about right" isn't enough.

In this case Mr and Mrs Ham ran an established dairy farm and in 1997 took their son, John, into the partnership. Prior to John entering the partnership, Mr and Mrs Ham owned the farmland, buildings, livestock, farm machinery and other assets. John had no capital of his own although the Annual Accounts attributed part of the capital to him, his capital contribution being his share of profits after allowing for drawings.

In February 2009, in accordance with the terms of the Partnership Deed, John served notice to terminate. The Partnership Deed provided that if the partnership was terminated then the partners to whom notice had been given could elect to either have the partnership wound up, or purchase the share of the other partner at the net value of such share. Whilst the Partnership Deed provided that the net value would be agreed between the partners, or, in default, be determined by the Partnership Accountants, unfortunately there was no instructions about the basis upon which the net value

was to be assessed. It was this issue and the competing interpretations of the Partnership Deed in this regard which resulted in this case being considered by the Court of Appeal.

The parents argued that John's share was to be decided on the basis upon which the annual accounts had been drawn up during the partnership (the land was never re-valued in the annual accounts), whereas John argued that it meant the share of the partnership property which would have been realised upon a notional winding-up of the partnership. The Court of Appeal made clear that there were no presumptions or default rules which pointed towards one basis of valuation over another. Rather, the Court had to take account of all relevant facts, including the background, in interpreting the Partnership Deed. Having reviewed the circumstances, the Court of Appeal found that John's share should be valued on the basis that the partnership was wound up. If the partnership was wound up, then all assets would be sold and the realised profits would be shared between the partners in accordance with the Partnership Deed.

Continues on page 3...

## Also in this issue

Maximizing Agricultural Property Relief on let farmland

Family matters

Agri-environment schemes 2014-2020

Changes to permitted development rights

# Family matters

The breakdown of a marriage is always difficult but the unique and complex nature of farming businesses means the impact is not only felt by the separating couple but their extended family and the wider farming community.



Factors specific to farming businesses mean personal affairs should not be dealt with in isolation as ultimately upon divorce there will need to be a division of matrimonial assets that satisfies each parties' financial claims whilst at the same time minimising the impact on the day to day running and long term future of the business – particularly as there is often a desire to preserve the farm for future generations.

Farms are more often than not a family business with many related members of an extended family having some ownership and being reliant on the income produced. This can make extracting capital more difficult particularly when combined with the fact that farming businesses are often capital rich – especially with the rise of land values in recent times. Whilst it is rare for there to be an order for the sale of

the whole farm (although possible) there will be a need to raise capital either by sale of land or through borrowing and a valuation is likely to be necessary for this purpose. Many farms are subject to farming tenancies, the terms of which will need to be looked at closely and value ascertained as the tenancy impact on which assets can be sold or transferred. Farming businesses are often subject Family Trusts and are structured in the form of partnerships, limited companies or a combination of both. Farms are often inherited – with one party wanting to ring fence the inherited assets as non-matrimonial assets which adds another often emotive dimension.

These unique elements of a farming business requires the working together, at an early stage of any separation, of a team specialist lawyers, accountants, surveyors/agents, and lending institutions to achieve an outcome on divorce which is fair, meets both parties needs but limits the impact on the business and family and ultimately reduces costs.

As well as considering how you may approach any separation it is also important to consider steps which can be taken prior to and during marriage to protect your and your family's assets – whether you are the one getting married or an anxious parent seeing your children marry. Whilst not perceived as romantic, a sensible option would be to consider a pre-nuptial or post nuptial agreement. Current case law indicates nuptial agreements will be followed upon separation providing they are fair. A recent Law Commission Report has set out proposed requirements for an "enforceable qualifying nuptial agreement" which if made law will allow couples to agree how assets should be divided provided needs are met, which would not be subject to scrutiny by the Court in a subsequent divorce.

*Alison Benson*

## Maximizing Agricultural Property Relief on let farmland

Farmland let under tenancies made before 1 September 1995 qualifies for Agricultural Property Relief (APR) from Inheritance Tax at 50% whereas land let after 1 September 1995 generally has the benefit of 100% APR, thereby eliminating a potentially costly tax charge.

This makes Farm Business Tenancies (FBTs) under the 1995 Act far more attractive to landlords seeking to maximise IHT savings. However extinguishing Agricultural Holdings Act (AHA) tenancies in favour of FBTs does not generally appeal to tenants, due to the favourable treatment enjoyed under the AHA regime.

What is perhaps less well known is that succession tenancies, under the AHA, granted post 1 September 1995 qualify for 100% APR in the same way as FBTs, and

this treatment also applies to the surrender and re-grant of a tenancy either by adding land to the existing holding or by virtue of specific steps taken under Section 4(1)(g) of the AHA. In this way, the parties continue to enjoy their full rights whilst providing 100% APR for the landlord.

Although these provisions have been in place for some time, landlords with holdings covered by AHA tenancies have been slow to recognize the significant tax savings that can be achieved as a result of a careful review of long-standing arrangements.



As with all significant tax reliefs, economic pressures may mean that favorable treatment may not be around forever, so now might be a good time to explore the options available to maximize reliefs, and members of our Private Capital team will be more than happy to discuss available options with you.

*John Lane*

# Agri-environment schemes 2014-2020

The new Rural Development Programme (RDP) will commence on 1 January 2015 and run until 31 December 2020. The first agri-environment agreements under the new scheme will commence on 1 January 2016, with transitional arrangements applying in 2014. It will not be possible to set up a scheme in 2015.

## The objectives of the RDP are:

- Fostering the competitiveness of agriculture.
- Ensuring the sustainable management of natural recovery, and climate action.
- Achieving the balanced development of rural economies and communities including the creation and maintenance of employment.

## The priorities of the RDP are:

- Fostering knowledge transfer and innovation in agriculture, forestry and rural areas.
- Enhancing farm viability and competitiveness of all types of agriculture and promoting innovative farm technologies and the sustainable management of forests.
- Promoting food chain organisation, including processing and marketing of agricultural products, animal welfare and risk management in agriculture.
- Restoring, preserving and enhancing ecosystems related to agriculture and forestry.

- Promoting resource efficiency and supporting the shift towards a low carbon and climate resilient economy in agriculture, good and forestry sectors.
- Promoting social inclusion, poverty reduction and economic development in rural areas.

There is a requirement to ensure that farmers are not double funded – in other words that payment in return for obligations relating to the RPA scheme is not mirrored by payments under the RDP. In particular this may include greening practices. The greening requirements have not yet been fixed for England but Natural England will not be able to fund works where RPA obligations require that work to be carried out.

The new RDP is likely to be known as NELMS (new environmental land management scheme). It is anticipated that DEFRA will publish guidance on NELMS by the end of 2014 but the first agreements will only commence on 1 January 2016.

NELMS will have an upper tier which may be similar to HLS. It will be called a Priority Site Agreement and will be site-specific and

will relate to places of higher environmental value such as areas which require habitat creation and/or restriction. These will usually last for five years with a possibility of exceptions lasting much longer but with a five year break provision.

The 'usual' NELMS agreement will be a Priority Area Agreement. Groups of applicants may be able to co-operate across several holdings to secure the best outcome for a landscape. All such agreements will last for five years, with the possibility of an extension for two further years.

A third tier to NELMS will include limited funding for small scale capital grants, but no details exist at present.

## NELMS is going to be different to the predecessor Environmental Stewardship Scheme. Some of the differences are:

- One agreement per holding.
- No upland or organic or woodland schemes, but a menu of options to select from.
- All agreements to commence on 1 January in any year and a single application deadline.
- Priority Area agreements to be for five years.
- One new IT system drawing together data from various databases.
- No points entry threshold.

Whilst much more work is needed to complete the detail of this new scheme, farmers can now start to planning the knowledge of the general form that the scheme will take.

*Neil Franklin*

## Partnerships agreements – why it's important to get them right continued from cover...

The circumstances in this case could have been avoided had the family taken the time to ensure that the Partnership Agreement accurately reflected their intentions and made clear how "net value" was to be assessed. The message to take from this case is firstly, ensure the Partnership Agreement details the parties' intentions fully and clearly not only for the period of time whilst the partnership is on-going but also upon the termination of the partnership or retirement or death of one of the partners. Secondly, having got a partnership agreement in place, it is equally as important to make sure that it is reviewed on a regular basis.

*Caroline Hardcastle*



# Changes to permitted development rights

On 6 April 2014 new legislation came into force which provided new permitted development rights for the change of use of an agricultural building.



In brief, for most development (and this includes a change of use) a planning application is required. Permitted development rights allow certain types of development to proceed without the need to apply for planning permission.

The new rights mean that the use of an agricultural building of up to 500 square metres can now be changed to a state funded school or registered nursery without the need for planning permission.

Furthermore, the use of an agricultural building of up to 450 square metres can now be changed to up to 3 residential dwelling houses without the need for planning permission. Some building operations reasonably necessary to convert the building can also be carried out without planning permission.

As with most permitted development rights there are a number of restrictions and conditions that must be complied with

in order to qualify for this right, and these require careful thought when progressing a development.

For example, planning permission will be required if the development will result in the external dimensions of the building extending beyond their current location, or if the building works consist of works other than works such as partial demolition or the installation or replacement of windows, doors, roofs, exterior walls or services.

Equally an express planning application will need to be made where the site is occupied under an agricultural tenancy and the consent of both the landlord and tenant has not been obtained. Also, sites with listed buildings and containing a scheduled monument and buildings not used solely for agricultural use will not fall within the permitted development rights regime.

Importantly, there are also conditions attached to the changes of use including an

obligation for the developer to apply to the local planning authority for determination as to whether their prior written approval will be required regarding:

1. Transport and highways impacts of the development;
2. Noise impacts of the development;
3. Contamination risks on the site;
4. Flooding risks on the site;
5. Whether the location or siting of the building makes it impractical or undesirable for the building to change to that particular use.

So, given the requirement to still apply to the local planning authority to determine the above issues, questions will undoubtedly be asked as to whether this does make the conversion of an agricultural building any less complicated or more possible.

*Libby Clarkson*

## Information

If you have any queries on any issues raised in this newsletter, or any agricultural matters in general please contact Neil Franklin on 01482 337250.

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful.

If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

The law stated is as at 1 July 2014.

**Hull Office**  
Wilberforce Court, High Street,  
Hull HU1 1YJ  
Tel +44 (0)1482 323239

**York Office**  
Rowntree Wharf, Navigation Road,  
York YO1 9WE  
Tel +44 (0)1904 625790

[www.rollits.com](http://www.rollits.com)

Authorised and Regulated by the Solicitors Regulation Authority under number 524629

Rollits is a trading name of Rollits LLP. Rollits LLP is a limited liability partnership, registered in England and Wales, registered number OC 348965, registered office Wilberforce Court, High Street, Hull HU1 1YJ.

A list of members' names is available for inspection at our offices. We use the term 'partner' to denote members of Rollits LLP.