

agriculture

Introduction

Our Agriculture factsheet provides information covering a broad spectrum of legal issues relating to the use and ownership of agricultural land with links to other related factsheets which may be of interest.

Agricultural Holdings

A tenancy granted before 1 September 1995 is likely to fall under the Agricultural Holdings Act 1986. The land use must be agricultural, used for a trade or business, there must be a contract of tenancy and not tied to employment.

Auctions

Buying a property at auction can be fraught with difficulties. A pack should be available before the auction as of course once the hammer falls the contract is binding. With agricultural land care needs to be given as to whether there are any footpaths crossing the land any environmental issues, and whether there are any discharge consents etc. Land may be put into auction because the seller is under a duty to obtain best price such as a mortgagee or an executor, but it might be in auction because there is a problem with the title.

Buying Agricultural Land

The following is a check list of matters to consider when buying agricultural land and instructing solicitors:

Funding

- Is funding in place or an offer made in principle? Are funds available at short notice to pay a 10% deposit? Have you considered Stamp Duty Land Tax payable?

Farming

- Who is going to live at the property?
- Who is going to farm?
- What kind of farming is to be carried out?
- Are you expecting to acquire milk quotas or entitlements to receive Single Farm Payment?
- Are you expecting to receive the Single Farm Payment in the current year?

Tax

- Are you being separately advised as to the tax consequences and trading structures?
- Are you registered for Vat?

Fixtures and Non Fixtures

- What fixtures do you expect to acquire?
- Is there any machinery, ornaments, livestock etc that you expect to acquire?

Environmental Matters

- Are you aware of any environmental matters issues, woodland schemes etc?

Employees

- Are you expecting to take over existing employees?

Future Development

- Are you expecting to pay any additional sums to the seller should you obtain any new planning permission for all or part of the property?

Inspection

- Have you inspected the site, checked for footpaths, and other evidence of use by third parties?
- What way does the land run – is surface water likely to run on adjoining land or into ditches?

Chancel Repair Liability

While there is no definitive register stating whether a property is liable to make a payment, a search can reveal whether it is located in a parish which could charge for repairs. Insurance can then be obtained to cover any potential liability.

From October 2013 Chancel Repair Liability will only affect buyers of properties if the liability has been registered at the Land Registry. Churches have until that date to register their right to recover any money otherwise the right is lost.

Common Land

Common land or land over which rights of common are exercised is now governed by The Commons Act 2006. For land to be common it would either need to have already been registered as such or post 2006 created by statute or by express grant. Rights of common need to attach to land that has not already been registered such as a town or village green. The register will show details of what is common land and who has the benefit of the rights but not who owns the common land as this will fall to the Land Registry. Under the Act where the ownership of common land is not registered at the Land Registry the Local Authority are given powers to protect such land. New rights of common cannot be created by long use now but it is possible to create new rights over land already registered as common land such as grazing rights where registered common land is under grazed.

Conditional Contracts

A conditional contract is an agreement conditional upon a specific event, the occurrence of which, at the date of the agreement, is uncertain. A common example is a contract conditional upon the buyer getting planning permission.

This simple explanation belies the complexity of the drafting involved in the preparation of such agreements which often relate to very valuable land or buildings. Poorly drawn documents can result in substantial loss.

Development

When disposing of land to a developer consideration needs to be given to a number of matters. Firstly does the seller want to share in any future increases in value following a change of use – overage, what the period is to be for that, what is going to trigger the payment. Whether it is to be upon grant of planning permission or implementation of planning permission. How is the uplift going to be secured so as to bind future owners and what happens if they do not pay following the payment being triggered. Also, what sums need to be discounted before calculating the actual increase in value i.e. infrastructure costs. Secondly thought needs to be given as to the services and where they will run. Thirdly can access be gained to the development in such away so as not to hamper any future plots sales. If agreements have already been entered into, are the parties doing what they should be doing within the required timescales. These are a few key but not exhaustive considerations.

Entitlements / Single Farm Payments

Since 1 January 2005 payments from the EC to farmers are now linked to the occupation of land. Farmers are awarded a single right to a payment per hectare each known as an entitlement in return for managing the land, not for producing agricultural crops. A farmer has to be carrying on an agricultural activity and can be an individual or a company or a partnership. Similarly farmers operating under such farming agreements who carry out the agricultural activities are likely to be those entitled rather than the farmer who provides the land. Entitlements are freely transferable and must be notified to the Rural Payments Agency. Both the seller and buyer have to be a farmer under the definition. Entitlements can be transferred without land subject to certain conditions and VAT is chargeable in that instance. Stamp Duty Land Tax is not payable as an entitlement is not an interest in land.

Farm Business Tenancies

A tenancy created on or after 1 September 1995 is likely to be a farm business tenancy and subject to the Agricultural Tenancies Act 1995. Differing from Agricultural Holdings, provided a farming business is carried on at the outset and notices were served, the agricultural use can be minimal allowing for diversification. If no notices have been served then the use must be wholly or primarily agricultural.

Grazing Agreements

Grazing agreements are short term agreements which tend to be after 1995 limited to two areas:

1. Seasonal grazing or mowing although such agreements will be treated as short term farm business tenancies. Seasonal agreements could be where livestock have to be grazed or on grass grown for a certain period of the year.
2. A right for a third part to take grass without giving a right of occupation known as "Profits of Pasturage". This should if properly granted and observed not amount to the grant of a tenancy to the person who takes the grass.

Prior to 1995, a mowing/grazing agreement did not fall under the Agricultural Holdings Act 1986 provided it lasted for less than 365 days. Arrangements in excess of 365 days would have been converted into tenancies under the 1986 Act.

Inheritance Tax

Agricultural Property Relief (APR) can provide a reduction of 100% in the net value of agricultural land including certain tenancies whilst most other tenanted agricultural land is reduced by 50%. Although undoubtedly the intention of the legislation was to protect the integrity of farming businesses so that the next generation were not forced to sell up on death to pay tax, APR is only available if you satisfy the detailed conditions in the legislation and it is very easy for a genuine farming business to miss out on Inheritance Tax relief because a condition has not been satisfied.

Over recent years HMRC have challenged claims for APR particularly where the farming activity has been scaled down, often as the farmer gets older and whilst there is no requirement that the farming operation is profitable there must still be some farming activity to support the claim. Farm houses create their own problems. There are far fewer farms than in previous generations and much greater use is now made of farming contractors. There must be some farming activity and the farming activity must relate to the farmhouse. Often the sale of land adjoining the farmhouse will be fatal to the claim for successful relief and the farmhouse itself must be of a character appropriate to the farmland. Particular care is required if farmers are thinking of diversifying into other businesses.

Mortgages and Security

Lenders will normally want security for any lending they make whether to individuals or businesses. This can range from guarantees to charges, mortgages and in the case of companies, debentures. The security will often be taken over land, whether freehold or leasehold, but in a commercial context can be over fixtures, fittings, equipment, machinery and intellectual property rights like patents and designs. Usually the security will be heavily weighted in favour of the lender and in some cases may prejudice the flexibility of the borrower to run his business.

Commercial projects will often require financing from more than one lender and this will involve multiple charge forms and other security documents such as deeds of priority or postponement.

Options

An option is the right to require a party to buy a property (a 'Put' option) or the right to require a party to sell a property at a given time in the future (a 'Call' option). An option agreement will involve an option period where the party with the benefit of an option can call on the other party to either sell them the property or to buy the property from them at a price and on a given date. If that right is not exercised within the option period then the option lapses and both sides are back to the position they were in before the option was entered into.

Once granted, an option is usually registered at the Land Registry against the relevant title to put any interested party on notice that there is an option in place. A bank which has a mortgage over a property needs to be put on notice of the option otherwise they can sell free of it if it post dates the charge.

Partnership & Companies

Businesses can incorporate as limited companies or limited liability partnerships (LLP's) or remain unincorporated, as sole traders or traditional partnerships. The principal legal benefit of incorporation is that the business is a separate legal entity, distinct from its owners, and is liable for its own debts. This means that the share holders of a company or members of an LLP are usually only liable up to the amount of their investment in the capital of the business i.e. what they paid for their shares or membership.

By contrast, a sole trader or partners in a business are potentially liable to the extent of the whole of any personal assets including, for example, their homes. Personal liability is not limited to their share in the partnership and each partner can be sued for all the debts of the partnership. This is known as "joint and several" liability.

LLP's are a new business format which is a hybrid between a partnership and a limited company. They are designed to protect the partners from personal liability or have been formed by larger businesses or groups looking to carry out joint ventures or risky trading activities.

Individuals can trade as a sole trader without any formal registration or ongoing reporting obligations. Similarly, no formal documentation is required to trade as a partnership although a properly drawn partnership agreement is strongly recommended.

Companies and LLP's are though saddled with annual reporting requirements to Companies House.

Receivership

A legal charge will usually include a power for the mortgage company to appoint a Receiver under the Law of Property Act 1925. A Receiver is effectively a manager with powers usually expressed in the form of charge itself. He will often have the power to contract, convey, manage any existing business, collect rents etc. He has a statutory duty to account to other lenders who have charges secured on the property and ultimately the borrower if there is money left over following a sale.

A Receiver will need to be formally appointed by the bank and for him to be appointed there effectively needs to have been a default under the mortgage. Very often mortgage lenders prefer to appoint a Receiver rather than take possession themselves as they do not inherit any liability in connection with the land. Whilst a Receiver is appointed by the lender he is in fact the agent of the borrower.

Sales of Sites of Special Scientific Interest (SSSI)

Under the Wildlife & Countryside Act 1981, Natural England is under a duty to notify local planning authorities, the Secretary of State and the owners and occupiers of a site specifying the flora and fauna or other geographical or physical features by which the land is of special interest and what activities should be prohibited so as not to cause damage to it. Once notified it is an offence to carry out any prohibited activity unless prior permission is sought of Natural England or the Countryside Council for Wales.

Selling Agricultural Land

The following is a check list of matters to consider when selling agricultural land and instructing solicitors:

Existing borrowing

- Is the price sufficient to pay off any mortgage? Are funds in place if not?

Occupation

- Who is in actual occupation?
- Are there any tenancy agreements in place?
- Who farms the land?

Farming

- What type of farming is carried out?
- Do you intend to sell milk quotas or entitlements to receive the Single Farm Payment whether to the buyer or a third party?
- How much if any purchase price is to be attributed to quotas or entitlements if being sold to the buyer?
- Do you intend to receive the Single Farm Payment for the current year?

Taxation

- Are you obtaining separate tax advice on the sale?
- Do you need to dispose of the property in the current or next tax year?
- Are you selling a business as a going concern?
- Do you need to charge Vat?

Fixtures and Non Fixtures

- Are there any fixtures you intend to remove?
- Is all machinery and equipment fully owned by you?
- Do you intend to sell items not forming part of the land i.e. stock separately, and if so who will value?

Environmental Matters

- Are you aware of any pollution or contamination or infestation?
- Are there any environmental schemes or grants which affect or benefit the property?
- Is an asbestos survey/Energy Performance Certificate required?

Employees

- Do you have any employees and is it intended that the buyer takes them on?
- Development?
- Do you wish to reserve the right to receive any share in future values following the grant of planning permission and if so for what period?

Share Farming Agreements

An agreement between a landowner and a farmer for the farming of land. It will usually involve at least two persons pooling assets or services for a specific farming purpose and dividing up the gross receipts in agreed proportions.

Site acquisition and development

It is essential when acting for a developer client in the acquisition of a property to consider all the key legal issues; which may affect the ability to subsequently develop it. These include boundary issues, making sure that your client is not proposing to build outside the extent of the land he is purchasing; easement issues; making sure there are legal rights of access to the whole of the development; checking for ransom strips – pieces of land that lie between the development land and the public highway and which may be in separate ownership; checking restrictive covenants to make sure that development is not prohibited and making sure that planning consents and planning agreements are in place. These are few of the many issues which need to be covered as part of "Site Assembly".

We are experienced in acting for developers in the acquisition of land for development and the subsequent preparation for sale of the plots on the site.

Sporting Rights

Sporting rights are rights in favour of a person or persons to carry out sporting e.g. shooting and fishing on another's land. Very often sporting rights are reserved by a seller when selling of part of a larger farm or piece of land. The rights can in turn be leased on but a prospective lessee need to give consideration to practical issues such as the ability to gain access to the land when the person granting the lease of rights does not actually own the land over which the rights relate.

Stamp Duty Land Tax

Stamp Duty Land Tax ("SDLT") is the self assessment tax which replaced the old stamp duty for property purchases from December 2003. Historically, documents were "stamped" with the level of duty paid whereas now a Return must be sent to the Revenue with the appropriate tax payment. SDLT is calculated as a percentage of the purchase price ranging from 1% for purchases above £175,000.00 (£150,000.00 for commercial premises), 3% above £250,000.00, 4% above £500,000.00 and 5% above £1,000,000 from April 2011 (residential properties only). A purchase for £250,000.00 means tax of £2,500.00 whereas one penny over £250,000.00 means tax of £7,500.00. With commercial properties where VAT is paid on the price, SDLT is payable on the VAT inclusive figure – tax on tax. With leaseholds, the calculations become even more complex.

Woodlands

Grants are available under certain woodland schemes to maintain existing woodland and create new woodland. Undertakings are imposed upon applicants which cannot be complied with if occupation is given up i.e. on sale. Incoming occupiers will need to agree to take over those undertakings and thereafter formally apply to take them over. Where after the incoming occupier will be entitled to receive outstanding grants.

How can Powells with Chawner Grey help?

We can advise buyers and sellers and landlords and tenants on all issues arising from their ownership or occupancy of agricultural property. For any advice on agricultural matters please contact:

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