Agricultural Law News
Update
SPRING 2020
Lanyon Bowdler SOLICITORS
Your quarterly bulletin on legal news and views from Lanyon Bowdler

RESIDENTIAL TENANCIES FOR AGRICULTURAL EMPLOYEES

By Andrew Evans, Senior Partner, Commercial & Agricultural Property.

Most residential tenancies granted these days automatically become assured shorthold tenancies. Such tenancies give greater powers to a landlord to recover possession at the end of the term of the tenancy.

Employers should, however, beware of just letting out a property to one of their agricultural workers without proper advice. Simply granting a tenancy to a landlord's agricultural worker potentially creates an assured agricultural occupancy. Assured agricultural occupancies carry with them greater protection for tenants against termination of the tenancy and rights for family members to succeed to the tenancy on the death of the tenant.

Such occupancies can cause problems for landlords, not only in recovering possession, but also there are wider implications, for instance selling property with vacant possession or using property as security for business loans.

An agricultural worker is someone working in agriculture under a contract of employment who has been so employed for 91 weeks out of the previous 104 weeks. This does not include contractors or self-employed workers, but does include workers who may not be carrying out agricultural work as such, but are engaged in the wider workings of a farm business such as a mechanic repairing farm machinery.

Landlords should also be careful not to fall into the trap of creating a tenancy to a worker who has worked less than 91 weeks out of the previous 104 weeks because if the worker achieves the 91 weeks of employment within the term of the tenancy this will satisfy the agricultural worker condition and transform the tenancy into an assured agricultural occupancy. Landlords can avoid unwittingly creating an assured agricultural occupancy by the simple act of serving a notice on the tenant prior to signing the tenancy agreement. The notice is in prescribed form and provided the procedure is followed correctly, the danger of creating an assured agricultural occupancy will be avoided.

One final word of warning is that once an assured agricultural occupancy has been created, it cannot subsequently be replaced by an assured shorthold tenancy. It is important therefore to get it right at the outset and serve the prescribed notice even where the employee has not yet satisfied the required length of employment to satisfy the agricultural worker condition.

NFU LEGAL DISCOUNT

LB Farm Wise

We're offering NFU members a free legal health check to help you plan for your farm's future.

Our legal health check will identify aspects you need to ensure are in place, and correctly documented, to protect your farm business for the future. This will help to safeguard the interests and wishes of the people involved in the farm and the running of the farm business.

How it works

We will conduct an initial free review of your property, business and family interests in order to assess your position*.

We will also make recommendations to you, the NFU member, for further work and provide cost details. The 12.5% NFU member discount will apply to legal work recommended under this scheme.

The advice we give will be bespoke and tailored to your needs and, where possible, different pricing options will be offered.

Examples of the issues the health check can cover

Property issues:
- Ownership audit
- First registration of land
- Tenancy issues
- Sporting rights
- Development opportunities

Business issues:
- Business structure and partnership agreement
- Contract reviews
- Employment issues

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> *Always satisfied with service.*
> DN, Oswestry

TRAILER TOWING: LEGAL RULES AND REQUIREMENTS

We are urging drivers to ensure they are familiar with the laws about towing a trailer following a court case concerning the death of an elderly woman.

Unfortunately, such accidents are not uncommon and it appears that much needs to be done to raise awareness about towing legally and safely. It can seem very complicated but it is extremely important that drivers know what they can and cannot do.

Government guidelines state that if a driver passed their car driving test on or after January 1997, they can tow a trailer up to a certain weight – but if they want to tow a heavier weight, they must pass a towing test to obtain a BE towing licence.

There will be some drivers on the road who can legally tow without a licence, but it should be emphasised that every driver towing, with or without a licence, should adhere to the legal rules and requirements of towing.

These include towing weights and width limits – the maximum weight a vehicle can tow can be found in the vehicle's handbook.

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- GDPR
- Disputes

Family issues:
- Succession plan
- Wills
- Trusts
- Lifetime gifts
- Pre-nuptial and post-nuptial agreements

Information for LAS subscribers

LAS subscribers can apply for a contribution of up to £250 towards the legal costs of two pieces of legal work recommended as a result of the health check, which equates to £500 (this special offer has been extended until 31 October 2020).

The NFU Contract Checking Service also applies, providing contributions of up to £250 per contract review for up to four reviews, which equates to £1,000 (this special offer has been extended until 31 October 2020).

If you're an LAS subscriber and wish to apply for a contribution towards the Legal Health Check or the NFU Contract Checking Service, please contact NFU CallFirst on 0370 845 8458 who will handle your enquiry in the first instance.

**This offer is subject to our firm's terms of business.*

The maximum trailer width for any towing vehicle is 2.55 metres and the maximum length for a trailer towed by a vehicle weighing up to 3,500kg is seven metres.

Towbars should meet EU Regulations and be 'type approved'. Drivers should fit suitable towing mirrors and must display the same number plate on the trailer and the towing vehicle.

The trailer must have a working brake system if it weighs over 750kg when loaded. The brakes must be in good working order and the trailer must also have a secondary coupling or breakaway cable whilst towing in case the trailer becomes detached. The breakaway cable should not drag on the floor whilst towing.

Drivers must ensure that the trailer is correctly coupled with the towball at a correct height, and ensure laws regarding wheels, tyres, lights and indicators conform to legal requirements.

Trailers should not be overloaded, weight should be distributed evenly and the load secured properly. Drivers should keep within towing speed limits, always take account of weather conditions and drive safely and correctly.

These rules are especially important when carrying livestock. The movement of livestock in transit can't be predicted so it is extremely important to ensure the weight is distributed as evenly as possible by using internal safety gates.

Many people don't think about how they tow or secure their load and just because a person has been towing for a long time, it doesn't mean they are towing safely or legally. It's important to stop and think about how you are towing and drivers not required to take the BE towing license test may think of taking it as a refresher.

Thinking about how you tow could avoid potentially disastrous consequences that can tragically be far greater than a fine or a driving ban, but the loss of life.

By Llinos Roberts, Solicitor, Commercial & Agricultural Property.

> *Professional and knowledgeable, able to explain legal issues in an accessible way.*
>
> **PP, Oswestry**

PRE-NUPTIAL AGREEMENTS AND THE FAMILY FARM

If you have an interest in a farm and you are getting married, then you should consider a pre-nuptial or post-nuptial agreement. A pre-nuptial agreement is an agreement in writing which sets out what you intend to happen with your financial matters should your marriage break down.

A pre-nuptial agreement can take into account the complexities involved in owning and running a farm. We understand that a farm is not only a place of work; it is also a home and a family asset that the people involved want to protect for future generations. There may be several family members living on the farm and different businesses operating from it. Therefore, a pre-nuptial agreement can give a couple and potentially, the whole family, clarity as to the situation on separation.

In England and Wales, pre-nuptial agreements are not legally binding and in the event of divorce, the court retains the ultimate decision making power as to whether the agreement should be upheld or given weight. However, in order to make sure any such agreement is given as much weight as possible by the court, the parties must have a full appreciation of the implications of the agreement.

We would advise that both parties obtain independent legal advice and exchange full and frank financial disclosure. We would suggest that the agreement is signed no later than two months before the wedding to mitigate any potential future arguments that a party was pressurised into entering the agreement close to the wedding.

Therefore, if you are in the process of organising your wedding, consider a pre-nuptial agreement as part of your wedding preparation. If your wedding day is coming up soon, you can contact us to discuss a post-nuptial agreement; another type of agreement which sets out what should happen with financial matters on divorce. If you want to discuss this further then get in touch with one of our specialist family law solicitors who offer bespoke advice based on your circumstances.

By Caroline Yorke, Associate Solicitor, Family Law.

SPOTLIGHT ON SARAH WHITTALL

Sarah qualified as a solicitor in December 1989 and joined Lanyon Bowdler in 2017 as an associate leading the Hereford office commercial and agricultural property team. In February 2020, Sarah was promoted to partner.

Sarah acts in a wide range of non-contentious commercial and agricultural transactions, undertaking a substantial amount of property development work.

She is also experienced in acting for local developers as well as land owners in relation to property development involving both green and brown field sites for residential and commercial development which includes:

- Sale agreements
- Leases
- Option agreements
- Promotion agreements
- Site assembly

Sarah also acts for a number of local farmers in connection with acquisitions and land transactions.

EXTENDING TIME LIMITS FOR PERMITTED DEVELOPMENT RIGHTS

The High Court has given conflicting judgments on whether planning authorities can agree extensions to the time limits for determining prior approval applications for permitted development. In July last year, the case of Warren Farm (Wokingham) Limited v Wokingham Borough Council [2019] EWHC 2007 (Admin) decided that they could not but in late January of this year, Gluck v Secretary of State for Housing Communities and Local Government [2020] EWHC 161 decided that they could.

Permitted development are simpler developments which do not require a formal application for planning permission. However, prior to the start of these types of development, legislation sometimes requires the applicant to go through what is known as a 'prior approval' process.

The prior approval process enables local planning authorities to check certain details and impacts, such as noise, odour or highway impacts, of the permitted development before it starts. If these are unsatisfactory from a planning point of view, prior approval is refused, the applicant cannot rely on the permitted development right and they have to submit an application for full planning permission to proceed with the development.

There are prior approval procedures for various categories of permitted development rights, including the much-debated 'Class Q rights', to change agricultural buildings into living units. The Permitted Development Order sets a time limit of eight weeks, or such longer period as agreed between the developer and the council, to determine the application. However, another part of the Order states that if the LPA does not make a decision on the prior approval submission within a certain time period, the applicant is entitled to start the development in accordance with the original submitted details.

Both cases involved High Court challenges regarding the councils' decision to determine prior approval applications after the eight week period set out in the Order.

Although they are supposed to be simple and quick, some prior approval decisions require the officer to consider a long list of things. For example, in order to determine a Class Q prior approval application, the officer has to consider:

- Whether the building is an agricultural building
- The extent of its curtilage
- Whether the works to convert the building into a residential unit amount to a conversion or rebuilding
- When the building was last used solely for agricultural use in an established agricultural unit
- The existence and status of any agricultural tenancy or agricultural use of the land
- Consultation responses and representations
- The potential impacts on highways and environmental impacts listed in the Order

The purpose of permitted development rights, even those which require prior approval, is for developers to be able to start certain types of development without going through the full planning application process. At some point, lengthy or repeated extensions to the prior approval process begin to undermine this aim. However, a considerable amount of time is sometimes required to consider the above list of matters properly given that planning officers want to make the right decisions to avoid granting approval for the wrong development or spending their time and resources on needless appeals.

On 31 July 2019, the High Court in the Wokingham case decided that there is no power to extend the time period for determining prior approvals, despite the part of the legislation which said authorities could do just that. However on Friday 31 January 2020, Mr Justice Holgate disapproved of this judgment in the Gluck case and decided it was clear that the legislation allowed local planning authorities and applicants to agree to extend the time limit for determining prior approval applications.

As both judgments are from the High Court, neither takes precedence over the other. Therefore a Court of Appeal judgment or change to legislation is needed to settle this matter conclusively.

By Tracy Lovejoy, Associate Lawyer.

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