

agriculture news



Issue 2

Introduction to **Caroline Hawcroft**

Lupton Fawcett extends a very warm welcome to Senior Associate, Caroline Hawcroft, who has recently joined our Agriculture and Landed Estates team.

Caroline specialises in agricultural and rural property work including complex and high value sales and purchases, mortgaging agricultural land and buildings, advising upon and preparing agricultural tenancy agreements including the surrender of AHA tenancies, sporting rights, profits and dealing with easements, for example, cable easements for windfarms and easements for pipelines running across agricultural land.

Here, Caroline explains why this is an extremely challenging time for the farming industry.

“With Brexit growing ever closer and the recent publication of the new Agricultural Bill, we are likely to see the biggest shake up in the industry that has been seen for decades”.

Due to such changes, especially in the way farmers and land managers are to receive future payments diversification is likely to play an even greater role in creating a strong, robust and successful farming business. A diverse farming business with more than one income stream

has a greater chance of succeeding in the forthcoming changing landscape. Business diversification is a key strategic step to future proof farming businesses. However, it is essential that landowners are properly advised before embarking on such a project in order to avoid the legal consequences of the various pitfalls.

So what are the legal issues which need to be considered before proceeding with a diversification scheme?

Title

Are there any restrictions or third party rights which could prevent the diversification scheme? Is the land secured by a charge? If so, is bank's consent required? If the property is leasehold do the terms of the lease allow for diversification? Is landlord's consent required? Is the land tenanted, if so do the terms of the tenancy/licence allow for termination if required?

Planning

Careful consideration must be given as to whether the diversification project requires planning consent, for example, for a change of use and/or building works. Would the proposed development be permitted under Permitted Development Rights?

Services

Development of land or buildings may

require connection to utilities such as water, drainage, electricity, etc. Are there express rights in the title? If connection to the services cannot be obtained direct from the land easements may need to be negotiated with neighbouring land owners.

Finance

Is finance required to fund the diversification project? If so, it is essential to have discussions with a lender at an early stage to ensure funding is available and what security (if any) the lender requires.

Tax

Obtaining tax advice before committing to a diversification scheme is essential as diversification can have tax consequences, in particular inheritance tax implications for the landowner. As such, it is extremely important that tax advice is taken at the outset of the project.



Contact:

If you have any thoughts as to diversification and wish to have an informal chat, please contact **Caroline** on **01904 561414** or **caroline.hawcroft@luptonfawcett.law**

Are you causing a nuisance and when will you be liable?



Contact:

For further help or advice in relation to this article please contact our Head of Agriculture and Landed Estates **Daniel Edwards** on **01904 561 424** or daniel.edwards@luptonfawcett.law

Nuisances can either arise under ‘common law’ or under statute. Common law nuisances are either public nuisances or private.

Private nuisances are usually caused by someone doing something on their own land which they are lawfully entitled to do, but which becomes a nuisance when the activity extends to and affects neighbouring land. Public nuisances are caused where your activities endanger the life, health, property, morals or comfort of the public or obstructs the public in the exercise or enjoyment of rights common to all, such as obstructing the highway.

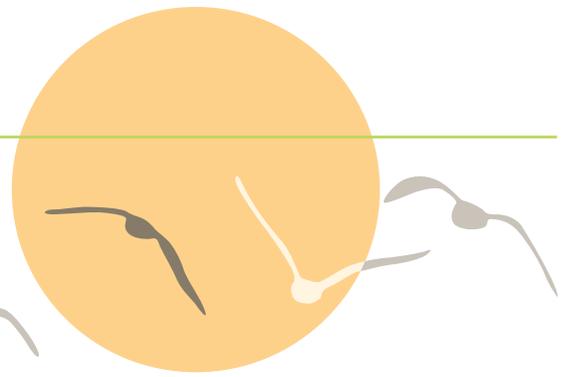
Claims can be brought against landowners by neighbouring occupiers where private nuisances are believed to have taken place. The most common complaints are in relation to noise and disturbance and water and flooding nuisance.

Activities which can typically cause annoyance include events attracting large numbers of visitors and traffic, noisy events such as festivals and construction works creating noise, dust and traffic. An aggrieved neighbour can bring a claim against you to stop the activity, by an injunction, and for damages. If you are planning to carry out a new activity on your land it is sensible to seek advice from a relevant professional advisor and to think about the impact of the activity on neighbouring landowners in advance and to consult with them.

A landowner owes a “measured duty” to take reasonable steps to prevent natural occurrences, such as floods on its land, from causing damage to neighbouring properties. Reasonable steps will include taking advice before carrying out flood risk activities e.g. building structures designed to contain or divert flood waters or dredging a river (you should also check if an Environmental permit is required for these activities) and keeping the stream beds and structures, such as culverts or trash screens, clear of obstructions. Failure to do so may lead to a claim if water escapes onto a neighbour’s land and again the claim can be for an injunction and damages.

Nuisance claims can also arise in relation to overhanging tree branches; if trees overhang a highway then you may be liable to car owners and pedestrians. As a general rule an occupier of land on which a tree stands will not be liable for any damage unless he knew, or could with reasonable care have become aware, that the tree amounted to a nuisance. If in doubt take advice.

Finally, what if you are the landlord of a tenant that is causing a nuisance? Happily the law says that it is the occupying tenant who is liable and not the landlord. However if as landlord you expressly or impliedly authorised the tenant’s behaviour that is causing the nuisance, the position may be different.



Introduction to Health & Safety Law in Agriculture



Meghan Waldron, expert health and safety lawyer at Lupton Fawcett answers your questions.

Statistically, agriculture is a high risk industry with a greater number of fatal accidents per annum than any other industry sector.

What are the main risks in agriculture?

Some of the main areas of risk identified by HSE are as follows:-

- Farm vehicles
- Working at height
- Livestock
- Machinery
- Electricity
- Building work

The law requires agricultural business owners and workers to ensure, in so far as is reasonably practicable, the health and safety of employees and of anyone affected by the business, such as visitors to your premises.

How can the risks be managed?

As an employer you should ensure that you are familiar with the *Health & Safety at Work Act 1974* and the *Management of Health & Safety at Work Regulations 1999*.

The black letter law can be a difficult read, and in many ways the practical application of the law is what is important. Fortunately there is a more easily read guidance available here

www.hse.gov.uk/pubns/books/hsg65.htm

It will not be possible to completely eliminate all risks but you should take all steps that are reasonably practicable to ensure that staff work in a safe environment.

Risk assessments should be carried out which involve identifying 'hazards' in the workplace, calculating the risk that someone could be hurt by that hazard, identifying precautions that can be taken and implementing these precautions to ensure that the risks are prevented.

What should I do if someone is injured?

Obviously you need to deal with first aid, calling the emergency services etc.

You should also seek immediate legal advice from an expert regulatory solicitor as an investigation or prosecution can have serious consequences. You, or members of your staff, may be interviewed and an on-site investigation may be carried out by the HSE.

It is vital that you seek immediate representation, as how you approach the aftermath of an incident may determine how the matter is ultimately dealt with. You should contact your insurer immediately.

Employers should also be aware of their duties under the *Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013*. In certain circumstances employers and self-employed people who are in control of work premises are obligated to report certain serious work place accidents.

What should I do if I am investigated for an alleged H & S breach?

An investigation and subsequent prosecution can have serious consequences for businesses and individuals. There are a number of different offences and sentences can include unlimited fines and prison sentences.

If you or your business faces investigation or prosecution then you should seek immediate expert representation. In some cases your insurance company may be able to cover the costs of representation, which is why you should contact your insurer immediately.

The Regulatory & Corporate Defence team at Lupton Fawcett are experts at dealing with Health & Safety investigations and prosecutions. Our team can support and advise you throughout any investigation and subsequent court proceedings.



Contact:

Meghan Waldron or Jeremy Scott
on 07971 520407 or 0113 2802125



Relying on a Gentleman's Agreement

In my line of work, as an agricultural property solicitor, it never ceases to surprise me how many people rely on oral arrangements or gentleman's agreements when dealing with property.

This applies not only to property owners and landed estates but also to tenants, friends, neighbours and farming families. Given that property is often a business or private individual's main asset and income source, not properly documenting such an arrangement often results in unforeseen and potentially expensive consequences. Of course, such arrangements usually continue without issue until a major event occurs such as a death, the sale of property or a dispute when what has been agreed is of paramount importance.

A recent example when preparing the sale of some agricultural land following the death of the owner, was the claim of a potential tenancy over the land. The issue here being whether or not the land could be sold with vacant possession or if it was subject to a tenancy and if so, what type of tenancy. There is a huge difference in the security of tenure afforded to agricultural tenants depending upon whether the occupation is under the Agricultural Holdings Act 1986 (potentially the lifetime of three people), the Agricultural Tenancies Act 1995 (being a farm business tenancy) or a short-term licence. Such occupation impacts on both the value and desirability of the land. In this example, as the occupation had not been documented, it was one person's word against another resulting in a sizeable payment to ensure the land could be sold with vacant possession. This is not an uncommon scenario and could have been avoided if the terms of the occupation had been documented.

Another scenario frequently encountered, is where the initial term of an occupation has been properly documented but when this comes to an end, it has not been renewed and the tenant allowed to remain in occupation. The most common occurrence of this for agricultural land is where a Farm Business Tenancy ('FBT') for a term of 2 years or less has

been entered into. This is the most flexible type of FBT as the term ends automatically without notice needing to be served (unless the tenant is allowed to hold over). If a tenant is allowed to hold over and remain in occupation after the term has expired, it will convert to a yearly periodic tenancy. In order to terminate a yearly periodic tenancy, at least 12 months written notice is needed to take effect at the end of a year of the tenancy (and if the date is missed can mean a notice period of just under 2 years). This is of particular importance where the land might be used for another purpose e.g. development and vacant possession is needed quickly.

It is therefore extremely important to ensure that all arrangements relating to property are properly documented and appropriate advice on both the legal and tax consequences are taken.



Contact:

Jessica Richardson is an Associate at Lupton Fawcett for agricultural and can be contacted at **jessica.richardson@luptonfawcett.law** or on **01904 561 420**.

https://twitter.com/LF_Law <http://www.linkedin.com/company/lupton-fawcett>

www.luptonfawcett.law

Lupton Fawcett LLP

Yorkshire House East Parade Leeds LS1 5BD
DX 730000 Leeds 70 T +44(0)113 280 2000 F +44(0)113 245 6782

Belgrave House 47 Bank Street Sheffield S1 2DR
DX 312601 Sheffield 47 T +44(0)114 276 6607 F +44(0)114 276 6608

Stamford House Piccadilly York YO1 9PP
DX 65206 York-6 T +44(0)1904 611 411 F +44(0)1904 646 972

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