You want to convert your barns to residential use? Not so fast…

Profile

Honeydale Farm
Shipton under Wychwood

“The UK is one of the best countries in the world for mixed, sustainable farming.”

Ian Wilkinson
Managing Director Cotswold Seeds
The starting gun has finally been fired in the Brexit negotiations - a relief after an extended period of suspended animation - and an unexpected election has been thrown into the mix just for good measure. Hopefully the shape of things to come will become apparent over the next few months and no industry will be watching as keenly as the agricultural one. The one thing that the farming community is always ready for is uncertainty. Even in tranquil times, volatility is part and parcel of the farmer’s daily existence from fluctuating prices and unpredictable weather, to changing regulations and customer capriciousness.

Despite the political uncertainty, there is some good news around. Savills’ recent report on the value of agricultural land shows that although prices remained relatively static in 2016, strong sale prices in the last four months of the year indicated there is still plenty of confidence around. Few farmers sold land last year but the number of new lifestyle entrants to the market rose and there was an increase in borrowing to fund land purchase, no doubt as a result of historically low interest rates which are being held in spite of creeping inflation.

As usual we have covered a number of different issues in this edition including the new Telecoms Code which gives operators the upper hand in agreements with landowners; the funding options open to farmers before we exit the EU; and the reasons why permitted development for converting agricultural buildings looks anything but. We also feature Cotswold Seeds, a business which puts its money where its mouth is by following its own advice on herbal leys and mob-grazing.

Finally, it is with much sadness that we report the death of Robin Ogg, our former senior partner (page 16). Many of you will have known him well and his loss will be keenly felt among clients and colleagues alike. Our deepest condolences to Liz and his family.

Dates for your diary 2017

JUNE
ROYAL BATH & WEST SHOW
31 May – 3 June
Bath & West Showground, Shepton Mallet
www.bathandwest.com
KENILWORTH SHOW / 10 June
Stoneleigh Park. Come and visit us on our stand overlooking the main ring
www.kenilworthshow.co.uk

THREE COUNTIES SHOW / 16 - 18 June
Three Counties Showground, Malvern
www.threecounties.co.uk

JULY
GAME FAIR / 28 – 30 July
Hatfield House, Hertfordshire
www.gamefair.org

AUGUST
BLAKESLEY SHOW / 5 Aug
Blakesley Heath Farm Maidford Northants
www.blakesleyshow.co.uk

THE FILLONGLEY SHOW / 13 Aug
The Showground, Corley, Warwickshire
www.fillongleyshow.org.uk

SEPTEMBER
MORETON-IN-MARSH SHOW / 2 Sep
Moreton-in-Marsh, Gloucestershire
www.moretonshow.co.uk

MIDLAND GAME FAIR / 16 Sep
Weston Park, Shropshire
www.midlandgamefair.co.uk

DECEMBER
CHRISTMAS AGRICULTURE TALK
6 Dec
Our annual agriculture talk will take place in the Oak Tree Rooms, Stoneleigh Park
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In February this year intruders broke into a football ground in Greenford, owned by the London Playing Fields Foundation, and dumped tonnes of waste on the pitch over a ten-day period, during which time they claimed squatters’ rights and caused over £100,000 of damage. Although the police were called out a number of times they were unable to take enforcement action and the charity had to pursue court action in order to secure their eviction. They were then faced with the unpleasant and expensive task of legally removing the waste.

The assumption is that the charity was the victim of an organised, criminal gang. Although the scale of the outrage was significantly larger than most incidents of fly tipping, its experience serves as a timely reminder to landowners about the resultant disruption and cost. The number of incidents across the country is on the rise again and, although most involve household waste (the sort of quantity which fits into a small van or the boot of a car), more serious cases involving lorry loads of commercial, industrial or construction waste pose a major logistical and financial problem for landowners whose responsibility it becomes.

IF YOU DISCOVER FLY TIPPING – REPORT IT

Landowners are not obliged to report fly tipping on their land to the authorities (although both local authorities and the Environment Agency (EA) can access the land without permission to deal with the rubbish if it poses a pollution threat) and so the full extent of fly tipping is unknown.

Local authorities and the EA are keen to record as much information as possible about fly tipping, and its associated costs, on the ‘Flycapture’ database, originally set up by the EA in 2004. By reporting fly tipping, farmers can help local authorities monitor the scale of the activity which, in turn, will lend added weight to the NFU’s campaign to change the law to require local authorities, landowners and the police to work collaboratively on ‘prevention, clean-up and prosecution’.
PREVENTION IS EASIER THAN CURE
Clearly the logistical difficulty of securing a farm boundary cannot be underestimated and it is almost impossible to deter the organised criminal fly tipper. However, there are some things you can do to deter the majority of casual fly tippers:

> Secure gateways and boundaries using immoveable objects such as large logs, rocks, earth mounds, gates, fences and other barriers - but do not impede rights of way.
> Erect ‘No Tipping’ signs with threats of prosecution.
> Remove fly tipped waste quickly before it attracts others to follow suit.
> Liaise with neighbours to identify and block any weak, accessible spots on your boundaries.
> Use CCTV if feasible

Catching fly tippers is the first problem as clearly they know their activity is illegal. However, if caught, they can be fined up to £50,000 in the Magistrate’s Court, face unlimited fines in Crown Courts or imprisonment for up to five years. If you encounter someone fly tipping, exercise caution but if you can photograph the incident and make a note of the vehicle registration without compromising your safety, then do so.

RAISE AWARENESS OF FLY TIPPING
The National Fly Tipping Prevention Group encourages information and intelligence sharing and there are a number of regional initiatives to try and tackle this scourge but most people are currently left to deal with the problem themselves. Reporting fly tipping is the first step to raising awareness of how a big a concern it has become and will encourage a better, coordinated approach.

Do not do what a farmer in Suffolk did last year: he moved tonnes of waste he found dumped on his land onto a neighbouring highway. He was fined £1,000 with £1,600 costs and then had to pay £4,000 to have it removed.

ERECT ‘NO TIPPING’ SIGNS WITH THREATS OF PROSECUTION
RURAL FUNDING
BEYOND 2019
Recipients of EU funding agreements should have breathed a sigh of relief when a Treasury statement confirmed that all such agreements would continue to be fulfilled after the UK leaves the EU, having previously said that only those agreements signed before the 2016 Autumn Statement would be honoured. Of course what happens when those agreements finally expire can only be a matter of conjecture while the government works on the terms of our exit. In the meantime, there is still time for farming businesses to apply for various grants for both diversification and agri-environment schemes.

**RURAL DEVELOPMENT PROGRAMME**

The RDPE programme is funded by the EU and the RPA holds the purse strings. There are three distribution routes for funding: the Growth Programme, delivered via the Local Enterprise Partnerships (LEPs), the LEADER programme via Local Action Groups (LAGs), and Countryside Productivity.

**GROWTH PROGRAMME:** The LEPs decide on the priorities for their particular areas and, working with the RPA, assess grant applications (which must be for a minimum of £35,000 and no more than 40% of the total cost of the project) specifically for rural business development, food processing, and rural tourism infrastructure. Farm diversification projects could fall into any one of these categories but the application criteria and process are the same for each. Coventry & Warwickshire LEP offers grants for business development (including enabling farming businesses to diversify into non-agricultural activities) and rural tourism infrastructure (including enhancing food and drink-related tourism), but not food processing.

The application process is a two stage one and the deadline for completing stage one is **31 January 2018**. If the application is successful any grant agreed will be honoured regardless of whether we have left the EU.

**LEADER FUNDING:** The LEADER programme has £138m of funds to distribute between 2015 and 2019 via Local Action Groups (LAGs) which are partnerships between local communities and the private and public sectors. Any application for a LEADER grant must support one of six priorities which include supporting micro and small businesses and farm diversification; boosting rural tourism; increasing farm and forestry productivity; providing rural services, and cultural and heritage activities. Again, in the event of a successful application, grant payments will be honoured.

**COUNTRYSIDE PRODUCTIVITY:**

The grant scheme is temporarily closed while the RPA assesses the last round of applications. However, when it reopens, applications can be made for small capital grants (up to £35,000) to increase farm productivity (examples include animal husbandry, crop robotics, and improved water management); and large capital grants (from £35,000 to £1m) for buying equipment or machinery.

**AGRI-ENVIRONMENTAL SCHEMES**

**COUNTRYSIDE STEWARDSHIP:**

The largest tranche of EU funding to support rural business goes to agri-environmental schemes and is distributed via the Countryside Stewardship Higher-Tier, Mid-Tier (both of which last five years) and Capital Grant schemes (which last two years). The window for applying for 2018 Higher-Tier options closed in May but applications for Mid-Tier options remain open until **30 September providing the pack is requested by 31 July**. Successful applications depend on meeting local priorities, supporting pollinators, and improving water quality. Given the government’s commitment to maintaining EU funding until the end of the agreement, farmers whose applications are successful and whose agreements start on 1 January 2018 will have their funding continued.

**A VIABLE ENVIRONMENTAL MANAGEMENT SCHEME FOR THE FUTURE?**

Two EU-funded, ‘pay by results’ environmental pilot projects currently underway in England might provide a more viable long term solution to land management. This is not a new idea: a number of other PBR environmental schemes have been successfully trialled elsewhere in the EU, including Ireland (where management of the Burren is probably the best known example). The real advantage for the farmers involved is the non-prescriptive approach to managing their land in order to deliver specific environmental results. It is these results against which they will be assessed and the payments calculated. It is uncertain what level of public funding farmers will receive for managing the environment after Britain leaves the EU but the relative simplicity of managing these PBR schemes, and their popularity at government level, makes them an attractive future option.

**BRIDGING THE GAP**

The government’s softened stance in supporting EU funding agreements beyond 29 March 2019 gives farming businesses some breathing space which might be helpful if we have a bumpy transition out of the EU. Nonetheless, the opacity of the application process (starting with knowing which body to approach for funding) is the first hurdle to overcome. The government website, GOV.UK, is a useful starting point and most professional advisers and other information sources (such as the Warwickshire Rural Hub) can also help.

Now that Article 50 has been triggered and we know we are definitely leaving the EU, we have the opportunity to shape our rural and agricultural policies to suit the distinctive nature of UK farming. However while the detail of our future is being fine-tuned, extending these funding agreements beyond 2019 might help to bridge the gap.
Securing the long term future of British farming

“The UK is one of the best countries in the world for mixed, sustainable farming”, so declared Ian Wilkinson, MD of Cotswold Seeds, who in 2013 had the opportunity to put his money where his mouth is by buying Honeydale Farm at auction. The 107 acre farm had 60 acres of conventionally-farmed spring barley with the remainder put down to permanent pasture. For the first year, Ian continued to farm in the same way as the previous owners with the help of contractors. The proof that a different approach was needed was provided by the results of the first year’s harvest which, although of exceptional quality and quantity, turned in a small loss. In 2014, the first stage of an eight-year rotation plan was implemented, signalling the start of a campaign to promote sustainable farming in the Evenlode valley.

Helping farmers to find the right solution

Cotswold Seeds has been mixing and selling grass seeds directly to farmers for 43 years. Over that time, the business has built up an invaluable knowledge bank on low-input farming gained not only from its 15,000 customers in the UK but also from experts and practitioners both here and on the continent. Indeed it
was a meeting with Breton farmer, André Pochon, who had persuaded 2,000 Breton farmers to stop using nitrogen, which convinced Robin Hill, the original founder of Cotswold Seeds, that legume-rich leys were the future. There was nothing generic about the company’s approach: the experience of dealing with thousands of farmers face to face has meant that it can advise on the best plants to sow, helping customers arrive at the right solution for their particular farm. As Ian noted, “we essentially work with farmers to think about their options by considering a range of factors affecting their farm: the micro and macro climate, soil types, farm size, funding models, and their own attitudes to low-input farming. We can advise on the seeds and how forage plant species fit into individual farming systems”.

Honeydale Farm provides the perfect platform to show both farmers and consumers how the change to low-input farming can be achieved.

Honeydale shows the way in sustainable farming

Cotswold Seeds took the view that the post-WW2 drive to industrialise farming was not viable in the long-term for most of UK agriculture. Rising input costs and global competition from countries better equipped for large-scale grain production, plus greater awareness of environmental damage, gave the company the necessary impetus to advocate a more viable alternative: sustainable farming through self-sufficiency. This system, which is already used widely throughout the UK, aims to reduce expenditure on inputs by relying on a natural system of nitrogen-fixing through legumes, and using complex leys and mob-grazing for weed suppression. In the last 15 years, the company has noticed a distinct change in opinion as more farmers embrace the idea of a more sympathetic and sustainable system and that ‘business as usual’ is no longer an option. Honeydale Farm provides the perfect platform to show both farmers and consumers how the change to low-input farming can be achieved.

Education and innovation

But Honeydale is about more than showcasing a natural system of farming, it is also about achieving a deeper connection between farmer and consumer by encouraging educated debate on the food supply chain and emphasising the importance of food quality.
Honeydale Farm is the perfect size to engage people: although a little smaller than the average 157 acres of cropped land in the UK, its 107 acres means it is big enough to be commercially viable but small enough to get to know every corner. An important part of the project is the proposed development of the dilapidated farm buildings into a food and farming hub for customers and the rural community. The core objective is education and innovation, enabling people to see at first-hand what a sustainable system looks like and what it can achieve. One example is a plan to create a micro-dairy, with five or six cows, to allow people to see close up, and safely, the rudiments of milk production, presenting consumers with a different vision to that of mega-dairies and their associated welfare concerns.

**Good farming and good food**

Both Ian and Fiona Mountain, one of the team closely involved with the Honeydale project, are fervent about reconnecting the consumer with the origin of their food. Persuading consumers that food quality is important and worth paying for is part of Honeydale’s mission to educate: as Fiona pointed out, people now willingly pay premium prices for quality coffee and would no more revert to cheap instant than fly to the moon. She believes that buying quality food will go the same way – consumers will place much more value on the provenance of the food they eat, helped by better communication of the benefits of healthy eating. However, neither of them underestimates the scale of the challenge ahead, weaning people off cheap food will not be accomplished overnight. As Ian ruefully admitted, “we will need to approach this in the same way as if we were to eat an elephant – small piece, by small piece”. And Honeydale aims to boost the conversation between the rural community and the urban majority by promoting the link between good farming and good food, encouraging consumers to use their buying power to persuade supermarkets to rethink their buying strategies.

**A return to the roots of real farming**

Honeydale is not just about the consumer either; it’s also about the farmer. Increasing numbers of Cotswold Seeds’ customers are coming to look at the way Honeydale is now being farmed. After the disappointing lack of income after the first spring barley harvest, Ian embarked on an eight-year rotation plan in 2014, starting with the restoration of soil quality and fertility by planting herbal leys (which include the deep-rooting, soil-conditioning sainfoin), mob-grazed by a flock of 65 sheep owned by a neighbouring farmer’s son. The plant diversity has encouraged an explosion in the bee population and the farm now supports 14 hives which will be further sustained by the 10 acre orchard planted with heritage fruit trees. At the moment, Ian and his team are experimenting with no till methods of terminating cover crops using a crimper roller, obviating the need to use glyphosate, and shallow ploughing herbal leys in preparation for sowing oat and wheat crops (years 4 and 5 of the rotation). This is part and parcel of the fundamental ethos underpinning the Honeydale approach: a return to the roots of real farming both literally and metaphorically.

**Securing long term profitability**

Ian points out, not only is the rotation system a satisfying way of farming, it will secure the farm’s long term profitability as the soil regains its fertility. At the same time, the community hub will help to bridge the gap between producer and consumer by giving the latter the opportunity to get up close and personal with the source of their food. Ian’s enthusiasm for Honeydale’s place in the ‘real food’ campaign is palpable: “It will be so exciting to have a vibrant community with people actively engaged with growing food and in synch with the environment. I strongly believe that Honeydale Farm is in the vanguard of a movement towards a more viable future for British agriculture”. 

“I strongly believe that Honeydale Farm is in the vanguard of a movement towards a more viable future for British agriculture.”
WHAT'S NEW?

First, the £170m contract awarded to US engineering company CH2M has recently been overturned following concerns about the close relationship between CH2M and HS2. After the unsuccessful bidders, led by MACE, threatened legal action over the procurement process, CH2M withdrew from the Phase 2b contract which was then awarded to another US firm, Bechtel. HS2’s chairman, Sir David Higgins, and Transport Secretary, Chris Grayling, have denied any wrongdoing on the part of HS2 or CH2M but the press has had a field day.

Second, the snap general election has generated uncertainty. Despite speculation that the Conservatives’ election manifesto might include a commitment to pause the project, the government has now said there is “no change” to its policy on HS2. About £3bn has been ear-marked funds to be deployed elsewhere. According to Lord Framlington, a peer and former Tory MP, Theresa May wanted to scrap the HS2 project when she became Prime Minister but was told it was too late.

SO WHAT IS THE COST OF HS2?

HS2’s budget estimate has grown to £55.7bn (up from £33bn) but the real figure is nearer to £63bn if the National Audit Office’s assessment of the likely overrun is correct. The Institute of Economic Affairs puts the cost at £80bn. Recent research, commissioned by HS2, found that if trains are to run at speeds of 225 - 250 mph, the ground along much of the route would need to be “stiffened” leading to a dramatic rise in costs. According to STOP HS2, Luton North MP, Kelvin Hopkins, claims that “leaks from inside the HS2 bureaucracy suggest the total cost of HS2 will be over £200bn”.

WHAT DOES THIS MEAN FOR THOSE AFFECTED?

Land and property adjacent to both the Phase 1 and 2 routes have been blighted for many years. Although the majority of those adversely affected may be hoping that the project will be cancelled, it looks unlikely that the next government, of whichever hue, will perform a U-turn. Indeed, putting it on hold would just serve to prolong the blight. Whatever your views on HS2, the project looks set to power on with enabling works planned to start as soon as June this year.

We are in regular discussion with HS2 and are currently advising landowners, residential occupiers, business occupiers and HS2 contractors. Please contact our HS2 team if you would like to discuss any issues with us, or visit our website for more information on the project and recent developments.
Don’t write your will without your agreement to hand

We have written extensively over the years about the need to put partnership agreements in writing. Agreements created verbally, or through the conduct of the parties, do carry legal weight but, in the event of a disagreement, resolution often comes down to who said what which is notoriously unreliable and can cause even greater upset. In the absence of any agreement, the 1890 Partnership Act will determine what happens to the partnership – the outcome of which is, in most cases, undesirable.
Understand what you own and what the partnership owns

It is equally important to ensure that your will dovetails with your partnership agreement. A partnership agreement takes precedence over a will so if the latter is not written with the former in mind then there is every chance that an asset you wished to gift is not actually yours – it belongs to the partnership. A common error is to gift the farm, or individual parcels of land, under the terms of a will only to discover that, according to the partnership agreement and accounts, they are actually partnership assets which cannot be gifted through a will. Drafting your will with the partnership agreement to hand means that you will know exactly which assets are personal and which belong to the partnership. It is important to understand that holding the legal title of a property at the Land Registry does not necessarily mean that the property is yours as you could hold it on trust for the partnership.

Greater HMRC scrutiny of partnership property

HMRC appears to be taking a closer look at what constitutes partnership property. The rate of relief for trading partnership property is potentially 100% on death or transfer, but only 50% for property owned by the partner and used in the business. If the evidence that assets genuinely belong to the partnership looks insufficient, HMRC is unlikely to concede 100% relief immediately. After the death of a partner, they may want to scrutinise the partnership agreement to understand how the partnership assets are owned and the partners’ interest in them.

There are several reasons why it is more important than ever for farming partnerships to try and take full advantage of 100% business property relief: the increase in land prices; new income streams generated by diversification of farm businesses; and higher potential development, or hope value.

Not giving a partner the right to withdraw a previously owned asset from the partnership (or the entitlement to the whole of any income due from it) can help to avoid potential problems. Land held in a partnership should be registered in the names of all the partners or, failing that, a declaration of trust completed stating that the partner is holding it on behalf of the partnership.

Generally, partners should understand that if they transfer land to a partnership, it is no longer theirs to deal with as they wish; what they own within a partnership agreement is their interest in the partnership and not the underlying assets. If the partners agree that the land held in the partnership is done so other than in accordance with the partnership capital sharing ratios, this arrangement should be formalised in a partnership agreement.

1890 Partnership Act

There are numerous cases of families forced to sell the family farm because there was no agreement in place to sort out who gets what in the event of a partnership being dissolved. In these circumstances, the only law that applies is the 1890 Partnership Act. The default position under the Act is that any of the partners can dissolve the partnership at any time and with no notice. The exit, death, or bankruptcy of any partner automatically dissolves the business and all the assets may have to be sold on the open market - and few farming families have the sort of cash in hand needed to purchase the deceased partner’s share. With a partnership agreement in place, arrangements can be made for the shares of a deceased partner to be bought in instalments over a defined period.

Keep partnership agreements and wills under regular review

It is estimated that only a third of active farming partnerships have a written agreement. Without an agreement, the financial security of those businesses and, by implication, the family is potentially compromised and tax planning opportunities missed. For this reason, wills and partnership agreements should be reviewed together, and on a regular basis. Otherwise you run the risk of not being able to bequeath assets as you wish and the tax position will also be less than ideal. If you would like to review either your existing agreement or discuss drawing up a new one in tandem with your will, then please get in touch and we would be delighted to help.
YOU WANT TO CONVERT YOUR BARNS TO RESIDENTIAL USE? NOT SO FAST...

A search for ‘barn conversions’ on Google reveals, perhaps unsurprisingly, that local planning authorities remain unconvinced of the merits of converting redundant agricultural buildings into residential units. After permitted development rights were extended in 2014 to cover the conversion of farm buildings (Class Q), it transpired that more than 50% of applications were refused prior approval because most failed the location sustainability test. Anxious to increase the amount of rural housing stock, and conscious that applying the location test to farm buildings is unhelpful given where most are sited, the government issued revised guidance in 2015 clarifying that a proposed building conversion under Class Q should be judged on whether it is ‘impractical’ or ‘undesirable’. In other words, the location should not be a barrier to development unless the proposed site had either no, or very limited, access (impractical) or it was next to an intensive livestock unit or other ‘objectionable’ activity (undesirable).
‘SUSTAINABLE LOCATION’ TEST DOES NOT APPLY

In spite of this helpful clarification, LPAs have not shown any notable enthusiasm for increasing the number of prior approvals, primarily because most have not traditionally supported development in open countryside and it is perceived as a tool to circumvent planning policy. East Hertfordshire DC has gone to great lengths to challenge the guidance in two cases after it refused prior approval for barn conversions on the grounds that both locations were impractical and undesirable. Both decisions were appealed and the court found that the council had not applied the guidance relating to location correctly and that the proposed conversions were, in fact, neither impractical nor undesirable.

...BUT THE CONVERTIBILITY TEST DOES

Rather than relying on location criteria to bounce applications, some LPAs are carefully scrutinising the physical aspects of the building to ensure it has the necessary load bearing capability and can be converted without substantial demolition and rebuilding: ‘building operations are allowed...only to the extent reasonably necessary for the building to function as a dwelling house, and partial demolition to the extent reasonably necessary to carry out these building operations’. This has been tested in a case in Nottinghamshire where the farmer wanted to convert a steel-framed barn into a house. The case hinged on whether the ‘proposed conversion amounted to a rebuild’ as the barn was open on three sides. Although all the other criteria under Class Q were met, the planning inspector determined that the barn would need substantial rebuilding and thus did not fall within permitted development and would need full planning permission. The assessment of “substantial” is in the eye of the beholder and essentially a judgment call.

BUILDING MUST HAVE HAD AN AGRICULTURAL USE

Given the apparent reluctance of LPAs to approve the conversion of farm buildings, there is another potential pitfall for farmers selling an agricultural building as a development opportunity with Class Q consent. One of the eligibility criteria is that the building in question must have been used for agricultural purposes on or before 20 March 2013.

Jill Scrivener, an agricultural planning consultant with Bourne Rural, warns that if a LPA discovers subsequently that the eligibility criteria was not met, it is perfectly possible that it might withdraw consent, particularly if there had been any controversy surrounding the site. If this occurs, the purchaser’s investment will be worthless and they may well seek damages from the seller. Of course, proving agricultural usage is not always easy relying as it does on either photographic or written records (which may not exist), or verbal confirmation. Any landowner with a potential development opportunity would be well advised to try and gather as much evidence as possible about the previous use of the building, not only to give the prospective purchaser certainty but also to head off any retrospective enquiry.

GOVERNMENT MISSION TO INCREASE RURAL HOUSING SUPPLY

The government’s 2016 Rural Planning Review has helped to inform its approach to the rural housing crisis. The summary of responses to the Review contains a number of questions relating to local housing needs in rural areas. These include the creation of another agricultural-to-residential use permitted development right to allow conversion of up to 750sqm, for a maximum of 5 new dwellings, each with a maximum floor space of 150sqm; and an extension of the existing Class Q permitted development right to increase the existing conversion threshold from 450sqm to 465sqm. Although these proposals will be welcomed by many farmers and landowners who have redundant buildings capable of conversion under Class Q, they and their advisers must be absolutely rigorous when determining whether or not they meet the eligibility criteria.

In spite of central government encouragement that everything must be done to increase rural housing stock for rural workers, all the indications are that LPAs will stick to the letter of the law.
NEW CODE GIVES TELECOM OPERATORS THE UPPER HAND

Mobile technology is one of the fundamental building blocks of the country’s digital infrastructure.

At the moment, the relationship between landowners and telecom operators is governed by a Code originally drawn up in 1984 and which, most commentators agree, has long outlived its usefulness given the huge advances in digital technology in the intervening years. In order to incentivise telecom operators to invest in the mobile network, the government has updated the Code as part of the Digital Economy Act which received Royal Assent at the end of April.

Most of the rights which the existing Code confers on operators are being retained but there is one major change which will affect landowners – the price the operators will pay for renting the land on which their equipment sits. The new Code proposes the introduction of a valuation scheme whereby the value of land is assessed on its value to the landowner rather than to the operator, similar to the system used by utility providers. This means that landowners with a contract under the new Code will not only be paid considerably less rent for having the mobile equipment on their land, they will also not benefit from additional payments from other operators sharing the site.

OTHER CHANGES INCLUDE:

Operators will have a new automatic right to upgrade, and to share apparatus with other operators, without giving landlords options to negotiate new terms or charge extra. This means that landowners will have no say on the size or amount of equipment installed.

Landowners and operators cannot opt out of the provisions of the Code.

The Code will not be retrospective and will only apply to contracts after the law has been enacted. Transitional arrangements will be put in place when existing contracts come up for renewal.

The Code confers rights to enter land for the purpose of maintaining, installing, upgrading and operating equipment.

The Landlord & Tenant Act 1954 will not apply to agreements under the new Code.

These changes are significant for landowners particularly in relation to rent, access to the site, and size and amount of equipment. The new Code is expected to come into force once Ofcom has completed its consultation on the proposed code of practice, standard terms and template notices, and amended them accordingly. The consultation period ends on 2 June and the new Code is likely to be operational shortly afterwards. In light of this, if you are proposing to enter into a new arrangement with a telecoms provider you may wish to consider very carefully whether this is something you wish to proceed with. If you already have a lease in place with a telecoms provider which is due for renewal then we strongly recommend seeking legal advice in order to understand the full impact of the new Code on you.

IF YOU ARE PROPOSING TO ENTER INTO A NEW ARRANGEMENT WITH A TELECOMS PROVIDER YOU MAY WISH TO CONSIDER VERY CAREFULLY WHETHER THIS IS SOMETHING YOU WISH TO PROCEED WITH.

There is also little comfort for landowners wishing to terminate contracts, or not enter into them in the first place as a result of the changes. If an operator deems a particular site is necessary to maintain the network, they can still compel a landowner to agree to terms via a court order. The government has made it clear that the country’s digital infrastructure is too important to be subject to the vagaries of the market which is why the operators have landowners over a barrel.
IN MEMORY OF

Robin Ogg

Many of you will already have heard the sad news that Robin Ogg, the firm’s former senior partner, passed away on 20 April. He will be remembered by those of you who knew him as the consummate gentleman, sharp of mind and gentle of manner.

After Robin left Cambridge in the mid-sixties he joined Wright Hassall as an articled clerk and became a partner in 1976. He built up the firm’s agricultural practice and was well known and very well respected among the Warwickshire farming community not least for his hands-on experience of running a flock of sheep. A keen cricketer, Robin played for both Wellesbourne and Snitterfield. As a lawyer and as a person he was an example to us all. Kind, considerate, professional, and with a cracking sense of humour, he was admired and loved by clients and colleagues alike.
FARM REGULATOR’S CHARTER

The Farm Regulator’s Charter, introduced by Defra, outlines the nine principles governing how regulators should decide which farms to visit and how to conduct themselves when visiting.

They will focus on non-compliant farming businesses, identifying them through better use of existing intelligence. The nine principles include better coordination between farm regulators; better targeting of non-compliant farms; working with Farm Assurance Schemes to reduce visit frequency; and sharing of best practice to maximise operational efficiency.

GLYPHOSATE

A further review into the potential health risks of glyphosate has concluded that it does not pose a risk to human health.

The European Chemicals Agency’s Committee for Risk Assessment has reviewed all the available scientific evidence on glyphosate and reported that it should not be ‘classified as a carcinogen or as a substance likely to cause genetic or reproductive effects’.

The European Commission is to consider reauthorising the chemical in December 2017 and the NFU is encouraging members to lobby their MPs and MEPs, as well using social media, in support of reauthorisation. The conclusion that glyphosate is safe to use, providing it is used correctly, reflects the findings of the European Food Safety Authority (EFSA), the World Health Organisation and the Food and Agriculture Organisation, as well as other regulatory evaluations from several countries including the US, Canada, Australia and Canada.

Report all incidents of dog attacks on livestock to the police

North Yorkshire police are encouraging farmers around the country to report all incidents of dogs attacking livestock to their local police force.

They have launched this initiative in conjunction with four other police forces, Sheepwatch UK and the Animal Health and Welfare Board for England, with the objective of recording detailed information about the number and severity of dog attacks, how such reports are handled, and to establish if the law in this area should be strengthened.
‘Making Tax Digital’

Although ‘Making Tax Digital’ has been temporarily derailed by the election, if the Conservatives are returned with a majority, it will probably be reinstated in the next Finance Bill.

The original deadlines to go digital were April 2018 for businesses with a turnover above the VAT threshold, and April 2019 for smaller businesses. This timeline is likely to slip but eligible farming businesses should prepare for the change, particularly those who have traditionally kept paper records, by switching to digital record keeping. Naturally this raises the thorny – and entirely reasonable - question of how this will be achieved given the inadequate broadband access and speed in many rural areas.

Government guidance on applying for fracking consent

Published in February, this guidance is intended to ensure that anyone applying for hydraulic fracturing consent can demonstrate that they meet the relevant conditions.

It also lists all the documents from the various regulatory bodies which need to be included in the application. The guidance also covers the content of the application letter which should contain advice on arrangements for publishing methane emissions’ results; what scheme is in place to benefit the local community; and a commitment to continue publishing the results and running the benefit scheme when consent is granted.

Ten farm-related fatalities in February alone

Having reported a small decline in the number of farming-related fatalities during 2015/16 in the last edition of Law & Land, the news that there were 10 deaths in February this year alone was an unpleasant shock.

The incidents involved livestock, power tools, machinery and a falling straw bale. The fatalities included a child hit by a farm vehicle. The NFU and the Farm Safety Partnership are urging farmers to observe stringent safety guidelines, particularly around vehicles and machinery management and maintenance.

KEY EMPLOYMENT DATES

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 April 2017</td>
<td>National Minimum Wage rates are:</td>
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<tr>
<td></td>
<td>- £7.05 per hour (from £6.95) aged 21 – 25</td>
</tr>
<tr>
<td></td>
<td>- £5.60 per hour (from £5.55) aged 18 – 20</td>
</tr>
<tr>
<td></td>
<td>- £4.05 per hour (from £4.00) aged 16 -17</td>
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<tr>
<td></td>
<td>The apprentice rate increases from £3.40 to £3.50 per hour.</td>
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<tr>
<td></td>
<td>National Living Wage increases from £7.20 to £7.50 per hour.</td>
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<tr>
<td>2 April 2017</td>
<td>Statutory rates for maternity, paternity, adoption, shared parental and sick pay increase from £139.58 per week to £140.98</td>
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<tr>
<td>6 April 2017</td>
<td>The gender pay regulations come into force</td>
</tr>
<tr>
<td></td>
<td>The apprenticeship levy comes into force</td>
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<tr>
<td>April 2017</td>
<td>Immigration skills charge of £1,000 in force for employers sponsoring foreign workers with a Tier 2 visa. This cost is in addition to current fees for visa applications. The minimum salary threshold for “experienced workers” applying for a tier 2 visa will also increase to £30,000.</td>
</tr>
</tbody>
</table>
Meet the team

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This newsletter does not constitute legal advice.
Specific legal advice should be taken before acting on any of the topics covered.