

Autumn 2020

InBrief

The Magazine of Gullands Solicitors



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Video witnessed Wills



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Virtual ploughing Match

Welcome to InBrief

We would normally at this time of year be seeing many clients and friends of the firm at the autumn ploughing matches and various rural events but sadly these have all had to be postponed. This year we are however delighted to be supporting the first ever virtual ploughing match, raising funds for the air ambulance charities nationally, so details of how to enter can be found on page 3.

In this edition we are focusing a number of pages on the theme *Let's get working*. Despite reports at the time of writing this of localised lockdowns and a possible national lockdown again, the broader business community here in Kent is optimistic and we are here to help you and your business embrace the new normal we find ourselves in to survive and thrive.

Commercial property is in the spotlight on pages 4 and 5. As many people are continuing to work from home, how should you approach your commercial property requirements in the future? Our Q & A guide aims to answer your key questions on commercial leases.

The residential housing market is reported to be buoyant with people looking to escape city life and move to the country but changes to legislation regarding septic tanks need to be considered by both home buyers and sellers.

The Government has also put the spotlight on the construction sector as a way of helping Britain build its way out of recession, so we look at some of the changes to planning rules and also land options for farmers and landowners who might be approached for future schemes on pages 8 and 9.

The charity sector is one which has been hit hard in recent months and many will be considering a range of options, so we take a look at the subject of charity mergers on page 11.

Finally, on page 12 we catch up with employment partner Amanda Finn on some of the many employment issues which continue to keep her and her clients very busy and what employers should be focussing on in the coming weeks.

Whatever your business sector we provide a range of legal services so get in touch to discuss how we can help you and your teams get fully working again.



John Roberts
Managing Partner

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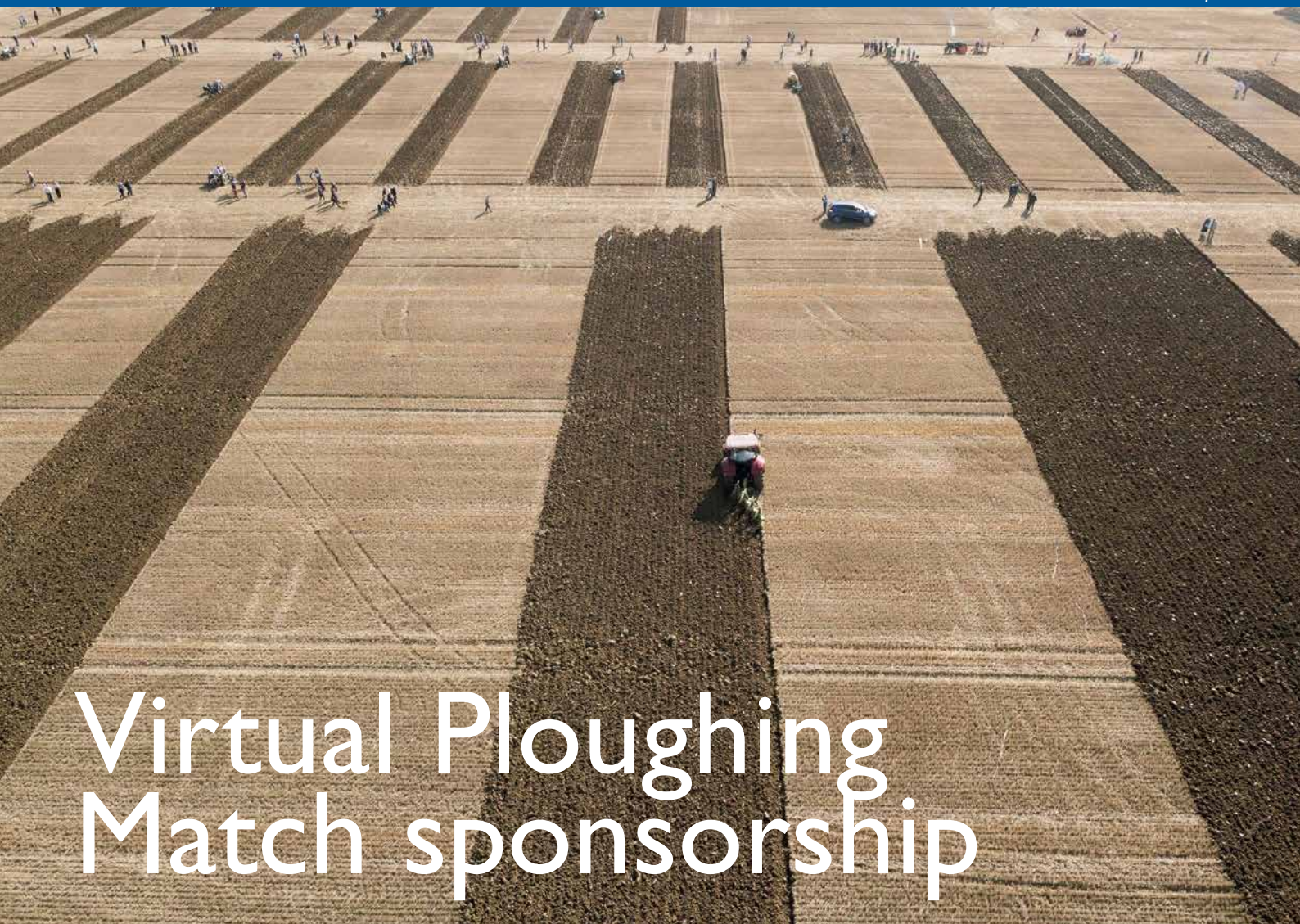
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Virtual Ploughing Match sponsorship

Gullands is delighted to be sponsoring one of the categories – Classic Tractors and Ploughs for the first ever virtual ploughing match which has extended its closing date for entries to 31 October 2020.

Due to the restrictions on social gatherings many ploughing matches across the country have been called off for this autumn and the organisers have received a number of requests to extend the entry deadline to allow more entries.

There are a number of different showing classes and new categories, including vintage and classic commercial vehicles, motor vehicles, military vehicles and motorbikes.

Karen Wheeler at Grapevine Events who are organising the Virtual Ploughing Match comments: *“We are acutely aware of the disappointment of so many seeing all their local events postponed or cancelled because of the Covid-19 crisis. Whilst the decisions the many Societies and Associations have made are of course sensible and necessary, these events offer a great social time for many, and the events will be sorely missed by competitors and supporters alike.”*

“Many of the organising bodies raise a great deal of money for local and national charities as well, and without this vital source of funding from events and fundraising efforts, all 23 Air Ambulance Charities have seen their income plummet over the past months. VPlough has been designed to fill part of that void and help them to continue to provide a vital service nationwide.”

Paul Burbidge at Gullands comments: *“Like many we are disappointed so many events have been cancelled or postponed this year but we are delighted to be supporting this virtual event and the amazing and vital work of the Air Ambulance service across the UK.”*

VPlough is a fully virtual event that will allow visitors to see all the competitors' work and interact with them and each other. Entrants will be able to select the air ambulance charity they want to send their entry fee to and the name of that charity will appear under the entry once it goes live on the website.

The event will be judged virtually by a team of experienced and knowledgeable judges and awards given for best in class, and while the event cannot replace a real ploughing match, we hope it will be a fun event to participate in, as well as raise money for our much-valued air ambulance services!

Entries for the Ploughing Classes and Machinery Showing Classes are now open so there is no need to leave the tractors and ploughs in the shed this year.

CLA South East Kent Branch AGM

We are delighted to be one of the sponsors of this year's CLA South East Kent Branch AGM which takes place online at 2pm on Thursday 15th October. This year's guest speaker is CLA Vice President Victoria Vyvan and details of booking can be found at <https://portal.clahosting.org.uk/MY-CLA/Events/Event-Details/eventDateId/3532>



Commercial leases – a guide

Work patterns have changed for many people since the beginning of the pandemic with millions of people now working from home. As lockdown restrictions ease many businesses are slowly moving back into their commercial premises, so it is sensible for business owners to review their property needs and requirements going forward.

Here are some frequently asked questions about commercial leases to help guide with your decision making.

My lease is coming to an end within the next 12 months but I'm not sure if we want to stay or move?

You can end the tenancy by moving out of the premises by the end date specified in the lease. If you are unsure about your future business plans you could discuss options with the landlord. They may allow you to remain in occupation as long as you continue paying rent and give say three months' notice to end the tenancy.



Now could also be a good time to negotiate a new lease on more favourable terms so take legal advice to discuss your options.

I want to find a smaller business premises as most of my team are now working from home, can I just end my lease?

Firstly, check if your lease has a break clause which allows either you or the landlord to end the lease at a specific date without waiting for the full term of the lease to expire. If you want to break the lease you must comply with any conditions in the lease which could include giving notice – typically six months. The landlord can refuse the break in certain circumstances, typically if you are behind with rent payments but beware, as even small breaches of your lease can provide grounds for refusal. It is important to take legal advice before exercising a break clause to make sure you get it right.

There may be other options in the absence of a break clause.

You might have the right to assign the lease or sublet to another business so they become the new tenant. This does not however completely remove your legal responsibilities or potential financial liabilities, so you should take legal advice before taking either of these steps. Failing that you can negotiate the surrender of the lease with the landlord but they will normally expect some compensation, so it might not be an economically viable option.

Be aware of your responsibilities at the end of the lease as they can be extensive. With many serviced offices you may need to carry out internal decoration or replace carpets whilst a full repairing and insuring lease might mean you are responsible for both internal and external structural repairs and maintenance. Again, it is important to take legal advice before signing a lease to understand your full obligations.

My landlord has refused to extend my commercial lease, is there anything I can do?

This depends on the type of lease you have, the length of it and if you agreed to give up the right of renewal when the lease began. Also, if you are in breach of your lease for example for not paying the rent or keeping to maintenance responsibilities. The landlord may also wish to use the premises for a different use as planning rules have recently changed to help stimulate town centres. Take legal advice to see if you can both reach an amicable agreement.

We are in discussions with our landlord who wants to increase our rent but we don't think this is fair or accurate given the current pandemic, what can we do?

Rent reviews follow a procedure which should be set out in your lease. Normally, but not always, it is based on open market rents. If you feel the new rent being asked is too high then you can appoint a surveyor to help you to negotiate with your landlord. It is also important to take into account the cost of moving your business, adapting a new premises, the cost of new stationary, advertising, client communications etc, not to mention the cost of a surveyor, which may all be far higher than the proposed rent increase itself.

We have decided to make some changes to our business offering, do I need to check with my landlord that this is ok?

Your lease will specify what the business premises can be used for so it is important to take advice first. Many leases have clauses which prohibit any significant alterations or change of use without the landlord's consent. You would also have to consider if your use is in line with the Use Class permitted or if you need planning permission from the Local Authority to change it.

My landlord is selling the property my premises is in, does this mean my business will have to move?

Not necessarily as you are protected by the terms of your lease. However you should be aware that if there is a break clause, the new landlord might wish to exercise their right to end the lease. They may be interested in having a discussion with you about their future plans for the property and might be willing to offer you alternative premises or a payment to end the lease early, so it is worth having a discussion with them.

Taking professional advice at an early stage can help you to successfully negotiate the best outcome for you and your business, so get in touch with our team today.

Marianne Webb can be contacted at m.webb@gullands.com

Public Rights of way and your land



Public
Footpath

An estimated 29m people regularly walk in the UK and with many more people accessing the countryside this year due to the Covid-19 pandemic, landowners with a public right of way through their land may have concerns about its use. And for those considering buying a house with a right of way, what are the rights of those allowed to use it?

In England and Wales, a footpath is a public right of way for pedestrians and they are allowed to walk their dog as long as it is kept under close control. Prams, pushchairs or wheelchairs can also be used on a footpath.

There are other types of public rights of way:

Bridleways are for use by walkers, horse riders and cyclists, but cyclists are expected to give way to walkers and horse riders.

Byways are open to motorists, cyclists, horse riders and walkers and vehicles using them must be registered, taxed, insured and have a MOT. Vehicle users must also have a valid driving licence.

Restricted byways are open to cyclists, horse riders, horse and carriage users and walkers but exclude use for motor vehicles and motorcycles.

Public rights of way across your land must be kept unobstructed and footpaths on the edge of a field must not be ploughed. Footpaths can be ploughed where they cross a field but a minimum width of one metre must be made available to walkers within 14 days of ploughing and landowners must restore footpaths after ploughing.

Crops cannot be grown on a public right of way however grass can be grown for hay and silage. Dairy bulls over 10 months are not allowed to cross a field with a public right of way. Gates and styles have to be put up with the permission of your local authority.

You cannot put up signs which mislead or prevent people from using a public right of way and you cannot harass, intimidate or prevent members of the public from using a public right of way.

Permissive paths are not rights of way but paths which a landowner has given the public the permission to use. The permission may be granted on a long-term basis but it can be withdrawn at any time.

If you own a property with a public right of way, have questions about the purchase of a house with a footpath or public right of way, permissive footpaths or have questions about accessing a neighbour's land, get in touch with our team today.

Sarah Walkden is an Associate at Gullands Solicitors s.walkden@gullands.com

Rules on septic tanks may affect many rural properties

With many people reported to be planning a move to the country to escape city life, they might for the first time encounter septic tanks which often come with rural property. The rules on septic tanks changed in 2015 and came into force on 31 December 2019. How will this affect your rural property sale or purchase?

The rules prevent the discharge from septic tanks into watercourses or drainage ditches. Many homeowners are unaware there may be issues with their drainage systems and non-compliant septic tanks now need to be replaced. We have seen an increase in issues identified with the sale of some properties with private drainage so advice should be sought to find out if your septic tank is compliant or not.

There are various options which homeowners can do to make their septic tank compliant, which includes:

- Installing a drainage field so the septic tank can discharge into the ground.
- Replacing the septic tank with a small sewage treatment plant.
- Upgrading an existing septic tank with a conversion unit.

In exceptional circumstances you can apply to the Environment Agency for a permit for the septic tank to discharge into surface water:

Alan Williams comments: "These rules may come as a surprise to many homeowners and prospective buyers and property owners are advised to obtain a professional report which details how their existing septic tank system can be made compliant with the new regulations. It could be costly in some circumstances to carry out this work. It is up to the buyer and seller to agree before contracts are exchanged who will be responsible for the work, which must be carried out within a specified period of the sale, usually within 12 months."

Septic tanks are sometimes shared by two or more properties and may not be situated on the land of the property you are buying, so make sure you find out as much information as you can including that there are adequate access rights and an agreement for maintenance obligations and costs.

Alan Williams can be contacted at a.williams@gullands.com



Significant changes announced to planning classes

Significant changes to the Use Classes Order for commercial property in England have been announced by the Government. The announcement will allow businesses and landlords much greater flexibility to adapt and diversify to meet changing needs and this is likely to shape the future of the high street.

From 1 September 2020, use classes A1 (shops), A2 (financial and professional services), A3 (restaurants and cafés), B1 (offices and light industrial), D1 and D2 (institutions and leisure) will all be replaced with class E, which covers commercial, business and service.

This new class E allows more flexibility in that changes between different uses within the same class will no longer require planning permission. There will be the potential from September for more mixed uses within buildings, so a building could be a retail unit by day and offer a restaurant service at night.

There are some exclusions from class E including drinking establishments (previously A4) and hot food take-aways (previously A5) which will both fall within new sui generis uses requiring planning permission. This is to allow local residents' views to be taken into account. The Government is also keen to protect the special role that pubs have in many communities.

Other new classes include a learning and non-residential institutions use class F1 replacing former use class D1 regarding schools, libraries and galleries. There is also to be a local community class F2, grouping properties from former use class D2 for example swimming pools, ice

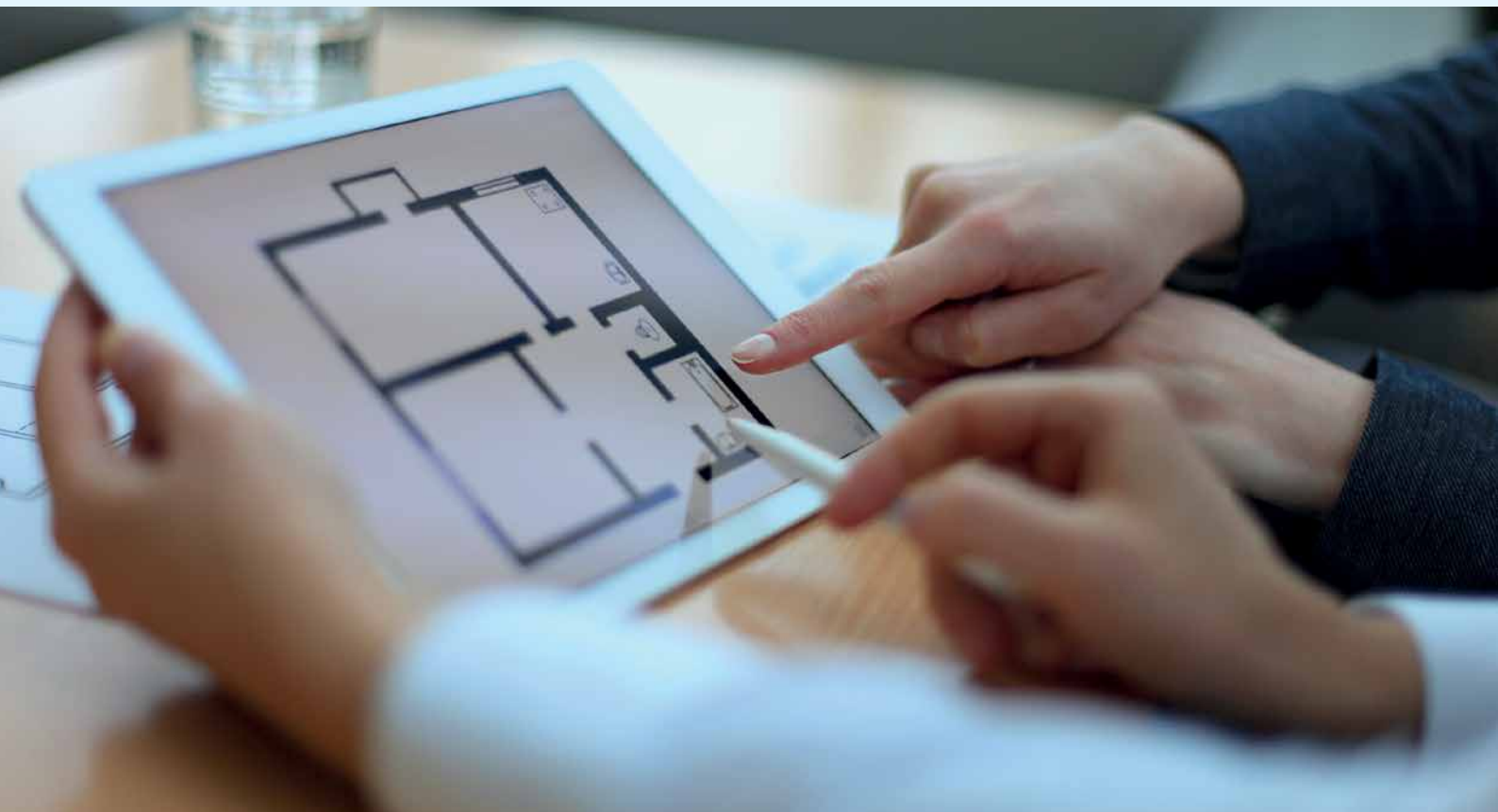
skating rinks and other areas for outdoor sports as well as buildings used by local communities.

The classes which remain unchanged are Class C (residential), Class B2 (general industrial) and Class B8 (storage and distribution).

These changes will provide more flexibility for landlords, developers and tenants to revitalise specific properties and their uses. A longer-term benefit for landlords is that rents might rise as buildings become more attractive and profitable, but it will also make rent reviews more complicated given the property could in the future have multiple uses. As many businesses are just starting to resume trade following the lockdown, they certainly will not want to see rent rises in the immediate future.

These changes will be welcomed by many in the industry, but successful town centres tend to be successful because they offer a number of mixed businesses and services, whereas from September more profitable uses might be more attractive which could restrict the diversity of the high street. It remains to be seen.

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Land option agreements and buying land for development

The Government has a focus on economic recovery and growth and house building has already been singled out as one way of achieving this, especially here in the South East. In September the Housing Secretary announced a new £12 billion investment boost to help deliver more affordable homes and homes for social rent.

To achieve any increase in the volume of new housing means bringing more land forward for development and it is likely that local authorities will need to review the provisions they have and the timing for its development. This combined with many other factors – both economic and due to lack of succession could lead more landowners and farmers to consider putting land forward for development, so what is the best way to go about this?

An option agreement is an agreement between a landowner and a developer and provides a way for landowners to increase the value of their land without having to incur the costs of obtaining planning permission.

This may be speculative or in response to a call for land and sites for development from a local authority.

The agreement is a contract which allows the buyer to serve notice on the owner to sell them the land and/or property at the agreed price but being an option, the developer has the choice about whether to go ahead with the purchase or not. For this they usually pay the landowner a fee to fix the option for a set period of time.

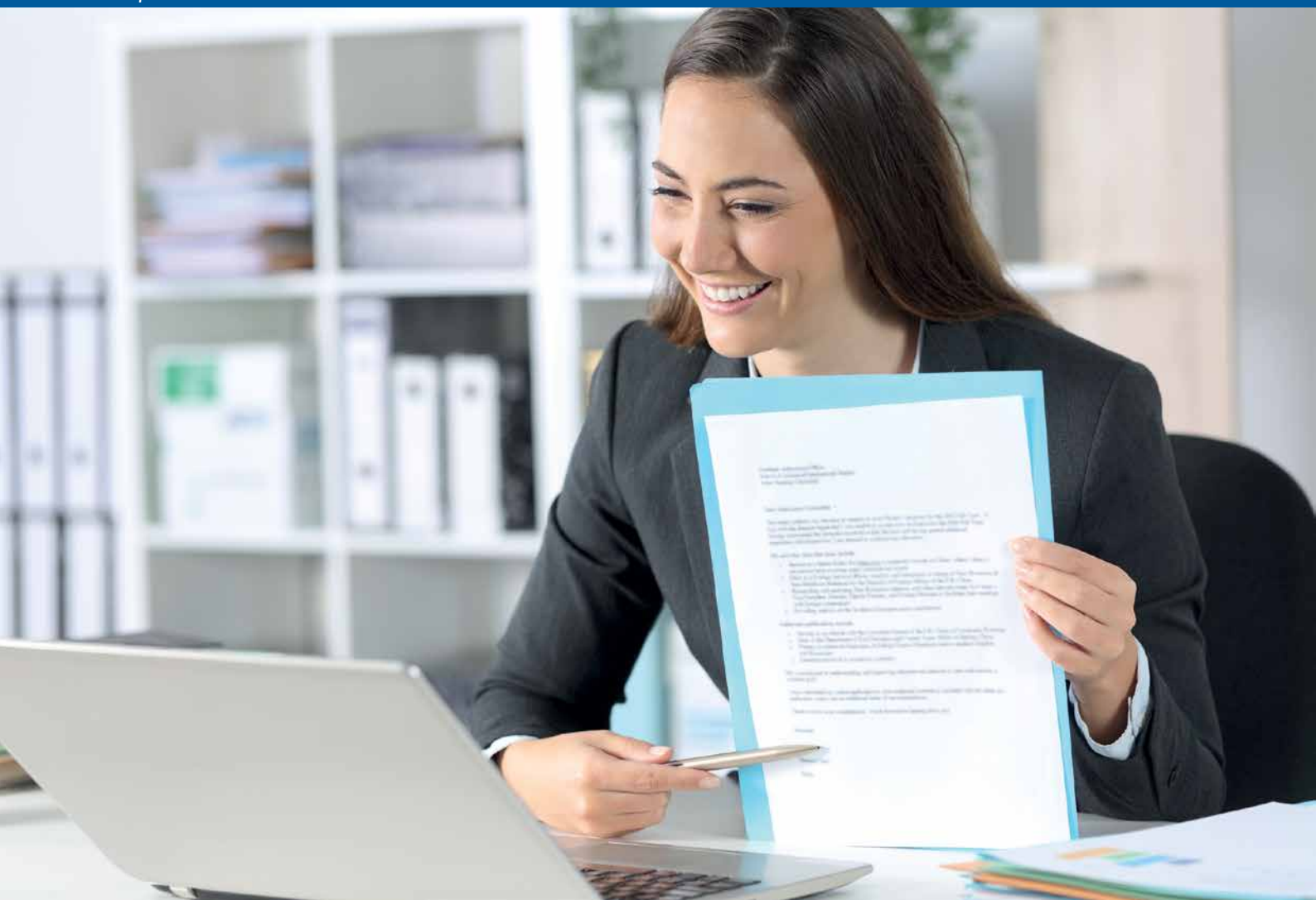
Landowners who are approached by a developer should consider a number of issues before entering into an agreement, such as:

- What is the objective of their involvement, how will it affect their other land holdings/ farm operations and how much money are they looking to realise?

- How much involvement do they want to have with the project and will they need to appoint someone to act on their behalf?
- Can they continue to use the land whilst it is subject to the planning process?
- Will they benefit from the full value of the land from the agreement or could the developer seek to change the planning permission in the future?
- What is the period of the Option for which my land is going to be tied up?
- Is there scope for Overage in the future to catch more intensive development of the site?

There are of course many other legal and financial considerations, so it is recommended landowners take professional advice before entering into any agreement.

Paul Burbidge can be contacted at p.burbidge@gullands.com



Video witnessed Wills

The Government announced this summer that there will be a temporary change in the law to allow Wills to be witnessed using video technology. This is due to come into force this Autumn, but it will also apply retrospectively to Wills executed from 31 January 2020, to cover those which were made during the lockdown.

Certain rules should be followed to ensure that a Will is valid and it must have been made according to the rules set out in the Wills Act 1837 and signed in the presence of at least two adult independent witnesses. Up until the rule change that meant the physical presence of the witnesses, but now they can be there either physically or virtually via technology platforms such as Teams, Zoom or Facetime. It is important to make sure the quality of the sound and the video is good enough to see what is happening in real time.

Both witnesses still need to see the Will maker signing the Will at the same time and as they both sign their copies, so careful thought needs to be given to the positioning of the camera so everyone can see each

other and the Will at all times. A physical copy of the Will should be circulated as soon as possible so that it can also be physically signed.

When the witnesses receive the physical copy to sign, they must allow the Will maker to observe them signing it, ideally with the other witness present as well on the video call. All witnessing must be live and not a recording. The Will becomes valid once both the Will maker and the witnesses have signed it.

The Government have also published guidance for Wills executed in this way which includes using wording to show the witnesses' presence was via a video link.

Existing law allows for Wills to be witnessed and this takes into account social distancing measures, for example allowing the Will to be witnessed through an open door of a house or vehicle, from a corridor or adjacent room with the doors open or witnessed outdoors.

Partner Alex Astley comments: *"Whilst this is welcome news that the Government have announced flexibility on the use of technology, we still advise people to wait until the publication of the legislation on video Wills before they make one and that they continue to make a Will with everyone's physical presence unless it is absolutely necessary. We are very happy to offer advice and support for anyone looking to make a new Will or who is updating an existing one, so get in touch with us to discuss options."*

Alex Astley can be contacted at a.astley@gullands.com

Charity mergers – time to consider the future?

As charities continue to work on their own recovery post Covid, their trustees will certainly be considering the future. Charity mergers isn't a new concept and could be an option for trustees to consider, to help provide a strong future and to enable the charity to continue to best achieve their charitable purpose.

Whilst many in the charity sector may see a merger as a sign an organisation has somehow 'failed', it is important to remember that outside of the charity world, mergers are common and a tool to combine the strengths and resources of organisations to allow them to grow and prosper.

A charity merger could take a number of forms which includes an agreement to work more closely and collaboratively to deliver services, the asset transfer from one charity to another or the creation of a new charity from the merger of two or more organisations.

Whatever the structure it is important to consider those affected by it – the employees, volunteers, donors and the beneficiaries of the charity's services. A successful charity merger is one that brings all of these individuals together to create a new, more effective and efficient way of working.

Legal considerations to take into account will centre around the legal structure which could take a number of forms:

- A straightforward merger of two or more equal organisations who will work together as equals.
- A takeover, where one or more charity is transferring its assets, activities, employees etc to another.
- A group of charities, where one charity becomes a subsidiary of another larger group.

There are a number of important considerations with any form of merger to succeed which include:

- The merger must be in the best interests of the charity and its beneficiaries.
- Being open about everything and viewing a potential merger as a strategic opportunity for the charity to grow and deliver better services.
- Don't consider the charity to have 'failed' because it is exploring or pursuing a merger.
- Make sure the charities are compatible by carrying out due diligence on both the financials and the history, culture and ethos of the other charity.
- There will be costs associated with a merger, so it is important to budget for these to enable the process to complete.
- Be realistic that it will take time and a considerable amount of work to embed new team structures, adjust to the new ways of working and to overcome differences in work culture.
- Speak to the Charity Commission if you need any advice to enable you to change or broaden your objects. They have been encouraging charities to consider mergers to build stronger and more strategically focussed organisations.
- Don't be afraid to seek the advice of business professionals who might be willing to volunteer their time or mentor trustees to help you to achieve the merger.
- Consider the risks associated with merging and how to deal with these risks.

Once completed the merger should be registered on the Charity Commission Register of Mergers to ensure future legacies which would be left to the closed charity are able to be received by the new or merged organisation.

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Staff profile:

60 seconds with Amanda Finn

Position: Partner

Department: Employment & Family

Amanda Finn has been incredibly busy this summer helping clients navigate the numerous employment issues which Covid has brought and which continue to challenge them, especially as the end of the furlough scheme approaches. She has also been a regular guest on BBC Radio Kent, updating the business community on the latest employment news. We caught up with her to find out more.

What should all employers be doing now?

It really depends on the sector in which they operate. The Government has announced further support for businesses which is designed to help until March 2021.

The furlough scheme ends on 31 October and it will be replaced with new financial support for businesses with staff working reduced hours. The new Job Support Scheme will be available for businesses with staff working at least one third of their normal hours but receiving 77% of their normal wage (unless hitting the cap). The scheme is open to all SMEs and to larger businesses who can show a fall in turnover. It starts on 1 November 2020 and will operate for six months.

Making up the unworked hours will be down to both the employer and the government. In short on a basic calculation the employer will be paying 55% of a workers wages for an employee working a third of their hours.

Generally, the decision for many businesses is still whether they will fully return to the workplace or if staff will continue working from home. There are a number of issues still to consider around this if you plan for it to be a much longer-term arrangement as well as how you deal with requests for flexible working. Making sure your working from home guidance is up to date is the first step.

Alongside these extra measures and with the end of the furlough scheme businesses need to decide if staff will be able to return to work or if redundancies will be made. There may also be other opportunities such as offering reduced hours working, so I would urge business owners to get in touch to chat through what options could be available to them.



Putting Covid aside, the changes which the UK's departure from the EU bring also need to be considered. From January 2021 when the new points-based immigration system comes into force here in the UK, it is estimated that only 2% (31,000 out of 1.4 million private sector businesses) will currently be able to employ overseas workers. To be allowed to employ overseas workers businesses need to be on the Government's register of licensed sponsors.

Brexit planning has taken a back seat within some businesses, but with weeks to the end of the transition period ending it is important for businesses to also turn their attention to their future staffing requirements, especially if they usually rely on overseas workers.

What other employment changes are on the horizon?

There is probably a lot for employers to catch up on as their attention has been so focused on Covid, however there have been a number of employment tribunal rulings which they should be aware of. For example, a ruling in March was a reminder for employers to fully understand an employee's disability prior to disciplinary proceedings which may lead to dismissal.

This ruling highlighted why it is important that managers who are carrying out a disciplinary process understand why employees may act in a certain way and understand if there is a possible link between their disability and their behaviour. Employers must be mindful to take into account the employee's health or disability at each stage of the disciplinary process. Employers should also follow the procedures for dealing with any concerns about an employee's actions and make sure that all of their company policies are transparent and not opaque and are written using a clear, concise language.

Outside of the workplace, what keeps you busy?

Aside from my family keeping me busy, I'm a keen gardener and have been growing a number of different vegetables this summer.