

Autumn 2021

# InBrief

The Magazine of Gullands Solicitors



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Natural Capital



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# Welcome to InBrief

Another harvest comes to a close for most farmers, whilst the top fruit harvest is finally underway after a delayed start. The weather has certainly caused a number of issues this year and to combat this the government firmly has zero carbon emissions on its agenda. On page 4 we look at the issues around Natural Capital for farmers and landowners.

By the time you read this we will have attended the Weald of Kent Ploughing match and we hope the weather will be kind. I think we are all looking forward to attending events and catching up with old friends and contacts. We are anticipating a bumper turn out to our stand, which this year we are sharing with Kreston Reeves.

Recent changes to planning rules will no doubt change the face of our high streets and we look at some of the issues around changes to permitted development rights.

Another lesson of the pandemic has been how much we either love or loathe where we live and if you were lucky enough to have quiet neighbours, then you should be grateful according to recent research. Whether it is noise, boundary disputes or other issues, these matters can cause a lot of upset for everyone involved and we look at some of the legal issues and how to avoid them escalating.

Other changes which we are likely to see following the pandemic is more multi-generational households and we look at some of the legal issues from a private client perspective to make sure everyone enters into such an arrangement with their eyes open.

Finally, we have taken part in some fantastic charity events over the past few months, in particular Elmer's Big Heart of Kent Parade which concluded in early September with a farewell weekend and charity auction. This has been a fantastic success for the Heart of Kent Hospice, raising over £312k and we wish our 'Steam Elmer' a happy new home – we will miss him brightening up the car park of the Carriage Museum.

We look forward as ever to catching up with you at one of our next events.



**John Roberts**  
Managing Partner

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# Season of change

**We are delighted to be back at the Weald of Kent Ploughing Match this autumn, following a much quieter September last year as it was postponed, along with many other events. This year we have also teamed up with our friends at accountants and business advisers Kreston Reeves to welcome guests to our marquee.**

Events such as this are in important date in the rural calendar and provide an opportunity for farmers, landowners and rural dwellers to meet up and chat about the harvest just past and the farm year that begins ahead. No doubt the lack of a proper summer here in the South East will be one of those topics!

There is much change on the horizon for the rural sector and earlier this year the Government published a consultation which included proposals on a lump sum exit scheme for farmers.

We all know few farmers do actually retire, but the government says there is growing evidence that more would like to, and a lump sum payment could enable them to do this in a more planned and managed way.

The government is also keen to attract new entrants from younger generations into the sector and there could be support for farmers who want to rent out their farms as well as those selling up or surrendering their farm tenancy.

The government has said more details on the response to this consultation will be published later this year, but it seems inevitable that the scheme will go ahead.

Before making any changes to your farm business, or to discuss issues of succession planning, do get in touch find out more about the various options available, to help you make the best-informed decision.

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# Natural Capital - legal considerations for landowners

**Landowners and farmers should now be familiar with the terms Natural Capital and Biodiversity New Gain (BNG) which offer them an opportunity to secure additional income and new revenue streams as the basic Payment Scheme is phased out 2021-2027.**

BNG is already a requirement of the National Planning Policy Framework and National Planning Practice Guidance so it is not a completely new concept. I've been dealing with these projects in my role as trustee for various charities and their recent property developments.

More detail is now available about Natural Capital and The Environmental Land Management Scheme guidance, published 15 March 2021, sets out the goals of the 25 Year Environmental Plan and the Government's commitment to net zero emissions by 2050.

Landowners and farmers will be paid to deliver projects that enhance Natural Capital including:

- Clean and plentiful water
- Clean air
- Thriving plants and wildlife

- Protection from environmental hazards
- Reduction of and adaption to climate change
- Beauty, heritage and engagement with the environment

To deliver this, farmers will also be able to access payments via the Sustainable Farming Incentive Scheme, which is currently being piloted and will be launched in full in 2022.

There will also be The Local Nature Recovery Scheme, which will encourage greater collaboration between farmers which begins in 2022 and a full launch is planned for 2024.

The Landscape Recovery Scheme will see a number of projects including the restoration of wilder landscapes, large-scale tree planting and peatland and salt marsh restoration. Around 10 pilot projects will begin in 2022 and a full launch is again planned for 2024.

How should landowners and farmers now approach the introduction of these schemes and what legal considerations should they consider before entering into any future agreements? They should also review any existing agreements they have in place with developers.

They should consider whether any existing agreements, mortgage terms or covenants

will be breached by participating in any new scheme and we can help you to review these to understand your position.

Secondly, consider if you are happy with land being taken out of production for 30 years or more, what will be the ongoing costs to manage and maintain it and who is responsible for those. Is there the succession in the farm business to continue this if you are no longer able to and does it also limit the potential for diversification projects at a later date?

Also, will you risk generating an unintended IHT bill for future generations which reduces financial gains to be made and could result in other land or assets needing to be sold to pay for it.

Understanding the ongoing legal responsibilities to avoid breaching them and possibly opening oneself up for legal action or financial penalties is important, so taking legal advice will therefore be vital to understand the detail of any agreement.

We are happy to review any documentation and advise on the legal implications of any future agreement to protect you and your land interests.

**Blair Gulland** can be contacted at [b.gulland@gullands.com](mailto:b.gulland@gullands.com)

# Changing face of England's High Streets

Changes to planning rules in England which came into effect on 1<sup>st</sup> August will now make it easier for the owners of empty shops and some other commercial buildings to convert them into homes. Some people in the property industry say this could mean as many as four out of five retail units being converted into housing, forever changing the face of many high streets.

The new legislation allows properties in Use Class E to be redeveloped into housing without the need for a full planning application. New Permitted Development rights mean only prior approval is needed from the relevant local authority. To qualify properties must have been vacant for three months before the date of the application and they cannot be larger than 16,145.8 sq ft of floorspace. Local authorities will however be able to unilaterally remove these permitted development rights where they want to protect the character of a conservation area.

According to The British Retail Consortium, one in seven shops in England, Scotland and Wales were empty in March 2021. The government is hoping that measures such as these new permitted development rights will reinvigorate currently empty high streets. However, there are some concerns that local councils will have less control to implement their own vision for the high street and town centres in the future.

There are also concerns that business tenants who have failed to comply with their lease terms and who are protected under the emergency Covid-19 legislation until 25 March 2022, could see landlords reluctant to renew their existing retail leases. The British Retail Consortium says it is "Worried that this will lead to a situation where you will have an uncontrolled and unmanaged change of use, which will undermine the coherence of the commercial units that remain, particularly on the high street and in town centre locations".

Landlords are advised to consider their property portfolio carefully and how they might benefit from this new legislation or if they are at risk of being affected negatively by these changes.

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# Private equity investment – is it right to sell a stake in your business?

**If you are a business owner and are approached to sell a stake in your business, or are looking for investors to help fund the next cycle of growth, what do you need to know to make the most informed decision?**

Private Equity firms are investing in many different sectors and each firm will be looking for something different, so choosing the right partner from the beginning is important.

Firms will want to invest in a business to increase its growth with the view to exiting and making a profit on their investment, once it achieves peak value. This is traditionally something which is aimed for over a short period of time, usually 3-5 years, although the length differs according to the sector.

In exchange for the investment, the private equity firm will usually take an active, day to day role in the management of the business, to refine and oversee plans for growth. For the business owner, this means your business will benefit from a range of experience and fresh thinking.

Reduced control over day-to-day decision making is, however, one of the hardest areas for owner-managed businesses to accept and you may find

you disagree with decisions being made and imposed upon you. How long you stay with the business will be part of the investment deal, along with measures to keep other key members of your management team in place.

The investment may involve a 'rollover' proposal which requires the owners/managers of the business to put aside some of the sale proceeds for reinvestment into a new entity, often a limited company, which then acquires the business. This allows all parties to have a share in the future increase in value of the business, helping to tie in key personnel, and it also spreads the risk if there is a decrease in value.

Financial details such as the cost of management fees, which the private equity firm will charge, need to be scrutinised, as this could have a big impact on the profitability of the business and its ability to achieve the financial covenants in the investment agreement. Failure to meet financial covenants could see the private equity firm take full control of the business, so understanding all of the legal obligations and the implications of the deal are essential.

Private equity investment has helped many businesses to accelerate growth plans and to build a strong and successful future and if you are interested in finding out how such a deal could work for you, get in touch.

Sarah Astley can be contacted at [s.astley@gullands.com](mailto:s.astley@gullands.com)



# Mediation Success in family disputes

**Back in March 2021 the Government launched a scheme to help separating families resolve disputes outside of the courts, with a £500 voucher towards mediation services. Mediation is a way of finding an amicable solution to disagreements and the government were also keen to free up space in family courts.**

The scheme has proved successful and figures from the Family Mediation Council who run the programme suggest up to three-quarters of participants have been helped to reach full or partial agreement on their dispute.

The Government has announced it will invest a further £800,000 into the scheme.. while it deals with the backlog in the courts following the disruption of Covid.

The breakdown of a relationship does not have to be acrimonious or end up in a court room and the Collaborative process we offer here at Gullands enables the couple to finalise the details of their split via face to face discussions in a series of four-way meetings.

These meetings are attended by the separating couple, each supported by their own Collaborative lawyer. The parties and their lawyers work together, with the lawyers providing support and advice, with the aim of facilitating an amicable settlement to whatever issues are facing the couple. It can be a very successful way of resolving issues concerning children and finances.

The process begins with all four parties signing a Participation Agreement to commit to the process and agreeing that all discussion takes place at the meetings, in a spirit of openness.

Collaborative law is very different to the typical legal process as it reduces hostility and encourages communication. Other benefits are that:

- Working together enables the best outcome to be reached for the whole family.
- People tend to maintain a better, ongoing relationship with their ex-partner which is especially useful where children are involved. It can be faster to identify and resolve issues.
- It is a much cheaper way of resolving issues compared to going to court.
- You are guided by an experienced family solicitor:

Julie Hobson, Partner at Gullands Solicitors is a Resolution Collaborative Solicitor and will work with you to help achieve the best outcome for you and your family. Free initial telephone consultation offered and evening appointments are available, email [matrimonial@gullands.com](mailto:matrimonial@gullands.com)



# Disputes with neighbours

**According to research published recently by Churchill Home Insurance, between 2020 and 2021 there has been a 28% year on year rise in the number of noise complaints by people to their local councils across the UK.**

With many of us spending much more time at home during the recent lockdowns and taking summer staycations and with many people continuing hybrid working arrangements and working from home more frequently, it is unsurprising that you may notice things about your neighbours which quite frankly annoy you.

How you deal with this could have several implications, financially, emotionally, and legally if you decide to sell your home in the future, so what is the best way to handle these neighbour disputes?

## Noise disputes

Firstly, try to solve the problem informally and speak to your neighbours to let them know you are being disturbed. They may not realise they are being noisy, but also ask yourself do you have a realistic expectation of noise levels. For example, children playing in a garden on a sunny day is perfectly reasonable.

If your neighbour rents their property and the noise continues, speak to their landlord to let them know the issue you are having, as there may be terms in the lease which are being breached.

If you want to escalate your complaint further, you can try using a mediation service to help you to discuss this with your neighbour.

Where complaints involve a statutory nuisance such as loud music, vehicles, machinery and equipment or a barking dog between 11pm and 7am, then you can make a complaint to your local council.

A last resort is to take legal action against your neighbour.

## Boundary disputes

A second area where neighbours frequently fall out is regarding boundaries. Whether a dispute is about a fence, wall or the boundary line, people quite rightly don't want someone encroaching onto their land.

Disputes over boundaries tends to happen when someone puts up a new fence or wall, usually without discussing it, with their neighbour who may rightly or wrongly believe they own the land. It is therefore important to establish where the boundary is before you begin any work. Don't assume that an existing fence is in the right place as previous occupants may have come to a different agreement.

## Avoiding a boundary dispute

To establish where the boundary is you should look at the title deeds to your property which are available from the Land Registry. Boundaries on Land Registry plans only show the general position of the boundary and unless there is a plan with measurements are normally only accurate to + or - 1 metre. Ideally speak to your neighbour to reach an agreement.

If you are unable to both agree to this then you could consider seeking the help of a chartered surveyor and if you both agree to their decision, sign an agreement which a solicitor can help draft. The surveyor could also draw a new boundary plan which is submitted

to the Land Registry to help avoid this issue in the future. Useful for when you want to sell the property or if the neighbouring property subsequently changes hands.

## Existing boundary disputes

For existing boundary disputes with neighbours where an agreement can't be reached, both parties might decide to consult their own surveyor and if this fails, then it is likely the dispute will go to court or the First Tier Property Tribunal and a judge will decide on the boundary placement.

## Party Walls

There are separate rules that protect a Party Wall which is shared with neighbours and anyone planning on carrying out work to a Party Wall is required by the Party Wall Act 1996 to obtain their neighbour's written permission. Written permission is also needed to carry out other works such as increasing it's height, strengthening foundations, and other building works directly to it which could affect the structural integrity of it. You should take advice from a specialist Party Wall Act surveyor if you are unsure about carrying out any work to a Party Wall.

Disputes with neighbours often start with one issue and escalate. Compromise is often needed on both sides to help avoid and resolve a dispute with a neighbour. If you plan on selling your property you have to declare any dispute you have had which could impact on the future saleability of the property.

If you have any concerns about issues with your neighbours, consult our team at Gullands for advice and support.

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# Multigenerational living

## a guide to a happy household

As average life expectancy and house prices have both increased over the last 25 years, so too has the number of families who are choosing to live together in a multigenerational household, so how can you make such an arrangement work without any disputes?

### **Start with the financial details.**

It is likely that it will be the older generations in the family who will be putting the most capital into the arrangement. Ownership of the equity in the property should be recorded along with how day to day household expenses and maintenance costs will be met. A deed could also be drawn up to record the ownership of the property for each family member; otherwise in the absence of such a document the law could assume an equal split, especially in the event of a divorce.

### **Have an up to date Will.**

Every adult should have an up-to-date Will which details what happens to their share of the property on the event of their death, especially if the parent has other children who don't live with them that they would like to receive a share of the property. For parents with children under the age of 18, it is important to appoint guardians in their Will.

### **Free childcare or a live-in carer?**

It might be assumed that as you live together you will all take equal responsibility for the care of younger children or older relatives, however over time that might create a burden on some members in the household and lead to arguments. Discussing all of these details in advance – even who walks the dog, feeds the cat or does other chores is important.

### **Mental capacity.**

Consider what happens to the arrangement if one member of the family loses mental capacity which can occur at any age. As well as providing care for them, you will also need to consider how tied together your finances are and how easy this is to unpick.

A Lasting Power Of Attorney will allow for the transition of decision making between household members for financial and or health and well-being reasons.

### **Have your own space.**

Discussing the arrangement in as much detail as possible should help to avoid disagreements but it is important that everyone has their own space that they can retreat to if they need peace and quiet. Respect everyone's space, possessions, and feelings for a happy household.

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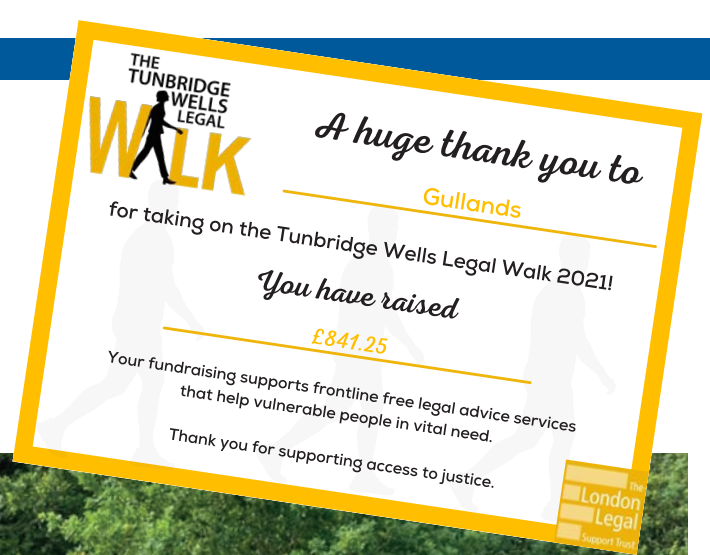
# Tunbridge Wells Legal Walk 2021

A team from Gullands recently took part in the 10km Tunbridge Wells Legal Walk 2021 and along with friends, guests and others in the legal profession they helped raise a total of £10,862 for Citizens Advice Tunbridge Wells.

The Gullands' team of 13 individually raised £841.25, which was well above the £400 target and every penny will go to supporting vulnerable people in the local community, such as elderly people who are struggling to live independently, people who live with disabilities and their carers, homeless people and those living in unacceptable conditions, victims of trafficking and those having to face employment discrimination.

The London Legal Walks Trust which organised the walk offers support to over 100 organisations in London and the south east and helps them to continue providing pro bono legal advice. Part of the way it is funded is through donations from those who support the London based and local south east walks.

Gabriela Alexandru who organised the Gullands' team comments: "We would like to thank everyone who helped organise the event, participated on the day, and who made donations to support those less fortunate than them. Thanks to them more people in the community will now receive access to legal advice and the help they need."



## Elmer's Big Heart of Kent Parade success

We have loved the colour and vibrancy around Maidstone Town Centre provided by the 51 large Elmer sculptures and 31 smaller elephants from the learning herd this summer, all part of Elmer's Big Heart of Kent Parade.

Sadly, all good things come to an end and after nine weeks in situ and patiently waiting to be discovered, they all gathered for one final Farewell Weekend before being auctioned.

This has been a huge success for the Heart of Kent Hospice with over 10,000 eager explorers downloading the App and collecting 366,000 Elmer sculptures and collectively walking over 19,000 miles around Maidstone. This will have also provided a boost for town centre businesses, increasing footfall post lockdown, at a time when businesses needed it the most.

We were delighted to sponsor Steam Elmer who was placed at the Carriage Museum and we loved receiving the many entries into our Steam Elmer selfie competition.

Our four lucky winners were Melanie Banister, Rebecca Slingsby, Marcin Dudkowski and Keli Wade, who each won a £50 restaurant voucher, again a small boost for some of the town centre restaurants which have had a difficult 18 months.





From the left: David Boughton, Steve Taylor, Leroy Bradley, Angela Reed, Richard Filmer, Sasha Kamenetski from HOKH & Linda Harrild from the Air Ambulance

# Charity football match raises £2,500

A charity football match sponsored by Gullands and played on Sunday 18 July at the Gallagher Stadium, Maidstone, raised £2,500 for the Heart of Kent Hospice and Kent and Sussex Air Ambulance.

The match was played in memory of the late Maidstone and Mid Kent Sunday Football League Committee members Mick Filmer and Ted Towner who sadly passed away earlier this year.

Organiser Richard Filmer comments: "Despite it being the hottest day of the year we are very grateful to all of the players and spectators who turned out to watch the game and to remember Mick and Ted. This was a special tribute to two of our Sunday League greats who contributed so much to the game at a local level and inspired many players."

The match was sponsored by Gullands Solicitors and partner Leroy Bradley comments: "We are delighted to have been a part of such a fantastic afternoon at the Gallagher Stadium. Football teams help to bring local communities of all ages together and we hope events like this will inspire the next generation who will go on and play for their local teams."

Sasha Kamenetski, Corporate Partnerships Manager at the Heart of Kent Hospice says: "On behalf of everyone at the Hospice, I want to say a big "thank you" to the organisers and the sponsors of this great event. The fantastic amount that was raised once again demonstrates the generosity of the local community and helps us to provide support for terminally ill people and their families and carers."



# Staff profile: Georgina Bailey

**Position:** Associate Solicitor in the Commercial Property Department

**Time at Gullands:**

I joined Gullands in February 2021.

**Main responsibilities and duties:**

Dealing with a wide range of commercial property transactions ranging from land acquisitions, leases of high street premises to larger development transactions.

**Why did you decide to pursue a career in the legal sector:**

Law has always been a subject of interest. Before deciding to enrol onto my undergraduate degree, I would often research and read up on the current news and changes in law. Studying law gave me the opportunity to feed that interest, it was soon clear that Land Law was my strongest subject, but also the one I found most interesting.

**What is the best part of the job:**

The role allows me to build trusting relationships with longevity. I can somewhat become invested in the client's goals and finding ways to effectively achieve those goals together, obtaining the client's trust and proving their trust in me is well placed, is truly rewarding.

**If you were not in this job, what would you be doing:**

I would most likely be in a public service role such as a doctor or a teacher. I have always



enjoyed interacting and talking with people from all walks of life! It is important to me that I am in a role that is both challenging and engaging.

**What changes would you like to see happen in the law in the next 10-20 years:**

I would like to see mechanisms in place that will streamline the process, making a transaction less stressful and more cost and time effective for our clients.

**What do you like doing in your spare time:**

Living away from my family and friends means I like to spend most of my free time visiting them. Otherwise, I always make sure to get in some long walks and swims in the week, followed by a home cooked meal! My father was a chef and so I enjoy trying new recipes.

## Viticulture

We were pleased to attend Viticulture on 10<sup>th</sup> June at Plumpton College, the first in person event for many of the businesses attending and an opportunity to meet friends and clients from the sector.

The growing viticulture sector in Kent is exciting and brings with it many business opportunities and not just for those directly involved.

With this in mind, we are delighted to be working with the Maidstone Town Centre team and businesses in the town to organise a wine weekend in 2022, more details to follow soon.



## Taste of Kent Awards 2022

We are delighted to sponsor the Taste of Kent Awards 2022 and The Diversification Award.

The formal launch of the awards will take place later this year at the Houses of Parliament and voting for the public will open January-February 2022 and there will be self-nomination categories for businesses.

All businesses need to adapt to survive, and the last 18 months has seen significant changes for many sectors here in the South East with food, drink and hospitality businesses leading much of that change.

The way we live, work, shop has all changed and alongside that many technological changes have

advanced much faster than anticipated. To keep up with the speed of change takes great skill and ambition of business leaders and we look forward to hearing more about the entries to this award and how their new business model might provide inspiration for others in the sector.

Kent is a county with a rich source of food and drink entrepreneurs and long may this be encouraged and celebrated.

Details of how to enter will be announced at <https://www.tasteofkentawards.co.uk/>

