

Land option agreements and speculative housing development



House building plays a key role in the UK's economic growth, especially here in the South East. Despite this several councils in Kent have failed to deliver enough new homes which is likely to see more speculative housing development in these areas.

Canterbury, Medway, Sevenoaks, Gravesham and Tonbridge and Malling have all failed to reach the government target of 75% of their individual targets over the past three years. If these local authorities now reject a planning application for a new housing scheme, it is more likely a planning inspector would overturn the decision.

To achieve any increase in the volume of new housing means bringing more land forward for development and it is likely that these 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.

Partnership Agreements – a firm handshake or agreed in writing?

Have you ever considered what will happen to your farm business if one of the partners dies or is made bankrupt and you don't have a written partnership agreement in place? Legally speaking the Partnership Act 1890 will be used which requires all debts to be paid and borrowing returned to banks with the residue being distributed between the remaining partners. If this isn't what you had in mind then read on...

In practice in the absence of a written partnership agreement then as long as the remaining partners agree, a new partnership agreement can take over all of the debts and assets of the old partnership so that a sale doesn't have to take place.

It is always better not to leave anything to chance as a written partnership agreement will reduce the risk of a dispute taking place, as conversations about all of the tricky issues will have taken place and an agreement reached.

Another area that frequently causes disputes is how the assets will be valued in the event that the partnership agreement comes to an end, as there can be a significant difference between the book value of assets vs the open market value. Given the rise in land and property values in recent years this is important to get right for the long term success of the farm business.

Other points to include in the written agreement will be which assets are personally owned and which are business assets belonging to the partnership. Property which is owned by a farming partnership will be eligible for full Business Property Relief (BPR), however if it is owned personally and used by the partnership in the course of the farming activities then only 50% BPR will be available. Agricultural property relief is only applicable to the assets used for agricultural purposes and at their agricultural value, which might not be the true market value.

Finally, it is also important to make sure all partners have Wills which are up to date and accurately reflect the points in the partnership agreement. For example, if land and property is included in the partnership agreement then it cannot be gifted in a Will, but you can leave the interest in the partnership in the Will instead.

It is never too late to draw up a written agreement, so don't leave anything to chance and get in touch today.



The Wine Weekend Maidstone

We are delighted to be supporting a brand new wine event for the public which is being held in Maidstone on Saturday 16th July 2022.

The Wine Weekend is a new event to celebrate and showcase viticulture here in the heart of Kent's wine region. We are delighted to have been involved in helping to set up this initiative along with Ulric Allsebrook of Frederic Bistro, the Maidstone Business Improvement District and Kent County Council.

On offer will be a delicious range of wines from local producers including Chapel Down, Hush Heath, Simpsons, Domaine Evremond, Gusbourne and Biddenden which will be available to taste and buy along with food and other refreshments.

Blair Gulland who has been instrumental in setting the event up comments: "What better way to enjoy the wines of our many producers here in the Garden of England on a sunny, summer day, which will also bring people into Maidstone for the weekend and to enjoy the hospitality of the town centre. Initiatives such as this are important for our high street and local businesses as it provides an opportunity to showcase some exciting and very delicious wines from our fantastic local producers. The setting of Sessions House will be a stunning backdrop to what we hope will become an annual event."

Tickets will cost £15 each (redeemable against purchases) and The Wine Weekend will be held in the beautiful courtyard of Sessions House, the buildings of Kent County Council. Further details for the public and exhibitors is available at www.thewineweekend.co.uk



Making way for the next generation

Applications are now open to farmers in England for a new Lump Sum Exit Scheme. Those eligible have until midnight on 30 September 2022 to apply.

So how should farmers plan for their exit.

This new scheme was initially billed as a retirement scheme but it is open to applicants who want to leave the sector and take up a new occupation, as well as those wanting to retire. This is also likely to be a one off scheme and not open to applications in future years.

You can request a forecast as to how much you might receive before making a final decision.

Payments will be calculated based on an average of BPS payments made for the 2019/20 and 21 scheme years which also includes young farmer or greening payments. This figure will be divided by 3. If payments were claimed in Scotland, Wales, or Northern Ireland the reference amount (which has a cap) will only relate to your English payments.

Your lump sum payment may also be reduced if you do not give up enough entitlements and this could happen where entitlements have been sold or leased out since the 2021 BPS was claimed.

Applicants may also want to apply for BPR in 2022 as well as the Lump Sum Exit Scheme in case they find they are not eligible or if the transfer of land can be completed in time.

If you have inherited all or part of a business from a farmer who claimed BPS in one of the years 2019 to 2021, that BPS claim history can be taken into account.

If two or more businesses have merged since BPS 2018, the merged business can ask for the BPS claim history of the original business to be taken into account.

This is clearly a complex issue and we are happy to work with your agents to help you decide the best course of action.

The structure of your farming business might also dictate whether taking a lump sum payment is worthwhile. If you farm in a partnership or Limited Company there could be implications for the whole business with the other directors/shareholders prevented from claiming any subsidy in the future.

In general planning for your succession should start with a conversation with family members to discuss any hopes and ambitions they might have. At this stage independent advisers can help you model how the business could look going forward. If you decide to pass on the business and assets then you will need to consider a range of factors such as:

- What each family member expects or needs from the farm assets.
- How the assets of the farm are currently owned.
- Who currently occupies any land and buildings and any agreements in place which cover this.

- The future focus and direction of the farm business and the role the new generation will have in seeing this to fruition.

It is important to take specialist tax advice before any actions are taken to review both the Inheritance Tax and Capital Gains Tax implications of any decisions.

Other ways to protect the assets of the business and individuals going forwards includes making sure everyone has an up to date Will that enables the succession of the business as planned, that Partnership or Shareholder agreements are in place. Thinking personally, ensure pre and post nuptial agreements or cohabitation agreements are considered and used which can help to keep wealth and assets in the family if younger family members want to get involved.

If you are thinking about family members who don't want to be actively involved in the farm business but you would still like them to receive a 'fair share' then holding assets (such as land and commercial property) in a Self-Invested Personal Pension (SIPP) is one option rather than selling assets off or taking out finance to provide a lump sum payment.

Finally, once you have agreed a plan and the time scale to allow for a hands-on handover period, consider how your advisers can also play a role in this transition to help the next generation truly succeed and hit the ground running.

20 year legal fight following council food conviction

In a rare legal case, a former publican from Northamptonshire who was wrongly jailed, successfully cleared his name after a 20 year battle and also won £4m damages from North Northamptonshire Council.

The High Court case was brought by Dr Geoffrey Monks against East Northamptonshire District Council (now North Northamptonshire Council) for its 'vendetta against him' through the courts amounting to abuse of process.

Back in 1999 Dr Monks was prosecuted for alleged food safety offences at one of his pubs The Snooty Fox and because he was unable to pay the £20,000 costs and fines he was sent to a category A prison in 2003. During this period, he also suffered severe ill health due to the stress of the case and he lost his home and business interests. His conviction was successfully overturned in 2015. In addition to this case, Dr Monks had another conviction relating to another pub he owned – the Samuel Pepys overturned on appeal.

Dr Monks subsequently brought this case against the council for its failure to follow its own detailed food safety enforcement and prosecution policy. He alleged the council had conducted approximately 5,000 food safety inspections of premises in the eight years before it focused its attention onto him, which resulted in just two prosecutions. Between 1995 and 1998 there was not a single person charged with a food safety offence in the council area.

This case is unusual as there have only been two previous, successful civil actions brought to recover damages for the tort of abuse of process in English legal history, the last one being in 1861.

This case although rare, should serve as a warning to other non Crime Prosecution Service prosecuting authorities who should consider how disproportionate actions and the impact they could have on an individual.

The Council has accepted it caused serious personal injury, loss, and damage to Dr Monks over a 20-year period and it has apologised to him.

If you would like more information about prosecutions by non CPS prosecuting authorities please get in touch with **Andrew Clarke** andrew.clarke@gullands.com

CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.



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