



Protected Wildlife and your Property

The launch of police initiative “Operation Bat” in June 2004 signals the increasing gravity with which wildlife crime is viewed in the UK.

With growth in rural development over recent decades, a trend set to increase in the near future, we should expect to see a growing interface between people and wildlife, as development inevitably encroaches on habitats. This state of affairs, along with the reinvigorated drive to prosecute for wildlife crime, demands that the public, in particular rural homeowners and developers, have a keen awareness of their rights and responsibilities regarding wildlife.

All 16 species of bat in the UK, as well as all wild birds (that is all birds excluding game), are protected by law and to kill, injure or disturb them is an offence. It is also illegal to obstruct access to or to damage a roost, regardless of whether the animals are present or not. In practice, this means that any activity such as building, renovation work, maintenance or pest control could contravene legislation.

Awareness is critical, as the presence of protected wildlife may not always be apparent and homeowners could unwittingly flout the law, running the risk of incurring a hefty fine: in 2004 a man in Fife, Scotland, was fined £450 for killing six bats in his home. Further information on how to be sure if bats are roosting in your property can be obtained from the Bat Conservation Trust. It may be useful to know that bats do not make nests and many species roost discreetly in small crevices either on the building exterior or in lofts. The clearest evidence will be droppings which consist of insect remains and will easily crumble when touched.

However, the presence of bats or birds on your property does not necessarily prevent works taking place, although compromises may have to be made. If they are present in your house it is essential to seek advice from your Statutory Nature Conservation Organisation (SNCO), either English Nature, Scottish Natural Heritage or the Countryside Council for Wales, before any activity is carried out that may interfere with the protected wildlife. You will then be advised as to the best manner in which to undertake works and the most suitable time. Bats are most likely to roost in houses between May and August whilst swallows, house martins and swifts arrive in April and will have migrated by October.

Importantly, if you wish to carry out works on any other structure where there is evidence of bats, such as trees, bridges, outbuildings, barns or any demolition work (including houses) then a Habitats Regulations Licence must be attained from the relevant Government Department (DEFRA, Welsh Assembly or the Scottish Executive). This will require a bat survey, ideally carried out by an environmental consultant, which will detail the nature of bat occupancy of the structure and outline plans to mitigate disruption to the animals.

The legal protection of such creatures will be of particular concern to those seeking to convert barns or other buildings into houses, where a large investment may be at stake. The lengthy and potentially expensive process of applying for the Habitats Regulations Licence should be taken into account sooner rather than later to minimise disruption to your building schedule.

For more information or advice on this topic, please contact Richard Connolly on 01905 610 410.

STOP PRESS

Antrobus Update

In October 2002, Dr Nuala Brice a Special Commissioner delivered her 61 paragraph judgement in the first Antrobus case. There was much rejoicing amongst the taxpayers at what had been a relieving victory. Almost four years later to the day, the same Dr Nuala Brice delivered her 127 paragraph judgement in the McKenna case. There was much weeping amongst the taxpayers at what had been yet another defeat for the taxpayer.

Although not involved in McKenna, Alan Neal and Jim Quinn have been the solicitors involved in half of the 6 leading cases on this subject during the last 5 years. In March they will dissect the 6 cases and display for you where your farm and farmhouse now stand in the search for Agricultural Property Relief from Inheritance Tax.

They try to make even talking tax light and informative. Do come and join them.

For more information on these two events refer to our Event Update inside this newsletter.

Medieval Church Law Means Couple Face £200k Bill

Final judgement was made in the House of Lords recently in the much-reported case of Aston Cantlow v Wallbank.

The Wallbanks own Glebe Farm, in Aston Cantlow, Warwickshire. The farm includes a field called Clanacre, which is classified as rectorial property, making them “lay rectors” of the parish. Through ownership of this land the couple became liable for restoration costs of their ancient parish church under the Chancel Repairs Act 1932, which is based on centuries-old law.

The Wallbanks lost their claim that their obligation to pay for church repairs were unenforceable because it contravened the Human Rights Act.

The initial restoration bill was for £95,000. Mr. & Mrs. Wallbank were yesterday ordered to meet a final demand for £200,000. They were also ordered to pay the legal costs of the proceedings.

The Effects Of The Regulatory Reform (Agricultural Tenancies) (England And Wales) Order 2006

In 2004, Defra consulted over reform to agricultural tenancy legislation. The result, the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006, came into operation from 19 October 2006. Its amendments to the Agricultural Holdings Act 1986 (AHA86) and the Agricultural Tenancies Act 1995 (ATA95) are summarised below:-

1 The 'Livelihood Test' for succession to an AHA86 tenancy

New sources of income may now be taken into account when considering whether or not a potential successor to an AHA Tenancy has derived his principle source of income from the holding for at least 5 out of the last 7 years. That income may now include income from:-

- i) agricultural work carried out from, rather than necessarily on, the subject holding (e.g. contracting). The landlord's written consent for that work is however needed; and
- ii) other work carried out on or from the subject holding (e.g. diversified activities or external employment). Again the landlord's written consent to that work is required before the income may be considered.

2 End of Tenancy Compensation

The reforms contained the respective amendments to the regimes governing end of tenancy compensation:-

a) AHA Tenancies

The amendments are designed to ensure continuity of each party's claim for compensation, arising from an earlier AHA tenancy. However to apply, the new holding will have to include a substantial part of the original holding.

'Substantial part' is not necessarily defined by reference to the area of the holding, but also by reference to the value of the holding.

b) FBT's

The amendments to the ATA95 provide that:-

- i) parties to an FBT may agree an upper limit of compensation payable at the end of the tenancy, for any given improvement;
- ii) where the parties agree the principle of an upper valuation limit for the improvement, but cannot agree that upper limit, the default will be the cost to the tenant of the individual improvement; and
- iii) if a tenant surrenders part of the land upon which an improvement has been made early (creating two end dates for the payment of compensation in respect of one improvement), the total aggregate compensation payable for the two end dates shall not exceed the maximum agreed, or the statutorily imposed compensation limits for that improvement (whichever is applicable in the circumstances).

3 Arbitration Procedures under AHA86

The DEFRA consultation identified difficulties with AHA86 arbitration procedures, such as:-

- a) relative scarcity of AHA86 arbitrations leading to

a lack of sufficiently qualified arbitrators; and

- b) the rigidity of that arbitration procedure.

Accordingly, the new procedure:-

- i) adopts the procedures of the Arbitration Act 1996;
- ii) retains the procedure by which in default of agreement, the President of the Royal Institution of Chartered Surveyors (RICS) shall appoint the arbitrator; and
- iii) removes the time limit for the President of RICS to appoint arbitrators in rent review matters.

4 Rent Reviews

a) AHA86

The amendments provide that:-

- i) Where a tenancy is enlarged, but the rent attributable to the original holding (as now comprised in the enlarged holding) does not increase, the timetable for the review of that original element of the rent will be unchanged; and that
- ii) rent reviews now be determined as at the next possible termination date, rather than the date of the arbitrator's appointment.

b) ATA95

The amendments allow the parties to an FBT to:-

- i) opt out of the statutory rent review provisions by express agreement, provided the agreement does not allow only for upwards reviews; and to
- ii) opt for rent review by independent expert, provided, again, that the clause does not allow only for upwards reviews. The parties will be bound by the decision of the agreed expert.

However these provisions only apply to agreements commencing on, or after 19 October 2006.

5 Application of the ATA95

a) Enlargement

DEFRA's consultation procedure revealed a reluctance to increase the size of existing AHA holdings, for fear of losing AHA86 protection. Most farmers instead retain the existing AHA tenancy, but enter into a separate FBT for the additional land. DEFRA considered that this over-complicates matters; with alternative regimes applying to what is often neighbouring land.

The amendments to the ATA95 mean that AHA86 protection now applies to any new tenancy arising from a written contract of tenancy, which states that the AHA86 is to apply to it where:-

- i) the parties agree to add land to an existing AHA86 holding, but contrary to the intention of the parties, that action operates as a surrender and re-grant of the AHA86 protected tenancy; or where
- ii) the parties come to an agreement to add land to an AHA tenancy and are aware that this will operate as a surrender and re-grant of the existing tenancy.

The original AHA holding must form a 'substantial part' of the new holding (see definition of 'substantial

part' above). However, new restrictions prevent incremental increase of a holding to attempt to avoid the 'substantial part' requirements of the new rules.

This rule also only applies to tenancies entered into on or after 19 October 2006.

b) Succession

DEFRA's consultation also suggested that lack of clarity of the 'agreed succession procedure' meant that many unnecessary AHA succession applications were made to the Agricultural Lands Tribunals as a protective measure. It is intended that amendments to the succession provisions will make the 'agreed procedure' clearer, thereby reduce the number of unnecessary ALT succession applications.

6 FBT Notice to Quit Under the ATA95

The former 24 month upper limit for an FBT Notice to Quit is removed.

1.1 Proposed Reform

The RRATO contains provision to amend sections 5 to 7 of ATA95 so as to remove the existing upper limit of 24 months on service of a notice to quit.

For more information on this subject please call James Leyland on 01905 610 410.

Planning Permission for Poly Tunnels



The High Court judgment has made it clear that large-scale use of Poly Tunnels do require Planning Permission.

The Court upheld the decision of the Inspector and rejected the arguments which were put forward that plastic tunnels could not be described as buildings as they were not permanent.

The Court agreed with the Inspector that Poly Tunnels constitute an actual development for planning purposes and therefore require formal permission.

Common Land – The Commons Act 2006

A great deal of uncultivated land in England and Wales is subject to rights of local farmers to graze cattle and sheep. It may be subject to public rights of access (private or public) and when acting for purchasers of such rural land it is essential to fully investigate and be aware of these rights.

Rights of common are centuries old (at least 700 years) and have historically formed an important part of the rural community. We have all heard of grazing rights and rights of piscary but there are many less well known "common rights" which it is equally important to be aware of. Please note Common Land is not land owned communally by a few people it is land owned by one person which other people have certain rights over.

Many common rights are of nothing more than historic interest but some can be vital to the viability or otherwise of a farming business.

The Commons Registration Act 1965 established 3 registers:-

1. *Description of Common Land.*
2. *Rights exercisable over it.*
3. *Ownership thereof.*

The Commons Act 2006, which received Royal Assent on 19th July 2006 and which has been earmarked for immediate introduction updates and expands the law making the Register of Common Land a more comprehensive list:-

1. by making any land not registered as such losing its "commons" status; and
2. preventing the creation of new rights of common by prescription.

(NB: A right of common can still be created by deliberate action but the land over which it is exercised will have to be specifically registered under the new Act.)

Like much other recent legislation (e.g. Cross Compliance in SFP) the Commons Act 2006 puts in place a system which promotes sustainable farming, enables public access to the countryside and protects threatened wildlife and their habitat and it is apparent from the Landscape Ministers

comments at the time of Royal Assent that this is the driving force behind the legislation.

Common Land is often highly valuable wildlife habitat. Around 55% of Common Land in England is designated SSSI (Site of Specific Scientific Interest) and only 63% of that Common Land is in favourable or recovering condition. In other words nearly 40% of it is in a condition classified by English Nature as being in poor and declining conditions (i.e. bad for wildlife).

The New Act essentially puts in place 5 "systems" to enable better management and identification of Common Land.

1. It creates the concept of "Statutory Common Councils" which will enable commons to be managed sustainably by commoners working together to regulate grazing, vegetation and other agricultural activities. The hope is that this will help to bring Common Land into good or recovering condition.

2. It sets out new clear criteria for registering town or village greens giving local people the chance to register places of value to them for recreation/green space by protecting them permanently.

3. It overhauls the registration system for Common Land, thereby safeguarding public access to commons by enabling missed commons to be registered and wrongly registered land to be deregistered.

4. It will provide better protection for Common Land and greens by streamlining the consent systems for works and fencing them ensuring a consistent application of the statutory protection as well as reinforcing existing protections.

5. It prohibits the Severance of Common Rights preventing commoners from selling, leasing or letting their common rights away from the property to which the rights attach. The Act actually brings in a retrospective ban of severance of its rights effective from 28th June 2005.

For more information on the Commons Act 2006 and how it may affect you or your local community, please speak to Sarah Baugh on 01952 641 651.

Event Update 2007

mfg Solicitors are planning some seminars during the next 12 months and we will also be attending several events which we would be happy to see you at! Please contact us if you would like to attend any of the events we are running on **01905 610 410**.

Date	Event
20-03-07	mfg Solicitors APR Update Seminar Worcester Rugby Club
22-03-07	mfg Solicitors APR Update Seminar Telford International Centre
09-04-07	South-Shropshire Point-to-point Eyton-upon-Severn
10-04-07	Croome & West Warwickshire Point-to-point Upton-upon-Severn
07-05-07	North Shropshire Point-to-point Eyton-upon-Severn
07-05-07	North Ledbury Point-to-point Upton-upon-Severn
15-06-07 16-06-07 17-06-07	Three Counties Show Malvern
21-07-07	Newport Show Chetwynd Deer Park Newport
02-08-07	Burwarton Show Cleobury North
04-08-07	Oswestry Show Park Hall Oswestry
05-12-07	Market Drayton Christmas Livestock Show & Sale Market Drayton



Employment Law Newsflash

The Department of Trade and Industry has unveiled the staged increase to statutory annual leave entitlements to 28 days per annum.

The current annual leave entitlement for agricultural workers under the Wages Order is 23 days.

The first statutory increase for all workers to 24 days per annum will be effected from 1st October

2007, and then rise to 28 days per annum by 1st October 2008.

Since 1st October 2006 agricultural workers are also now entitled to paid leave for Bank and Public holidays which fall on a day when the worker does not normally work.

If you require any further information please contact Sally Morris or email sally.morris@mfgsolicitors.com

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mfg Offices:

Halesowen	(0121) 550 0777	Wellington	(01952) 641651
Telford	(01952) 641651	Stourport	(01299) 827827
Worcester	(01905) 610410	Bewdley	(01299) 402221
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Kidderminster	(01562) 820181	Oswestry	(01691) 684817



People in Agriculture

In what we hope to be the first of a series of interviews with local agricultural personalities, Sarah Baugh, Partner at mfg's Wellington branch spoke to Wynne Jones, Principal of Harper Adams University College about the challenges facing the rural community and the importance of collaboration between specialists in the agricultural field in facing an ever-changing future.

Professor Jones has been involved in agriculture throughout his life. The son of a North Wales farmer, Professor Jones has been at Harper Adams for over 18 years, the last 10 as Principal.

Preliminary discussions focussed on the multi disciplinary nature of agriculture. Professor Jones explains:-

"Harper Adams has always been recognised as a key provider of agricultural education but rather than concentrating on purely the traditional subjects of animal husbandry and crop growing, students have to be conversant in not just technical operations but also issues of financial and rural resource management and marketing.

"Although they are 'agricultural specialists', that encompasses so many different land based resources. We have specialists in animal science, crop production and crop science. There are those who specialise in agricultural machinery and those who have to consider farm buildings and their environmental compliance and planning issues. All of these different strands have to be pulled together

to provide a rounded approach to rural life and the challenges which we face.

"The concept of being multi-disciplinary specialists is reflected in the courses that we offer. For example our Rural Enterprise and Land Management Degree covers a range of topics that impact upon legal, valuation and taxation issues as well as traditional resource management and planning issues."

Next we talked about the future of farming and the challenges which today's students, the future farmers will face.

"The challenge globally for the next 30 years must be food production. We could be looking at double the demand but with less land and less water available to produce it than at present. I think that it is vital to look at water management and extraction which will have major environmental implications that farmers will need to be able to address.

"Agriculture of the future is inevitably going to be very different. That is particularly true bearing in mind the strength of the retail end of the supply chain. All of us involved in the rural economy will have to take our businesses forward to succeed. That is going to mean not just specialisation but also expansion, which in turn could mean having to share resources, and use pooled arrangements. Equally the cost of machinery is so expensive nowadays that we might have to see more co-operative ownership arrangements. It will be up to Harper Adams to educate the upcoming farmers in the implications of those arrangements and for

firms such as mfg to be able to advise people fully and expertly upon them.

"Other matters that the rural community have to be more aware of include how vital it is to recruit, develop and keep good staff. But there are other issues not least of which is communication with more and more immigrant/seasonal workers in the industry."

So what initiatives does Harper Adams have in place to face this ever changing, multi-dimensional rural picture of the future?

"A key initiative is sustainable technology, utilising alternative crops or alternative uses for existing crops and materials including waste. To produce one tonne of bio diesel you need one hectare of rapeseed oil. In the UK alone we use 20 million tonnes of bio diesel per year. With a government target of 5% of that coming from renewable sources this has to be a major opportunity for the rural community of the future.

"We are also leading the National Care Farm Initiative, by working with the Arthur Rank Centre and also other initiatives which recognise the therapeutic value of farms and the rural lifestyle.

So how can mfg Solicitors help with all of this?

"Well although you are specialists you embrace the concept of agriculture as a multi-disciplinary subject. Its important for Harper Adams not only to have expertise within our boundaries but also around us and your Firm have always tried to focus on the rural needs and can offer a reasonably wide geographical net.

"It's often been said that Harper Adams is good at coming up with good solutions for rural challenges simply because we are located in the country and face the same issues that the farmers and other rural based businesses themselves are facing. Firms such as yours have the ability to latch onto local knowledge and local problems and that way you are more likely to be able to empathise with your clients and understand their needs. That helps to make you a success.

"Basically people tend to gravitate to their own type and it's important to communities that there are real experts in their own locality who understand what is important to them and can offer reliable expertise and assistance. All of the businesses in the rural community are tied together in a type of inter professional practice – whether it's a farm business, veterinary business or indeed the legal business, they all have to understand the issues that are important to the people they serve and mfg Solicitors appear to do that very well."

mfg Solicitors LLP, 20-21 The Tything, Worcester WR1 1HD

For further information please contact Iain Morrison: Tel: 01905 610 410 • Fax: 01905 610 191

Or Sarah Baugh at our Wellington (Shropshire) office on: 01952 641 651

Email: ian.morrison@mfgsolicitors.com • Website: www.mfgsolicitors.com