Agricultural Lore

Summer 2022 Edition

e-Publication

In this issue:

Welcome to Agricultural Lore

Summer Edition 2022

Vivienne Williams, Partner
Agriculture
vivienne.williams@michelmores.com
0117 906 9302

Natural Capital and the environment have been the primary issues of the last few months for our Agriculture team. These themes, and in particular biodiversity net gain, carbon, ESG, triple line reporting etc, were also considered at the recent CAAV National Conference and AGM, which we were very pleased to sponsor and attend once again.

The need to make the most of the current new opportunities, whilst recognising their possible effect upon the receipt of public subsidies or future opportunities, is the key challenge facing rural landowners and farmers. Obtaining advice from rural professionals is key to the making of those decisions and the CAAV Conference was a very helpful showcase of the possibilities, but without forgetting the potential pitfalls along the way.

Following the success of our first Sustainable Agriculture Conference in November 2019, we were delighted to welcome industry experts back in June, for the first time since the Pandemic, to our Second Sustainable Agriculture Conference as part of "A Week of Sustainability in Bristol". With a theme of restoring biodiversity against a backdrop of increasing insecurity in global food production, a series of inspirational speakers discussed the innovations and practices that are tackling climate change, biodiversity loss and food security.

Our Agriculture team is once again expanding to meet increasing demand for our services. We are delighted to welcome planning expert and partner, Helen Hutton, who joins the Firm with many years of experience of advising on all aspects of planning and environmental law (see inset box).

We are also joined by two Associates, agricultural disputes specialist Ben Dalton and Sarah Richardson, who deals with farm and estate property transactions.

Finally, we are always pleased to recruit bright junior lawyers to our team – we welcome Adrian Bennett, Grace Awan, and Zoe Davies as newly qualified solicitors, starting in September.

In this edition of Agricultural Lore we highlight two new pieces of legislation which are making their way through the Houses of Parliament; the Genetic Technology (Precision Breeding) Bill 2022-2023 deals with gene editing of plants and animals; and the Product Security and Telecommunications Infrastructure Bill proposes changes to the Electronic Communications Code.

We also consider the new trust registration requirements (TRS), two new court decisions on adverse possession and notices to quit, protection of woodland, rural diversification and much more…

We end with our Summer Quiz to while away those long balmy evenings, which this time focuses on stately homes.

Welcome to Helen Hutton

We are pleased to announce that Helen Hutton has joined Michelmores as a Partner in the Planning and Environmental team and will be working closely alongside the Agriculture team.

Helen deals with all aspects of planning and environmental law. She acts for a wide range of clients, including developers, landowners, other private individuals, trusts, not for profit organisations and corporate entities.

Benjamin Dalton
Associate

Sarah Richardson
Associate

Adrian Bennett
Joining from Sept 22

Grace Awan
Joining from Sept 22

Zoe Davies
Joining from Sept 22

Planning: Diversification of use for rural buildings - offices, shops, gyms or houses

Many former full time office workers have been shown by lockdowns that they need not commute daily into towns and cities; a variety of different working options work equally well. For some this involves, on a part or full-time basis, being in (or in the curtilage of) their homes in the countryside or in a small rural office nearby. Some have converted former garages or outbuildings into personal office spaces, or have built sheds in their gardens, while others are renting small offices within easy commuting distance of their homes. There is increasing demand for small local offices to rent.

Opportunity for redundant or under-used buildings

This presents farm and estate owners with a potential opportunity for the reuse of redundant or under-used buildings. In planning terms, there are various routes available to authorise the office use of such buildings, depending on the details of the proposal. Generally, these routes include those where:

a) a planning change of use is not necessary;

b) a change of up to 500m2 of agricultural space is allowed under the prior approval General Permitted Development Order; or

c) planning permission could hopefully be obtained.

If the building is listed, then listed building consent would be necessary for any structural changes or changes which affect its character as a listed building and permitted development rights would not apply.

Class E existing use

Where the last or current use of such buildings falls under what is now Class E business use (including a gym, restaurant or shop), then it may be possible to change the use from that previous use to office, without planning consent, as such uses are now within the same class (Class E). The conditions of the previous consent would however need to be checked, as would restrictions in any planning agreement or any planning restrictions affecting the area.

It might also be appropriate for owners of empty or underused buildings to consider the potential for someone to open a shop or maybe a gym there. As many people are staying closer to home more in the working week than they did pre-Covid and are choosing to buy more local produce, the need for more local facilities is increasing.

Similar rules to the above would again apply, as both shops (except those (mostly) selling essential goods, including food, where the shop's premises do not exceed 280m2 and there is no other such facility within 1,000m) and gyms fall within the same Use Class E. If it is to be a small shop, then permission for the change of use to a local shop under class F2 might be possible.

Permitted development rights

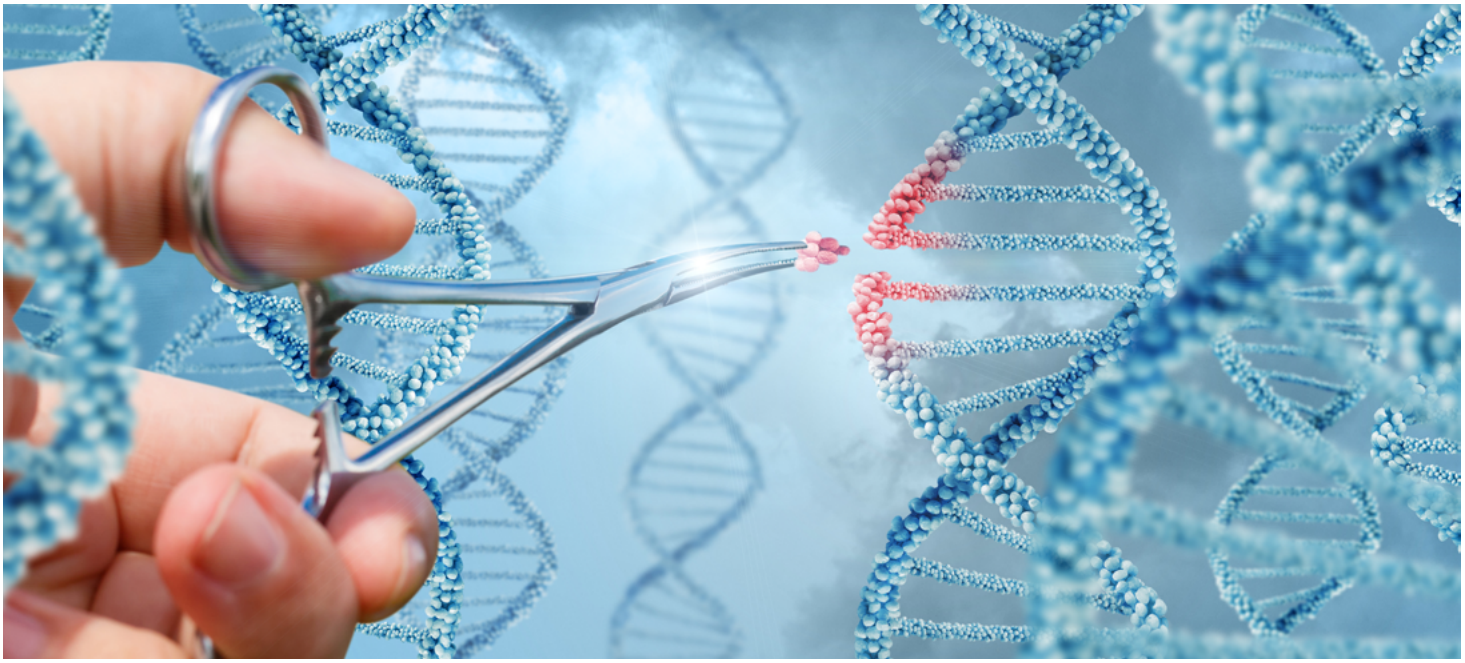
Where redundant or under-used buildings are in agricultural use, the change to office could be authorised for up to 500m2 under the prior approval Permitted Development right. The conditions and restrictions under the Order would need to be met in full, as again would conditions in any planning consent.

Class Q

Another option to consider could be a change of farm buildings into ancillary residential use, under the General Permitted Development regime (Class Q). Class Q allows the conversion of agricultural buildings to homes, subject to various conditions and limitations. Whether the right applies or not will partly be determined by the date when the agricultural use started. The building must have been in agricultural use on 20 March 2013, or if the agricultural use started after that date, the agricultural unit must have been in that use for ten or more years before an application may be submitted to the local authority. However, even where the building has been there for more than the requisite time, a Class Q application cannot be made if it is in certain protected areas.

Please do contact us or your planning consultant if you would like to discuss potential building conversions. We could run through the relevant qualifying criteria with you. We could also discuss existing agricultural or other tenancies or other hurdles which would need to be overcome, before any change of use could occur.

Helen Hutton, Partner
Planning & Environmental Law
helen.hutton@michelmores.com
0117 374 3437



Gene Editing: New Bill takes the GM debate to the next stage

In our previous article Gene Editing Consultation: UK Government announces plans to relax the rules and regulations surrounding gene-edited crops, we set out the government's plans for reforming the regulatory landscape for gene editing.

The government has now progressed those plans with the introduction on 25 May 2022 of the new Genetic Technology (Precision Breeding) Bill 2022-2023.

The new Bill makes provision about the release and marketing of, and risk assessments relating to, precision bred plants and animals – and also the marketing of food and feed produced from such plants and animals and for connected purposes. The Bill aims to move away from legal interpretation governing this area and to give more power to science.

Once enacted, the Bill shall enable research in gene editing (GE) which (together with genetic modification), was previously prohibited in the UK under EU law. It will give farmers and producers greater power to develop plant varieties and animals with beneficial traits (which can be produced through more traditional methods) but in a more efficient and potentially environmentally friendly way.

The Bill

The Bill is split into 5 parts:

- Part 1: Precision Breeding: Definitions;
- Part 2: Precision Breeding Organisms: Release, Marketing and Risk Assessments;
- Part 3: Food and Feed Produced from Precision Bred Organisms;
- Part 4: Enforcement; and
- Part 5: General.

In broadest summary, the Bill applies to "precision bred organisms" (PBO) (i.e. gene edited organisms). That is defined in section 1 of the Bill as any organism if any feature of its genome results from the application of modern biotechnology, if such feature is stable and if every feature of its genome could have resulted from:

1. traditional processes, whether or not in conjunction with selection techniques, or
2. natural transformation.

Readers should refer our earlier article (Gene editing – UK government announces post-Brexit consultation | Michelmores) for more information on what GE is.

The Bill then makes provision to enable the release and marketing of PBOs in England (see sections 3 to 5). Certain steps must be taken in order to do so, which includes certain notification requirements. The Bill includes added safeguards, such as the ability to refer matters to relevant advisory committees/bodies and also the requirement for welfare declarations and risk assessments for certain animals (as defined). The Bill also requires certain registers to be kept by the Secretary of State.

Provision is then made in the Bill for regulations to be made for regulating the placing on the market in England of food and feed produced from PBOs (see Part 3 of the Bill). The wording of Part 3 sets out matters, that such regulation might address (e.g. requirements for prior authorisations from the Secretary of State and requirements for traceability) – all aimed at safeguarding products released into the market for consumption by humans and other organisms.

The Bill further sets out enforcement powers for breaches of certain obligations which largely comprise the ability to issue compliance notices, stop notices and monetary penalty notices (see Part 4).

In large, the legislation is intended to apply to England (and Wales) only with a small number of exceptions (see section 47). The Bill predominantly addresses GE of plants.

The Bill follows earlier relaxation of the rules in respect of gene-edited plants under the Genetically Modified Organisms (Deliberate Release) (Amendment) (England) Regulations 2022.

The Parliamentary process

The full text of the Bill is on the UK Parliament website. It is at the very early stages of its passage through Parliament. Following the first and second readings, it is currently at the committee stage in the House of Commons, but there will doubtless be much debate on, and amendment to, its text, both in the Commons and in the Lords.

The Bill, nevertheless, represents a significant milestone in the UK in its move away from the GE prohibitions, that have long existed in EU law. The Bill seeks to facilitate GE with certain safeguards in place. There are powers for further regulations to be made to increase control and safeguarding in this area, so it waits to be seen what further regulations are indeed introduced.

Impact of the Bill

These developments have been hailed by some as removing unnecessary barriers to research into new gene editing technology, which for a long time have hindered the UK's agricultural development and world leading agricultural research institutions. It is considered a key step in bolstering the UK's food security – especially in the wake of the Ukraine conflict. There are ambitions to produce higher yields from land, improve food quality and reduce wastage. Biodiversity benefits are also noted.

Defra itself has hailed the benefits GE could bring – including (according to Defra): more efficient and precise breeding; production of crops with fewer inputs (e.g. pesticides and fertilisers); improving sustainability, resilience and productivity; boosting climate change resilience; creating safer food (by e.g. removing allergens); and creating plant varieties and animals, which have improved resistance to diseases (reducing reliance on products such as antibiotics).

Opposition to the Bill

Others (such as the Landworker's Alliance), consider the changes to be unnecessary; noting that there are existing methods to address these matters – or that the focus should be on developing more natural methods. There are also currently deep concerns about the lack of requirements around labelling of products which contain PBOs – albeit those may be addressed in further regulations. Others (including the RSPCA) continue to have concerns regarding animal welfare and ethics.

As has been shown in the media, the Scottish Government has also pushed back strongly on the application of any part of the new legislation to Scotland. It therefore remains to be seen what bearing the Bill will have on the Scottish position; no doubt this will be addressed in any further revisions of the Bill.

There are then others who still take the view that the Bill remains overly prescriptive with too many hurdles to overcome, which may prevent investment and innovation in this area.

Clearly, there remain split views within the industry as to the benefit and appropriateness of the proposed Bill. We will see how the Bill progresses through Parliament and what changes are made to the initial draft. Come what may, the success of the GE industry and the GE market will doubtless be driven by consumer attitudes towards GE – irrespective of the details of the legislation.

Seema Nanua, Associate
Agriculture
seema.nanua@michelmores.com
0117 906 9328

Telecoms: A better balanced Bill for site owners?

As reported in our earlier article "Telecoms: another top of the scales in favour of operators", the Product Security and Telecommunications Infrastructure Bill is currently going through Parliament. The Bill has been through the House of Commons, has undergone its second reading and Committee stage in the House of Lords and is now awaiting Report Stage, likely to take place in September.

There are two particular areas of amendment being debated, which are likely to be of interest to landowners. We focus on these and also address some of the imbalances proposed by the Bill, whilst remaining mindful of the need for a quick and efficient roll-out of infrastructure.

Mandatory alternative dispute resolution

The initial draft of the Bill only made it optional for operators to consider using Alternative Dispute Resolution ("ADR") before making an application to court. The Lords are now considering an amendment to make it mandatory for operators to engage in ADR before threatening to take a landowner to the tribunal for an agreement to be imposed.

This amendment is being tabled to try to address the imbalance between the apparently limitless resources of operators for dealing with disagreements in the tribunal, and landowners, who often do not have the means to resist such claims.

The intention is to try to move away from the attritional conflict currently dominating the tribunal, especially now that case law has developed around the Electronic Communications Code ("the Code"), which could make ADR a feasible option.

Renewals – 1954 Act and the Electronic Communications Code

Although in its 2021 consultation the Government stated it did not intend to revisit the statutory valuation framework introduced by the Code, the provisions introduced by clause 61 of the Bill seem to do just that. This clause amends the basis for rent assessment of Code sites, on the renewal of a subsisting agreement under the Landlord and Tenant Act 1954 ("1954 Act"), to import directly the Code's valuation provisions. This will mean that existing long-standing leases, which were freely negotiated between willing participants, will likely see demands for dramatically reduced rental values. The Government's argument for this is consistency in valuation across the ways in which Code Rights can be granted; whether by a renewal under the 1954 Act or by way of a new Code agreement.

As predicted by the Law Commission when the Government was looking to implement the Code, the dramatic fall in rents offered to landowners has resulted in a corresponding reduction in the number of new agreements reached between landowners and operators and has therefore not sped up the roll-out of digital infrastructure as intended.

If this were to apply to 1954 Act renewals, as well as to new agreements, it will neither encourage harmonious relationships between landowners and operators, nor will it help the intended roll-out.

As a result, it has been argued in the House of Lords that renewal agreements under the 1954 Act should not be brought under the Code but should remain under the 1954 Act, to preserve existing property rights and to try to reintroduce the collaborative relationships, which were undermined by the 2017 Code amendments.

An alternative amendment proposes that, if renewals are to be brought under the Code valuation system, there should be a limit in the reduction of rent sought.

Conclusion

Although the Bill still has some way to go before becoming law, these proposed amendments, which had cross-party backing in the Lords, should give landowners some comfort that a balance is being sought between their property rights and the ongoing need for a quick and efficient roll-out of digital connectivity across the country.

Charlotte Curtis, Partner
Real Estate
charlotte.curtis@michelmores.com
01392 687448

Dani West, Solicitor
Real Estate
dani.west@michelmores.com
0117 906 9356

Trust Registration Service: The new registration requirements

In our earlier article "Farmland & Partnerships: Caught by new trust registration rules" we described how farming families who hold land on behalf of other family members, farming partners and so on, may be caught by the new Trust Registration Service (TRS) rules in a variety of different circumstances. These new rules take effect from 1 September 2022.

We now continue with that theme to describe other types of trust, which are also caught and explain where trustees will need to take action.

By way of reminder, TRS is a register of the beneficial ownership of trusts. Its aim is to provide greater transparency around the ownership of trust assets and to prevent abuse. It requires trustees to register the trusts they administer with HMRC. This process requires certain information to be provided and then to be kept up to date.

Initially, only trusts that were subject to certain UK tax liabilities were obliged to register. The UK Government has extended these rules. HMRC are likely to impose penalties on trustees who fail to comply.

Which trusts must be registered?

All UK express trusts must now be registered on TRS unless they are excluded from registration (see below). As a general rule any express trust that is liable to UK tax must register on TRS.

An express trust is one created deliberately by the settlor of the trust and can either take effect during the settlor's lifetime or on the settlor's death via their will.

Trustees would be wise to assume that they must register unless one of the exclusions applies.

Which express trusts are excluded?

The following are examples of types of trust that do not need to register under TRS under current rules. Please note that this list is not exhaustive.

- Will trusts: created on death, that only receive assets from the estate and are wound up within two years of death. However, if the trusts are still in place after 2 years they will need to be registered.
- Pilot trusts: holding property valued at no more than £100 and came into existence before 6 October 2020. More recent and new pilot trusts will need to register.
- Bank accounts for minors: trusts created in the course of opening a bank account for minor children or persons lacking mental capacity. This applies to cash accounts only, investments held on trust for the benefit of minor children will not qualify. Note that Child Trust Funds and Junior ISAs are not trusts and therefore not required to register.
- Life insurance policies: trusts of life policies are excluded, provided the policy only pays out on the death, terminal or critical illness or disability. Note that it is important that life policies are written in trust in the first place for Inheritance Tax planning.
- Trusts for bereaved minors or young people (also known as 18 – 25 trusts)
- Registered pension scheme trusts
- Personal injury trusts
- Disabled persons trusts
- Charitable trusts
- Trust maintenance funds for historic buildings

Deadlines

Non-taxable trusts must register by 1 September.

Trusts subject to UK tax must register by 31 January following the end of the tax year in which the trust had a tax liability. If it is the first time the trust is liable to income tax or capital gains tax, the trust should register by 5 October following the end of the tax year during which the trust is liable to income tax or capital gains tax. If a trust is liable for more than one tax then the earlier deadline will apply.

The TRS record must also be updated within 90 days of trustees becoming aware of a change to the trust details or beneficial ownership. If the trust is taxable, an annual declaration must be made by 31 January.

Conclusion

The new rules increase greatly the number of trusts that will need to register and place an additional administrative burden on trustees. We can guide trustees through the complexity of these new rules and avoid penalties.

Edward Porter, Partner
Private Wealth
edward.porter@michelmores.com
0117 906 9312

Notices to quit: Court decision provides useful guidance

The rules regarding the form, service and effect of notices to quit, whether under statutory regimes or under the common law, are complicated and the pitfalls are many. A recent decision by the High Court has provided guidance on three specific aspects of serving notices to quit:

1. Who can serve a notice to quit;
2. The duties of a tenant, holding a tenancy on trust for a partnership; and
3. How a validly-served notice to quit can be undone.

The Case

The case was a further claim in the ongoing Procter v Procter dispute, which in brief, concerns three siblings' claims to the family inheritance (comprising some 600 acres). Readers may remember that in 2021, the Court of Appeal confirmed that an agricultural tenancy, protected under the Agricultural Holdings Act 1986, had been entered into by conduct between the then freeholders of part of the land (as landlords) and the then members of the Procter family partnership (as tenants) – being the three siblings: A, B and C. 'Within minutes' of the Court of Appeal's judgment, Sibling C – as one of the joint tenants holding the tenancy on trust for the partnership – purportedly served a notice to quit on the landlords (the "NTQ"). The partners by this point were Siblings A and B (Sibling C having 'retired' from the partnership in 2010).

Siblings A and B challenged the effectiveness of the NTQ: they asserted that the NTQ wasn't valid; alternatively, that service of it amounted to a breach of trust or fiduciary duty on the part of Sibling C, and that if the notice was otherwise valid, the Court should either undo its effect or order Sibling C to pay them equitable compensation.

The Decision

Question 1: Who can serve a notice to quit

The Court confirmed what is now well-established: unless the terms of the tenancy agreement provide otherwise, a notice to quit given by one joint tenant, even without the concurrence (and despite the objections) of any other joint tenant, is at common law effective to determine a periodic tenancy. This is because a periodic tenancy continues only so long as all joint tenants want it to continue. The same principle applies to joint landlords, because there is a notional renewal of the tenancy at the end of each period which requires the consent of all the parties. In contrast, joint tenants must act unanimously to exercise a break clause, surrender the term, exercise an option to renew or apply for relief from forfeiture.

Question 2: The duties owed by a tenant holding a tenancy on trust

The Court held that because Sibling C was a trustee, holding the tenancy on trust for the partnership, she had a fiduciary duty to act in the best interests of the partnership, for no collateral purpose and to preserve the trust property.

In considering Sibling C's argument that a trustee cannot be obliged to take on a further tenancy for a year, the Court held that recent cases about co-owners (in law and equity) not owing duties regarding renewals and serving notices to quit did not affect the position of a trustee who was not a co-owner in equity, as was the case here.

In practice, Sibling C's duty to preserve the trust property meant there was a duty to renew the tenancy, and so service of the NTQ was a breach.

Question 3: How the effect of a validly-served notice to quit can be undone

A validly-served notice to quit cannot be withdrawn or waived, and so it was not possible to remedy the breach of trust, simply by preventing Sibling C from relying on the NTQ: the tenancy would automatically come to an end on the expiry of the notice. The Court's solution was to rescind the NTQ, thereby applying a well-known equitable remedy for breach of trust or fiduciary duty (despite it typically applying to contracts).

The Court held that it could require trustees to carry out their duties, and so Sibling C was obliged to continue the tenancy to protect the trust property and act in the best interests of the partnership.

In light of the order for recission, there was no loss suffered by Siblings A and B and so no order for equitable compensation.

Conclusion

Notices to quit continue to be a contentious area for both landlords and tenants, no less so where either party is in fact a trustee or group of trustees: it is crucial to ensure that the form and service of any notice to quit is valid.

Helen Bray, Associate
Agriculture
helen.bray@michelmores.com
0117 374 3223

Family law and farming: What rural families can learn from The Archers

The long-running storyline of Alice and Chris Carter's marital problems in The Archers provides a wealth of cautionary tales for farming clients and their families. Although the recent cooperation appears to have solved the question of who is to look after Martha, we will explore some of the issues that have been covered over the last few months by the nation's much-loved radio soap opera. We start with the issue of raising finance to buy out the divorcing family member's share.

The wider family

A divorce or separation often has knock-on implications for the wider family, and this is particularly the case amongst farming families, where often parents, offspring, siblings and more are involved in the running of the farm. It is often the case that farm assets and family life are intertwined in a complex way and extracting a spouse or partner from the set-up can be complex and costly, both financially and in terms of farming continuity.

It is no surprise therefore that for Brian Aldridge, Alice's divorce is a huge worry in terms of safeguarding the future of the farm. The agreement over arrangements for Martha does not solve the financial risk to the farm.

Business assets

When deciding division of finances on divorce, the Court takes into account all assets, income, liabilities and pension. This includes business interests, partnerships, shareholdings.

One critical issue which has to be assessed for partnerships is whether the land, dwellings and buildings are partnership assets or whether they are owned by one or more of the partners and simply made available for use by the partnership, either on a tenancy or under a licence.

In the former case the value of the underlying land, dwellings and buildings is likely to increase the overall value of each partnership share significantly, whereas in the latter case, it is only the value of the tenancy or licence which will form part of the partnership assets. Depending on the terms of that licence or tenancy, this may be worth very limited amount.

In the context of a farming company, a similar assessment needs to be made to establish whether the company owns the land and buildings or whether individual members of the family own the property and have granted a tenancy to the company.

As with partnerships, the difference between these structures will impact considerably on the value of the shares held by the divorcing family member.

Fair outcome

The Court's aim is to achieve a fair outcome, with an equal division of assets being the starting point. The Court can make orders in relation to a party's shareholding in a business and can order a sale of a shareholding if required. The same applies to a partnership share in a farming partnership.

This is important for farming families, because if a sale of assets is the only way of funding a financial settlement, this can have a huge impact on the running and financial viability of the farming business.

Brian has been alive to this and has looked at whether Alice's shareholding could be bought out by Debbie, Adam or his husband in order to limit the impact on the farming business as a whole.

Sadly, for Brian, so far Adam and Ian have rejected this idea. Other options may include taking out a loan to fund the settlement or finding another investor who could buy into the business; neither are easy options, and much will depend on individual circumstances.

Advice

Families are encouraged to seek early legal advice if a family member is considering divorce – keeping a separation as amicable as possible and reaching an agreement by consent can provide for creative solutions to ensure that there is as little disruption as possible to the farm business.

Sarah Green, Senior Associate
Family Law
sarah.green@michelmores.com
0117 906 9335

Keepers of time: Protection of ancient and native woodland and trees

The Government updated its ancient and native woodland policy earlier this year setting out its commitment to recognise and protect the natural capital and cultural value of ancient and native woodlands and ancient and veteran trees in England. But it is not only ancient woodland which is protected in the UK; there are various restrictions and obligations of which landowners should be aware.

Ancient woodlands

Ancient woodlands have taken hundreds of years to establish and are defined as areas of land where there has been a continuous cover of trees since 1600. Not only do they boast beauty and character, but they are also valuable natural assets, which are important for wildlife and biodiversity, having developed complex and irreplaceable ecosystems. As detailed in the policy, ancient trees provide numerous benefits and improve our environment by providing shade, cleaning our air and water, nurturing our soil and wildlife and sequestering carbon.

Comprising only a small percentage of British woodland, the decline of ancient woodlands has been largely down to factors such as pollution, inappropriate management, invasive species, urban development and fragmentation.

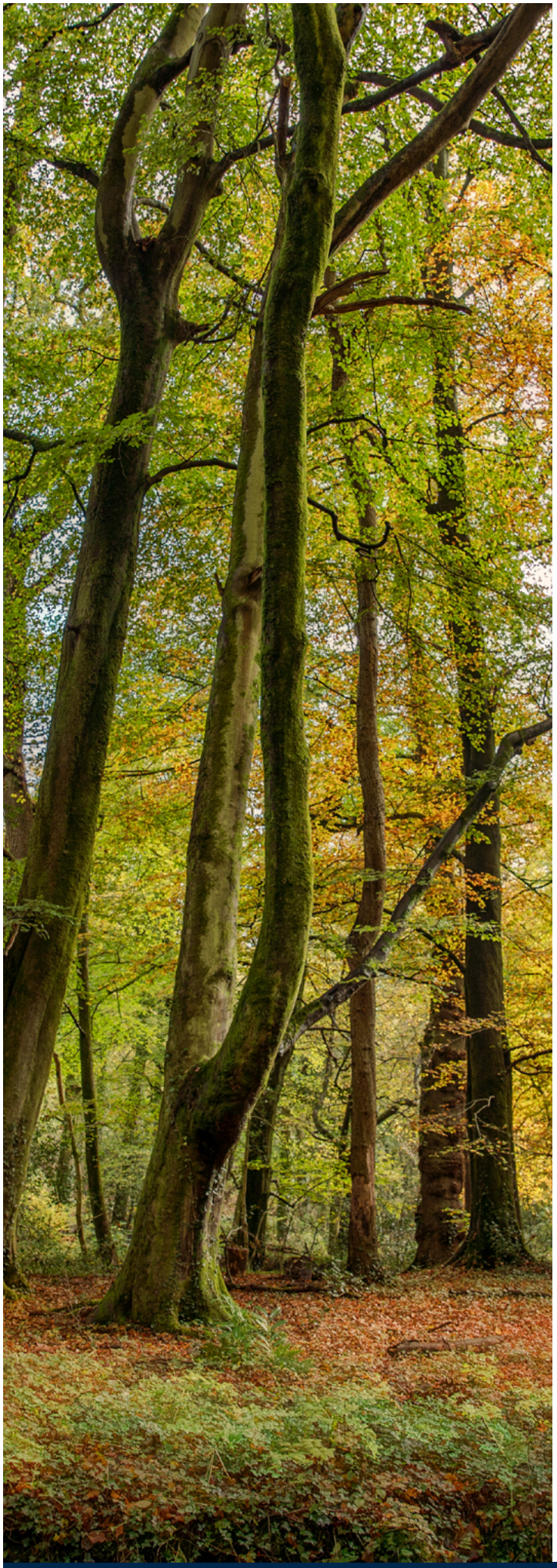
Ancient woodlands are subject to varying degrees of protection to manage and conserve their special features. Some sites have a statutory designation as National Nature Reserves, Special Areas of Conservation or Sites of Special Scientific Interest (SSSI). The SSSI designation, for example, requires ancient woodland owners to manage them effectively and appropriately. Consent is likely to be required from Natural England/Forestry Commission before carrying out works of management or changing an existing management regime.

Conservation area

Trees within a conservation area also benefit from protection by the local planning authority (LPA), whose prior consent must be obtained before carrying out work or cutting down a tree. There is a six-week period for the LPA to decide whether the tree or trees in question should be made subject to a Tree Preservation Order (TPO). It is a criminal offence carry out works on trees, within a conservation area, without giving the proper notice to the LPA, unless the work falls within a limited number of exemptions.

Tree Preservation Order

Where a tree is protected by a TPO, works involving cutting down, uprooting, topping, lopping, wilful damage and/or destruction are prohibited without the LPA's consent. Any works carried out contrary to a TPO would also be a criminal offence.



All areas

The Forestry Act 1967 provides that a felling licence is required for the felling of any growing trees, unless they fall within a number of exceptions. These include:

- Trees with a diameter of 8cm or less (15cm for coppice or underwood).
- Fruit trees or trees standing or growing in an orchard, garden, churchyard or public open space.
- The topping or lopping of trees or trimming/laying of hedges.
- Trees with a diameter of 10 cm or less where felling required to improve growth of other trees.
- Felling for the prevention of danger or abatement of a nuisance.
- Felling carried out by an electricity operator due to proximity to electricity lines.
- Felling required for development authorised by planning permission

There are also concessions which allow landowners or occupiers to fell small numbers (5 cubic metres or less) of trees each quarter without obtaining a felling licence, provided the sale of those trees meets certain limits (2 cubic metres or less).

If these rules are breached, Forestry England or Natural Resources Wales can serve a notice, requiring restocking or the remedying of any breach of a felling licence. If this is not followed, they can carry out the restocking or other works themselves and impose fines on the person who fails to comply with the notice. If there is a change of ownership or occupation of the land after the felling and if the previous owner has not complied with the notice served on them, Forestry England or Natural Resources Wales can serve a new notice on the new owner or occupier requiring them to fulfil the terms of the notice instead.

Impact on landowners and occupiers

The updated policy from the Government highlights the ongoing importance of trees and woodlands to our health, wellbeing and environment. Before carrying out any works involving/affecting trees and/or woodland, landowners and occupiers should seek advice to ensure they are complying with their obligations, as there are strict consequences for failing to do so.

Furthermore, any purchasers or new tenants of farms and estates (or landlords taking back holdings from a tenant) should make enquiries regarding the recent felling of any trees and the service of any notices to ensure that they do not find themselves saddled with enforcement action in place of the former owner or tenant.

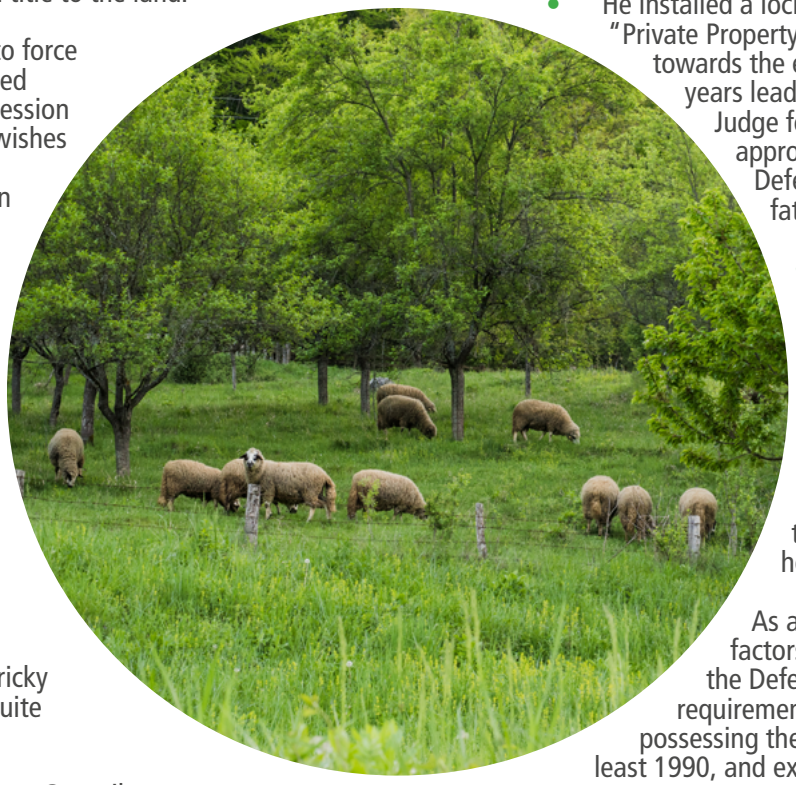
Sarah Richardson, Associate
Private Property and Landed Estates
sarah.richardson@michelmores.com
0117 374 3333

Adverse Possession: 20 years on from the reforms

Adverse possession is a method of acquiring the title to land simply by occupying it without permission. The basic requirement is that a squatter must possess the land exclusively, generally excluding all others from it, and also show an intention to possess it.

Prior to the Land Registration Act 2002 ("LRA 2002"), if a squatter could show adverse possession for a period of 12 years, they could acquire good title to the land.

The LRA 2002, which came into force on 13th October 2003, restricted opportunities for adverse possession significantly. A squatter who wishes to claim adverse possession must now put in an application once 10 years of possession without any form of consent has elapsed. At this point H M Land Registry will notify the registered owner, to determine if there is any objection to the claim. Only after the registered owner fails to oppose will the squatter then acquire the title.



Milton Keynes Council v Wilsher and another

Adverse possession can be a tricky field to navigate, sometimes quite literally.

In this recent case, Milton Keynes Council ("Claimant") acquired title to a farm in Milton Keynes. There were three fields ("Land") forming part of that farm which adjoined a traveller's site. Mr Wilsher, ("Defendant") was a traveller and small livestock farmer, who resided at the traveller's site. He used the Land for grazing animals.

The Claimant claimed that the Defendant was trespassing on the Land. The Defendant argued that his father obtained legal title by adverse possession for at least 12 years before 13th October 2003, and that he had succeeded to the title. He also put forward a second argument based upon proprietary estoppel, but that argument is not considered within this article.

The Defendant was able to show that both he and his father exercised a good degree of control over the land:

- A number of witnesses confirmed that he and his father had grazed horses over the Land for a significant period of time.
- He was able the show that his father had installed a concrete bridge on the Land, through the course of his own recollection during cross-examination.
- A worker, Mr O'Brien, conducted significant work on the Land, and was given permission to camp there by the Defendant's father.
- He installed a locked gate and erected a "Private Property" sign. Whilst this took place towards the end of the period of twelve years leading up to October 2003, the Judge found it showed a continuing approach to the Land by the Defendant, following on from his father.
- A wake for the Defendant's father was held on the Land in 2004, and whilst this fell outside the relevant period, the judge found that it showed the Defendant exercising a degree of physical control that would be expected by the owner, and the attitude he had towards the Land.

As a result of the various factors above, the Judge held that the Defendant had satisfied the requirements for adverse possession, possessing the Land with his father from at least 1990, and excluding others from it.

Lessons learned

Even though the Land Registration Act came into force almost 20 years ago, curbing fresh claims for adverse possession, *Milton Keynes Council v Wilsher* highlights how it can be combined with succession of title in order to succeed.

Landowners should be alive to any activity occurring on their land, especially if it has carried on for significant periods of time unchecked.

When purchasing land, a buyer should beware of anyone using any part of that land, and make sufficient enquiries so as to satisfy themselves there is no dispute as to possession. If in doubt, it is advisable to seek title indemnity insurance, which covers potential adverse possession claims.

Adrian Bennett, Trainee Solicitor
Agriculture
adrian.bennett@michelmores.com
01392 687 433

In Brief: Does a new road entrance to a field require planning consent?

Not all landowners and farmers are aware that the creation of a new entranceway from a field onto certain publicly maintained highway requires planning permission. For other highways, new entranceways can be created under permitted development rights. This issue was highlighted in the recent High Court case of *Prichard Jones v Secretary of State for Housing, Communities and Local Government* [2022]. The case considered the validity of an enforcement notice, which had been served on two landowners. The notice required them to deconstruct a vehicular access, which they had created from a field to an adjacent road without planning permission. They were also required to remove the associated gate and reinstate the hedge etc.

Status of the road

While there was a debate in the High Court case and the Appeal hearing about the presence or not of a previous gate, the main issue of the case was the status of the road and therefore whether the permitted development rules for new accessways adjoining a road under Class B of Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 applied. The rights under Class B are only relevant where the road is not a trunk road or a classified road.

Classified Road

The road in question was indeed held to be a classified road (and the inspector had made no mistake in the appeal in its classification), so the construction of an access onto it did not fall within general permitted development under Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

In considering the facts of this case, the following points were confirmed:

1. The statutory definition of a road is set out clearly in s 12 of the Highways Act 1980 and this road was still classified at the time of the appeal. Whether it still justified being classified was irrelevant.
2. Whether a road is classified is a matter of law. Bespoke issues taken into account in another appeal decision could not be relied upon here, as an appeal is not a source of law.
3. The Inspector was entitled to rely on the evidence provided by the Council's Highways department (which was the only evidence produced to him on this point) in establishing if the road fell under section 12 of the above Highways Act or not.
4. As a technical point, even if the road was not classified under section 12 above, the work, which had been carried out on the verge, was to facilitate access to the road gate, which was outside the above Class B permitted development right anyway.

Enforcement notice upheld

The case therefore determined that the Inspector was correct to uphold the enforcement notice against the unauthorised works, in the appeal. This meant that the works to create the concrete accessway from the field (including outside the new gate, up to the edge of the classified highway), had to be undone, the new gate had to be removed and the hedge and grasses had to be replanted.

Any landowner considering the creation of a new accessway should find out the precise status of the highway, to work out whether planning permission is required or not.

Helen Hutton, Partner
Planning & Environmental Law
helen.hutton@michelmores.com
0117 374 3437

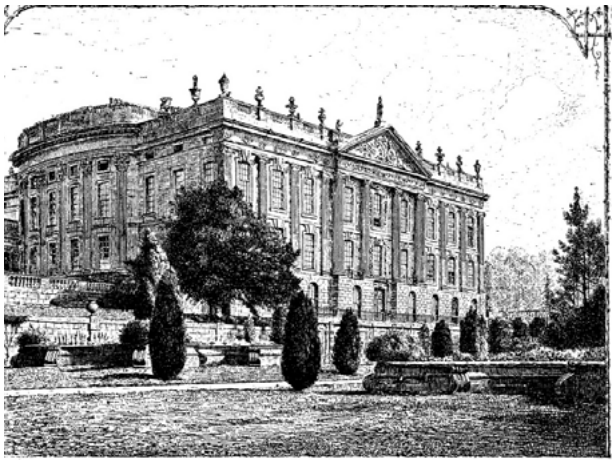
Michelmores

The Summer 2022 Quiz

The quiz this quarter is a nice relaxed identification round looking at stately homes.

Identify and name the stately homes depicted below.

1



2

3

4

5

6

Please email your answers to: adam.corbin@michelmores.com by 1st September 2022

Everyone who submits the correct answers will be included in a prize draw to win a bottle of sparkling wine.

The answers will be provided and the winners announced in the next edition. Good luck!

Answers to Early Spring 2021 Quiz

We have a winning entry for the quiz last quarter, but unfortunately have been unable to make contact with the winner to organise a photo and receipt of the prize.

If we have not made contact by the next edition we will make it a rollover, with two bottles of English sparkling wine to the winner of the quiz this quarter.

Here are the reasoned answers to the questions set last quarter:

1 True or False - it is not possible to surrender a tenancy unless the tenant executes a deed of surrender?

Answer: False. A surrender of a tenancy can take place by operation of law which means that there is nothing in writing and it can be inferred from the conduct of the landlord and the tenant. For certainty as to the fact that a surrender has taken place and the date of surrender, best practice would dictate that a surrender is by deed. A surrender made in writing, but not by deed can take effect as an agreement to surrender if section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 and general contractual requirements are satisfied.

2 Which of the following is the correct answer to this question – does a subtenancy survive the surrender of a head tenancy where the head tenancy is protected by the Agricultural Holdings Act 1986?

a. No – a subtenancy is carved out of the head tenancy so it stands or falls with the head tenancy.

b. Yes – a subtenancy survives a surrender of the head tenancy

Answer: c) Maybe. As a matter of law subtenancies do usually stand or fall with a head tenancy, and in the case of a tenancy governed by the AHA, no regulations have ever been made for the protection of sub-tenants, so if the AHA applies to the sub-tenant, they still fall. However, sub-tenancies which have the protection of another statute, such as the Rent Act, or Landlord and Tenant Act, are thought to retain their protection, even against a freeholder.

3 True or False – a surrender by one of joint tenants will end the tenancy?

Answer: False. Following the case of Leek v Moorlands Building Society v Clark [1952]. The position is different if one of the joint tenants serves a upwards notice to quit on the landlord.

4 If a tenant executes a deed of surrender and surrenders his tenancy is he automatically released from all breaches of covenant?

a) Yes – once the deed is completed, there is no going back to examine the history of the landlord/tenant relationship

Answer: b) No. In the absence of an express release the tenant is only released from liability for future performance of covenants.

c) No – the tenant can only be released from past breaches of covenant once the deed of surrender is registered.

Agriculture team

Vivienne Williams, Partner
Agriculture
vivienne.williams@michelmores.com
+44 (0)117 906 9302

Ben Sharples, Partner
Agriculture
ben.sharples@michelmores.com
+44 (0)117 906 9303

Adam Corbin, Partner
Agriculture
adam.corbin@michelmores.com
+44 (0)117 906 9324

Rachel O'Connor, Partner
Agriculture
rachel.oconnor@michelmores.com
+44 (0)117 906 9308

Tom Hyde, Partner
Private Property & Landed Estates
tom.hyde@michelmores.com
+44 (0)117 906 9306

Philip Wolfgang, Partner
Private Property & Landed Estates
philip.wolfgang@michelmores.com
+44 (0)1392 687720

Chris Massey, Partner
Private Property & Landed Estates
chris.massey@michelmores.com
+44 (0)117 906 9304

Andrew Baines, Partner
Property Litigation
andrew.baines@michelmores.com
+44 (0)117 906 9336

Sandra Brown, Partner
Private Wealth
sandra.brown@michelmores.com
+44 (0)117 906 9307

Edward Porter, Partner
Private Wealth
edward.porter@michelmores.com
+44 (0)117 906 9312

Jennifer Ridgway, Partner
Private Wealth
jennifer.ridgway@michelmores.com
+44 (0)1392 687735

James Frampton, Partner
Private Wealth
james.frampton@michelmores.com
+44 (0)1392 687505

Paul Beanlands, Partner
Commercial Property
paul.beanlands@michelmores.com
+44 (0)20 7659 4659

Kate Gardner, Partner
Employment
kate.gardner@michelmores.com
+44 (0)1392 687657

David Thompson, Partner
Commercial
david.thompson@michelmores.com
+44 (0)1392 687656

Ian Holyoak, Partner
Energy & Renewables
ian.holyoak@michelmores.com
+44 (0)1392 687682

Helen Hutton, Partner
Planning & Environmental Law
helen.hutton@michelmores.com
+44 (0)117 374 3437

Daniel Eames, Partner
Family Law
daniel.eames@michelmores.com
+44 (0) 117 906 9327

Caroline Baines
Consultant Professional Support Lawyer
caroline.baines@michelmores.com
+44 (0)117 906 9332

Katharine Everett Nunns, Barrister
Agriculture
katharine.everttnunns@michelmores.com
+44 (0)1392 687536

Agriculture team

Josie Edwards, Senior Associate
Agriculture
josie.edwards@michelmores.com
+44 (0)117 906 9337

Charlotte Razay, Senior Associate
Agriculture
charlotte.razay@michelmores.com
+44 (0)117 906 9314

Rajvinder Kaur, Senior Associate
Agriculture
rajvinder.kaur@michelmores.com
+44 (0)117 906 9352

Chloe Vernon-Shore, Senior Associate
Commercial
chloe.vernon-shore@michelmores.com
+44 (0)1392 687777

Holly Mieville-Hawkins, Senior Associate
Contentious Probate
holly.mieville-hawkins@michelmores.com
+44 (0)117 906 9365

Philip Lawrence, Senior Associate
Private Property & Landed Estates
philip.lawrence@michelmores.com
+44 (0)117 906 9319

Sarah Green, Senior Associate
Family Law
sarah.green@michelmores.com
+44 (0)117 906 9335

Elinor Crosbie Dawson, Senior Associate
Private Wealth
elinor.crosbiedawson@michelmores.com
+44 (0)117 906 9325

Erica Williams, Senior Associate
Agriculture
erica.williams@michelmores.com
+44 (0)117 906 9353

Harriet Grimes, Associate
Planning
harriet.grimes@michelmores.com
+44 (0) 1392 687545

Stevie Wilson, Associate
Private Property & Landed Estates
stevie.wilson@michelmores.com
+44 (0)117 906 9280

Louise Yearley, Associate
Private Property & Landed Estates
louise.yearley@michelmores.com
+44 (0)117 906 9357

Kate Higgins, Associate
Private Property & Landed Estates
kate.higgins@michelmores.com
+44 (0)117 906 9340

Seema Nanua, Associate
Agriculture
seema.nanua@michelmores.com
+44 (0)117 906 9328

Hannah Drew, Associate
Agriculture
hannah.drew@michelmores.com
+44 (0)117 906 9351

Helen Bray, Associate
Agriculture
helen.bray@michelmores.com
+44 (0)1173 743 223

Benjamin Dalton, Associate
Agriculture
benjamine.dalton@michelmores.com
+44 (0)117 906 9369

Sarah Richardson, Associate
Private Property & Landed Estates
sasrah.richardson@michelmores.com
+44 (0)1173 743 333

Sarah Rhodes, Solicitor
Agriculture
sarah.rhodesl@michelmores.com
+44 (0)117 906 9274

Karol Schlesinger, Solicitor
Private Property & Landed Estates
karol.schlesinger@michelmores.com
+44 (0)1392 687722

Agriculture team

Adrian Bennett, Trainee Solicitor
Agriculture
adrian.bennett@michelmores.com
+44 (0)1392 687 433

Grace Awan, Trainee Solicitor
Agriculture
grace.awan@michelmores.com
+44 (0)207 659 4644

Zoe Davies, Trainee Solicitor
Agriculture
zoe.davies@michelmores.com
+44 TBC

Jake Rostron, Trainee Legal Executive
Agriculture
jake.rostron@michelmores.com
+44 (0)117 906 9305

Charles Davidson, Trainee Legal Executive
Agriculture
charles.davidson@michelmores.com
+44 (0)117 906 9355

Annie Akhtar, Trainee Legal Executive
Agriculture
annie.akhtar@michelmores.com
+44 (0)117 906 9321