

The background of the entire image is a photograph of tall, thin grasses or reeds. The sun is low on the horizon, creating a warm, golden glow that filters through the grass. The sky is a pale, clear blue. The overall mood is peaceful and natural.

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**CAAV
NATIONAL TUTORIAL
2023**

introduction

**David Steel, Chairman – CAAV
Education and Examinations
Committee**

Welcome

Jake Rostron

- Housekeeping
- Structure of day

Scenario overview and materials

<https://www.Michelmores.com/subscribe>

Scenario Overview

Client/ Landlord: Phil and Jill (Brookfield Estate)

- Phil (65) married to Jill (72) and have two children: David (31) and Kenton (25)
- Brookfield Estate – 600ha
- No in-hand farming enterprises

Tenant: Brian Aldridge (65)

- Home Farm (300ha) – AHA 1986 (first succession)
- Brian has two daughters, Jolene (29) and Ruth (25)

Session 1

**Residential tenancies and farm workers
dwellings**

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Residential Tenancies

Ben Dalton

Grace Awan

Introduction – The Scenario

Cottage 1 – Occupied by Brian's daughter, Jolene. Jolene works on the farm

Cottage 2 – Occupied by farmworker Neil since 1988

Cottage 3 – Occupied by Susan since 2008. Susan does not work on the farm, and pays a monthly rent

Break Out – 15 minutes

Consider the following:

1. The statutory farmwork which covers the occupation of the farm cottages;
2. The potential rights of those occupiers; and
3. The position of Brian as against the terms of his tenancy with Phil and Jill.

Introduction

- Rent Acts – Rent Act 1977 & Rent (Agriculture) Act 1976
- Housing Act 1988 – Assured Tenancies
- Housing Act 1996 – Assured Shorthold Tenancies (ASTs)
- Assured Agricultural Occupancies (AAOs)
- Renting Homes (Wales) Act 2016

A red pen is positioned diagonally across the top left of the image, pointing towards the center. The background is a calendar grid with dates 10, 11, 16, 17, 18, 24, and 25 visible. The pen is pointing at the date 17.

Watershed dates:-

15 January 1989

28 February 1997

What is the legal status of Jolene's occupation?

1st Question (**EVERY TIME**) – when did the occupation start?

This tells you which legislation governs the occupation

What is the legal status of Jolene's occupation?

- 2nd Question – does the occupier have links to agriculture?

If so, you should immediately be considering the possibilities of:-

- An AAO if the occupation commenced on or after 15.01.89
- Rent (Agriculture) Act 1976 if the occupation commenced before 15.01.89

What is the legal status of Jolene's occupation?

The occupation of the cottage by Jolene started **after** 15 January 1989 so we are dealing with the *Housing Act 1988*.

AST?

Qualifying Agricultural Worker?

Remember - All new lettings entered into after 28 February 1997 take effect as ASTs with limited exceptions. However, Jolene is an agricultural worker.

- Protected Occupier?

3 stage test:-

1. Qualifying worker
2. Qualifying ownership
3. Relevant licence or tenancy

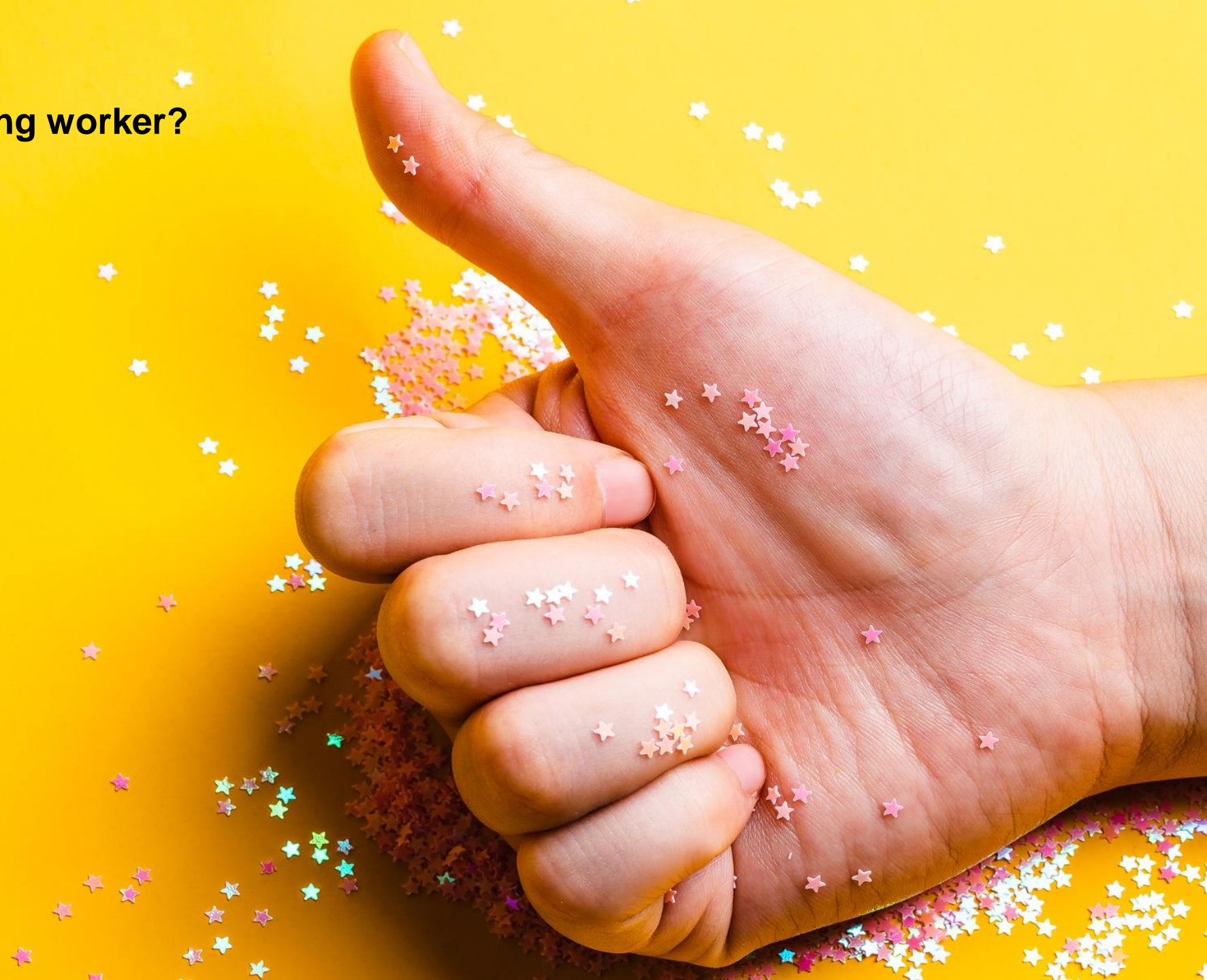


Qualifying worker?

- Employed in agriculture
- Worked full time (at least 35/week) in agriculture in 91 of the last 104 weeks

Is Jolene a qualifying worker?

YES



Is there qualifying ownership?

- Employer owns the house OR employer has made arrangements with the owner for it to be occupied by an ag employee
- Does it matter that Brian doesn't own the cottage?

Relevant licence or tenancy

- Exclusive occupation

Is there qualifying ownership?

YES



Is there a relevant licence / tenancy?

YES



ANSWER

Jolene is likely an Assured Agricultural Occupant



Implications of an AAO

- Lifetime security of tenure
- One right of succession
- Limited ability to recover VP
- Open market rent can be charged

Avoiding an AAO

Landlord MUST:-

- Serve Form 9 notice
- Charge rent of at least £250 p/a

What is the legal status of Neil's occupation?

- 1st Question (**EVERY TIME**) – when did the occupation start?

This tells you which legislation governs the occupation

What is the legal status of Neil's occupation?

Neil has been in occupation since 1988 (35 years). Prior to the implementation of the Housing Act 1988 on **15 January 1989**, residential lettings were governed by either the *Rent Act 1977* or the *Rent (Agriculture) 1976 Act*.

What is the legal status of Neil's occupation?

- 2nd Question – does the occupier have links to agriculture?

If so, you should immediately be considering the possibilities of:-

- An AAO if the occupation commenced on or after 15.01.89
- Rent (Agriculture) Act 1976 if the occupation commenced before 15.01.89

What is the legal status of Neil's occupation?

Because of the agricultural element to his occupation, the *1976 Act* is most likely the relevant statute.

Protected Tenancies – Rent Ag Act 1976

- Protected Occupier?

3 stage test:-

1. Qualifying worker
2. Qualifying ownership
3. Relevant licence or tenancy

Qualifying worker?

- Employed in agriculture
- Worked full time (at least 35/week) in agriculture in 91 of the last 104 weeks

Qualifying Ownership

- Employer owns the house OR employer has made arrangements with the owner for it to be occupied by an ag employee

Relevant Licence or Tenancy

- Exclusive occupation
- Does it matter if rent is not paid?

Succession

- One right of succession
- Succession by spouse
- Succession by family member – must be qualifying period of residence – not less than 2 years prior to date of death

ANSWER

Neil is a 1976 Act protected tenant



Impact of 1976 Act Protection

- Lifetime security of tenure
- Limited ability to recover VP
- One right of succession
- Regulated rents – ‘fair rents’

What is the legal status of Susan's occupation?

- 1st Question (**EVERY TIME**) – when did the occupation start?

This tells you which legislation governs the occupation

What is the legal status of Susan's occupation?

Remember: All new lettings entered into after 28 February 1997 take effect as ASTs unless prior notice to create an assured tenancy has been served.

Susan has been occupying the cottage since 2008

What is the legal status of Susan's occupation?

- 2nd Question – does the occupier have links to agriculture?

NO

Provided the legal requirements for a valid tenancy are met, an AST will have been created: e.g. exclusive possession for a term certain in return for a rent/consideration.

ANSWER

Susan is occupying the cottage under an AST



ASTs – Housing Act 1988

- All lettings entered into after 28.02.97
- Exception = AAO
- Minimum rent requirement - £250 p/a
- Usually for a fixed term

What can the Landlord do about sub-lets?

Assume that the AHA 1986 tenancy agreement to Brian contains the following clause:

“Not without the prior written consent of the Landlord (consent not to be unreasonably withheld) to assign sublet part with or share possession or occupation of the whole or any part of the Holding”

What can the Landlord do about sub-lets?

CASE E

"At the date of the giving of the notice to quit, the interest of the landlord in the agricultural holding had been materially prejudiced by the commission by the tenant of a breach which was not capable of being remedied, of any term or condition of the tenancy that was not inconsistent with the tenant's responsibilities to farm in accordance with the rules of good husbandry, and it is stated in the notice that it is given by reason of the said matter."

What can the Landlord do about sub-lets?

The Landlord could proceed to serve Case E Notices on Brian (one for every breach (i.e. sublet)).

Each Case E notice should particularise the breach complained of.

Session 2

Compulsory Purchase and Utilities

Compulsory Purchase Powers

- CPO and DCO
- Public interest/greater public good
- Compelling public interest must outweigh the rights of landowner/person or entity with an interest in the land, to the peaceful enjoyment of the land
- Roads, railways, regeneration of town centres, making development possible etc

Objecting to CPO or DCO

- Right to object
- Some are determined to stop CPO/DCO proceeding
- Impact on health and well being of individuals
- Often about compensation levels
- Strict timings/limitation periods
- Fixed and formulaic process
- Appeal
- Not all CPOs/DCOs are successful!

Water Industry Act 1991

- Water and Sewage Companies
- Not compulsory purchase
- Section 159 notices
 - i. 3 months' notice if new pipes
 - ii. 42 days' notice if altering existing pipes
- 7 Days Works Notice
- Section 167 Power to carry out works in a compulsory work order
- Section 160 Power to carry out works for sewage purposes
- Section 162 Power to carry out works for metering

Water Industry Act 1991

- Emergency access
- Landowner/tenant can refuse access. Compulsory purchase powers can then be used
- Financial risks of not allowing access
- Timings of works

Compensation – Section 5 LCA 1961

1. No allowance is to be made because the acquisition is compulsory.
2. The value is to be the open market value assuming a willing seller. You will note that it is not a Red Book valuation but prescribed by statute.
 - a. **The value of the land will be assessed in light of the no-scheme principle set out in section 6A. Any increase or decrease in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded (this is the *Point Gourde* principle codified).**
3. Special suitability for a statutory purpose or where there is no market apart from the special needs of a particular purchaser is to be disregarded.
4. Any increase in value due to use contrary to the law is to be disregarded.
5. Special and rare cases only can be dealt with on a cost of reinstatement basis.
6. Rule two above does not affect assessment of compensation for disturbance on other matters not based on the value of the land.

Compensation – Valuation Date (Notice of Entry)

s.5A of the LCA 1961 (now) states as follows:

5A Relevant valuation date

(3) If the land is the subject of a notice to treat, the relevant valuation date is the earlier of–

- (a) the date when the acquiring authority enters on and takes possession of the land, and
- (b) the date when the assessment is made.

(5) If the acquiring authority enters on and takes possession of part of the land–

- (a) specified in a notice of entry, or
- (b) in respect of which a payment into court has been made,

the authority is deemed, for the purposes of subsection (3)(a), to have entered on and taken possession of the whole of that land on that date.

(unless there is another express provision to the contrary).

Compensation – Valuation Date (General Vesting Declaration)

(4) If the land is the subject of a general vesting declaration, the relevant valuation date is the earlier of—

(a) the vesting date, and

(b) the date when the assessment is made,

and “general vesting declaration” and “vesting date” have the meanings given in section 2 of the Compulsory Purchase (Vesting Declarations) Act 1981.

S5A(5B) If—

(a) the land is the subject of a general vesting declaration, and

(b) the vesting date is different for different parts of the land,

the first of the vesting dates is deemed for the purposes of subsection (4)(a) to be the vesting date for the whole of the land.

Compensation - Value

It is not a Red Book Valuation – see: *Yorkshire Traction Co Ltd v South Yorkshire Transport Executive* [2003] RVR 67

- “Willing Seller and the Open Market”
- “Might be expected”
- “Rebus sic stantibus” (actual condition with all its possibilities)
- “Disregarding the scheme”
- “Evidence”

Compensation - Value

“Willing Seller on Open Market” - An open market does not mean a hypothetical market but the market in which, at the relevant date the seller could legitimately have sold his property and the buyer could have bought it. (*Gajapatiraju v Vizagapatam* [1939] AC 302)

“Might be Expected” - *“Expected refers to the expectations of properly qualified persons who have taken pains to inform themselves of all the particulars ascertainable about the property, and its capabilities, the demand for it, and the likely buyers”* (*IRC v Clay* [1914] 3 KB 466)

“rebus sic stantibus” – *“the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities”* (*Fraser -v- City of Fraserville* [1917] AC 187)

Compensation – Value, No Scheme Principle

“Disregarding effect of scheme” - *Point Gourde Quarrying and Transport Co Ltd v Superintendent of Crown Lands* [1947] AC 565 PC, *Waters v Welsh Development Agency* [2004] 1 WLR 1304

Section 6A LCA 1961

Rule 1: it is to be assumed that the scheme was cancelled on the relevant valuation date.

Rule 2: it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.

Rule 3: it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.

Rule 4: it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.

Rule 5: if there was a reduction in the value of land as a result of—

- (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or
- (b) the fact that the land was blighted land as a result of the scheme,

that reduction is to be disregarded.

Compensation – Heads of Loss

- **Land and Betterment**
- **Injurious Affection and Severance**
- **Disturbance**
- **Others**
 - Basic **L**oss and occupiers loss payments
 - Home **L**oss payments
 - **A**ccommodation Works
 - Advance **P**ayments
 - Interest
- **Fees**

Remember - LIDOF and LLAPI

Land & Betterment

Land

- Value of land taken in accordance with the valuation principles previously discussed
- Consider other special factors which might make the value greater than that of just plain agricultural land.

Betterment

- If the value of the retained land has increased as a result of the compulsory acquisition then no compensation is payable.
- Betterment has the opposite effect of injurious affection.
- Section 6B LCA 1961
- The valuation exercise may take account of certain planning permissions as well as the prospect of planning permission being obtained

Injurious Affection & Severance

- S7 CPA 1965 - *In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the value of the land purchased by the acquiring authority, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of powers conferred by this or the special Act*
- Severance claims arise when the land acquired contributes to the value of the land which is retained so that when severed from it the retained land loses value.
- Injurious affection is the depreciation in the value retained land as a result of the proposed development on the land acquired by the acquiring authority.

Disturbance

Disturbance

- Anything which is not too remote and is a natural and reasonable consequence of the acquisition is to be compensated.
- Entitlement:
 - (a) Be an Occupier;
 - (b) Must have an Estate in land - freehold or leasehold interest
 - (c) Lose possession as a result of the compulsory purchase
 - (d) Not include any item which is inconsistent with the basis of value of the land taken

Disturbance (Cont.)

Disturbance compensation is also payable where no land is taken - “McCarthy Rules” (from *Metropolitan Board of Works v McCarthy* (1874) LR 7 HL 243).

1. The loss must result from an act made lawful by statute
2. The loss must be such that in the absence of statutory powers it would have given rise to a cause of action.
3. The loss must arise from physical interference with the land or with a right enjoyed with it, and must result in depreciation of the value of the claimant’s land.
4. The loss must arise from the execution of the authorised works and not from their use.

Others

Home Loss

Claimant must show:

- (a) He has been in occupation of the dwelling, or a substantial part of it, as his only or main residence;
- (b) His occupation is by virtue of:
 - An interest in the dwelling, or
 - A right to occupy the dwelling as a statutory tenant,
 - A right under a contract,
 - A right to occupy under an employment contract, or the right to occupy under a license pursuant to statutory provisions;
- (b) He has been in such occupation for a year ending with the date of displacement;
- (c) He is displaced from his dwelling in consequence of the compulsory acquisition of an interest in the dwelling

Others (cont.)

Farm Loss

These can only be claimed in respect of a compulsory purchase order made before 31 October 2000. Following that date Occupiers Loss Payment is claimed instead.

Basic Loss

The claimant is it only entitled to a basic loss payment to the extent that the amount exceeds the home loss payment. The amount of such payment is modest, being 7 1/2% of the value of the property acquired, but capped to a maximum of £75,000.

A claimant must fulfil three conditions:

1. He must have a qualifying interest in land;
2. His interest must have been acquired compulsorily; and
3. Where he is entitled to a home loss payment, his entitlement to a basic loss payment limited to the extent to which the basic loss payment exceeds the home loss payment.

Others (cont.)

Occupiers Loss

Agricultural Land which is in addition to other rights to compensation. 2.5% of the value of the property acquired that is capped at a maximum of £25,000.

There are similar qualifying conditions as to the Basic Loss Payment.

Compensation is the greater amount of:

- 2.5% of the value of the claimant's interest;
- the land amount;
- the building amount.

Land Amount – Ag Land: Less than 100 ha = £100 per hectare or part thereof. More than 100 ha = £100 per hectare for the first 100 ha and £50 per hectare for the next 300 ha or part thereof.

Land Amount – Non-Ag Land: greater of £2,500 or £2.50 per square metre of the area of land acquired.

Building Amount: greater of £2,500 or £2.50 per square metre measured externally.

Fees!!!

Compensation for Works Powers

Schedule 12, para 2 WIA sets out the following heads of loss available to persons with an interest in land affected:

- Depreciation value of the interest in the affected land
- Disturbance (loss or damage which does not consist of depreciation, but would otherwise be payable if the land had been compulsorily purchased)
- Damage and/or injurious affection caused to non-relevant land (i.e. land where the works was not carried out)

Compensation for Works Powers

A claim for compensation can be instigated by direct contact with the water undertaker. There are no statutory requirements for initiating a claim, but broadly should contain:

- Details of the events that caused the loss (i.e. digging up ground)
- Details of the losses (e.g. unable to crop)
- Evidence to show that the losses were direct and substantial.

If the water undertaker's claims process does not result in satisfactory compensation to the interest holder, the compensation may be disputed by referral to arbitration in the Upper Tribunal, where compensation will be assessed in accordance with the rules in section 5 of the Land Compensation Act 1961.

Break-out Session

Answers

Break
Back at 11:15am

Session 3

**Natural Capital: bio-diversity net gain and
nutrient neutrality**

Natural Capital – Scene Setting

- Environment Act 2021
- Plenty of consultation – BNG, Tax and Metric
- Not much legislation – time lines
- State of the market – value variation and uncertainty for landowners
- Demand side concerns – the developers commercial perspective
- LPA issues – resourcing and DIY
- Conservation Covenants – a false start

Biodiversity Net Gain

- Have to exceed pre-development BNG by 10%:
 - Post development BNG onsite;
 - Offsite BNG allocated to the development; and
 - The value of any BNG credits purchased
- First task is to assess pre-development BNG
- Baseline date of 30 January 2020

Biodiversity Net Gain

- Onsite options must be explored first
- Application of the mitigation hierarchy to avoid, reduce and mitigate for impact of development
- However, it is extremely unlikely that 10% BNG can be delivered on site without impacting project viability due to reduced profit margins
- Reduction in developable area
- Must be maintained for 30 years

Biodiversity Net Gain – LPA Perspective

- 2 year transition for Environment Act 2021
- 9 November 2023
- Statutory Credits – pricing and justification
- Resourcing
- Own schemes
- Competition with private market – Localism Act 2011 – DEFRA Consultation Response
- Cost of monitoring/enforcement – **escrow accounts**
- No bias towards LPA schemes
- Cannot **insist** on proximity, same LPA, neighbouring LPA

Biodiversity Net Gain – Landowner Perspective

- Strategic site considerations – LNRS metric multiplier – **existing LPA strategies**
- What about tax?
- What happens to the site after 30 years?
- Can I trash the land to create an artificially high improvement in habitat to maximise credits?
- What if the habitat does better than expected?
- What if the habitat fails?
- Can I claim for ELMS and BNG?
- Can I claim for BNG and Carbon/nutrient neutrality credits etc?

Biodiversity Net Gain - Tax

- APR is the prime concern
- Fact specific – lease for habitat creation may exceed agricultural value
- BPR may soak up any excess value or stand in for APR
- Balfour
- Treatment of cash – Income or capital – rent or premium?
- CGT reliefs unlikely to apply so succession plan before entering into agreements
- SDLT liability on rent and premium
- VAT at standard rate on BNG credits

Biodiversity Net Gain – Site Issues

- What happens to the site after 30 years?
- Unlikely to return to agricultural use
- Rebasing of the site for further enhancement and additional credit sales
- Can I trash the land to create an artificially high improvement in habitat to maximise credits?
- Line in the sand – 30 January 2020
- Staged sales – if habitat goals achieved early
- Rebasing
- Unexpired original term plus 30 years
- Unit by unit sales – partial site exploitation

Biodiversity Net Gain – Site Issues

- What if the habitat fails?
- Primary obligation on landowner or habitat broker- signatory to S.106
- Adequate funding – establishment, monitoring and maintenance
- Last line of defence = LPA
- Who wants to be a responsible body anyway?

Additionality

- DEFRA see value in private sector
- Holistic view of multiple income streams provided separate definable benefits are realised
- “additional or different outcomes and not paying for the same outcome twice” BNG Consultation
- 'a real increase in social value that would not have occurred in the absence of the intervention being appraised'. – Treasury Green Book 2018 – definition of additionality
- British Standard on BNG
- "Property of measures to achieve biodiversity net gain, where the conservation outcomes it delivers are demonstrably new and additional and would not have resulted without it."
- Woodland Carbon Code – legal and investment tests
- Mother Nature must get value and be seen to do so.....

Biodiversity Net Gain – Stacking & Bundling

- Can I claim for ELMS and BNG?
- Yes but must baseline ELMS
- Blended finance
- Individual scheme rules – SUDS & SANG are fine but SSSI are not.....
- Can I claim for BNG and Carbon/nutrient neutrality credits etc?
- Nutrient neutrality & biodiversity net gain can arise from same intervention
- Cannot sell NN & BNG & Other credits from same intervention
- Can do BNG/NN/Carbon so long as trees not part of BNG habitat or NN scheme

Biodiversity Net Gain – Developer Perspective

- What can I do sensibly on site to meet BNG objective without losing NDA?
- SUDS, SANG and nutrient neutrality land
- Sch 3 Flood & Water Mgt Act 2010
- Mitigation and compensation measures for protected species – 10% rule
- Existing and future option/promotion agreements
- Scope for bigger land take for BNG buffer land
- Mitigation hierarchy – on site provision is best
- Can I sell excess BNG credits or use for another development?
- If identified in original biodiversity gain plan
- Issues also critical for landowners in negotiation with landowners

Biodiversity Net Gain – Metric Considerations

- Small sites metric
- Spatial risk
- LNRS site strategy – all incentivising local provision
- Difficulty
- Time to target
- Advantages of habitat banking – advanced creation metric
- No exemptions for brownfield sites but zero baseline may do the job anyway
- Onsite BNG to be provided within 12 months of development completion/~~before~~ occupation

DEFRA Biodiversity Metric 4.0

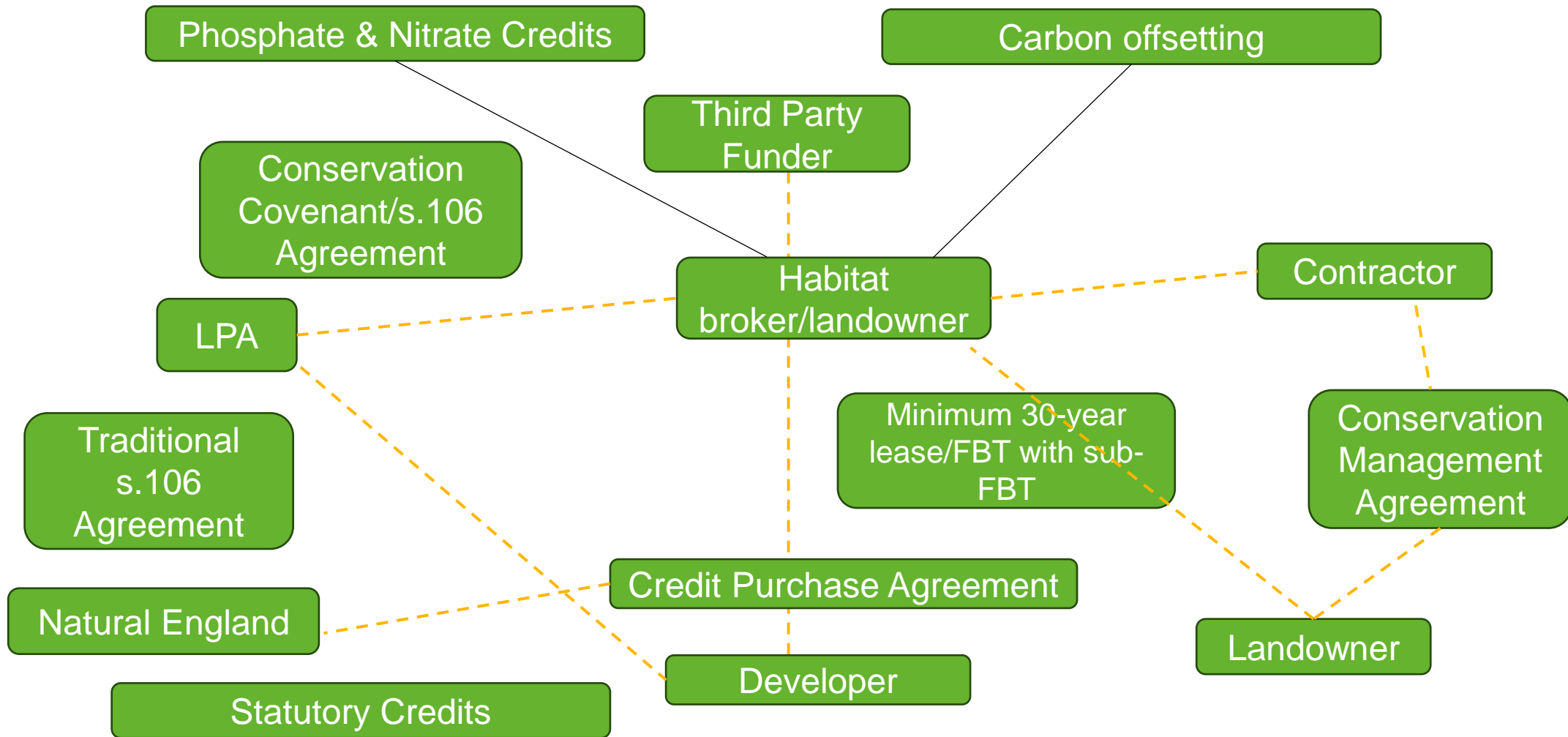
Mitigation sites do not have to be in same LPA as development for BNG, however:

- DEFRA's biodiversity metric's "spatial risk multiplier" incentivises local off-site biodiversity gains
- The greater the distance from the development, the lower the deemed value of the habitat
- If a habitat bank is within the same LPA, then there is no penalty applied. If it is in the neighbouring LPA, then a 25% deduction is made. If it is beyond that, then a 50% discount is applied

Takes into account strategic significance of certain sites - Local Nature Recovery Strategies (**LNRS**) have increased weighting of 1.1 to 1.15

Landscape Scale Recovery

- Single point of contract with DEFRA
- SPV to ensure flexibility
- External finance
- Role of tenants - **COLLABORATION**
- Common land
- Stacking and bundling – again.....
- Additionality – planning and drafting are key





NUTRIENT NEUTRALITY

Eutrophication

- Excess levels of nutrients in freshwater habitats and estuaries (especially phosphates and nitrates) contribute to the growth of algal blooms, leading to eutrophication
- Significantly reduces oxygen levels for fish and other aquatic life
- Damaging protected sites > 'unfavourable condition'

Sources of pollution

- Pollution most typically arises from:
 - Agricultural activity - fertilisers, animal waste, slurry
 - Use / occupation of buildings and untreated or partially treated sewage and wastewater entering rivers
 - Surface water run-off from development
- Where sites are already in unfavourable condition, extra wastewater from new housing developments can exacerbate the issue

Phosphate and Nitrate Neutrality

- Dutch N case (2018) and subsequent NE Guidance (2020-2021)
- Offsetting to ensure P & N levels do not rise
 - Nitrate offsetting – e.g., the Solent, Stodmarsh
 - Phosphorus offsetting – e.g., Somerset Levels
- Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar Sites (i.e., wetlands of international importance)

Natural England's guidance to LPAs

- Identifies several water catchments with protected sites
- Planning permission can only be given for developments in these areas where a Habitats Regulations Assessment (HRA) demonstrates a neutral impact on current nutrient levels in the catchment.
- Longer terms proposed – legacy levels
- If the development of agricultural land results in positive P/N kg then mitigation required
- Localised approach – soil type and land use
- Effect in perpetuity required – 80-125 years

Natural England's guidance to LPAs continued...

- Dutch N Case – 7% of new homes blocked (LGA)
- Expanded zones in 2022 – 32 + 42 LPA
- New methodology with specific catchment calculators:
 - Catchment area
 - Average rainfall
 - Soil drainage type
 - Within NVZ
- Existing land use type > New land use type
- R (Wyatt) v Fareham BC – Court of Appeal

R (Wyatt) v Fareham BC

- LPA required to carry out HRA
- Not the Court's role to repeat HRA
- No reasonable doubt as to adverse effects
- Average occupancy rate of 2.4
- Water usage of 110 litres
- 20 % precautionary buffer

R (Wyatt) v Fareham BC – CA Decision

- Precautionary principle – worst case scenario
- No direct link between occupancy rate and water consumption
- Algorithm assumes all occupants inward migrants to LPA
- Standard land use figures appropriate
- 20% buffer not used incorrectly

Calculating the nutrient burden

1. Calculate the proposed development's total nitrogen/phosphate that would be discharged into the catchment;
2. Calculate existing (pre-development) nitrogen/phosphate from the current land use of the development site;
3. Calculate nitrogen/phosphate for the non-built land uses proposed for the development site, such as public open space; and
4. Calculate the change in total nitrogen/phosphate due to the development: $(A - B \pm C)$ including the 20% precautionary buffer.

If the result of Stage 4 is positive, then mitigation is required. If it is negative, mitigation is not required.

Mitigation sites

- Unlike BNG, mitigation sites must be in the same catchment for NN:
 - Calculate the nutrient run off prevented by discontinuing the agricultural use
 - Hydrogeological surveys?
 - Trees useful but not essential

On-site

- On-site mitigation is possible via creation of large-scale wetlands, woodlands and fallow habitats
- Not often viable unless there is a significant open space provision within the development boundary
- Solutions need to be available and work in perpetuity or at least for as long as the development is required, which is a heavy burden on developers
- Packaged private water treatment plants are one solution, but require material investment in front end infrastructure before other development can take place

Off-site

- Nutrient credits
- Third party landowner of agricultural land > change of land use, e.g., woodland, heathland, saltmarsh, wetland, or conservation grassland
- Maintained for 80-125 years
- Some LPAs are implementing their own NN credit schemes, e.g., Havant Borough Council

Pleasant Farm – existing land use example

Catchment:	Upper Stour
Soil drainage type:	Freely draining
Annual average rainfall (mm):	700.1 - 750
Within Nitrate Vulnerable Zone (NVZ):	Yes

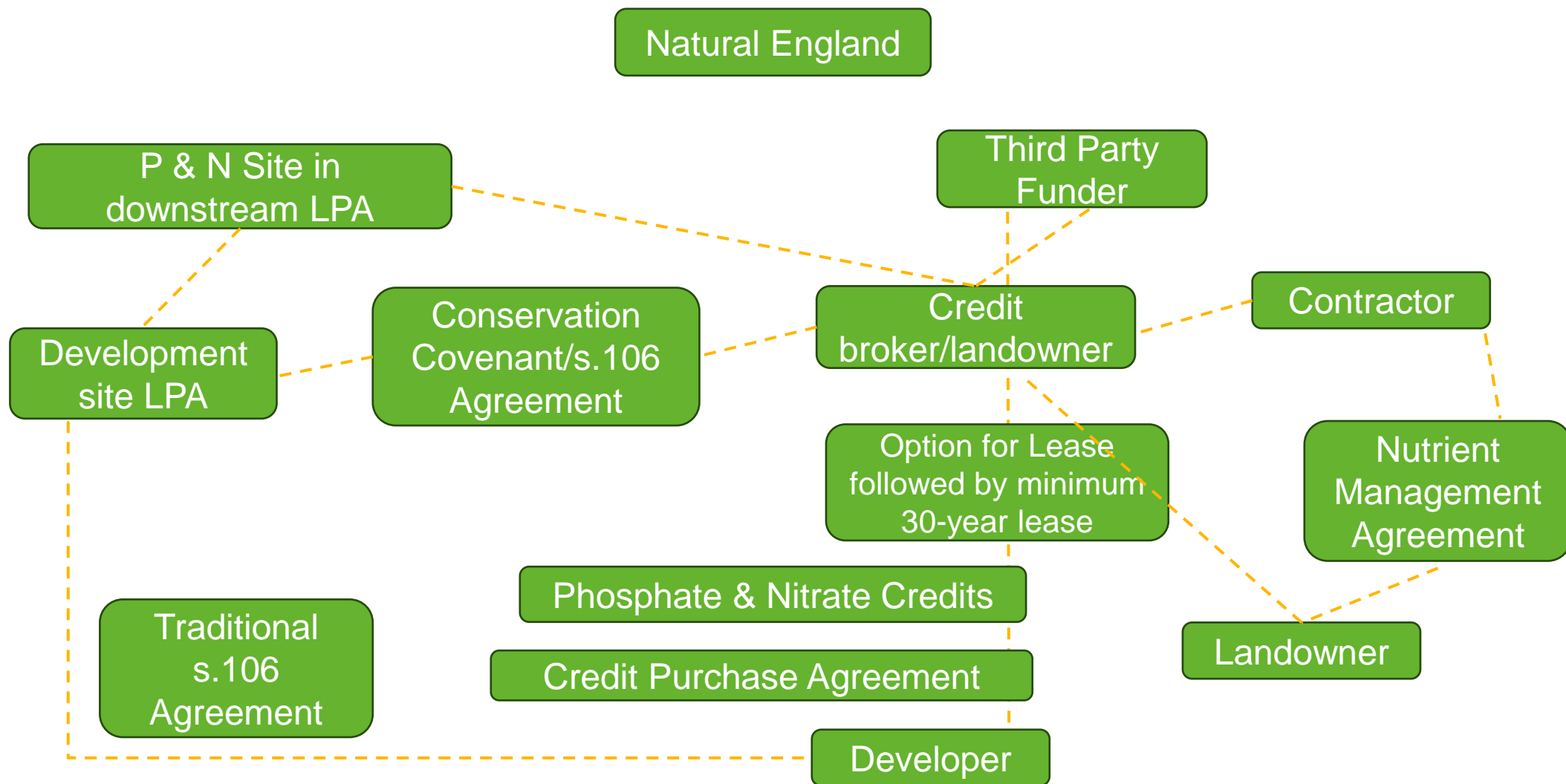
Existing land use type(s)	Area (ha)	Annual phosphorus nutrient export (kg TP)	Annual nitrogen nutrient export (kg TN)
Cereals	47.97	7.93	1495.72

Pleasant Farm – new land use example

New land use type(s)	Area (ha)	Annual phosphorus nutrient export (kg TP)	Annual nitrogen nutrient export (kg TN)
Woodland	47.97	0.96	143.91

Available Natural Capital Assets

- Difference in the total export of nitrogen from the measured area of land between current use and future use = **1351.81** kg p/a.
- Difference in the total export of phosphate is **6.97** kg p/a.



Key Issues

- Timing – front loading/deposit %
- Lack of statutory structure or legal precedent
- Absence of market / price benchmarking
- Conservation covenants – early 2023 for RB's
- Levelling Up Bill – WWTW 2030 deadline
- Statutory nutrient credits

Phosphate & Nitrate Neutrality

- Upgrading WWtW – 2030 deadline
- Factored into future HRA – assume work will be done
- 75% less P and 55% less N
- Likely impact 50% less credits needed post 2030
- National Nutrient Mitigation Scheme
- NE accreditation for private schemes
- No crowding out of private markets

Phosphate & Nitrate Neutrality

- Unlike BNG, mitigation sites must be in the same catchment for NN:
 - Calculate the nutrient run off prevented by discontinuing the agricultural use
 - Hydrogeological surveys?
 - Trees useful but not essential
- Third party landowner of agricultural land > change of land use, e.g., woodland, heathland, saltmarsh, wetland, or conservation grassland
- Maintained for 80-125 years
- Some LPAs are implementing their own NN credit schemes

Session 4

Natural Capital Agreements & Conservation Covenants

Consider how you might advise Jill of the likely structure to a deal with the developer, and how might the local authority ensure that the BNG requirements are met.

Consider:

1) how you might advise Jill of the likely structure to a deal with the developer;

and

2) how might the local authority ensure that the BNG requirements are met.

KEY AREAS OF KNOWLEDGE TO DEMONSTRATE IN EXAM

- i. understanding of what Biodiversity Net Gain (BNG) is and the statutory framework underlying it;
- ii. the key priorities for each party;
- iii. what options the landowner has; and
- iv. which parties must be signatories to which agreements.

Background

To obtain planning permission and meet the BNG objectives required by the Environment Act 2021, the Developer needs:

- additional land to deliver required **10% BNG**
- to guarantee availability of land on which to deliver biodiversity gains for minimum **30-year period**.

Jill & Phil are willing to make land at the Brookfield Estate available.

Developer's Priorities

- Agreement for Lease
- Habitat Management Agreement / Conservation Management Agreement
- Conservation Covenant
- Biodiversity Gain Site Register

Advice to Landowner Client

- Sufficient land to meet own BNG / nutrient neutrality / carbon goals / requirements after this lease?
- Reserve control of other natural capital assets
- Existing rights over land
- Length of lease and restrictions on use of land during and potentially after the lease

Structure of Agreement

Agreement for Lease	Habitat Creation Lease
Conservation Covenant	Habitat Management Agreement

Outline Heads of Terms – **STC & Confidential**

AGREEMENT FOR LEASE

- Grant of Habitat Lease conditional on planning permission
- Longstop date
- Completion date

Outline Heads of Terms – **STC & Confidential**

HABITAT LEASE

- Type of lease – FBT / common law / commercial?
- Premises
- Term & Registration
- Consideration
- Rent review
- Permitted use
- Reservations
- Access rights
- Repairing and insurance obligations
- Change of use
- Review & variation
- Dispute Resolution
- Costs

SIGNED AND DATED by both parties

Conservation Covenants

- Part 7 Environment Act 2021
- In force from 30 September 2022
- What is it and why is it required?

*A conservation covenant agreement is an agreement between a landowner and a responsible body to do or refrain from doing something on their land for a **conservation purpose**, for the **public good (EA 2021, section 117)***

“Conservation purpose” is defined as:

- (1) Conserving the natural environment (flora and fauna, habitats, geological features) or natural resources of land;*
- (2) Conserving land as a place of archaeological, architectural, artistic, cultural or historic interest;*
- (3) Conserving the setting or landscape of any land which has any of these features”*

Key elements

- A private voluntary legally binding agreement between a “landowner” and a “responsible body”
- Concerning an area of land
- Delivering a “conservation purpose” for the **public good**
- No need for benefitting land
- Executed by Deed and contain indication that parties intend to create a CC:
s117

The Parties

- Covenantor (landowner)

- Freeholder
- Tenant of lease > 7 years
- They must hold a “qualifying estate” in covenant land

- Responsible Body

- *Secretary of State; or*
- *Bodies designated by Sec of State under **sec. 119 EA 2021**, includes –*
 - *Local Authorities: must be **suitable** to be a RB*
 - *Other public bodies or charities with **mainly conservation related functions/purposes;***
 - *Private bodies/entities if **at least some of their main activities relate to conservation.***

How will they work?

- **Duration (s.121)**
 - to bind land in perpetuity or such shorter term as agreed between parties
 - Leaseholders limited to remainder of lease term
 - BNG rules require minimum 30 year term: Sch 7A, TCPA 1990
 - Nutrient neutrality – maintain for minimum of 80 – 125 years
- Registrable as a local land charge
- Will complement existing statutory designations

The terms

- Obligations can be:
 - Positive (requiring the party to do something on the land) and/or
 - Restrictive (requiring them to refrain from doing something)
- Likely to be a mix of obligations
- Include / annex appropriate management plan
- Focus on freedom of contract

Other key points

- Monitoring and reporting
- Modification and Discharge
- Enforcement/ Breach:

Defences (section 126):

- Outside party's control
- An emergency to prevent injury or loss of life
- Necessary to comply with (new) statutory controls
- Specific contractual defence

Final thoughts

- Impact on land values
- Costs
- Interplay with s106 Planning Obligations
- Tax:
 - APR – occupying for the purposes of agriculture?
 - Agricultural value < market value
 - BPR as an alternative?

Lunch
12:25pm – 13:25pm

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Session 5

Telecommunications

Background/Context

“A set of rights that are designed to facilitate the installation and maintenance of electronic communications networks.” (Ofcom)

- Telecommunications Act 1984 = “the Old Code”
- Communications Act 2003
- Digital Economy Act 2017 = “the New Code”
- Telecommunications Infrastructure (Leasehold Property) Act 2021
- The Product Security and Telecommunications Infrastructure Act 2022 (PSTIA 2022)
- Case Law

Key Terminology

A code right in respect of land may only be conferred on an operator by an agreement between the occupier of the land and the operator.

“Operators” – Check Ofcom’s Register

“Occupier” - the occupier of land for the time being.

“Relevant Person” - A person whom an operator requires to agree to confer a Code right on the operator or to be bound by a Code right exercisable by the operator

When agreement reached, Relevant Person then becomes “Site Provider”



Code Rights

12 main rights (Para. 3 of Schedule 3A):

1. Install ECA onto/under land *AND* keep installed ECA *AND* to carry out any works on the land for or in connection with the installation of ECA
2. To inspect, maintain, adjust, alter, repair, upgrade or operate ECA *AND* to carry out works on the land for the same purposes *AND* to enter land to inspect, maintain, adjust, alter, repair, upgrade or operate any ECA
3. **To share ECA with another operator *AND* to carry out any works on the land for the purposes of, or in connection with, sharing with another operator *AND* To enter the land for the purposes of, or in connection with, sharing with another operator the use of ECA**
4. To connect to a power supply
5. To interfere with or obstruct a means of access to or from the land
6. To lop or cut back, or require another person to lop or cut back, any tree or other vegetation that interferes or will or may interfere with EC

Key Requirements of a Code Agreement

- ✓ In writing
- ✓ Be validly signed
- ✓ Specify a duration
- ✓ Specify notice period for termination

New Code Agreements

- By Agreement – Part 2
- Court Imposed – Part 4
- When? → Agreement not reached & Para. 21 Test
- Consideration → Rent, premium (Para 24)
- Compensation → Diminution in value, expenses, reinstatement

Subsisting Agreements

- A telecoms agreement entered into prior to 28 December 2017 (para. 1(4) of Schedule 2 to the DEA 2017)
- Governed by Old Code BUT subject to transitional provisions
- Schedule 2 of DEA 2017

Termination of Code Agreements

A Code Agreement can only be terminated in accordance with the Code. – Para 30.

Serve Para 31 Notice - 18 months' notice specifying one of 4 grounds

- Operator can serve para 32 counter-notice – within 3 months!
- Operator can apply to Tribunal within 3 months of para 31 notice (para 34).

BUT removal of equipment requires another notice (Part 6, Para 36 – 44)

- Para 40 Notice – giving reasonable time to remove equipment
- Para 39 Notice – Checking ownership of electronic equipment (no negatives to serving this)

Two stage process!

Recent Updates to Case Law

*Cornerstone Telecommunications Infrastructure Ltd (Appellant) v. **Ashloch** Ltd and another (Respondents) - Subsisting Agreement protected under 1954 Act*

On Tower UK Ltd** (formerly known as Arqiva Services Ltd) (Appellant) v. AP Wireless II (UK) Ltd (Respondent) [2022] UKSC 18 - **No Existing Code Rights

Reminder of Scenario

The Brookfield Estate has a telecoms mast in the corner of one of the fields. The mast was put up by "Eulogy Systems" **in 1999**.

There are **no written terms**, but Jill has established that the mast is located in one of the fields subject to Brian's tenancy.

She does not believe that the Estate provided Brian with consent to grant Eulogy occupation of the mast. She has established that Brian has had £10,000 per year for it, from Eulogy.

Jill has told you that on approaching Eulogy to obtain more information regarding the occupation, it referred to a change in the law that came in a few years ago, and that it was taking advice on its position.

Brian has now approached the Brookfield Estate to say that Eulogy have requested a new tenancy under the Electronic Communications Code, at a rent of only £2,000 a year. The tenant isn't sure what to do.

Model Answer

- Background
- The Code
- Understanding the Current Arrangement
- Oral Agreement
- Written Agreement
- Requesting a new agreement
- Strategy
- Unlawful sub-letting

Session 6

Succession

Overview of the Scenario:

Tenancy of Home Farm:-

- Granted to Brian's father in 1965
- 300 ha beef and sheep enterprise
- Brian succeeds to the tenancy in 1990
- Daughter, Jolene, has worked on farm since finishing ag college at 18
- Daughter, Ruth, helps out on farm around job as a primary school teacher

Advice for Jill

1. Basic statutory framework
2. Evaluation of potential successors
3. Advice on strategy

1. The Statutory Framework

Is the tenancy subject to the AHA?

-YES: granted pre 1 September 1995

NB: all tenancies granted on or after 1 September 1995 take effect as FBTs under the ATA 1995 unless tenancy falls into one of the s.4 ATA 1995 exceptions

1. The Statutory Framework

Does this AHA tenancy carry succession rights?

- YES – granted before 12 July 1984
- TWO statutory successions available: s.37 AHA 1986
- Tenancies granted after 12 July 1984 do not carry succession rights unless fall into exceptions in s.34(1) AHA 1986

1. The Statutory Framework

Criteria for Succession:

- On death – ss.35-48 and Sch 6 AHA 1986
- On retirement – ss 49-58 and Sch 6 AHA 1986

What is the CURRENT criteria for succession?

Must be:

- (i) Eligible; and
- (ii) Suitable

1. The Statutory Framework

Could a retirement notice be served?

-YES

-Retirement notice:-

- At least 12 months duration

- Expiring on term date

- Nominates one proposed successor

1. The statutory framework

Succession on death:

- Application made within 3 months of date of death
- On prescribed form
- Lodged with Tribunal and landlord
- NB: time limit for S.41 AHA 1986 application
- Landlord reply within 28 days of receiving application

2. Evaluation of potential successors

Eligibility Test:-

1. Close relationship
2. Principal source of livelihood
3. Commercial unit occupation

2. Evaluation of potential successors

Eligibility – **Close relationship**

“a close relative of the deceased / retiring tenant”

- Wife, husband/civil partner
- Brother or sister
- Child (not children-in law)
- Person “**treated as a child**” in relation to a marriage / civil partnership of which the deceased was a party.

2. Evaluation of potential successors

Eligibility – Principal Source of Livelihood Test

In at least 5 out of the 7 years ending with the date of death/retirement notice the applicant's agricultural work on the holding, or the unit it forms part of, constituted his/her principal source of livelihood.

2. Evaluation of potential successors

Eligibility – Principal Source of Livelihood

- Discontinuous periods ok
- 3 years can be at college/university
- Principal = more than 50%
- Livelihood = ordinary living expenses including benefits in kind
- Spousal income?

2. Evaluation of potential successors

Eligibility – Principal Source of Livelihood

- Agricultural work – manual labour, bookkeeping & accounts, management decisions
- Work on the holding/unit – unit as comprised at the date of death/retirement notice
- Outside income?
 - Contracting; haulage; livestock dealing; farm shops; investment income

2. Evaluation of potential successors

- Jolene?
- Ruth?

2. Evaluation of potential successors

Eligibility – **Principal Source of Livelihood Test**

Application under s.41 AHA 1986

...to be treated as eligible if applicant doesn't satisfy PSOL test, but satisfies it to 'a material extent'

material extent = contribution to applicant's livelihood derived from his agricultural work must be substantial in terms of time and important in terms of value

2. Evaluation of Potential Successors

Eligibility – Commercial Unit Test

A "**Commercial Unit**" is a unit that when farmed under competent management is capable of producing a **net** annual income equivalent to the average annual earnings of **2 full time male agricultural workers (approx. £42k)**.

Any occupation arrangements which do not provide longer term security to the applicant will be disregarded, e.g.

Grazing Agreements, short term FBTs etc.

2. Evaluation of Potential Successors

Eligibility – Commercial Unit Test

There are '**Deemed Occupation**' rules that apply.

***Occupation by Spouse** = occupation by Applicant.

***Joint occupation** = Applicant treated as occupying whole, but income attributable to the land is split between the joint occupiers (% split dependent upon their respective shares).

***Occupation by Partnership** = same as joint occupation rules. Income will be split between partners, depending upon their % shares in partnership.

***Land owned by the Applicant:** will be deemed to be occupied by the applicant for the purposes of the commercial unit test even if the applicant is not occupying the land if it is let on a short term/ non secured basis to a third party.

2. Evaluation of Potential Successors

Eligibility – Commercial Unit Test

- Jolene?

- Ruth?

N.B. If the **retiring tenant** owns a commercial unit, that will not disqualify the successor on retirement. So a possible reason to opt for a retirement application is if a potentially disqualifying commercial unit will be inherited by successor on tenant's death – it would prejudice a succession on death application. We have not been given any details of what other land is occupied or owned by Brian as the potential retiring tenant to see if this would be a relevant consideration here.

2. Evaluation of Potential Successors

Suitability – **3 limb test**

1. Training and/or practical experience of agriculture;
2. Age, physical health & financial standing;
3. Landlord's views on suitability.

The Tribunal has a wide discretion when determining suitability: will consider "*all relevant matters*"

2. Evaluation of Potential Successors

Suitability

- **Jolene?**

Farmed the holding since finishing agricultural college at 18 and has worked full time on the Farm ever since.

- **Ruth?**

Appears she has far less practical experience of agriculture than Jolene and she works full time as a primary school teacher.

3. Strategy

Case G Notice to Quit

- If Brian dies, the most important advice for the Estate is to ensure that a Case G Notice to Quit is served following Brian's death.
- Must be served **within 3 months** of receiving formal written notice of the tenant's death from or on behalf of the Executors or notice of an application for succession (whichever happens first).
- The Landlord must serve a Case G in case no succession applications are lodged or because an application might not succeed. Otherwise, the landlord is left with a tenancy vested in the Executors indefinitely.

3.Strategy

Succession Application – **on death**

- If Jolene and Ruth make an application to succeed, the Estate must ensure that a response is filed within **28 days** of receiving the application.

Application for Consent to Case G Notice to Quit

- If the applicant is then found eligible and suitable the landlord can seek to pursue his application for consent to operation of the Case G notice to quit.
- Must be made within 2 months of the expiry of the deadline for lodging the succession application itself (i.e. within 5 months' of date of death).
- Landlord must satisfy one of the six grounds in s.27(3) of AHA and establish that a "fair and reasonable landlord would insist on possession:" (s.27(2)).

3. Strategy

Succession Application – **on retirement**

- Must be made **within 1 month** of the retirement notice.
- Any Response must be filed at the Tribunal within 28 days of receiving the application.

Greater Hardship

If Jolene was found eligible and suitable the Estate would have the opportunity to establish 'greater hardship'. **THIS IS ONLY AVAILABLE ON APPLICATIONS TO SUCCEED ON RETIREMENT.**

The landlord must make the application for greater hardship at the time of filing his reply.

4.Settlement

- Given the risk of there being a further potential successor, settlement is attractive to try to achieve a negotiated deal ASAP given the Estate's desire to recover possession of the Farm.
- This all needs to be factored into the considerations as part of the wider settlement discussions.

Break
Back at 3:05pm

Session 7

Rent Review

New Facts

- Consent to subletting and sharing is not to be unreasonably withheld or delayed
- This is a 2015 model clauses lease
- The user covenant is agriculture only...

Why is this a good topic?

- Limited statutes
- Hardly any case law
- Broad appeal
- Easy criteria
- Easily applied

Service/procedure

- Next *available* termination date falling at least 12 months after service of the section 12 notice (but no more than 24 months duration).
- Running words: *"or at the expiration of the year of your tenancy which shall expire next after the end of 12 months from the date of service of this notice"*.
- In writing and requiring "rent payable to be referred to arbitration from the next termination date".
- *Section 93 AHA* –
 - delivered to recipient personally.
 - left at [his] proper address (last known address).
 - sent by recorded delivery post.

Frequency

- Minimum 3 year cycle for rent reviews
- 3 year cycle runs from:
 - commencement of tenancy.
 - date from which previous review took effect (increase or reduction, but not a standstill).
 - date of arbitrator's decision that rent should remain the same.

Schedule 2 paragraph 1(1):

“the rent at which the holding might reasonably be expected to be let by a prudent and willing landlord to a prudent and willing tenant...

...taking into account:...

...all relevant factors,...

...including the terms of the tenancy (including those relating to rent),....

...the character and situation of the holding (including the locality),...

...the productive capacity of the holding and its related earning capacity,...

...and the current level of rents for comparable lettings”

Hypothetical parties *not* the actual landlord and tenant:

Disregards

- Tenant's improvements (including improvements by tenant under previous tenancy if carried over and not compensated at expiry).
- Tenant's fixed equipment.
- Grant funded element of any landlord's improvements.
- Effect on rent of the tenant's actual occupation.
- Dilapidations caused or permitted by the tenant.
- High farming.
- Anything adding value which is personal to the sitting tenant.
- Improvements financed by the landlord for which the tenant makes payments in return (both the payments and improvements are disregarded).
- Scarcity (of AHA tenancies).

New Facts (reminder)

- Consent to subletting and sharing is not to be unreasonably withheld or delayed
- This is a 2015 model clauses lease
- The user covenant is agriculture only...
- Agricultural Holdings (Requests for Landlord's Consent or Variation of Terms and the Suitability Test) (England) Regulations 2021/619
- "qualifying request" to arbitration or third party determination.
- Landlord's consent to a matter which requires consent under the tenancy or request for a variation of the terms of the tenancy.
- The request must be made for the purposes of either:
 - enabling the tenant to request or apply for "relevant financial assistance"; or
 - complying with a statutory duty relating to the tenant's use of the holding.
- Financial assistance includes Environmental Land Management Scheme (ELMS).

Session 8

Recovery of land for development

Rachel O'Connor

A Note on AHA 1986 Tenancies and Notices to Quit:

Why are Notices to Quit so important?

1. The regulation and operation of Security of Tenure
2. The right of the tenant to challenge the basis upon which the landlord can terminate the tenancy.

(MAKE SURE YOU KNOW THE PROCEDURE FOR BOTH S27(3) NOTICES AND THE INCONTESTABLE NOTICES TO QUIT (CASES A-H))

Case Study- Development of a Laboratory

- You have been told that the Estate wishes to build a lab for David to conduct his research on the Estate, and that falls squarely within the AHA tenancy.
- The Estate has not yet applied for planning permission, but Jill has been told by her planning consultant that she might be able to achieve outline planning permission fairly quickly, and the planning consultants have lodged an application with the local planning authority.

Case Study- Development of a Laboratory

The early resumption clause in the tenancy states:

“The Tenant shall yield up possession of such part or parts of the Holding as are required by the Landlord for non-agricultural purposes from time to time within six weeks of the date of service of a notice to quit.”

Case Study- Development of a Laboratory

1. What would you advise Jill in terms of the best strategy to adopt in order to obtain vacant possession of the land?
2. Is there anything Jill needs to do before she serves a notice on Brian?

When advising Jill you will need to consider:

- The relevant statutory requirements pursuant to the AHA 1986 (CASE B AND S27(3)(f)- IF RELEVANT);
- The common law requirements; and
- Any further contractual requirements contained in the tenancy agreement.

QUESTION ONE

What would you advise Jill in terms of the best strategy to adopt in order to obtain vacant possession of the land?

The Starting Point...

- Brian has tenancy governed by AHA 1986
- Jill wants to obtain possession of part of the holding
- For the laboratory and
- Possible onsite accommodation

What are the mechanisms for obtaining VP under AHA 1986?

- Case B
- S27(3)(f)

CASE B Procedure:

Where the landlord requires the holding for a non-agricultural use which requires planning permission.

- Landlord serves notice to quit;
- Tenant serves notice referring case to arbitration within 1 month;
- Arbitrator appointed by agreement or application to RICS to appoint arbitrator within 3 months; and
- Notice to quit suspended until outcome of arbitration.

SECTION 27(3)(F) Procedure:

Where the landlord requires the holding for a non-agricultural use which does not require planning permission and does not fall within CASE B.

- Landlord serves notice to quit;
- Tenant must serve counter-notice within 1 month to contest the notice to quit;
- Landlord must apply to the Tribunal for consent to the operation of the notice to quit within 1 month;
- Tenant must submit reply to the Tribunal within 1 month.

SECTION 27(3)(F) Procedure:

- Landlord must prove:
 - The notice to quit falls within s27(3)(f); and
 - That a fair and reasonable landlord would insist upon possession;

The notice to quit cannot take effect unless and until the Tribunal grant the landlord consent to its operation.

Can Jill obtain possession of part of the holding?

- At common law a NTQ part is invalid – 3 exceptions
- Is an exception relevant here?

Yes - the written tenancy contains a contractual clause that expressly allows for a NTQ of part (resumption of part clause)

Can JILL satisfy the requirements to serve a Case B notice?

She must establish whether the land is required for a use other than for agriculture and planning permission has been obtained.

Case B: “LAND”

- Check if all the land specified in the notice to quit is required for non-agricultural use.
- Check if all of the land is covered by the planning permission.

Case B: “Required”

The land can be required by either the landlord or an identified developer.

Can Jill demonstrate:

- a clear **intention to implement** the planning permission;
- a **reasonable prospect of achieving it**; and
- that they are able to satisfy the **planning conditions** and any **reserved matters** during the notice period.

Case B: “A use other than for Agriculture”

- Is the development clearly non-agricultural?

In this case, yes.

Case B: “Planning Permission”

- Planning permission needs to be in place before the NTQ is served and would need to cover **all** the land subject to the NTQ.
- There is no planning permission here – but Jill has been told she might be able to achieve outline planning permission fairly quickly.

Will this be sufficient?

Case B: “Planning Permission”

Outline planning permission has been found to be acceptable for the purposes of Case B.

However, it needs to be viewed alongside the requirement that Jill will need to be in a position to implement the permission at the date the NTQ expires.

Also, Jill will need to consider any planning conditions that may need dealing with before planning permission can be implemented.

How long should the NTQ give Brian to Vacate?

- S25(1) AHA 1986 – NTQ will be invalid unless at least 12 months in duration expiring on term date
- S25(2)(b) exception – short notice can be permitted where the NTQ is given pursuant to provision in the tenancy which authorises part resumption for non-ag purpose

Does a short notice period apply in this case?

The early resumption clause in the tenancy states:

“The Tenant shall yield up possession of such part or parts of the Holding as are required by the Landlord for non-agricultural purposes from time to time within six weeks of the date of service of a notice to quit.”

Other things to consider?

- What about access?- any provisions in the tenancy?
- What compensation may be due to the tenant in either circumstances?
 - Basic and additional compensation under the 1986 Act
- Could Jill negotiate a surrender of the land required?

Compensation

Basic Compensation:

- 1 year current rent without proof of loss; or
- Actual loss or two years rent which is the lower.

Additional Compensation:

- 4 times the annual current rent.

Compensation for Improvements and Tenant Right.

QUESTION TWO

Is there anything Jill needs to do before she serves a NTQ on Jim?

Should Jill wait until she obtains full planning permission before serving a Case B NTQ?

- If Jill obtains outline planning permission only and serves a NTQ giving only 6 weeks notice, as per the tenancy agreement, she is unlikely to be able to demonstrate that she “required” the land and is in a position to implement the planning permission at the date of expiry of the NTQ
- She should wait until she receives planning permission and then serve the NTQ.

Jill would also need to make sure the substance of the NTQ is correct

The NTQ must be in writing and identify :

- The parties
- Description of the holding
- The reason – ie Case B or s27(3)(f)
- The part of the holding subject to the NTQ including a plan
- The expiry date and running words

The NTQ must be for the correct notice period (already considered)

Session 9

Tax

Inheritance Tax

- IHT on market value of estate at death
- APR and BPR assets relieved at either 100% or 50%
- IHT @ 40% on chargeable estate above NRB / RNRB
- Assets passing between spouses exempt
- Lifetime gifts within 7 years of death reduce NRB

Agricultural Property Relief

- 50% or 100% relief
- Applies to agricultural value of agricultural property (occupied for 2 years or owned for 7 years):
 - agricultural land or pasture
 - farm buildings
 - farm cottages
 - farmhouses
 - commercial woodlands ancillary to agricultural land
- Farmhouse is two stage test: is it a farmhouse at all and, if so, is it a farmhouse of a character appropriate to the farmland?

Business Relief

- 50% of 100% relief on full market value
- Business property (owned for 2 years) includes:
 - sole trader business or share of partnership (100%)
 - unquoted shares (including AIM shares) (100%)
 - land, buildings, plant and machinery used by a business carried on by a company which the deceased controls (i.e. majority of voting powers) or partnership in which he has a share (50%)
- Business must be wholly or mainly trading (i.e. 51% trading activities as opposed to investment) - Balfour
- Excepted assets do not qualify - e.g. surplus cash or non-business assets
- Binding contract for sale = no BR

Home Farm

- AHA tenancy vs FBT?
- Is the lab an agricultural activity?
- Will land continue to be used for agricultural purposes?
- Farmhouse?
- Cottages?
- BR?

Environmental Schemes – BNG and NN

- Lack of legislation and guidance on tax treatment of environmental schemes
- Agricultural use and loss of APR
- Farmhouses
- Woodland Carbon Code and Peatland Carbon Code
- BR?
- Valuation issues

Session 10

Mediation

Alternative Dispute Resolution Mechanisms - Examples

- Arbitration
- Mediation
- Expert Determination (also known as third party determination)
- Early Neutral Evaluation
- Negotiation (without assistance of a third party)

Mediation – Overview

- A form of ADR that is flexible, voluntary and confidential
- A neutral third party (a mediator) helps parties work towards a negotiated settlement
- The Court / Tribunal cannot force parties to mediate, but a party that refuses to engage in ADR may face an adverse costs order
- Mediation can be used to resolve an entire claim, or to narrow issues between the parties
- The Mediator's role – facilitate agreement

Practicalities - Prior to the mediation

- Agree identity of mediator, or by nomination of an ADR organisation
- Prepare mediation bundle, position statements and case summary (as appropriate).
- Sign a mediation agreement

Practicalities - On the day

- Each mediator will have their own style but usually the parties will be in separate rooms, with the mediator bouncing between those rooms throughout the course of the day
- Initial joint meeting
- The parties are free to withdraw at any time
- Settlement Agreement - It is good practice to document any deal that is reached to avoid the deal unravelling

Mock Mediation

Some time has passed and all of the issues facing the Estate have come to a head. You have managed to persuade Brian's land agent to attend a mediation.

Consider what the Estate's aims will be for each issue, and how best they can secure a deal at mediation.

With the table next to you, you will attempt to mediate the issues between you. One of the tables will be for the tenant and the other the landlord.

Key Issues:

- David's lab – recovery of land within Brian's tenancy for development
- Farm cottage – security of tenure?; David's need for on-site accommodation
- Rent Review
- Succession prospects for Brian's daughters
- Telecoms mast and rent
- Tax reliefs – IHT; environmental schemes
- Other - Environmental aims; CPO matters; natural capital opportunities

No feedback: no notes!

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Bristol

Broad Quay House
Broad Quay
Bristol BS1 4DJ

Cheltenham

Eagle Tower
Montpellier Drive
Cheltenham GL50 1TA

Exeter

Woodwater House
Pynes Hill
Exeter EX2 5WR

London

100 Liverpool Street
London EC2M 2AT

Sidmouth

Church Street
Sidmouth
EX10 8LT

+44 (0)333 004 3456
michelmores.com