Rostons | Farming Focus

SUMMER 2023

CHARTERED SURVEYORS • VILLAGE & COUNTRY HOMES • ENTITLEMENTS • PLANNING • LITIGATION • FINANCE

Meet the team

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Get off my land!

Currently with the drive to net zero, the move from fossil fuel to new energy sources, there is becoming more and more demand to land. In addition, we are seeing the water companies under pressure to clean up not only their supply of clean drinking water with major schemes such as the Vyrnwy Aqueduct relining taking place, but also dealing with the outfalls from small treatment works for sewage. This is leading to more and more access to land and it is important that landowners and occupiers understand their rights.

Legislation
Legislation gives rights to the different statutory undertakers, but to exercise these rights, they have to serve notice.

Statutory Notices
Statutory notices give a clear indication of the area for which access is required and also ensures your projection in so much as compensation in payable for any loss or damaged caused.

Early Access
It is not unusual for either the Contractor or the Statutory Undertaker to try and sweet talk the farmer to allow early access. This is usually down to some requirement that the Contractor has that will ultimately give a cost saving somewhere along the line. If you are allowing access before either a notice is served or before the notice is expired, you are putting yourself in a weak position.

Access to areas outside the Notice
The Statutory Undertaker and their Contractors should not be taking access to any land outside their notice. If you are allowing them to have such access, it is by your agreement and Rostons would recommend that you agree terms for such access. It is a commercial deal between you and the Contractor. There is no point coming back to your appointed Agent after the event, when the Contractor fails to do their side of the bargain. In all too many cases, this is what happens when a deal goes wrong and it is hard for us to rectify the position.

Best Practice
The best practice for anybody affected by any works is to ensure the following takes place:

- **Pre-entry Meeting**
  A pre-entry meeting to agree fencing, crossing points, water supplies and so forth, and this should be clearly documented.
- **Records/Evidence**
  Should issues occur with cattle escaping or fencing being poor, photographs should be taken and the dates recorded in a diary.
- **Advance Payment of Compensation**
  Most Statutory Undertakers have a duty to make an advance payment of compensation within 90 days of entry being taken, if requested. It is essential this is requested.

Above all, have a clear understanding of your rights and appoint an agent that has the knowledge and the team to deal with matters.

Commercial Leases

We are seeing an increase of farm buildings being used for commercial purposes from storage and workshops to offices. Whilst potentially providing an alternative source of income careful consideration should be given to the practicalities of such leases and their management.

Any agreement should include terms that are relevant to you and your situation. Careful consideration should be given to who the tenant is, what their business is and how this will fit in with your use of the property especially if in close proximity to your home. It may be appropriate to include restrictions on operating hours and vehicle movements in the lease. If the tenant is a company, is there a personal guarantee to ensure that if the business were to fail the rent is still paid. The lease agreement should also reflect obligations of either party – who will be responsible for repairs, insurance and other outgoings such as business rates and utilities? In addition to the agreement, is the correct planning in place and does the building require an Energy Performance Certificate?

Turning to the end of the lease. Was a full photographic record of condition produced at the start of the tenancy agreement to ensure the tenant is liable for any damages caused? Commercial tenants have an automatic right of renewal at the end of their tenancy unless the security of tenure provisions under the Landlord and Tenant Act 1954 are excluded from the lease. This must be done prior to entering the agreement and there are strict timescales on this.

If you are thinking of letting your buildings for commercial uses, please contact Vicky Symcox-Black or Jack Jones at the Rostons Office who would be more than happy to discuss your needs.

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Planning Permission

Planning Permission continues to be a popular topic within our industry, with expanding businesses and on farm diversification continuing to drive the demand within the Agricultural sector.

Following the COVID pandemic all councils have seen a wave of applications submitted, which has led to a backlog in turnaround, meaning that currently full planning applications are regularly taking in excess of 200 days from validation to be assigned to a planning officer. Therefore, if you are looking at new projects it is best to submit an application well in advance of when you plan to implement the changes.

One useful method for agricultural businesses to obtain planning permission in shorter timescales would be to apply using permitted development, as the timescales for a decision are defined within the act and therefore are placed as priority. The local authority then has 28 days from receipt of the application to make their decision, as if they go over this date it can lead to an automatic approval. However, it is worth noting that to be able to apply under permitted development there is set criteria including maximum size and distance from a road.

Once a planning application has been submitted, the key factor to avoid further delay is to present your application with as much justification and evidence as possible so that limited further reasoning or questions are required by the council to make their decision.

In addition, we have seen an increase in enforcement officers picking up cases where planning permission has not been granted prior to the works commencing. At this point they will inspect the site and provide you with the options to rectify the error, this is usually to submit a retrospective planning application, or to remove the development.

Sales of Farm Machinery

Our monthly online sales have been very successful so far in 2023 with a good selection of tractors, farm implements and livestock equipment, traded to buyers all over the UK. If you would like to enter some lots for the next sale, please call the team on 01829 773000.

Our September six of on farm sales are progressing well. Please keep an eye out for future sales.

Andrew is extremely pleased with the September 6 as in 30 years of auctioneering he has never had six on farm sales in a month.

Speak to Andrew Wallace, if you would like advice about having an on farm sale.

SFI UPDATE

September 2023 sees the much-anticipated rollout of the Sustainable Farming Incentive Scheme including the six new standards and the alterations to existing standards.

Farmers and landowners will now be able to apply for a three-year SFI Agreement to conduct environmental land management actions and help manage land in a more sustainable way, whilst achieving the desirable farm outputs and productivity.

New standards contain a range of actions suitable to both grassland systems and arable operations with a variety of annual payment rates typically on a per hectare basis.

Although many actions are similar to those under the Countryside Stewardship Mid-Tier Scheme, amendments and additions to each option will allow for a larger number of applications across the farming sectors.

The decision by Defra to apply a “pick and choose” application approach, as opposed to the originally anticipated level-based approach, has been welcomed by many and is sure to encourage applications.

Further standards are set to be released in 2024 and SFI Agreements can be amended on an annual basis. As such we recommend holding a yearly review in order to assess how the agreement is functioning and whether further actions could be added.

If you would like Rostons to conduct an on-farm visit and prepare a Summary of Recommendations and Potential Annual Income, please contact Jack Jones or Sarah Gerrard at the Rostons Office.

Telecoms & Fibre Optic Cables

Following the release of the Electronic Communications Code 2017 which created a significant amount of upheaval in the telecoms industry, ultimately granting stronger power to telecoms operators, and causing the driving down of rents they pay to landowners who host equipment on their land.

Further Tribunal decisions have confirmed the position regarding rents for rural mast sites. What is often not realised is that these powers have also been granted the same rights to fibre optic cables used in the provision of internet services.

We are increasingly aware that these operators appear to be rather blasé when it comes to landowner rights. We frequently encounter cases where apparatus has been installed on private land without any notification or Wayleave Agreement, which is a statutory requirement.

Please contact Jonathan Bell if you are approached by any operators in relation to such matters.