MOORE BLATCH

RURAL NEWS

Edition five

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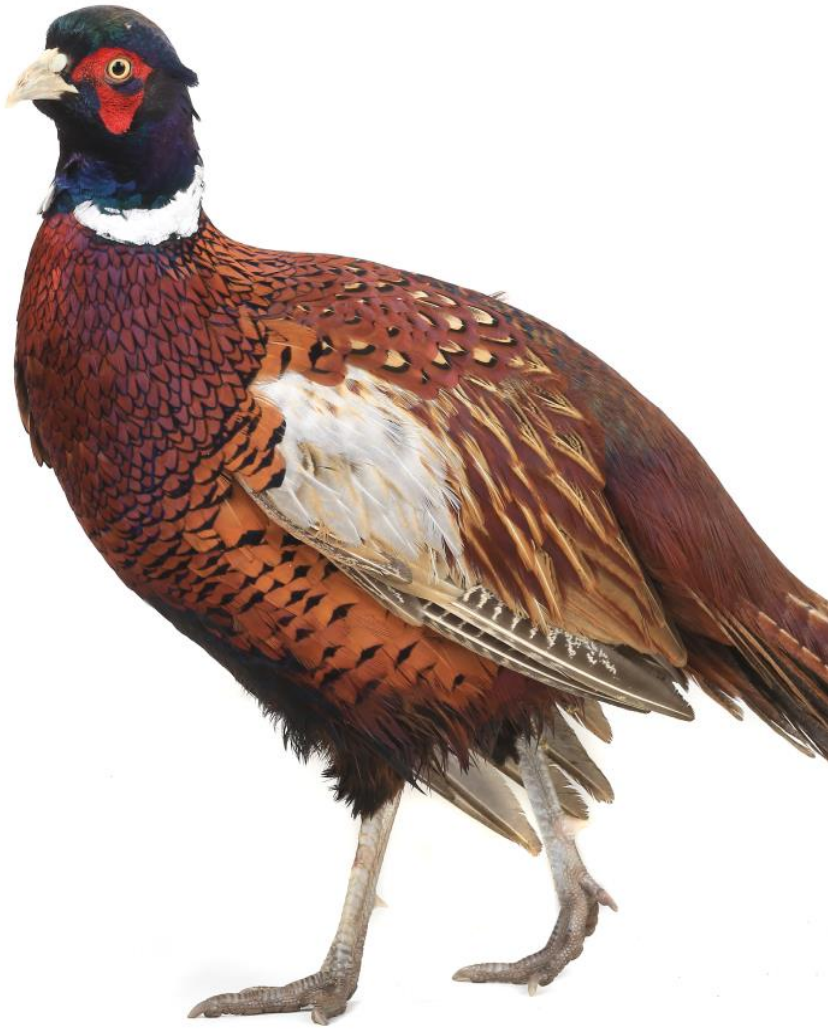

WELCOME TO THE LATEST EDITION OF RURAL NEWS

I am delighted to announce that Moore Blatch is now a top 100 law firm as ranked by The Lawyer and one of the fastest growing firms in the country.

As we continue to build on our recent success, I am pleased to welcome the following new recruits to our rural services team: Jack Keats and Matthew Billinglsey join us as solicitors and Alex Wavell joins the firm as a Chartered Tax Advisor.

Having recently completed his training contract with Moore Blatch, Jack joins the rural services team focusing on sales and purchases of agricultural property and land development transactions. Jack will be assisting me and Sarah Jordan with these matters.

Matthew joins the private client team and will be assisting Philip Whitcomb with wills, tax & trusts with particular expertise in acting for clients in respect of the tax efficient ownership of agricultural, business and heritage property. Alex also joins the private client team specialising in inheritance tax and the taxation of trusts.

Our event sponsorships this year include The Hampshire Farmers Club annual walk and dinner, The CLA New Forest Awards, Harry Whittington Racing Owners Day, ALA South Central events and Hursley Hambledon Hunt Point to Point. I look forward to crossing paths with you in the near future.

In this edition we feature a guest article from Alan Riley, property law consultant at Property PSL limited. He provides an update on restrictive covenants which featured as part of his monthly commercial update. As it is shooting season, the team look at licensed shoots and shooting rights. We also have articles on why landowners, banks and solicitors should work together and comment on business property relief (BPR) on horse livery businesses for inheritance tax purposes. I also share with you how exchanging in one day can be possible.

I welcome any comments on this newsletter or any queries you may have on it.

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SHOOTING RIGHTS

CASE LAW UPDATE

A recent decision in the High Court, *Fuller v Kitzing and another [2017] EWHC 810 (Ch)*, will be of interest to our readers regarding the interpretation of shooting rights especially when they are reserved to third parties.

Fuller V Kitzing concerned Mr Fuller, the owner of freehold property that formerly belonged to a larger estate who was infuriated that a third party, Mrs Kitzing, had the right to enter his land in the immediate vicinity of his house for shooting. Mrs Kitzing was expressly entitled under the terms of her lease to stand guns at Mr Fuller's freehold property.

The High Court refused to impose a blanket ban on shooting within 300 metres of the main house or in the garden there. However, the Court did restrict shooting from or deliberately in the direction of the house, and required that Mrs Kitzing give notice of shoot times in the vicinity of the house.

The Court was clearly upholding the shooting rights granted under the lease, but imposing reasonable notice requirements, which in theory all practitioners should consider drafting into shooting licences and leases in light of this case.

The High Court also confirmed that a game bird can be "wild" and the subject of a profit à prendre (a right to take the game) even if bred and fed by human agency - provided it has been released back into the wild.

A right to "preserve and rear game" also exists and includes the right to protect game from outside threats (for example, controlling vermin) and the right to feed game birds already present, even if they had been introduced on neighbouring land as poults (young pheasants) in pens and later released.

Crucially, the High Court held that the right to protect game from vermin does not extend to the erection of pens, which is a common method used in practice for rearing game and perhaps a controversial decision that will require further legal commentary in the future.

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LICENSED SHOOTS

FARM DIVERSIFICATION

From oil paintings to period dramas to the Shooting Times, the shooting season is the inspiration for many quintessentially British countryside scenes. It is also a lucrative earner for landowners who licence their land for game bird shoots, game shooting and clay shoots.

As well as ensuring a shooting licence is always in place, it is important for landowners to consider the legal implications of inviting third parties onto their property.

This article gives an overview of the shooting licence itself, and outlines key considerations regarding health and safety and insurance.

Shooting licence

A licence will define the parties involved and the land they are allowed to access by way of a plan. It will include reference to the legal shooting and the taking and carrying away of game from the land.

'Game' will be defined to include those animals the landowner is happy to be shot i.e. pheasants, partridge and deer.

The licence fee will be stipulated. Land agents can advise on an appropriate market fee if needed.

Obligations on the part of the party taking the licence can be listed and can include the amount of people allowed to shoot at any one time, an indemnity against any damage caused, insurance references and any other obligations a landowner would like to impose to make the licence bespoke to their property.

The licence should also make it clear that the farmer maintains the right to carry on all normal and ordinary acts of agriculture and land management during the licence period.

Existing written licences should be reviewed regularly to ensure they cover current circumstances and are legally up to date.

Health and Safety

Under the Occupiers' Liability Acts, landowners can be strictly liable for personal injury or death caused by events on their land.

Landowners cannot exclude this liability and should ensure that a full risk assessment for the shoot is carried out.

This will identify any risks and enable a landowner to take precautions to prevent accidents. Health and Safety policies and assessments should also be audited to check they are sufficiently comprehensive and robust.

Insurance

Public liability insurance with minimum cover £10 million is a must. Landowners should fully disclose all activities on their land to their insurance providers and read the small print, to ensure an appropriate insurance package is put together for them.

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A KINGDOM FOR MY HORSE:

LIVERY BUSINESSES QUALIFYING FOR BPR

As Winston Churchill said; "the outside of a horse is good for the inside of a man" – something that many readers no doubt happily agree with. Over and above the pleasure of riding, owning and maintaining a horse takes time. So, it's not surprising that with life as busy as it is, many take full advantage of a nearby livery business.

Until recently, the assets of a DIY livery business have been regarded as not qualifying for Business Property Relief (BPR) for inheritance tax purposes. However, the First Tier Tribunal in the case of *Vigne* means this has now changed –DIY livery business assets do now qualify for BPR.

Horse livery businesses fall into four broad categories:

- Grass livery – the provision of a field on which a horse can graze;
- DIY livery – where grazing and some stabling for the horse is provided by the business but the horse owner is responsible for the maintenance and well being of the horse;
- Part livery – where the landowner will take on some of the responsibility for the well being of the horse and will often muck out and provide feed; and
- Full livery – basically five-star hotel provisions for horses with the livery business taking full care of all the needs of the horse.

Whilst a livery business provides some insignificant activities or expenses of a business nature, HMRC's view is that the main activity of a livery was holding investments and land - therefore claims for BPR are denied. People are paying for the use of the land for their horses, with the services provided by a DIY livery business coming as part and parcel with that land. Without providing the land (the dominant feature) there would be no livery business.

But for many people who make use of livery facilities, the services the business provides are as important (if not more important) than the provision of the land itself. Looking after horses is a responsible and time-consuming role, and many horse owners simply do not have the time and energy to take on all this involves. In the *Vigne* case the services provided were more than just providing land in return for money; the horse owner expected and got more for their payments. This included:

- Purchasing worming tablets in bulk and passing on the discount to the horse owner. There was also a facility for the staff to administer the tablets to the horses if required;
- Growing and providing hay to the horses during winter;
- Poo picking (the removal of manure from the fields) which if left was advantageous to the land but disadvantageous to the health of the horses; and
- Daily health checks on the horses.

The Tribunal found on the evidence that the business did not consist of mainly or wholly holding investments, but was one which was "offering more than the mere right to occupy a particular parcel of land".

So, what can we conclude from this?

The main point is that livery businesses and riding schools may qualify for BPR, but whether they do or not will depend on who does what. The more services that the business can provide to the horse owner the better. Services such as worming, provision of feed, poo picking, health checks, providing a safe environment for the horse, on site security, advice to the owner on the care of the horse, blacksmithing services, on call for emergencies and turning out services will all help. As with most things, evidence is key, so make sure there is plenty of it including invoices to horse owners, timesheets as well as marketing literature highlighting services provided and a business plan.

Winston Churchill is also quoted as saying "there is no such thing as a good tax". That may be so, but it is certainly a good thing to get your livery businesses to qualify for the tax reliefs available.

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EXCHANGE IN ONE DAY?

YES IT'S POSSIBLE

Moving house is a tortuous process in every way, usually not helped by the legal process which can drag on for several months without any explanation whatsoever. It may therefore come as a surprise that it's possible to conduct the entire process during the course of a day, without compromising either the buyer or seller's position. We speak from experience as recently we completed a purchase of an £8 million country house, having exchanged in just one day.

So, how is this possible?

An estate agent approached us on a Friday asking whether we had capacity for an attended exchange the following Monday.

Having said yes, we issued a sales memorandum over the weekend, and on the Monday morning I arrived at the property near Newbury in Berkshire at 7am for an inspection and walk of the boundaries.

Meanwhile, my colleague Archie Sherbrooke, based in our City of London office, visited the seller's solicitors' office in the City at 9am and collected the relevant documents.

By midday we had formally engaged our client and dealt with the usual money laundering identity checks, and by 2.30pm we received the 10% deposit.

Having raised enquiries of the seller's solicitors and received satisfactory replies, we finished our report to our clients by 5pm and received authority to sign the contract on our clients' behalf.

By this time the sellers were mid-flight from the United States so they weren't in a position to exchange contracts until they arrived in the UK. Finally, at 11.55pm I received a call, and we exchanged.

What is the secret?

For the seller, it's all about preparation - incurring the cost of preparing for the sale, including obtaining all searches and if necessary resolving any issues, before even finding a buyer. For the buyer, it's all about co-ordinating a team of lawyers and agents to work on one matter for one day, which means dropping other work for the sake of one transaction.

On both sides this comes with high fees, but in some circumstances - such as in this case - it is worthwhile in order to drive through a deal and secure someone their dream home.

It's important to note that exchanging in a day is usually only possible for a cash purchase. Whilst it is possible when a mortgage is involved, there is some risk involved as if a mortgage offer isn't forthcoming between exchange and completion this could result in rescission, loss of deposit and the break-down of the sale.

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TEAM NEWS

We are delighted to share with you some feedback recieved from our rural services Chamber's submission. We continue to rank for Agriculture & Rural Affairs in Southampton and surrounds.

"They're superb - they're technical and good with clients and they do great work. They've continued to provide good work - they're not too high cost, they're accessible and they're very technically competent."

Philip Whitcomb - *"he's got huge depths of technical undertanding and a superb ability to translate that to the client and other advisors"*

Sarah Jordan - *"She's a good rural lawyer and very pleasant to deal with"*

Ed Whittington - "He is calm clear concise, dligient and proactive"

SDLT ROADSHOW

Ed and I have been running Stamp Duty Land Tax (SDLT) Roadshows whereby we visit contacts and brief them on how to lawfully utilise existing SDLT reliefs. This proves beneficial to selling agents in particular when trying to secure a deal.

We have been assured by our audiences that our talks are useful!

If you would like us to come and visit your team please contact me.

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BANK SECURITY:

THE BENEFITS OF LANDOWNERS, BANKS AND SOLICITORS WORKING TOGETHER

We all know farmers don't like selling land to release capital. Re-financing is often the better option to raise cash to invest in your farming business. Whether it is to buy more land or convert redundant buildings, allowing a bank to take a charge over your assets is an obvious choice to release funds.

Having been in practice for over 15 years, I often find clients are puzzled as to why their solicitor has asked them so many questions about their farm, especially if they have lived there for generations. This is, I believe, because many landowners don't necessarily understand the process required for charging their land to a bank.

This article gives an overview of the procedure that solicitors must undertake before those important draw down facilities are available.

If a bank takes a charge over your property, your solicitor will be instructed by not only the landowner but also in most cases by the bank as well. There are strict regulations a solicitor is required to adhere to and the process is akin to if you were buying your farm for the first time. Unfortunately, the fact that you have been in occupation of your land for many years is of no comfort in the security process.

Your solicitor needs to check the legal title, carry out searches and raise any enquiries with you to clarify any issues which a bank may not be able to lend on. Some of the common issues I have encountered in carrying out security work over farmland are as follows:

- Who the land actually belongs to is a fundamental issue. If the property is owned by a Trust but a farming company is seeking the finance, it is vital that the mortgage deed accounts for the correct legal owners. Title deeds need to be readily available, so a bank can agree the best vehicle for lending.
- When you agree with a bank on the land and buildings to be charged, ensure that a plan is prepared showing the exact area. So often instructions are received with the heading "100 Acres at Black Acre Farm" and it is difficult to ascertain where those 100 acres lie. Having plans at the outset makes the transaction much swifter.
- If you have let any farm buildings or containers on your property, ensure that these lettings are documented by way of written tenancies which allow you to regain possession of the property at the end of the tenancy. The bank will need to see a copy of any tenancies/licences and they will need to be taken into account when the bank's valuation of the property is carried out.
- Planning is another issue that often comes to light. It is important to have all the planning documentation for any extensions, including building regulation approval for any works carried out to farmhouses or farm buildings if planning law dictates. A bank requires confirmation from the solicitor that planning laws have been complied with.
- If you plan to charge only part of your farm or estate, it will be necessary to grant a right of access to that part which the charge will be secured against if the property is registered under separate titles at the Land Registry. This is to ensure the bank has all necessary rights to call on its security, access the land and, ultimately, to sell it if you default on your repayment obligations.
- Your solicitor will need to raise a number of enquiries with you relating to boundaries, rights of way, planning, environmental issues etc. These enquiries are in a similar vein to those which would be raised if you were buying land.

Following the completion of a charge, it will then be registered at the Land Registry or, if your property is unregistered, it will trigger a first registration at the Land Registry. If you are taking out a charge in the name of a company, it must also be registered at Companies House.

The rural services team at Moore Blatch is highly experienced in dealing with landed estates, farms and land, so we are adept at making the process of charging your property to a bank as painless and as stress free as possible.

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RESTRICTIVE COVENANTS (PRE-1926)

CASE LAW COMMENT

Pre-1926 convenants rely upon express words of annexation to benefitting land to pass to successors in title.

The question to be answered in Sutton and *East Surrey Water Plc v Kirby & ors; Re Woodcote Reservoir* was whether five objectors to an application made under section 84 of the Law of Property Act 1925 for the modification or extinguishment of certain restrictive covenants were entitled to the benefit of the relevant covenants. If they were, their objections could be heard by the Lands Chamber and considered. If they were not, the application would succeed.

The water company owned land known as Woodcote Reservoir in Purley, Surrey and proposed to construct two buildings on the land containing residential apartments, with associated amenity space and parking. The water company had obtained planning permission from the local planning authority to do so.

The land was subject to restrictive covenants which were noted in the charges register of the water company's registered title.

The covenants were imposed by a conveyance of the land in 1910. These covenants provided (inter alia) that: "No building or structure other than the said reservoir or reservoirs shall be erected on the land except a recorder house not nearer the road frontage than the houses on the adjoining land". Any such "recorder house" could only be built in accordance with plans approved by with the consent of "William Webb of Upper Woodcote House, Purley, Surrey".

The covenants also provided that: "Nothing shall be done on the land which shall become a nuisance or annoyance to the said William Webb or the adjoining owners". It was probably safe to assume that the said William Webb had conveyed the land to the water company, although that was not clear.

The objectors were required to discharge a significant evidential burden: to prove that they had the benefit of the restrictive covenants and, thereby, that they had standing so that their objections could be heard. The difficulty for the objectors was that no original or examined copy of the 1910 conveyance was available.

The only evidence of that conveyance was the extract of it appearing on the water company's registered title. The extract set out details of the covenants, but beyond those, no other details were provided.

It was unclear who had been the vendor under that conveyance, and whether the vendor had owned any other land in the vicinity of the property. Hence, the objectors were unable to put forward any specific evidence regarding who had originally obtained the benefit of the covenants, and who might currently have the benefit of the covenants.

The only facts they could assert were that they owned properties in the immediate neighbourhood of the application land. As there was no evidence as to which land might have been benefited by the covenants, and whether the benefit had been annexed to that land, the evidential burden had not been discharged, and the objectors could therefore not be heard.

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