Summer 2024

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Next Level Law

Agricultural Brief

Our legal update for farmers, landowners and estate managers

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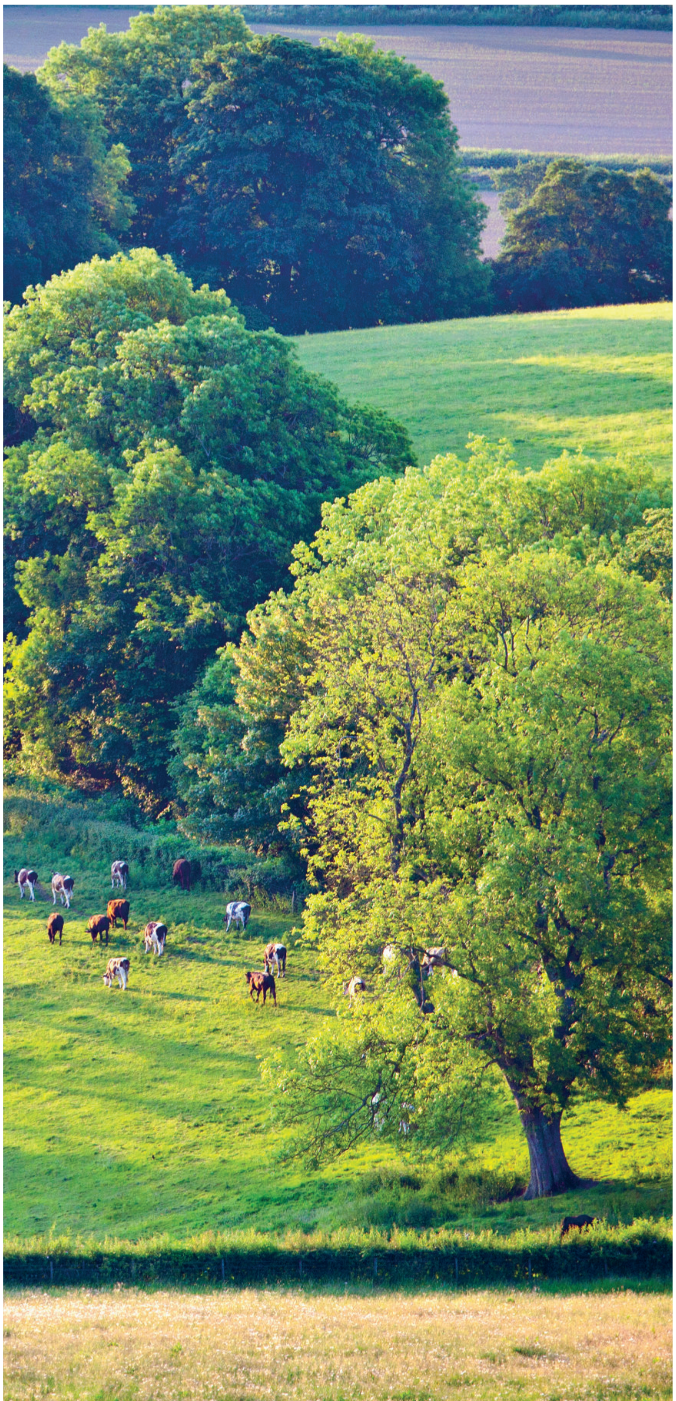

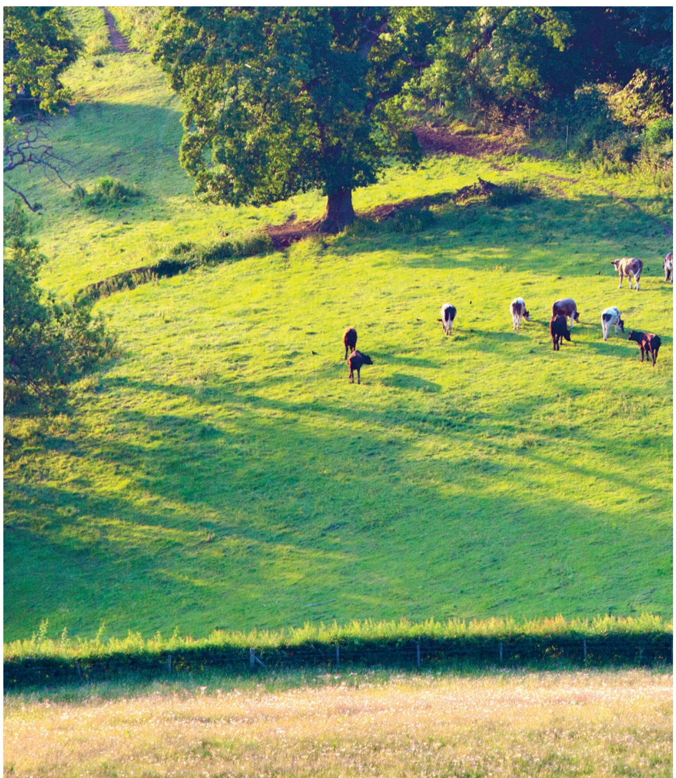

Welcome

The first six months of 2024 saw the UK hit by unprecedented rain fall which continued into June and the summer months. If heavier rainfall continues to be a trend across the UK for prolonged amounts of time, farmers may begin to look at other avenues of income. As an alternative to farms contemplating their balance sheet and cashflow forecasts whilst looking out at the falling rain we have put together some more positive reading as we explore some avenues of opportunity we are seeing for farmers and landowners across the country.

In the renewable energy world, we are seeing increasing areas of land going under solar panels, supported by battery storage, along with stand-alone battery storage projects, often located on good quality farmland. Whilst for relatively long-term options and leases one does wonder how many of the options will be exercised and what the shape of the countryside will look like in 30 years' time. Will solar and wind increasingly dominate the agenda, or will we see an increase in nuclear energy, on a smaller or larger scale, freeing the land back into agricultural production? Commercial scale ground source heat is increasingly a prospect, providing certainty of energy pricing to users, and generation of energy locally for use in its immediate locality transported and sold by way of private wires seems to be the future.

Food security is very much on the agenda, and as supply chains look to reduce their carbon footprints yet further in the next few years, having achieved the easier gains, home grown vegetables and fruits produced in controlled environment growing facilities, powered by renewable energy, will be increasingly attractive to supply chains and buyers, produce pricing being offset by the need for reduced carbon emissions.

In this issue:

- **Oliver Evans** explores the UK carbon market, providing an insight into various schemes, involving woodland, hedgerows and peatland amongst others.
- **Rebecca Allen** then takes us into the world of viticulture, which is rapidly evolving throughout the UK, often guided by our dedicated Viticulture Team.
- **Natasha Power** offers her perspective on Anaerobic Digestion, looking at what benefits these AD plants can offer to farmers and landowners.

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- **Daisy Darrell** in the buzzing environment of Natural Capital provides a summary of where the market is currently positioned and where it could be heading, offering her view on the opportunities which may arise.
- And finally, it could be time to draw stumps, shuffle the cards, cash in the chips, and decide to explore other opportunities outside of farming. **Michael Playford** shares some tips about preparing your farm for sale and legal steps you might look to consider.

The Birketts Agriculture and Estates Team is well versed in advising clients across a wide number of areas of diversification and opportunities and is always available to talk through ideas, share experience, and offer guidance.

UK carbon schemes for farmers

In November 2008, the 2008 Climate Act was passed in the UK. This committed the UK to reducing its greenhouse gas emissions by 80% by 2050 compared with 1990 levels. In 2019 the UK Government's committee for climate change increased this target to bring all greenhouse gas emissions to net zero by 2050.

As a result, a wide-ranging Net Zero Strategy has been adopted by the UK Government including carbon capture and sequestration schemes on UK farmland which according to Nature Sustainability has the potential to store up to 20 million tonnes of carbon annually.

So, what does this mean for farmers?

Farmers are increasingly having to find alternative ways to make their farming enterprises viable and so carbon farming, and the sale of carbon offsetting known as "carbon credits", which can be run alongside existing farming enterprises is an exciting prospect for farmers.

Farmers can voluntarily place areas of less productive farmland or indeed whole farms into the schemes and carry out farming and non-farming activities which enhance the storage and capture of carbon such as tree planting or regenerative cropping methods such as no till and direct drilling which reduce carbon emitting from the soil. Carbon capture is measured using a recognised system and then converted into carbon credits (one credit per one tonne of carbon dioxide captured). These credits can then be sold on the open market to businesses who are required to comply with net zero greenhouse gas targets.

Interestingly, the Government's stance at present is that carbon schemes can be adopted in addition to government subsidy schemes such as the Basic Payment Scheme, Sustainable Farming Incentive and Sustainable Farming Scheme provided that double counting does not occur i.e. the benefits are not used twice.

What accredited schemes are available to farmers?

The woodland carbon code is available to all farmers who wish to create new woodland on their farmland. The code requires applicants to sign up to the code before planting begins and thereafter to manage the woodland in accordance with the UK Forestry Standard. Newly created woodland is independently audited and verified at specific points during the scheme to ensure compliance with the scheme and carbon capture estimates are based upon project specific tree planting density and tree species. The carbon capture estimate is then risk adjusted based upon robust scientific research all of which is designed to create a trusted carbon credit for farmers to sell.

Farmers can sell two types of carbon credit units.

Pending Issuance Units (PIUs) which are issued once the tree planting has been verified and can be sold as soon as they are issued. PIUs are not fully verified as to the amount of carbon actually captured and so attract a lower value than Woodland Carbon Units (WCUs) which are converted PIUs that have verified the amount of carbon capture.

The Peatland Code, is available to farmers who have UK peatland sites. The code was set up to restore the 80% of UK peatland which is estimated to be in a degraded state and emitting 23 million tonnes of CO2 annually (3.5% of the UK's total carbon footprint). The code is project based and available to those farmers with at least 50cm of peat depth. Farmers gain credits by carrying out restoration works such as re-wetting, blocking up drainage ditches, contour bunding and re-profiling, hag and gully

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blocking to slow down water flow on the peatland to reduce erosion and raise water tables. As with the Woodland Carbon Code, PIUs are issued once a project has been verified and works completed and Peatland Carbon Units (PCUs) are created by converting PIUs once carbon capture gains have been verified.

The benefits to farmers

The average price of a Woodland Carbon Code PIU in 2023 was £25.36 and the average Peatland Code PIU in 2022 was £23.95. In the future these amounts are expected to increase significantly as businesses are required to undertake more carbon offsetting.

The UK Government is in the process of creating accredited schemes for both soil carbon and hedgerow carbon which will offer more choice and allow more farmers to enter the carbon farming world.

Non-accredited schemes available to farmers from private companies

Soil carbon schemes are available to both arable and livestock farmers and reward the farmer for using regenerative, no till and direct drilling practices which help to capture additional carbon in the soil in return for a carbon certificate which can be sold on by the farmer.

Tree and hedgerow carbon schemes work on a similar basis to the woodland carbon code by creating and maintaining new woodlands, hedgerows or filling in gaps or widening existing woodlands and hedgerows to capture more carbon in return for a saleable carbon certificate.

Credibility is the main issue with these schemes as each private company adopts different measuring standards to the carbon capture making it difficult for those buying the credits to verify the quality of the scheme. These schemes do however appear to offer more flexibility to farmers than the accredited schemes, as some schemes offer the leasing carbon capture on a short-term annual basis so that farmers are not tied into long term arrangements. These schemes are often backed by some form of indemnity by the company measuring the carbon in the event that the measuring method was inaccurate or failed to produce the carbon capture that was promised to the buyer of the unit.

It is clear that caution must be taken when entering into non-accredited schemes to ensure that the scheme being entered into will produce a saleable and attractive carbon credit for those businesses in the carbon market.

Viticulture – the fastest-growing agricultural sector

Despite the fact wine has been produced in the UK since perhaps as early as the roman times, many in the international wine industry did not expect the success of the UK wine industry. The UK is now winning awards for its wines alongside international competition, showing just how far the UK viticulture sector has come.

There are now almost 1,000 UK vineyards according to the Department for Environment, Food and Rural Affairs (Defra). Since 2000 the hectares under vine in the UK have more than quadrupled with WineGB expecting a further increase of 85%, totalling 7,700 hectares by 2032. The Environment Secretary, Steve Barclay, has said he is "proud of what British winemakers have achieved over recent years, and we continue to work hard in partnership with the wine sector to simplify the rules and bring in new financial support."

To support the education and growth of the UK wine industry, the Government has launched a new Future Winemakers Scheme (FWS) and has set aside £1.5m this year to develop skills and opportunities in the UK. The funding is intended to support "education, training and upskilling, as businesses estimate thousands of new vineyard jobs will be created over the coming years." Defra is predicting a 50% growth in employment within the UK's viticulture sector by 2025.

The Government has recently introduced reforms to remove some of the red tape, such as scrapping redundant rules on bottle shapes and stoppers and even the foils for sparkling wine. A consultation closed on 10 May 2024 which was consulting on reforms in the UK wine industry. These included:

1. new rules around no and low alcohol wines
2. allowing the transformation of imported wine in the UK
3. improvements to wine labelling rules.

The aim of the consultation is to further increase growth, reduce the burdens on the UK wine industry and offer more increased choices to consumers.

Viticulturists can also benefit from support through the Farming Investment Fund to support investment into machinery and equipment, technology, and infrastructure.

With 2023 being the UK's largest ever grape harvest we are expecting to see an estimated 20-22m bottles of UK wine produced, which represents growth of 50% on the previous record year.

Those who own land which is suitable for vines may also benefit from values in the region of £20,000 per acre whilst those who own established vineyards may be looking at values in the region of £35,000 per acre according to the Strutt and Parker Viticulture Report Summer 2023. We expect that the rent on a lease where land is used for viticulture may well exceed the usual agricultural rent under a Farm Business Tenancy as well. This gives an interesting opportunity for those with suitable land who have no interest in viticulture. With international wine producers such as Taittinger and partners buying land for vineyards in the UK, we may see more international interest and investment in the UK viticulture sector.

There appears to be a lot of opportunity in the UK viticulture sector both for those who are interested in entering or expanding within the UK viticulture sector and even those landowners who have no interest in entering or expanding within the UK viticulture market.

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Anaerobic Digestors: what benefits can they bring?

Following a recent webinar and article by the Royal Agricultural Society of England discussing opportunities for farm scale Anaerobic Digestors (AD), we consider key points from a farmer and landowner's perspective: what do they want from AD on a farm, and what benefits can it bring?

Income generation

It goes without saying but central to any successful business is income generation. With the removal of the Basic Payment Scheme (BPS) and the recent rise in the cost of farm inputs, a reliable and sustainable source of income is high on the priority list.

An on-farm AD plant can generate income through the production and sale of biogas and electricity, as well as the production and sale of digestate. Income may also be available through the capture of carbon dioxide from the digestion process, with sales to the beverage industry, the capture of methane from digestate lagoons and the drying of wood chippings, for example. The plant can also save costs by displacing the need to buy in fertiliser, electricity, and fuel for vehicles and heating.

Where there is income there are also often tax implications. When planning for an on-farm AD plant it is worth considering what corporate vehicle to use, a company with limited liability for directors may be suitable particularly where the business is family owned, and, how the plant as an asset on the farm will sit within any Inheritance Tax planning.

Government incentives

Until 2019, eligible AD plants could receive support from government schemes such as the Renewable Heat Incentive (RHI) and Feed In Tariffs (FIT). However, the only incentives available at the time of writing are the Green Gas Support Scheme (GGSS) and the Renewable Transport Fuels Obligation (RTFO), neither of which are particularly suitable for small scale on-farm AD sites. Speaking to Lucy Hopwood of NNFCC Bioeconomy Consultants about future schemes, she thinks it is likely any future support will be more flexible and inclusive, allowing more scale-appropriate development and continuation of existing capacity, with on-site benefits being acknowledged as well as energy export. However, it is unclear whether the Government will introduce a new scheme before 2028, as that is when the current GGSS will come to an end.

We hope that the Government's response to the latest call for evidence in the 'Future policy framework for biomethane production', which closed on the 25 April 2024 and aimed to 'maximise the potential of the biomethane market' will provide clarity on future schemes, specifically for on-farm AD sites.

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Diversification: risk reduction

Farmers and landowners are often required to be entrepreneurs and are particularly alive to the benefits of diversified activities, think holiday lets, farm shops, and dog walking fields. Depending on the feedstock type, an AD plant can enable the farmer to diversify, keep farming the land, and reduce reliance on a single income stream. Any reduction in risk to the business can help shore up a farm for future generations and provide positive news to a bank manager.

If the farm uses the electricity, digestate and heat from its AD plant it can become more self-sufficient. There is also the possibility of using the methane as fuel for tractors. Such self-sufficiency could protect the farm and business from the pricing volatility of the energy market.

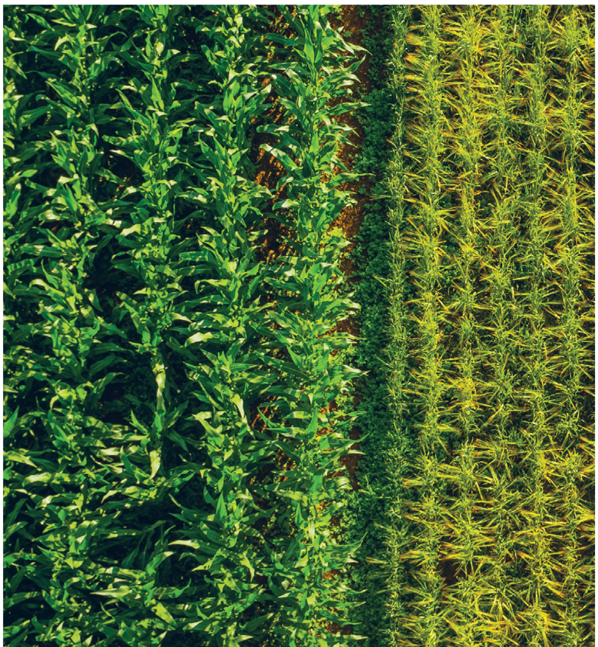
The outbreak of the Ukraine war was a sober reminder of this volatility as we saw a significant increase in energy and fertiliser prices.

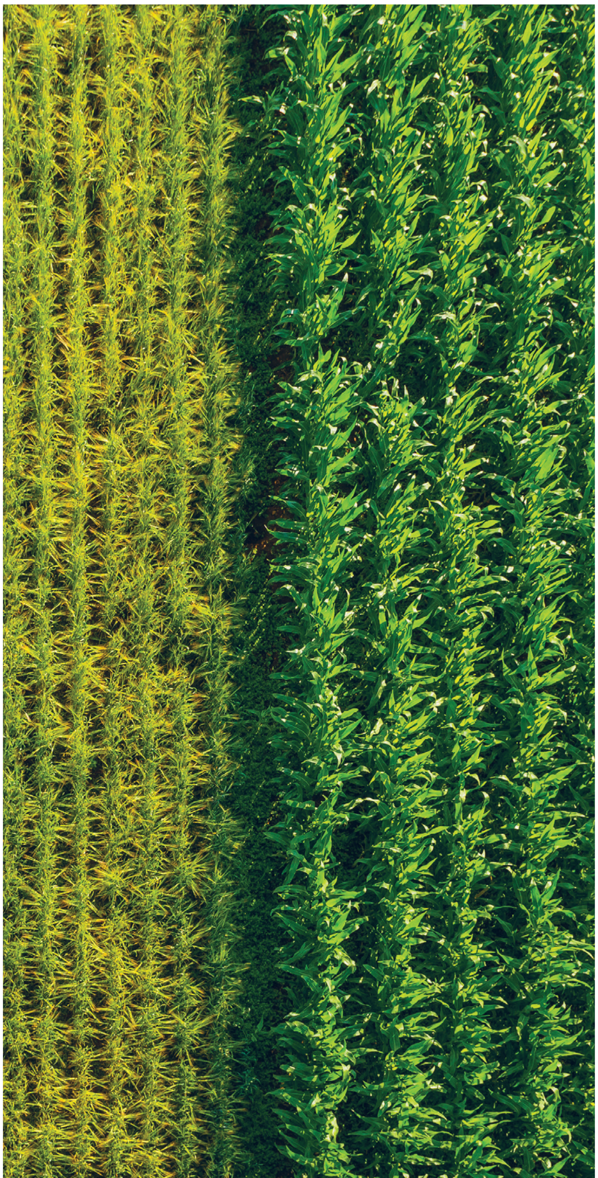
The life of an on-farm AD plant can vary but the main components can last in excess of 25 years. Where the business wants to step back from managing the plant, the AD plant could be marketed and leased with access rights and various contracts, such as long-term feedstock contracts, to another management company. Alternatively, it could sell the site as a standalone project.

Waste management and regenerative agriculture

An on-farm AD site can also be an asset in a farmer's plans for regenerative agriculture: the digestive off take improves soil quality reducing the need for chemical inputs from fertiliser; the use of certain materials from the farm as feedstock, such as chicken muck, crop residues or even energy crops, and converts a waste or otherwise low value product into something valuable.

We have covered only a few topics on AD and there are many more to consider. If you would like further information on leasing or the setup of a new plant, the funding process and key contracts, please contact Natasha Power and Jeremy Stanton. The team specialises in advising landowners and farmers on all aspects of the use of land for AD sites and clean energy projects, in particular: options, leases and access rights, planning, commercial contracts, succession planning and funding arrangements.





Natural Capital: seizing the opportunity

There is no denying that the world is facing an environmental crisis on an unprecedented scale. Climate change, deforestation and plastic and air pollution continue to present sobering obstacles to be tackled.

Closer to home, Britain is experiencing significant biodiversity loss with more than half (54%) of our flowering plant species having disappeared, including heather and harebell, along with 59% of bryophytes (mosses and liverworts) since 1970, whilst much loved animals such as the turtle dove, water vole and European eel also continue to come under threat.

However, if we take the view that a crisis can give rise to an opportunity, in accordance with a Chinese proverb, then these issues present an impetus for change through nature-based solutions. Taking this thought further – it gives landowners an opportunity to put themselves front and centre in the Natural Capital market through the monetising of these solutions.

There has recently been a degree of hesitation from some landowners around committing to ecosystem service schemes focused on Natural Capital, because of uncertainty as to the tax treatment of these agreements. The Government's Spring Budget in early March 2024 gave some clarity, with the confirmation that the scope of Agricultural Property Relief (APR) will be extended to include environmental land management activities from 6 April 2025. Further clarity was given with the following statements:

1. Lifetime transfers and transfers upon death which take place after 5 April 2025 will be eligible for relief. Relief will also be available where any environmental land management scheme is entered into on or before 6 March 2024 (assuming the same remains in place after this date).
2. Relief will continue to be available after the expiration of an agreement, as long as the land remains managed in such a way as to be consistent with the agreement itself.
3. Relief will only apply if the land has been in agricultural production for a period of at least two years prior to the change of use.
4. Farmhouses will be eligible for relief if their occupation is in accordance with and ancillary to land subject to an environmental agreement.

These recent proclamations are most welcome, but the position regarding APR is highly nuanced. In the event that you are considering entering into an environmental

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> It gives landowners an opportunity to put themselves front and centre in the Natural Capital market

scheme, we would always recommend a discussion with your accountant or a member of the Birketts Natural Capital Team in the first instance.

12 February 2024 also brought positive news in relation to the Biodiversity Net Gain (BNG) sector, with BNG becoming mandatory for major developments, followed swiftly by the application of the obligation on all planning applications (unless exempt) in relation to small sites, on 2 April 2024. This is an exciting time, with the World Economic Forum predicting the global demand for biodiversity units reaching approximately $2 billion by 2030 and $69 billion by 2050.

As always, the advice for landowners considering entering into any BNG arrangement is to take appropriate advice at the earliest stage possible on the tax implications of the arrangement, from an agent who is active in the BNG sector in order to appropriately benchmark the offer, which should ensure that you are being presented with the best possible terms.

All in all, things have moved on significantly in the Natural Capital world over the past few months. Natural Capital is still very much the topic of the day and looks to remain that way, presenting opportunities for landowners with the appetite for diversification.

> "Natural Capital is still very much the topic of the day and looks to remain that way"

Further considerations for farm sales

Selling a farm can be a long, and on some occasions stressful, process. However, there are steps you can take to reduce unnecessary stress by preparing in advance and identifying any potential problem areas. We have written previously about getting your "ducks in a row" in advance of a farm sale, but there are further considerations to be had if you do decide to put your farm on the market.

Funders

The majority of buyers will buy with some level of funding or will want the ability to use the land as security for future borrowings. When advising on a purchase, it is vital to understand what a buyer's funder, and their lawyers may require. Funders may not take quite the same approach to risk as some buyers. Knowing what they will require before marketing the farm can often allow you to prevent problems arising during the sale process.

Occupation: who is farming the land?

It may be that you do not farm in hand, and the position regarding occupation of the property can become increasingly complex where there are a number of separate tenancies or licences that affect different areas. A buyer will want to know on what basis any tenants occupy the land, and/or if they are buying the land with vacant possession. Before marketing, consider who occupies the farm, and any residential dwellings included in the sale and whether they do so on a formal or informal basis. An informal arrangement storing someone's caravan could for example give rise to a buyer's query. You should get professional advice on the nature of any tenancies (particularly if they are unwritten) and look to formalise any informal arrangements so the potential bidder or buyer doesn't get any surprises. It is also worth considering whether any tenant or licensee intends to remain on the land following completion of the sale, or if they are happy to surrender their interest.

Ownership

Consider who owns the beneficial interest in the property. In many cases the farm will be held on trust for a family farming partnership, which may bring further complications. In an ideal world, all members of the family will be on the same page and the beneficial ownership of the property will be properly documented, but it is often not the case. It is also important to consider whether any of the land is held by a trust, or if any third parties are entitled to a portion of the sale proceeds. Before sale you need to make sure you know all owners are on board, and agreed how any proceeds are to be divided.

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"Being as proactive as possible in advance of commencing a sale will give you the best chance of ensuring a smooth transaction for all parties"

Informal rights

Do any third parties, such as walkers or cyclists, use or cross the land, even on an informal or sporadic basis? It could be that you have agreed with a neighbour that they can enter onto your property in order for them to maintain their boundaries, or to access some of their own land. If any such rights are not noted on the title to your property it will be important to make any potential buyer aware of them as soon as possible. It would be prudent to either walk the boundaries of the farm, or sit down with a plan, and think carefully about who uses each area, when, and on what basis.

Pipes and cables crossing fields should also be considered as they are often put in place when any residential dwellings on the farm are being occupied. If the land is sold, a buyer will want such arrangements tidied up as easements, and they may even need to be lifted and shifted at some point. If the sale is planned early enough, often informal rights can be terminated by interrupting the chain of years needed for such rights to be claimed.

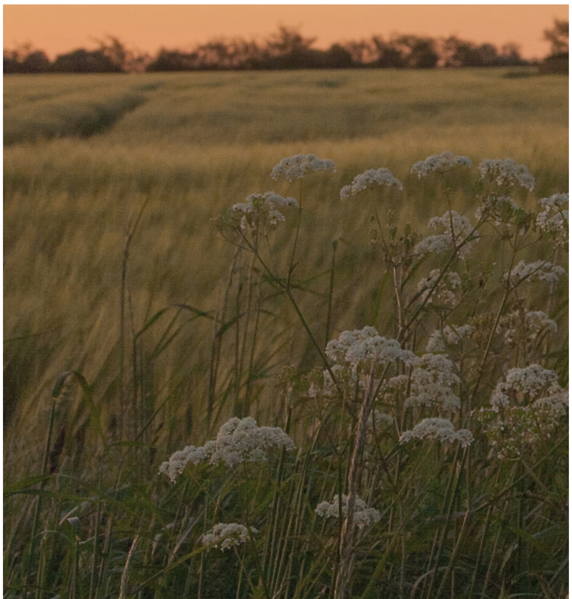
Mortgages

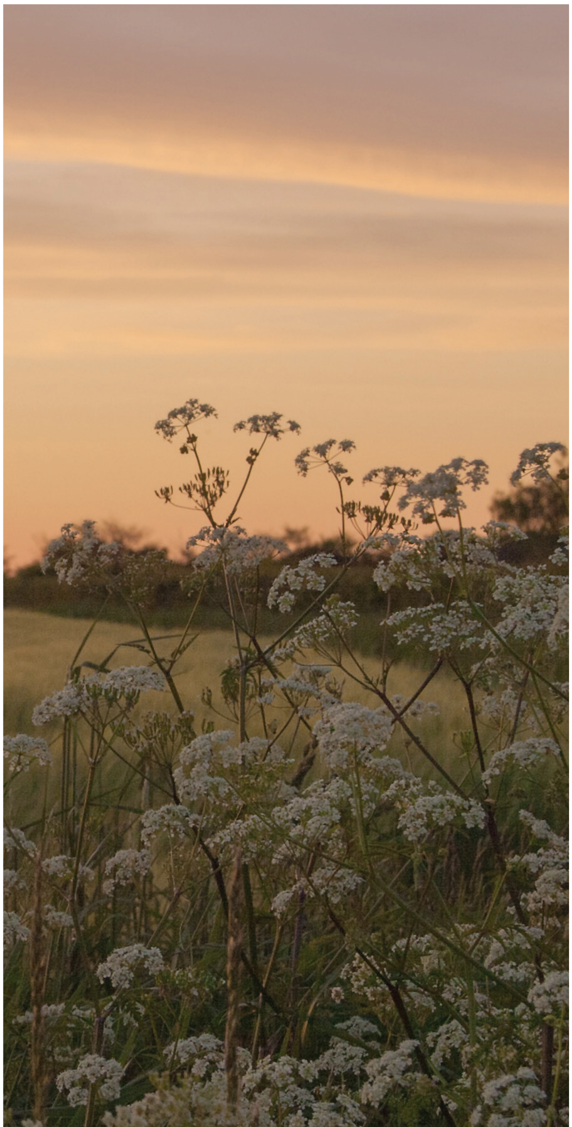
It may be that the farm is held as security by a lender, or forms part of a portfolio of charged assets. If appropriate, consider and discuss in advance with the lender to see if they are willing to release part of the security, and what funds they require in order to procure any release. In the event that any mortgage will be completely redeemed, keep the lender informed and notify them in advance so they have time to provide redemption figures when needed.

Tax advice

Early in the process take tax advice. A sale will generate a receipt and you will want to ensure you have mitigated the amount of tax payable. Again, with time, you can often take steps to ensure you explore tax planning for you and your families.

There is clearly much to think about when considering any potential sale, and the process can often be complex. Being as proactive as possible in advance of commencing a sale will give you the best chance of ensuring a smooth transaction for all parties. If you are looking to sell your farm, or would like advice on any of the above, please contact any one of our agricultural specialists who would be pleased to assist you.





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