

WELCOME TO THE WINTER 2019 EDITION OF

Agricultural Brief

Diversification
Special

IN THIS ISSUE

Simplified planning for farm diversification
Chloe Glason

**Diversifying your farm to future proof
your business**
Mark Gorton

Modern slavery in agriculture
Laura Brown

**Is diversification the answer to current
labour shortages**
Clare Hedges

Welcome to the winter 2019 edition of *Agricultural Brief – Diversification Special*.



Chris Coupland

Partner

01603 756489

chris-coupland@birketts.co.uk

As we begin 2019 we know that the year is likely to involve Brexit on the 29 March, although, at the time of writing, a request to extend Article 50 or a second referendum cannot be ruled out. We also know that the existing level of Government funding for agriculture post-Brexit is set to continue at the existing level of £3.2bn until the end of the current Parliament (although we do not know quite the shape in which that funding will be deployed).

At this year's Oxford Farming Conference, Michael Gove reiterated his vision for farming to be the bedrock of the *Agriculture Bill*, giving a coherent policy on food, giving farmers time to adapt to changes, deploying public money for public goods and safeguarding a sustainable countryside for future generations.

There is still a great deal of detail to be provided, but it seems likely that flat rate payments will be reduced and targeted payments (whether linked to habitat, public access, environmental protection or carbon sequestration) are to become more prominent with the best advice for all farmers and landowners being to look hard at their existing businesses and to consider where costs can be cut and where further income streams can be developed.

Diversification was a strong theme this year at the Oxford Farming Conference, albeit with presentations focused on rather niche opportunities regarding deer farming, the growing of micro greens and the possibilities associated with re-wilding. This winter edition of *Agricultural Brief 2019* has looked to shine a spotlight on some other aspects of diversification.

Chloe Glason in our Planning Team has written a summary of the permitted development rights which were extended in 2018 in relation to the conversion of agricultural buildings.

Our guest author, Mark Gorton of Traditional Norfolk Poultry, highlights the potential for poultry (and other non-supported sectors) to be a useful source of farm income.

Laura Brown in our Employment Team looks at the trickledown effect of the modern slavery legislation being passed down from larger corporations to their suppliers.

Finally, Clare Hedges in our Immigration Team discusses the pilot scheme for Seasonal Agricultural Workers due this year and the interaction between the need for overseas labour and certain types of diversification project.

I hope you enjoy reading the articles in this edition and if they trigger any questions or thoughts then please do contact the author or any member of the Birkett's Team and we will be pleased to help.

Simplified planning for farm diversification



Chloe Glason

Associate

01473 299122

chloe-glason@birketts.co.uk

Planning can be a barrier to farm diversification. In 2014, the Government introduced a range of simplified planning permissions (known as permitted development rights) to enable the reuse of under-used or disused farm buildings and these were extended in 2018. Details of the extended permitted development rights are set out below and the rights can be complicated to interpret, farm owners will find them useful to reduce some of the red tape surrounding diversification.

Agricultural buildings to residential

Whether to let permanently, sell or to create holiday lets, permitted development rights apply for conversion of existing farm buildings to up to three large (greater than 100sqm but less than 465sqm), or five small (less than 100sqm), dwellings (but with a total of no more than 1000sqm).

This right is twofold. It is a right for a change of use and also a right for building works as are 'reasonably required' for the conversion of the buildings.

So what does 'reasonably required' mean? For something to be a qualifying conversion, it cannot go beyond that which could sensibly be called a conversion (*Hibbitt and Another v Secretary of State for Communities and Local Government, Rushcliffe Borough Council* [2016] EWHC 2853 (Admin)). This is reinforced by the Government's Planning Practice Guidance Note which states: "this includes the installation or replacement of windows, doors, roofs, exterior walls, water, drainage, electricity, gas or other services to the extent reasonably necessary for the building to function as a dwelling house; and partial demolition to the extent reasonably necessary to carry out these building operations" (Paragraph 105). But, be careful, some are being caught out by buildings that are not structurally sound for conversion.

Agricultural buildings to flexible commercial use

It is permitted to change the use of a building and its curtilage to a 'flexible' use within the following use classes:

- hops (A1)
- financial and professional services (A2)
- restaurants and cafes (A3)

“

For something to be a qualifying conversion, it cannot go beyond that which could sensibly be called a conversion.

- business (B1)
- storage or distribution (B8)
- hotels (C1), or
- assembly and leisure (D2)

Unlike with agricultural to residential permitted development rights, there is no right to carry out any physical works that would ordinarily need planning permission.

Agricultural buildings to state-funded school or registered nursery

A right exists to convert up to 500sqm of existing farm building into a state sponsored school or registered nursery. Again, this carries with it no right to carry out associated works. As such, it is difficult to see how this right will be widely utilised.

Other issues to consider

It is imperative that to be classed as permitted development, you must comply with specific conditions, several of which relate to building dimensions as well as submitting details of what you are proposing to do to the local planning authority and obtain their prior approval.

You must check that existing planning permissions, section 106 agreements or planning designations (such as a building being listed) will not stop the permitted development right from applying. You must also check that there are no covenants on the land preventing use other than agricultural.

If a local planning authority has introduced the Community Infrastructure Levy (CIL) in its area, ensure you check whether development will be CIL liable, consider any mechanisms to properly reduce liability and submit the necessary paperwork at the appropriate time.

Although the system is simplified there are still procedures that need to be followed and pitfalls that must be avoided. We recommend that you engage a suitable professional to advise on the available options before committing to the cost of a project, or risk enforcement proceedings from the local planning authority or difficulties selling in the future.

For further information please contact Chloe Glason or a member of Birketts' Planning and Environmental Team.

Diversifying your farm to future proof your business



Mark Gorton
Joint Managing Director,
Traditional Norfolk Poultry
 mark.gorton@tnpltd.com
 www.tnpltd.com



...things are going to change in farming, and there has never been a better time to think about diversifying your farm to future proof your business.

During my life in growing and processing free range table poultry, there have never been more uncertain times in agriculture. Regardless of what happens between now and 29 March 2019, we won't know the full consequences of leaving the EU, probably for many years. One thing we do know is that things are going to change in farming, and there has never been a better time to think about diversifying your farm to future proof your business.

High welfare, free range, organic are all words and terms that the new generation of grocery shoppers have been brought up with, and this is one of the reasons why our company has enjoyed huge growth producing high welfare poultry over the past years. How many children's very first mouthful of baby food is organic? – If I'd have asked that question 30 years ago, when we started Traditional Norfolk Poultry (TNP), I'd have been met with blank faces! A quick internet search shows that at least 75% of the UK baby food market is organic, so it's no wonder that in later life consumers are increasingly choosing our high welfare poultry over their intensively produced counterparts.

Coupled with that, and the big question of where is our food going to come from after we leave the EU, I think we are going to see some great opportunities to continue to grow our business. Every time chemically washed chicken or antibiotic overdosed imported meat hits the headlines it drives more consumers in our direction because they can trust what we produce and they know where it has come from.

The demand for the high welfare free range chicken that we produce at TNP is growing all the time and in order to help us satisfy the market we are offering a fantastic opportunity for farmers in East Anglia to diversify their business and invest into the growing of speciality, high welfare free range chickens.

Within our agricultural team at TNP, we have a huge amount of expertise in the development of poultry units and we have teamed up with trusted partners to provide a bespoke package specifically designed to take a new farmer from an initial planning screening, through the design and build process of the new poultry unit, and then onto full training and guidance to the successful and profitable growing of free range table chicken. We have also partnered up with various banks and finance houses that are very experienced in funding poultry buildings and equipment and are very happy to discuss any lending requirements.



This is a sizable financial undertaking, and we are offering growing contracts that will provide a ten year return on the investment and an excellent income with regular cash flow for an existing or new member of your framing business, or perhaps a son or daughter who wants to return to the farm.

The ideal poultry unit will sit within about 15 acres and will need to have good vehicle access. Security is important and obviously power and water. We have designed the poultry buildings to be unobtrusive to the surrounding area whilst providing the perfect growing environment for free range chickens. Make no mistake, this is not intensive broiler production, this is free range chicken growing at the other end of the spectrum, low stocking densities, slow growing birds and lots of fresh air and natural light. But most importantly, it is an enjoyable, rewarding and profitable way to diversify your farming business!

If you would like to hear more about this opportunity, please contact mark.gorton@tnpltd.com or visit www.tnpltd.com.

Modern slavery in agriculture



Laura Brown

Associate

01603 756422

laura-brown@birketts.co.uk



...it is useful for the HR department to be familiar with the requirements of the legislation when preparing for and drafting the statement.

Slavery is still a prominent issue despite its abolition almost two centuries ago. In fact, the agricultural sector has been deemed high risk for the exploitation and abuse of workers by the Gangmasters and Labour Abuse Authority (GLAA). The spotlight on the farming sector has revealed some horrific conditions that an alarming number of farmworkers are subjected to. With the media revealing such shocking practices, it is unsurprising that the farming industry is facing pressure to improve standards.

Even for the vast majority of farming businesses that would not even contemplate exploiting their workforce, the pressure is still on to show the public how they have committed to maintaining and improving working conditions.

Statements

To add to existing pressure on the farming industry, 2017 marked the first year in which companies that operate in the UK with a global annual turnover of £36m were required to publish a slavery and human trafficking statement.

Without doubt, the written statement is not enough: the Government has urged organisations to illustrate as detailed picture as possible of the steps that they have taken on the ground to address and eradicate modern slavery. If they have taken no steps, their statement must disclose that.

Whilst ultimate responsibility lies with the senior managers of an organisation, it is useful for the HR department to be familiar with the requirements of the legislation when preparing for and drafting the statement. Preparing a statement is not easy: organisations are expected to map out their supply chains, identify key areas of risk and provide training at appropriate levels on the warning signs of modern slavery.

Cascading effect

The pressure to eradicate modern slavery is not intended or anticipated to stay at the top for long: large organisations are likely to commit to taking positive steps to eradicate slavery and human trafficking from their supply chains as well as their own operations. The notion behind this is to apply downwards pressure, impacting smaller farmers and organisations.

Many smaller business and farmers will find themselves being required to commit to maintaining certain working standards as part of their supply agreements. The pressure

applied from the top may also go a step further, with larger businesses undertaking in their statements to carry out supplier due diligence. With smaller suppliers competing for valuable contracts, they will start to feel the thrust of the legislation: failure to maintain acceptable (and legal) working standards may serve to undermine their bargaining position, especially when their competitors have already stepped up.



Risks

The stakes are high: the GLAA is out in full force tackling the issue, with what certainly feels like a particular emphasis on both arable and livestock farming.

Criminal sanctions often follow breaches of the legislation as well as the risk of being sued in the civil courts or company director sanctions. However, above all, the reputational risk for larger businesses is too big to not take the requirements seriously. Consumers are constantly raising questions and are more willing than ever to apply pressure where they believe a business has not taken sufficient steps to eradicate modern slavery. In addition, smaller suppliers that have failed in their commitments and as a consequence exposed their larger counterparts will seriously risk jeopardising their ability to compete for any future contracts within the industry. Ultimately, the legislations and requirements for the statements are designed to drive a cultural shift and oust from the marketplace the players that fall short of the legislation.

If you would like to discuss any of the issues raised in this article further, please contact Laura Brown or a member of Birketts' Employment Team.

Is diversification the answer to current labour shortages?



Clare Hedges
Senior Associate
Head of Immigration
 01223 326605
 clare-hedges@birketts.co.uk



This reflects the Government's position that it 'should not be an easy option', and the agriculture sector must invest in technology and increase efforts to recruit local workers.

The labour shortages currently faced by the agriculture sector are well documented. The situation will only get worse once free movement of EU nationals ends after Brexit.

To date the Government's only concession is the pilot scheme for Seasonal Agricultural Workers. This will commence in 2019, allowing farmers in the 'edible horticulture sector' to employ non-EU workers for up to six months in any twelve, alleviating labour shortages at peak times. It is limited to 2,500 workers per year and so of extremely limited impact.

The Guardian reported back in May 2018 that, "*Frustrated by the government's foot-dragging, some of the big growers have already diversified.*" The article referred to soft fruit growers scaling back UK operations and expanding in China, South Africa and Tasmania. That, of course, is not an option for farmers seeking to run a viable business here in the UK. So what else can be done?

Immigration White Paper

The White Paper published on 19 December 2018 confirms that the Government will consider the outcome of the seasonal agricultural workers pilot before deciding whether to roll it out more widely. It makes it clear that any wider scheme would be temporary and it is likely that higher salaries would be a condition of the scheme. This reflects the Government's position that it 'should not be an easy option', and the agriculture sector must invest in technology and increase efforts to recruit local workers. Readers will know it is not that simple.

The White Paper also proposes more general measures for 'transitory short-term work'. This would be at any skill level, but would be limited to workers of specified 'low risk countries', who would require a visa. Visa costs would increase over time and a full review would be completed by 2025. The initial suggestion is that visas would be for 12 months, followed by a 12 month cooling off period. However, this is subject to consultation and the agriculture sector may wish to push for different timescales to better suit farmers' needs.

Another possibility for those relying on migrant workers is to lobby for changes to the existing Youth Mobility visa scheme. This allows under-31s from Australia, New Zealand, Canada, Monaco, Japan, South Korea, Hong Kong and Taiwan to work in the UK for up to two years in any role. The Immigration White paper suggested that, post-Brexit, this scheme might be expanded to EU countries.

Although not mentioned in the White Paper, the Government might be persuaded to implement a model similar to the Australian scheme. This is restricted to 12 months. An extension is only awarded if the young worker proves they have completed three months of 'specified work' (plant and animal cultivation, fishing and pearling, tree farming and felling, mining or construction) in regional Australia. This would not necessarily lead to experienced labour being available and enthusiasm levels are not guaranteed, but it may help to plug some gaps without increasing the number of migrants entering the UK.

Diversification

Otherwise, faced with challenges in running their business in its current form, many farmers are choosing to diversify. On 13 December 2018 DEFRA released further details behind their 2017/2018 Farm Business Survey. They found that 66% of farm businesses in England had some diversified activity in 2017/18, up 2% from 2016/17.

But many potential areas for diversification also come with their own labour shortages. If you are contemplating a move into hospitality, be that offering tourist accommodation, running a tearoom, or hosting weddings, are you (or other family members) willing and able to take on work such as cleaning cottages or waiting on tables? Or will you employ others to do this? If so, it might be preferable to pursue less lucrative but also less labour intensive options such as running a campsite.

It is no surprise that the most popular diversification activities are those which rely on physical assets, rather than staff. DEFRA found that the most widespread form of diversification was letting out buildings for non-agricultural use, followed by generation of solar energy.

However, the most profitable form of diversification was processing farm produce. If you plan to add value through processing, will technology assist, or is it labour intensive? If you need more staff, will that work fit around other duties, perhaps creating fuller, more varied and attractive employment opportunities for local workers? Or would you encounter even more recruitment problems?

Anyone exploring diversification ideas must consider what staffing requirements will be generated, to ensure they are not just creating more problems.

You want to ensure maximum return for your efforts. When offering tourist accommodation, you could promote working holidays, where guests help out on the farm during their stay. If you are processing products, you could capitalise on the trend to gift experiences, by opening your doors to share traditional making techniques with visitors.

Farmers are renowned for being hard working, resilient and resourceful. There is no doubt that many will find diverse ways to ensure their business survives. But the most successful will be those who get not only the most out of their land, but those who maximise return on that increasingly scarce resource: human capital.

Key contacts

Birketts' Agriculture and Estate Team of over 50 advisors operate from our Cambridge, Chelmsford, Ipswich and Norwich offices allowing us to service our UK and overseas clients with ease.

The team encompasses ecclesiastical law, public access issues, aggregates extraction and management, renewable energy projects, structuring family successions and taxation, as well as mainstream agricultural and property law advice linked to sales, purchases, tenancies, options and development.

“

Birketts' knowledge is outstanding. You can contact them about anything and there will be someone I can be put in touch with to help me...”

Chambers UK [2019]



Chris Coupland

Partner

01603 756489

chris-coupland@birketts.co.uk



James Dinwiddy

Partner

01473 406375

james-dinwiddy@birketts.co.uk



Rachel McKillop-Wilkin

Partner

01223 326580

rachel-mckillop-wilkin@birketts.co.uk



Jack Royall

Partner and Head of Agriculture and Estates

01603 756487

jack-royall@birketts.co.uk



Neil Sparrow

Partner

01603 756483

neil-sparrow@birketts.co.uk

Keep up-to-date

Subscribe to our mailing list for insights, industry information and event invitations.
www.birketts.co.uk/register

Follow us:



@birkettsllp



[linkedin.com/company/birkettsllp](https://www.linkedin.com/company/birkettsllp)



@birkettsllp

Cambridge:

01223 326600

Chelmsford:

01245 211211

Ipswich:

01473 232300

Norwich:

01603 232300

Central fax:

01473 230524

For a full list of office and contact details please visit

www.birketts.co.uk/contact-us

Birketts LLP is a limited liability partnership authorised and regulated by the Solicitors Regulation Authority and registered in England & Wales with registered number OC317545.

A list of members may be inspected at any of our offices. The term 'partner' is used to refer to a member of Birketts LLP.

©Birketts 2019

