

# THE SWORDERS



RURAL PROPERTY UPDATE

SPRING 2019



The latest newsletter covers a range of topics focusing on short, medium and long term opportunities that landowners may wish to consider whilst assessing the potential of their holding.

The changes to Agricultural Subsidies could potentially create a serious funding gap, this makes it imperative to seek and develop new income streams. For the short to medium term, we have considered a range of opportunities to add value and income through diversification, which will become even more important following Brexit.

Looking to the longer term, we have identified some Local Authorities that are at a critical stage of their Local Plan process in order to maximise development prospects in these districts.

We are pleased to announce that two new planners have joined our growing planning team; Michelle Hill and Lois Partridge, both of whom will strengthen the expertise and planning advice Sworders are able to offer their clients.

Nick Sandford has also joined us, working in Estate Management and specialises in historic properties and all aspects of rural estates, including renewable energy, forestry, wildlife mitigation and habitat restoration and diversification schemes.

Lastly, we are pleased to announce the promotion of Hywel Morse to Director and Hazel Izod to Senior Associate.

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# STRATEGIC LAND PROMOTION OPPORTUNITIES

Sworders are actively involved in strategic land promotion for residential development. New and emerging Local Plans are being drafted by Local Planning Authorities (LPAs) as a directive from National Government to address recent housing shortfalls and plan for future housing needs. The Government aspires to deliver 300,000 new homes each year by the mid-2020s.

As a result, District Councils are working on Local Plans to bring forward residential and employment allocations, along with development management policies.



Opposite is a snapshot summary of some Districts in which Sworders are involved, identifying the current stages of the Local Planning Authorities' Local Plan.

Following adoption of Local Plans, some LPAs are conducting an early review of their Local Plans to assess housing numbers. This presents an opportunity to reconsider land within these districts.

LPAs currently at Call for Site stage and Public Consultation stage, present an opportunity to actively promote sites for residential allocation within the district and consider if the site is suitable and or deliverable for development.

Sworders' planning team monitor the activities of Local Planning Authorities to identify opportunities for landowners. For more specific detail on your LPA, please contact the Sworders' planning team.

# LOCAL PLAN UPDATE BY DISTRICTS



\* Current as of 18th April 2019

- Call for sites / Issues and Options Stage (Putting forward your site)
- Regulation 18 - Public Consultation of the Local Plan
- Regulation 19 - Publication of draft submission Local Plan
- Regulation 22 - Local Plan submitted to Secretary of State
- Regulation 24 - Examination / Local Plan awaiting adoption
- Local Plan Adopted

If you have land located adjacent to a settlement within any of the districts highlighted orange or grey, please contact us to discuss potential immediate development opportunities. We would also be happy to discuss monitoring roles within other districts at a more advanced stage in the Local Plan process, to explore longer term opportunities ahead of future Local Plan reviews.

# FARMLAND MARKET

The Brexit process evolves daily, making it a difficult time to comment on the farmland market. The fallout of Brexit and its political background will significantly influence the coming year and beyond. Uncertainty is likely to create downward pressure on the market and significant changes to agricultural subsidies will both limit farmland coming to the market and limit its ability to see meaningful growth in value. That said however, as long as it remains efficient to hold land for tax purposes and there remains a lack of farmland supply, the fundamentals of

the market are likely to see little change. With the weakening pound, the UK is perhaps looking far less expensive and this is likely to attract investment from abroad and will assist in holding up land values. Farmland has also in the past proved resilient to recessionary pressures as it is considered a safe haven and is therefore sought-after in times of economic volatility. Politically, the Government's next steps will be critical to the short and medium term outlook.



## TENANCY REFORM CONSULTATION BEGINS

In October 2017, the Tenancy Reform Industry Group published a report with recommendations on reforming agricultural landlord and tenant law. These recommendations were not included in the Agricultural Bill; however, as of 9th April 2019, consultation on the reforms have now opened. Consultation closes on 2nd July 2019. This consultation focuses on ways to improve productivity, investment and support new entrants and the next generation of farmers.

# LANDLORDS TO LOSE SOME CONTROL OVER RESIDENTIAL TENANTS

The Government has announced that it wishes to protect residential tenants from ‘unethical landlords’ and give them more long term protection. Section 21 Notices are used to end an Assured Shorthold Tenancy on giving the tenant two months’ notice. The proposal will remove this right and landlords will be forced to use a suggested speedy redress scheme to regain possession of the property. This will be for legitimate reasons, such as poor rent payment and the sale of the property. Therefore, now is the time for landlords to evaluate any recurring issues with current tenants and rectify this now in light of this proposed new legislation.



## NEW CASE LAW FOR AGRICULTURAL TENANCIES

Gaining possession of agricultural land subject to an Agricultural Holdings Act 1986 (AHA 1986) tenancy can be difficult for landlords where development is on the horizon. Previously there have been concerns over the extent of works landlords are permitted to carry out on land that is subject to such tenancies, especially where an outline planning permission may have been granted.

A recent case in the High Court in April 2019, *The Earl of Plymouth v Rees* [2019], has provided new guidance on this issue. This High Court decision is in respect of the interpretations of the exceptions and reservations in AHA 1986 tenancy agreements. The main impact of this judgement is to read and understand such reservations, exceptions and access clauses contained in the tenancy agreement.

In essence, the case has highlighted activities conducted by the landlord, which may be necessary to obtain planning permission or discharge planning conditions, such as archaeology trial trenching, digging of excavations for contamination works or boreholes, which are not permitted to be undertaken on the land subject to tenancy.

This recent decision is an important case for landlords who are seeking recovery of land for development or non-agricultural use that is subject to an AHA 1986 tenancy. It is important to receive advice early on if you are in a similar situation from either a landlord or tenant perspective.

# BRIDGING THE SUBSIDY FUNDING GAP

## What do we know?

With significant changes to subsidy funding on the horizon, the need to diversify agricultural businesses and spread risk is now more crucial than ever.

Landowners need to evaluate their gross margins and profitability in light of the forthcoming subsidy reductions, and consider how their diversification options could assist with this, if deemed appropriate.

The current Government has committed Basic Payment Scheme (BPS) funding for 2019 and 2020. Prior to the deadline of 15<sup>th</sup> May, Sworders have been actively involved in preparing BPS claims for their clients.



The UK Government has been very clear that when we leave the EU we will also leave the Common Agricultural Policy (CAP) and therefore we will be free to implement our own domestic agricultural policy, as detailed in the Agriculture Bill.

The proposals put forward by the Agriculture Bill will see BPS funding phased out from 2021 to 2027. Simultaneously, from 2025 new Environmental Land Management schemes (ELMS) will be introduced, whereby landowners will be paid for the environmental benefits they can provide, rather than payments linked to entitlements.

Whilst the level of BPS reductions for 2021 have been announced, there are no further details on how the transition from BPS will progress after this. In light of these deductions, farms need to consider their profitability without a subsidy. With these uncertainties in mind, diversification could provide opportunities for landowners to spread their risk. Over the next two pages we have set out some of these opportunities for landowners to consider in light of subsidy funding cuts.

# COUNTRYSIDE STEWARDSHIP SCHEMES

The current Government has pledged to continue to commit the same cash total in funds for farm support until the end of this parliament, expected in 2022. This includes funding under both Pillar 1 (BPS) and Pillar 2 (Countryside Stewardship - CS) of the current CAP.

The HM Treasury has guaranteed funding for the full lifetime of CS agreements signed by 31st December 2020. For five-year agreements signed by this deadline, these will run until 2025, bridging the gap created by the phasing out of BPS and the introduction of ELMs. Therefore, landowners who had previously discounted this option may now want to reconsider the benefits of CS.



## REDEVELOPMENT OF AGRICULTURAL BUILDINGS

The redevelopment of buildings for commercial use has long been a key form of diversification for landowners. With the introduction of a new capital allowance in the Autumn 2018 budget, redevelopment is now an even more attractive option for landowners. This enables landowners to claim a 2% capital allowance for the construction and conversion of buildings intended for commercial use.

For landowners looking for a simple and cost-effective solution, Class R Permitted Development (PD) Rights allow the change of use of an agricultural building to a flexible commercial use, subject to meeting set criteria. If successful, the building can then be used for a range of commercial uses including B1 (office/light industrial), B8 (storage/distribution) and D2 (leisure, for example a gym). The requirements and costs of utilising Permitted Development Rights are significantly lower than full planning applications, making this an attractive and unexplored option for many landowners.

An example of Class Q on a redundant agricultural barn.



## ALTERNATIVE USE

The sale of small parcels of land that can easily be separated from a holding, or are unproductive for agricultural purposes, present a good opportunity to release funds for reinvestment. Smaller parcels frequently attract premiums significantly above agricultural value, for example; garden extensions or equestrian and amenity use, where demand has remained strong and competitive.

The proceeds from these sales can be used to reinvest in existing farm buildings and further diversification projects. For example, similarly to Class R PD rights, change of use from agricultural to residential use is permitted under Class Q. Although adding significant value alone, once achieved, Class Q permissions can also be used as a 'fallback' position for securing additional development or alterations to a building (which are not permitted under Class Q rights), to add further value.



# RESTRICTIVE COVENANTS VS OVERAGE CLAUSES

Restrictive covenants and overage clauses in sale contracts are often used to attempt to secure a share in the additional site value from the land to which they apply.

Restrictive covenants can be a simple and effective way to protect additional development on property sold and used to extract money from end users if they develop the property in the future. However, depending on the circumstances, they are not always the right method of protection.

Overage agreements enable sellers to share in future uplift in value of the property they have sold. This may occur if planning permission is granted after a sale, and the value of the property may increase.

Both forms can protect landowners and the below table outlines a few key points on the methods.

RESTRICTIVE COVENANTS	OVERAGES
Protects seller's retained property from adjacent development	Future development on sold property can trigger payment to seller
Seller may agree to release the covenant for a price	Seller can share in uplift of the sold property's value
Simple to draft in sale agreements	Lengthy and costly to draft in sale contracts
Restriction on title which passes with the land	Clear method of future protection to share in proceeds
The seller must own property that can benefit from the covenant	Need to secure the overage payment mechanism

Generally, restrictive covenants require the seller to have retained land that may benefit from the covenant for it to be enforceable. Overage agreements will allow future development and the seller to benefit from the proceeds.

If you are in the process of selling, consider the type of property you are selling, its future potential, your own circumstances and the most appropriate method to protect your assets. You may require both forms, depending on your property's situation, therefore it is best to seek advice from your solicitor on the most preferred method adopted.



# WOODLAND GRANTS FOR CREATION AND CARBON FUND



Woodland creation is becoming an increasingly hot topic. The steady increase in demand for locally produced wood along with some positive changes to Government grant schemes, is encouraging an increasing number of landowners to start planting.

Changes announced by the Forestry Commission to the Woodland Creation Planning Grant and the Woodland Carbon Fund have now opened up eligibility for grant funding for projects of 10 hectares or more. There is now an additional allowance for existing woodland within 50 metres of project sites to be within a contiguous block that can count towards the minimum size requirement. These changes should be encouraging to landowners with smaller parcels of commercially unviable woodland. With additional grant funding, landowners can expand their woodland parcels to better utilise their existing assets. Grants are limited and deadlines apply, so we therefore advise early consultation with your local Forestry Commission Woodland Officer. Please speak to Sworders for further advice.

## HS2 GRANT FOR WOODLAND

HS2 have announced a further £4 million of funding, delivered by the Forestry Commission over the next four years. The funding will be on a competitive basis and is open to landowners within a 25 mile radius of the new line, running from London to the Midlands. There is a grant ceiling of £8,500 per hectare for capital items and for native woodland creation and £4,000 per hectare for ancient woodland restoration. Capital items include tree planting, shelters, fencing and badger gates. Woodland under the scheme will also retain BPS payments, subject to meeting eligibility requirements.



# STAFF UPDATE AND PROMOTIONS

Sworders is delighted to announce the following promotions and new members of staff.

## PROMOTIONS

**Hywel Morse - Director**



**Hazel Izod - Senior Associate**



## NEW MEMBERS OF STAFF

**Nick Sandford - MRICS, Director**

Nick has thirty years' experience of Estate Management and specialises in historic properties and all aspects of rural estates, including renewable energy, forestry, wildlife mitigation and habitat restoration and diversification schemes. Nick has played a prominent role within the CLA and currently sits on the Business and Rural Economy Committee.



**Michelle Hill - BA (Hons) MSc MRTPI, Senior Planner**

Michelle Hill joined our Warwickshire team as a Senior Planner. Michelle has a Masters Degree in Spatial Planning from Oxford Brookes University. She has a wide variety of experience having spent 11 years in development management and enforcement roles within the public and private sectors. Michelle is a Chartered Member of the Royal Town Planning Institute.



**Lois Partridge - BA (Hons) MSc MRTPI, Senior Associate**

Lois Partridge has joined the Holkham Office as a Senior Associate. Lois has a degree in Town Planning and a Masters Degree in Environmental Assessment and Management, both from Oxford Brookes University. Lois specialises in forward planning, in promoting sites through the Local Plan process, and in planning for strategic residential developments.



## CHARITY WORK

R.A.B.I – the Royal Agricultural Benevolent Institution  
Sworders are proud to support R.A.B.I, agriculture's oldest and largest charity, providing welfare advice, practical care and financial support to farming people in need. Assistance is given to farmers, farmworkers and dependants of all ages.

Fundraising for R.A.B.I is both rewarding and sociable. For more information email [info@rabi.org.uk](mailto:info@rabi.org.uk) or go to [www.rabi.org.uk](http://www.rabi.org.uk)



## SWORDERS' CAKE SALE

Sworders' colleagues hosted a charity cake sale across all 3 offices in April, raising £551.08 for Medical Detection Dogs. There was a fabulous selection of cakes available to purchase and Sworders hope to continue the tradition hosting another sale in the Autumn.





As rural property professionals, we advise across the agricultural, commercial and residential sectors on all aspects of rural property. We provide advice that seeks to maximise the value of clients' properties, often on a shared risk basis.

To be sure you are maximising the value of your asset, please contact us to discuss your opportunities.



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