



## EMBRACING CHANGE

Despite the weeks of uncertainty that remain before us ahead of any emergence from coronavirus restrictions, attention is now beginning to turn to the shape of post-pandemic life.

As Lucy Back highlights in her article for this edition, the post-pandemic period will continue to be a time of change, arising from the pandemic itself and other factors, which together could bring new opportunities. Recently we have seen demand for rural office space in high-quality destination locations from companies looking to better balance home and office working for their staff in the long term. There is also demand from co-working operators, who provide individual desks and the use of an in-house café to work-from-homers eager to escape their kitchen tables.

We are also in a period of innovation and change in the renewables market, with new opportunities continually being presented to clients. In this edition we consider solar power and renewables.

Some things of course are slower to change, and inside we summarise the calamitous consequences that can arise from poorly worded Option Agreements following the recently reported case of Fishbourne Developments Limited v Stephens. This case offers a reminder of the importance of detailed advice when considering any Development Agreement.

Clare Hutchinson

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# MAXIMISING OPPORTUNITIES

We are entering a period of change with both Brexit and the changes to BPS under the Agricultural Transition Plan but these changes could provide opportunities. This past year, in particular, we have seen transformations in the way people shop, where we go on holiday and the use of the countryside and changes that could be used by farmers to maximise business opportunities.

We currently have a relatively favourable tax regime as well as low borrowing rates and the possibility of a lump sum payment for remaining BPS payments. Therefore, now is the time to consider making changes to your business to take advantage of the current position.

One of the key factors is to take an honest look at the current business:

- **Where are the strengths?**
- **Who is involved?**
- **What is the legal ownership?**
- **What is the current financial position?**
- **Where do you want or need to be; and**
- **Do you know how to get there?**



It can often be helpful for an independent third party to help with posing these questions and offer solutions. Any changes should not be considered independently but need to be looked at as part of wider financial and succession planning. This is where an experienced professional can help, whether with difficult family discussions or providing advice on a range of areas to ensure the best solution can be found. Any such changes do not happen quickly so it is best to plan as early as possible.



# OPTION AGREEMENT COURT OF APPEAL

Fishbourne Developments Limited v Stephens 2020



In interpreting their Option Agreement, Fishbourne Developments Limited sought to acquire 117 acres of farmland, at a 30% discount to market value, based upon a planning permission to erect a new pitched roof on one of the existing farm buildings.

Fishbourne argued this was permitted under the terms of their Option Agreement as the wording required only “a *planning permission granted by the Local Planning Authority permitting any development of the Property*”. However, the High Court determined that this was not the original intention of the parties and the Court of Appeal confirmed the same. In this case, planning permission to erect a new pitched roof on one of the existing farm buildings did not trigger the option.

Whilst clearly this was always the intention of the parties, unfortunately what appears to be a poorly worded Option Agreement in this case could potentially have resulted in a substantial amount of risk and cost to the landowner.

Sworders take a bespoke approach to advising on any Development Agreement and we have the advantage of only acting for landowners, not developers. Hence, any advice we give on Options is tailored around making them as robust as possible for the landowner.

If you would like to know more about **Development Agreements**, further information is available on our website.

Go to **sworders.com** and download our latest leaflet from the

**Planning and Development Page**, with the link to our latest

leaflet, ***‘It’s Your Option or Is It?’***.



Jeremy Pidgeon

# KEEP CONTROL OF YOUR RENEWABLES



The market for renewable projects is gaining pace with a significant amount of new interest in the market. Landowners can identify and achieve new income streams as a result, however, it is important to remain in control of the process to unlock the true value and potential. If you are contacted by a developer, please contact us and we can outline the options available to you.

Solar PV is a method of generating electricity by capturing energy from the sun. To some landowners, it is an important way of powering their own operations at a reduced cost, but it can also be a way of generating an important alternative income stream. The advancement of technology in recent years has decreased the cost of solar panels to a certain extent and although there is no longer the financial support from subsidies, the interest in new solar developments is growing at a significant pace.

**At the initial stages, the key to taking a scheme forward and establishing its feasibility is knowing:**

- **Whether there is sufficient grid capacity within the area.**
- **What the cost of connection to the grid is likely to be.**

The grid is key to any solar (or energy) development and competitive grid connections often attract a premium which ultimately can help us to negotiate favourable and competitive terms with any developer wishing to install a solar scheme on landowner's land.

To achieve viable schemes, much larger developments are being sought by solar developers, often combining different technologies to maximise output. Notwithstanding this, there are also opportunities for smaller scale projects providing landowners with the opportunity to expand and diversify a farming or rural business.

**An understanding of the planning constraints by way of an in-depth site assessment is crucial to both small and large scale schemes. Our in-house Planners are able to offer this advice.**

Kelvin Grimes

There are many ways of delivering solar schemes, this can include a traditional developer Option Agreement but can also be delivered by way of promotion. This will allow the landowner to remain in control of the process while at the same time ensuring that the opportunity has been maximised commercially through market testing. Given that these schemes can run for 40 years, it is important to know the operator that you are agreeing terms with and that you are in control of important matters such as improving biodiversity, remaining in control, access, etc. Agreements can also be tailored to ensure that you are maximising other opportunities, including private wire, EV charging and battery technology.

### **Battery Storage**

This was an energised market a few years ago, although commercially the model has changed since, battery storage now offers a great opportunity where the grid is limited and you have reduced land available. It can also work well when the planning is slightly more constrained.

### **EV Charging**

As the car market moves away from fossil fuels to electric charging, we will need a significant increase in EV charging infrastructure across the country. This will increase over the years as the pressure on the infrastructure increases, however, for well located sites with a grid connection, there is a strong commercial model for EV charging stations. Initially, the key will be a well located substation along with a high traffic flow, ideally in excess of 20,000 cars per day. If you are interested in this type of opportunity, please do get in touch and we can discuss your options.

### **If you are approached or are interested in Renewables, please contact us.**

Keeping control of the process is very important. Sworders are able to check the grid capacity on your behalf so please do not let a developer control this process for you.

To obtaining a budget for such works, through to the marketing of the opportunity on the landowners' behalf to developers and investors, Sworders are able to advise and negotiate competitive Heads of Terms for Promotion, Option and Lease Agreements which are tailored to the specific site and ensure that the landowners' best interests are protected. Sworders are then able to continue discussions with the chosen development partner through to completion.

**If you have land and would like to know whether or not there is potential for a renewable scheme, please do make contact with the Sworders' team.**



# RIGHTS OF WAY

Do you have footpaths and other rights of way across your land? You will no doubt have seen an increase in use over the last year as the public take to the countryside during lockdowns. Unfortunately not everyone respects the countryside or keeps to the correct paths.



In order to prevent any new rights of way being created, it is important that landowners lodge a s.31(6) Deposit with the local authority. Under s.31(6) of the Highways Act 1980, once this deposit has been lodged and approved, it prevents any new rights of way being claimed for a period of 20 years unless a third party can prove that a route has been used as of right for more than 20 years. The deposit process requires a plan of all existing rights of way and an application form completed and sent to the local authority with the relevant fee. Notices are then placed at the entrances to the land for public consultation. Provided no evidence of additional rights of way are claimed at that stage, the deposit remains in place for a period of 20 years.

The Ramblers Association is trying to open up historic rights of way it thinks may have been lost over time, so it is important to establish now what are existing public rights of way, and ensure these are registered so that no further routes can be claimed.

A s.31(6) Deposit is a relatively simple and inexpensive application to make but it is vitally important to do so, even if you do not consider you have any rights of way across your land. If you would like advice on preparing and submitting an application, please contact us to discuss.



Lucy Back

# NEW LEGISLATION TO CRIMINALISE INTENTIONAL TRESPASS

The Home Office has recently announced new legislation which will make intentional trespass a criminal offence in an attempt to crackdown on illegal traveller encampments.

Previously, intentional trespass has been dealt with as a civil matter, often resulting in lengthy court proceedings to remove unauthorised encampments, however these new laws will give police powers to seize vehicles and prosecute travellers who camp on private land with fines of up to £2,500 and prison sentences of up to three months. Police will be able to act earlier in these situations, with the threshold for an unauthorised encampment being dropped from 6 illegally parked caravans to 2 caravans under the new laws. Police will also be able to prosecute travellers who return to the same site within 12 months, increased from the previous period of 3 months.

Criminal or 'aggravated trespass' will be limited to people who:

1. Are over the age of 18.
2. Intend to reside on private or public land.
3. Are using vehicles, and
4. Have caused, or are likely to cause, '*significant damage, disruption or distress*'.



'*Significant damage, disruption or distress*' may include examples such as excessive noise pollution, excessive litter or interfering with utilities supplies. These new laws have caused some concerns that there may be wider reaching implications of criminalising some forms of trespass, for example by inadvertently restricting activities such as wild camping, the ability for people to protest and more generally the rights of walkers.

**The Government has however said that there is no intention for the new laws to restrict any rights to roam or any walkers who enter private land.**

# PLANNING 2021

## **P**lanning for the Future White Paper Update

Consultation on this radical overhaul of the planning system closed in October 2020, is raising a huge volume of consultation responses. There are now question marks over what the legislation might contain, with many experts no longer expecting the Government's proposed zonal approach to feature in the Bill. Whilst new planning legislation is expected to feature in the Queen's Speech pencilled in for May, the actual Bill is not expected to be published until Autumn.

**Changes  
coming  
in 2021**

## **C**hanges to the National Planning Policy Framework

Government is currently consulting on draft changes to the NPPF, which include a strengthening of environmental policies and greater emphasis on well-designed, beautiful places in response to the findings of the Building Better, Building Beautiful Commission. An amendment is also proposed to the '*presumption in favour of sustainable development*' to reinforce the importance of infrastructure provision, improving the environment, and mitigating climate change, along with a tightening of the rules governing isolated homes in the countryside by removing the word '*innovative*' from the exception for '*truly outstanding or innovative*' design.

## **N**ational Model Design Code

A draft National Model Design Code is also out for consultation, aiming to improve the design quality of new development. It will also set a standard for Local Authorities to produce their own Local Design Codes which will be used when determining planning applications. In order to carry weight in the decision-making process, Local Design Codes will need to be prepared as part of a Plan, or a Supplementary Planning Document, and require extensive public consultation. This prompts concern over Local Authority resource and skills, as well as concern that design demands may be undeliverable as developers will not be involved in the process.

## **B**iodiversity Net Gain

The Government's flagship Environment Bill, which includes a requirement for all new development to achieve a 10% biodiversity net gain, has been subject to further delays. Having been introduced to Parliament in October 2019, the Bill is now not expected to come into effect until Autumn at the earliest, with a possible 2-year transition period. Biodiversity net gain will need to be calculated using the latest version of the Biodiversity Metric, and should be provided on site wherever possible. Understanding the baseline position and environmental value of a site will therefore be critical to minimise risk and maximise values.

## **P**ermitted Change of Use – Commercial to Residential

Consultation to allow a permitted change of use from Class E Commercial to Residential use ended on 28 January. The change is proposed to take effect from 1 August 2021, subject to a Prior Approval application. There is no size limit proposed, and no restrictions for Conservation Areas. Take-up is therefore expected to be high, but raises concerns over the future of town centres. Industry leaders have therefore called for the proposal to be scrapped.

## **N**ational Space Standards

Following complaints over the poor size and quality of homes built under permitted development rights since 2015, Government has introduced National Space Standards which will apply to all permitted development dwellings from 6th April 2021. This sets out a minimum size of 37 sqm for a one-bed studio flat; compared to homes as small as 16 sqm that have been found in permitted development schemes.

Hazel Izod

## DESIGN & ARCHITECTURE

We are pleased to announce we have just published our Design & Architecture Brochure showcasing all our latest projects. The team has considerable experience in residential, agricultural, commercial and mixed use, whether new build or extension, change of use and conversion, refurbishment and renovation.

If you have any project you would like to discuss, please contact us, as we would be more than happy to provide a free of charge initial assessment. Also, if you would like to order a free copy of our brochure, please contact us.



## AGENCY

Are you looking to sell, rent or buy a property? We take a proactive approach, with the use of a sales strategy through to high quality Particulars and bespoke Advertisements, including direct marketing. For a professional approach to selling a property, contact our experienced Agency Team.

[See below some of our current listings. Please contact us to find out more.](#)

WOOD FARM, HEMPSTALL, FARMHOUSE AND AGRICULTURAL BUILDINGS IN NORFOLK

UNDER OFFER



BURNHAM HOUSE AND LAND, GRADE II LISTED FARMHOUSE AND LAND IN RURAL WARWICKSHIRE

FOR SALE



## STAFF UPDATE

### New Staff

We are pleased to welcome Lucy to our Warwickshire Office. Lucy has an Honours Degree in Geography and a Masters with a Diploma in Spatial Planning from Birmingham City University. She has over 13 years' experience in both the Private and Public sectors, which includes Development Management and Strategic and Conservation Planning before joining Sworders. She specialises in all aspects of planning advice.



LUCY PIERCE  
SENIOR PLANNER

### Promotions & Qualifications



KATHERINE BRETT  
SENIOR ARCHITECT

Well done to Katherine Brett on her recent promotion to Senior Architect.



HESTER DALTON  
SENIOR SURVEYOR

Congratulations to Hester Dalton who gained her fellowship to the CAAV in December 2020.

### CHARITY WORK By Amanda Ranner

We are very proud to be supporting two very worthy charities; **Alzheimer's Research UK** and **Young Epilepsy** during 2021.

We have a fun packed year of fundraising events; with a 'virtual half and full' marathon, a charity auction, some themed quizzes, cake bake, mini tennis tournament and a skydive! Plus many more! We are hoping to raise vital funds during these very difficult times so that the money raised will help towards research and funding those affected by Alzheimers and Epilepsy.

If you would like to donate to our fundraising page, please sponsor us at: <https://uk.virginmoneygiving.com/team/SwordersEpicFundraisingEvents2021>

We will keep people updated with pictures and all the latest news on our Sworders' fundraising page.



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.

Sworders recognises its impact on the environment throughout its business and is passionate about the need to reduce and manage waste wherever practicably possible. Please recycle or give me to a friend.



To unsubscribe please email your request to: [post@sworders.com](mailto:post@sworders.com)

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