



Hewitsons Agriculture, Food & Rural Business

LEGAL UPDATE

Absolute Client Focus

Happy New Year to all of our clients and contacts

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Farming assets: Do they belong to the Partnership or the individual Partner?



[Kevin Fletcher](#)
Partner

Many assume if an asset, such as farmland, is referred to in the partnership accounts that it is a partnership asset. As such, on the death or retirement of a partner, you would expect its value to be brought into account when calculating the amount due to the outgoing Partner. However, that is not always the case. In the recent case of *Wild v Wild* [2018] the court decided the farmland was not a partnership asset, despite it being included in the business accounts. It reminds us of the importance of having a properly drawn-up Partnership Agreements and Declarations of Trust to establish the ownership beyond doubt.

Wild v Wild involved a family farm, including a farmhouse and small bungalow, owned by Ben in his sole name. In 1978 he went into partnership with his 16-year old son Malcolm. Years later Ben's other son, Greg, became a partner. Malcolm and Greg continued to run the farm after Ben's death in 2003. Their relationship became increasingly acrimonious and in 2016 the partnership was dissolved.

No Partnership Deed ever existed. The earliest Partnership accounts available were from 1989 and showed a fixed asset of £40,750 described as "property".

Greg brought proceedings arguing that the farm was an asset of the Partnership. As such it should be divided between him and Malcom. Malcolm and Ben's wife, Jean, argued that the farm belonged to Ben personally, outside of the partnership, and passed to Jean on Ben's death. The Court held that the reference to "property" in the accounts must refer to the farm, but the farm was not a Partnership asset and it passed to Jean, in 2003.

The use of the land by the partnership is not enough to infer that it is partnership property. The land should have been added to the partnership by Ben *with Malcolm's agreement*, for it to become partnership property. The land was not required to belong to the partnership for business efficacy. The farm business could, and did continue, on the basis that Ben was the legal owner. The Court also considered that given Malcom's young age at the time the partnership began, Ben was unlikely to give up ownership and control of the farm to the partnership. Ben may have included it in the accounts for tax purposes or it might be a continuation of his sole trader accounts. Ben could have been expected to want his other children to benefit from the land.

Whilst *Wild v Wild* is not a ground breaking case, it is a useful reminder of previous case law:-

- Partnership accounts, which include particular assets, will not be conclusive evidence of the legal owner of the asset
- The Courts are unwilling to imply a term into a partnership agreement except where it is absolutely necessary to give business efficacy to the arrangement
- One partner cannot unilaterally cause their property to become a partnership asset without prior agreement or subsequent acceptance

It is often the case that partnerships have existed over many decades and possibly several generations. It is therefore advisable to have a Partnership Deed. Where a Partner owns the legal title of a "farm asset" a Declaration of Trust should be put in place to evidence that the partnership owns the beneficial interest in the asset to provide clarity and hopefully avoiding lengthy and costly legal proceedings.

Should you wish to discuss your Partnership arrangements further please contact Kevin Fletcher on 01604 463373 or [click here](#) to email Kevin.

Court of Appeal upholds registration of quayside as town or village green



[Emma Bowman](#)
Solicitor

The registration of land on a quayside in Essex as a town or village green (TVG) has recently been confirmed by the Court of Appeal, despite the commercial activities of the landowner co-existing with recreational use by the public. The Court felt that the pre-registration co-existence of the two uses demonstrated that they were compatible with each other and such compatible uses could continue post-registration.

Land can be registered as a TVG if it has been used by the public for recreation openly and without the permission of the landowner for at least 20 years. In this case, the land was effectively a concrete apron which had been used for activities such as dog-walking and crabbing.

Registration as a TVG is significant because nothing can then take place on the land which interferes with the recreational use. Development on TVG land is therefore very restricted if not impossible.

The case is a reminder that landowners should ensure that any use of their land by the public is by permission only, and that the permission must be expressly granted such as by use of appropriate signs. It also illustrates that the risk of registration is not confined to land fitting the traditional concept of a village green.

For more information on Town and Village Green registration, please contact Emma Bowman on 01223 532717 or [click here](#) to email Emma.

Land Value Capture



[Deborah Sharples](#)
Partner

In the budget the chancellor announced some changes in relation to land value capture.

He announced proposals to allow combined authorities and joint planning committees to impose a Strategic Infrastructure Levy to finance strategic infrastructure. This would be a low level universal levy on development similar to the London Mayor's levy which was used successfully to raise money for Cross Rail.

There is to be a simplified power to raise an increased zonal CIL charge in areas of high land value uplift.

He has also proposed an end to the restrictions on pooling s106 contributions which were imposed by the CIL Regulations and which have proved to be unhelpful in the efforts to raise money for infrastructure.

This is in line with expectations for this budget. The tone of the debate on land value capture remains that no fundamental changes are needed and that s106 works well as long as the system is played fairly. There is a strong move towards discouraging developers and landowners from "gaming the system" or negotiating too hard with a threat of increased use of CPO with reduced compensation as the stick to encourage cooperation.

For more information on land value capture, please contact Deborah Sharples on 01223 532747 or [click here](#) to email Deborah.

This Bulletin is produced by Hewitsons for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area.

Advice should be sought from a solicitor in the Agriculture, Food & Rural Team at Hewitsons in respect of any information contained in this Bulletin that affects any matter with which you may be concerned.

Hewitsons offers a full agricultural, food and rural service. This Bulletin will help to keep those involved up to date with the latest developments.

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