



Hewitsons' Agriculture, Food & Rural Business Legal update

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Proprietary Estoppel: Farmer's daughter successful in her claim



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A recent High Court judgment (*Habberfield v Habberfield* [2018] EWHC 317 (Ch)) confirms that awards in proprietary estoppel cases remain difficult to predict.

The Claimant daughter, Lucy, claimed entitlement to the whole of the family farm, or such lesser sum as the Court thought fit. In proprietary estoppel claims, the Court is required to do the minimum to satisfy the equity that arises if the Claimant succeeds in establishing that there were assurances relied upon to his or her detriment, and that it would be unconscionable for the Court not to make an award.

The Deceased passed away aged 74, with the farm passing by survivorship to his wife, Lucy's mother. He had also left a Will leaving his wife his entire estate. Lucy claimed that the Deceased had assured her that she would take over the farm when he retired and therefore brought an action in proprietary estoppel claiming the whole of the freehold property. Her application was opposed by her mother on the grounds that neither she, nor the Deceased had made any such promises to Lucy, that Lucy had not suffered any detriment as she had ignored associated benefits that she had received from the farm and that, even if an equity was established, to pass the

entire farm to her would be disproportionate and a modest cash sum would satisfy her claim.

The court held that Lucy had proved that assurances were made which amounted to the serious promise of "a viable dairy farm" involving the transfer of property. The Judge did not accept that the promises were intended to include the entirety of the freehold estate; in fact it was notable that the representations were ambiguous as to the transfer of any freehold property whatsoever. However the extended period of time which the Claimant had carried the expectation for weighed heavily in her favour.

In coming to his decision the judge looked at the specific facts, for which there was written evidence of a letter from a surveyor in 2008, who had been employed by the couple, recording a proposal to be put to Lucy to run the business and to become owner of the farm after her parents' deaths. Lucy had for the period in question, worked on assurances from the Deceased that she would own the farm by the time both her parents' had died. The long hours, low pay and few holidays taken could be characterised as acts of detriment.

To satisfy the expectation of a "viable dairy farm" would have required a transfer of land and buildings worth £1.58m (or cash equivalent). However the Judge reduced this amount by taking account of a number of factors that mitigated against such an award including: avoiding displacement of the mother from her home, discounting for accelerated receipt, refusal of an offer some years previously which may have satisfied the expectation.

The award was £1.17m to be settled in cash, failing which a sale of the farm would be required.

This case might give comfort to claimants in typical farming cases that even ambiguous promises can give rise to significant awards, particularly if expectation loss has arisen over an extended period.

For more information on proprietary estoppel, please contact Lucinda Brown on 01223 532721 or [click here](#) to email Luci.

Fencing Easements



Anna Gora
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Anna Gora, a Senior Solicitor in our real estate litigation team considers in her article [Beware fencing obligations - they can last forever](#) whether an obligation to fence can be an easement. Easements are obligations that run with land but usually don't impose any positive obligation on the owners of that land. A recent case considered that an obligation to fence did impose such an obligation and could be enforced as an easement. For further information please see Anna's article by clicking the link above.

Extension of Permitted Development Rights



Emma Bowman
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Permitted development rights to convert agricultural buildings to residential dwellings under Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 have been extended with effect from 6 April 2018. The previous rights, in force since 2015, allowed for a maximum floorspace of 450 sq m to be converted, with a maximum of 3 new dwellings allowed on an agricultural unit.

The changes increase both the floorspace that can be developed and the maximum number of dwellings. It is now possible to create up to 5 smaller dwellings, provided that each is less than 100 sq m, or up to three larger dwellings with a maximum total floorspace of 465 sq m, or a mixture of the two. However, there can be no more than 5 dwellings in total.

The rights are subject to various conditions, including that the site must have been used solely for agricultural use either on 20 March 2013 or, if a building was not in use on that date, when it was last in use. The prior approval of the Local Planning Authority is required before the rights can be used.

Permitted development rights remain a valuable tool for farmers with redundant agricultural buildings. However, professional advice should be sought to ensure that the conversion work falls within the scope of the rights permitted by the legislation.

For more information on permitted development, please contact Emma Bowman on 01223 532717 or [click here](#) to email Emma.

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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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