Hewitsons' Agriculture, Food & Rural Business
LEGAL UPDATE

March 2017

In this Issue

- How do people acquire rights over my land?
- Is erection of three gates in 100m interfering with right of way?
- DWP Green Paper on measures to help ensure defined benefit pension schemes are sustainable

How do people acquire rights over my land?

If members of the public use your land without your permission for a long period of time, and you take no action to stop them or make it clear that you do not intend public rights to be acquired, they may be able to establish that a public right of way has been acquired or that the land has become a town or village green ("green") and apply to register it as a green. It is therefore important to keep an eye on your land and if there is evidence that people are, for example, regularly walking their dogs on your land, taking a shortcut across your land or using it to play games you should take appropriate action. Registration as a green can in particular prevent the land being developed.

To establish a presumption that a public right or way has been acquired, it is generally necessary for there to have been uninterrupted use by the public for a period of at least 20 years and for that use to have been as of right, so without any force being used, without permission being given and not exercised secretly. If the owner of the land can show he had no intention for the land to become dedicated as a public highway then the presumption will be rebutted. This can be done by, for example, putting locks on gates or putting up notices or signs on the land and ensuring that if gates, fences or hedges are damaged or removed they are replaced. Keeping records, in particular photographs, of the damage and replacement will provide evidence that force has been used.

To apply to register land as a green, a significant number of the inhabitants of a locality, or a neighbourhood within a locality, must have indulged in lawful sports or pastimes on the land for a period of at least 20 years again without any force being used, without permission being given and not used secretly. Case law has established that a small number of people can be significant, a locality can be a parish or a village but neighbourhood can be a smaller area and lawful sports or pastimes can include dog walking or playing cricket or football. Putting up notices or signs or locking gates can again prevent the requirements for registration being satisfied.

An alternative method of protecting your position, which is more effective, is to deposit landowner's statements with the appropriate Council. Most Councils publish details of the procedure that needs to be followed and the documents required. The statement will in the

case of public rights of way confirm which public rights of way you consider exist over the land and, if within 20 years a declaration is lodged confirming that no new rights of way have been dedicated, that will prevent a new right of way being established. If there had already been 20 years use as of right before the statement was lodged this would not, however, prevent a public right of way being established. In the case of greens, the statement confirms that you wish to bring to an end any period during which people have indulged in lawful sports or pastimes as of right. A fresh statement would need to be lodged within 20 years from the original statement to prevent continuing, or any new, use establishing a right to apply for registration as a green. If at the time the original statement was lodged there had already been use for 20 years then an application to register the land as a green must be made within one year.

Being vigilant is very important to prevent new public rights being acquired and if there is evidence of use by the public, other than over public footpaths, bridleways or byways, action should be taken sooner rather than later.

For more information please contact Sue Birnage on 01223 532741 or click here to email Sue.

Is erection of three gates in 100m interfering with right of way?

Stephanie Dennis
Solicitor

The High Court has held that the erection of a third gate in the space of less than 100m was interference with a private right of way.

The case concerned the situation where Mr X owned a Farm which was subject to a right of way in favour of his neighbour's farm along a track on Mr X's land. This right of way was granted in the 1960's and was not disputed. In 1960, there were no gates along the track.

When Mr X bought the Farm in 2012, there was one electric gate at the entrance to the track by the main road and one gate further along the track which was permanently unlocked. Mr X undertook various works during his ownership including the widening of the track and the installation of a third gate in between the two existing gates. This gate was always unlocked.

The neighbouring farm was acquired by a Company in 2014 for the purpose of development. The Company claimed that the right of way had been substantially interfered with and was unsuitable for its intended use.

It was held by the Court that three gates within less than 100m of each other was a substantial interference with the Company's right of way. The issue was not the actual gate but rather that it's presence meant that there were three gates in close proximity which amounted to interference.

In addition to this, the Court distinguished between an electronic gate which was button operated and one which was fob/code operated. The Court noted that a button operated electronic gate which anyone could open was not a substantial interference with a right of way. However, they appeared to imply (as previous case law has also concluded) that the installation of fob or code operated electronic gates in the position where there were no gates before, would be a substantial interference with a right of way.

For more information on private rights of way and obstruction of the same, please contact Stephanie Dennis.

DWP Green Paper on measures to help ensure defined benefit pension schemes are sustainable

Stephanie Dennis
Solicitor

Arising out of the Work and Pensions Committee's report on its inquiry into BHS, the Department for Work Pensions has published its green paper on 'Security and Sustainability in Defined Benefit Pension Schemes'. Views are being sought on changes suggested in four areas: funding and investment, employer contributions and affordability, member protection and the consolidation of schemes.

Possible changes could see the Pensions Regulator setting funding targets for severely underfunded schemes and limiting the length of (or extensions to) recovery plans put in place to achieve full funding. To help the Pensions Regulator carry out investigations, parties responsible for schemes are likely to be given a duty to co-operate with the Pensions Regulator. The Pensions Regulator might also be given power to interview parties, supported by sanctions for non-compliance. The consultation closes on 14 May.

Permitted Development Rights

Emma Bowman
Solicitor

Last month the Department for Communities and Local Government published a response to its 2016 Rural Planning Review call for evidence. The document says that the government is consulting on a new agricultural to residential use permitted development right. This would allow conversion of an agricultural building into up to 5 new dwellings, each with a floorspace of not more than 150sqm. The government is seeking views on how to ensure the new right would be effective in creating more homes for local people, including on whether the new right should have similar conditions to the existing Class Q right.

The DLCG has said that the new right would be in addition to Class Q rather than replacing it. Class Q allows the conversion of agricultural buildings into up to three residential dwellings with a total maximum floorspace of 450sqm. The government is consulting on increasing this threshold to 465sqm to bring in it line with the permitted development right for new agricultural buildings.

The government is also planning to revise planning advice to clarify what constitutes 'reasonably necessary' building work under Class Q. This will be welcome as Class Q has been controversial since its introduction, with a refusal rate by councils twice as high as for other forms of permitted development.

For more information on this, please contact Emma Bowman or email Emma on emmabowman@hewitsons.com

National Minimum Wage annual increases

Clare Waller
Partner

Annual increases in the level of National Minimum Wage take effect on 1st April 2017. From that date:

- The National Living Wage, payable to all workers aged 25 and over increases from £7.20 per hour to £7.50.
- The standard adult rate, payable to workers aged between 21 and 24 goes up from £6.95 per hour to £7.05.
- The development rate which is paid to those between 18 and 20 rises from £5.55 to £5.60 per hour.
- The young workers rate, for those aged 16 and 17 increases from £4 to £4.05 per hour.
- The accommodation offset, which is the maximum daily deduction from the National Minimum Wage to take account of the provision of accommodation as part of an employment relationship will increase from £6.00 per day to £6.40 per day.

If you have any queries on National Minimum Wage liabilities or employment matters generally please contact Clare Waller on clarewaller@hewitsons.com or 01604 463350.