



Hewitsons Agriculture, Food & Rural Business

LEGAL UPDATE

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Comply with your obligations at the beginning of the tenancy or lose the ability to serve a section 21 Notice!

A recent unreported judgment in the County Court confirms that failure by Landlords to supply a current gas certificate to residential tenants at the start of an assured shorthold tenancy may prevent them serving a section 21 notice to end that tenancy.

A section 21 notice is served by Landlords when they want to regain possession of premises and there has been no default by the tenant. The case highlights that if the Landlord has not complied with its obligations under the Gas Safety (Installation and Use) Regulations 1998 then it will be prevented from serving this notice and so prevented from recovering possession using this procedure.

Landlords will still be able to rely on the service of a s8 Notice. These are used to regain possession in instances where there has been a breach of the terms of the tenancy by the tenant.

For further information please follow [this link](#) or contact Suzanne Bingham on 01604 463162 or [click here](#) to email her.



Diversification by your Farm Business Tenant

Approximately two thirds of UK farms have diversified into non-agricultural business. Types of diversification might include: use for events, a retail outlet, glamping pods, a farm cafe, or energy generation. Diversification by tenants on a large scale is, however, less common than diversification by owner occupiers where the length of time remaining on the tenancy (with no guarantee of a renewal) does not justify the investment in a new venture.

Considerations for the landlord include:

- Do the terms of the Farm Business Tenancy allow the tenant to carry out activities other than agriculture or will your consent be required? If your consent is required, is this at your discretion or is consent not to be unreasonably withheld?
- Will any third party consents or permissions be required such as planning permission?
- If there is a private accessway to the site which you don't own, do the terms of your right of way allow the non-agricultural use?
- Will the Farm Business Tenancy remain a Farm Business Tenancy if the tenant carries out the diversified activity?

You should check if notices were exchanged between yourself and the tenant in the required format under the Agricultural Tenancies Act 1995 prior to the commencement of the tenancy.

One of the aims of the 1995 Act was to encourage diversification by tenants. The notice mechanism under the Act allows the parties to serve notice on each other before commencement of the tenancy agreeing that the tenancy will remain a Farm Business Tenancy as long as the tenancy is primarily agricultural at the outset (and that at least part of the land continues to be farmed for a trade or business) even if at a later date the user of the land ceases to be primarily agricultural. If such notices were not served then the nature of the tenancy must remain primarily agricultural in order to be a Farm Business Tenancy. In that case, if the diversified activity is more than minimal there will then be a danger of the tenancy becoming a business tenancy and the tenant having rights to claim a new tenancy under the provisions of the Landlord and Tenant Act 1954.

Careful consideration should be given as to whether the land subject to the diversified activity should be carved out of the Farm Business Tenancy and a new non farming business tenancy granted to the tenant under the Landlord and Tenant Act 1954. This should be "contracted out" of the security of tenure provisions by following the procedure specified under the 1954 Act of serving notice on the tenant and the tenant signing a declaration, in order that the tenant does not become a secure tenant.

Note that if substantial diversification has taken place under a Farm Business Tenancy, when the time comes to renew it is almost certainly more appropriate to grant a business tenancy under the Landlord and Tenant Act 1954 of all or part of the holding, as the renewal tenancy will not be primarily agricultural at the outset and therefore serving notices under the 1995 Act will not help your position.

- If the proposals involve any permanent works, for example the erection of buildings, do the tenancy terms allow this and will these be Tenant's Improvements or Tenant's fixtures? Will you have to pay the Tenant compensation at the end of the tenancy? Should it be agreed that the tenant will remove the works at the end of the tenancy?

- Will the change in use of the land affect your inheritance tax position?
- A farm let under a Farm Business Tenancy may provide a landlord with 100% Agricultural Property relief, but this could change if the holding is significantly used for non-agricultural purposes.
- If you support the tenant in their enterprise, consider whether to grant them a longer tenancy to encourage their investment, perhaps with Tenant's break clauses if they wish to retain flexibility should things not go to plan.

For more information on diversification, please contact Sarah Aylward on 01223 532769 or [click here](#) to email Sarah.



A Taxing Question: Is it a house with land or farmland with a house?

You may remember we wrote about SDLT in our March HTML.

HMRC have been looking at the SDLT returns for grand houses that have been sold with a relatively small amount of land and questioning whether the land is agricultural as claimed. A recent Tax Tribunal case concerned a substantial Edwardian house with 3.5 acres of land. Outside the formal gardens was a meadow bounded by a bridleway and with a dilapidated historic barn. The taxpayer contended that the paddock and barn were outside of the house's "garden or grounds" (the term in the legislation making the house and land one residential entity) and therefore they'd purchased a mixed-use property which should be taxed at the lower rates.

The Tribunal took a common-sense view and found that the land outside the garden was all part of the grounds of the house. It is noted that there was no formal agricultural use and it is wondered whether the decision would have been different if a tenancy or grazing agreement had been in place on the bare land. It remains to be seen whether this decision affects the sale price of farmhouses and/or the desire for additional land. Even if it doesn't, buyers may now be keen for some form of farming to continue in post purchase in order for them to establish agricultural credentials to HMRC.

For more information on Stamp Duty Land Tax, please contact James Frankland on 01223 532738 or [click here](#) to email James.



Why Golf Shelters Might be Important to Farmers

In a recent case, the Planning Inspectorate considered whether a portable shelter for a practice tee at a golf club was a building for planning purposes. The shelter was 10 metres wide and 4 metres high, covered by a green polyethylene material and described as a 'lightweight structure', with an open front and a partially open rear with a mesh material which also formed part of the sides. The shelter was fitted with wheels allowing it to be taken away and moved to different locations, but was also tethered to the ground over an artificial golf tee surface. Ultimately, it was the presence of the tether that proved decisive for the inspector, who ruled that despite the shelter's portability, the fact that it had been tethered to the ground meant that it had a degree of permanency and could therefore be classed as a building for planning purposes.

This case has significance which goes far beyond golf shelters and their status. The question of what is a building for planning purposes is a recurring one which can be of real importance,

including to farmers who provide temporary shelters of various kinds for livestock and for other sporting facilities where temporary buildings are common.

For more information, please contact Gemma Dudley on 01223 532747 or [click here](#) to email Gemma.



Agricultural Law Association Knowledge Sharing Workshop

Hewitsons is pleased to be hosting the autumn event of the Central region of the Agricultural Law Association. The event will focus on succession planning and proprietary estoppel and is aimed at practitioners who practice in this area or come across it in their day to day work. The event is on 14 November 2019 from 4pm to 7pm at Hewitsons Northampton office. For more information and booking details, please go to the [ALA website](#).

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