

Sunk costs

The situation may arise where, as a result of misfeasance, an asset unconnected with the claim becomes obsolete.

For instance a farmer may have recently put up a new building to house additional cows and following a particular event, herd size fails to increase at the expected rate and the building is no longer required.

It is not uncommon for such wasted costs to be included within the claim even though the decision to invest was unrelated to the claim itself.

The loss in this situation arises from the reduced herd size and not from the wasted costs of the building (which would theoretically have been funded by the income from the additional cows had the expansion occurred).

This is another form of double counting where both the loss of revenue and the capital expenditure which this revenue would have funded are both claimed.

Cull cows

In claims involving dairy herds (or other breeding livestock) there may be an amount for additional animals culled as a result of the misfeasance.

All cows in a herd will have to leave the herd eventually and so the culls that are claimed for are not additional culls but earlier culls. Accordingly it is only part of the cow's productive life that is lost.

As an example, if we assume that a heifer costs £1,250, a cull cow is worth £250 and the average herd life of a cow is four years, the replacement cost of a cow equates to £250 per year $[(£1,250-£250)/4]$. If a cow has already had three lactations by the time she is prematurely culled the loss is £250 $[(4-3) \times £250]$ and not the full cost of the replacement of £1,000. On average, assuming that the additional cows culled reflect the full age range of cows in the herd, the average cost of the earlier cullings will be 50% of the cost of replacement (£500 per cow in this example).

Tempering optimism

Claimants can be unduly optimistic with regard to the settlement they expect and it is not uncommon for a claim to be reduced by 50% simply by correcting these obvious errors of principle. A margin of error of this magnitude could well affect the lawyer's view as to how a dispute should be resolved. Solicitors may therefore want to be on the look out for such mistakes or, ideally, bring in an accountancy expert at an early stage to provide an early assessment of the quantum of a claim. This should ensure that there is a reliable basis on which to make decisions about how to pursue the claim.

¹ e.g. *Admiral Management Services Ltd v Para-Protect Europe Ltd* [2002 EWHC 233 (Ch)]; *R+V Versicherung AG v Risk Insurance and Reinsurance Solutions SA* No.3 [2006] EWHC 42 (Comm); *Aerospace Publishing v Thames Water Utilities* [2007] EWCA Civ 3

PLANNING

Seasonal workers living in temporary agricultural accommodation

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When considering the situation of seasonal workers including gypsies and travellers living in temporary agricultural accommodation – as with most planning, development and settlement issues – the first place to start is the Town and Country Planning (General Permitted Development) Order 1995. In this instance, the most relevant parts of the Order are Parts 4, 5 and 6.

Temporary buildings under the GPDO

Part 4 of the Order deals with temporary buildings and their uses and allows buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in under or over that land or on land adjoining that land. Development under this part of the Order will not be permitted if planning

permission is required but not granted or deemed to be granted.

All of this is also subject to the conditions that any buildings etc are removed and that any adjoining land is to be reinstated to its pre-development condition as soon as this is reasonably practicable.

Temporary agricultural accommodation for seasonal workers more often than not involves caravans, mobile homes or similar. Part 5 of the Order is specifically designed to deal with Caravan Sites. Permitted development under Part 5 of the Order covers the use of land, other than for a building, as a caravan site. Such permitted development is subject to the condition that the use be discontinued when the circumstances specified in paragraph A.2 cease to exist and that all caravans on the site shall be removed as soon as reasonably practicable.

The circumstances referred to in Paragraph A.2 are in fact the same "circumstances" covered by paragraphs 2 and 10 of Schedule 1 of the Caravan Sites and Control of Development Act 1960 (in that context being cases where a caravan site licence is not required).

The most relevant circumstances are contained in paragraphs 7 and 8, which apply to Agricultural and Forestry Workers.

Paragraph 7 deals with agricultural workers. In such cases, a site licence shall not be required for the use of agricultural land as a caravan site for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation.

Paragraph 8 deals with and makes provision for creation of a seasonal caravan site for forestry workers in similar terms.

TAKE A SEQUENTIAL APPROACH

- Accommodate seasonal workers in existing buildings either on or off site where possible;
- If not, choose a site outside a designated green belt;
- If not possible, convince Local Authority that there are very special circumstances and that all other alternatives have been examined;
- Choose the most suitable site within the landholding;
- Consult with local people and others affected

Agricultural buildings and operations

Part 6 of the Order deals with Agricultural Buildings and Operations. This legislates for various different scenarios in respect of site sizing. Permitted development under Class A of Part 6 of the Order includes the carrying out on agricultural land comprised in an agricultural unit of 5 hectares or more in area of works for the erection, extension or alteration of a building or any excavation or engineering operations which are reasonably necessary for the purposes of agriculture within that unit.

Development will not be permitted under Class A in various circumstances. These circumstances relate to the size of the land, the height and use of the buildings upon it and the activities carried out upon it.

Class B covers units sized between 0.4 and 4.99 hectares. Development under this class include various scenarios, the most relevant here being the extension or alteration of an agricultural building. Development will not be permitted under Class B in circumstances relating to the size of the land, external appearance of the development and the location and size of buildings in relation to the road.

Under Part 6 of the Order, "agricultural land" means land which, before development permitted by this Part is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwellinghouse or garden. "Building" does not include anything resulting from engineering operations. This does not specifically include temporary buildings; hence this is included in this article.

Local plans

When looking at a situation in a particular locality, the next port of call after the GDPO should be the relevant Local Plan or similar document. A good example of this is the West Lancashire Replacement Local Plan Supplemental Planning Guidance, which was issued in 2003 and updated

in January 2007. This deals with the issue of Accommodation for Temporary Agricultural Workers and states that planning permission is not required for temporary seasonal accommodation for farm workers.

As stated above, this is allowed under the GPDO during a particular season on land in the same occupation, as long as caravans are removed when circumstances cease to exist. This only relates to the short-term solution of providing adequate labour to meet the demands during peak periods of activity.

A Planning Inspector's decision in December 2002 stated that caravans can only be kept on a site for one particular season i.e. during planting or growing or harvesting of a single crop, but not for the whole crop cycle. The nature of horticultural businesses where multi-cropping and rolling planting programmes result in overlapping crop cycles, means that most farmers and growers would find it difficult to rely on the GPDO exemption rights alone and will need assistance from the Local Plan or similar or get planning permission for what is proposed.

Whilst the guidance is intended to be specific to this particular locality, it still provides a useful starting point when thinking about how to

approach this matter generally. Generally speaking, a planning application should be made where workers will be housed for longer than a single planting or growing or picking season or where caravans and other related buildings (e.g. canteens and toilets) are to be kept on site permanently or where the change of use to an existing building is involved or where hardstandings and permanent services (e.g. water or electricity supply or septic tank) need to be provided or where a new building is required.

Sequential approach

It is sensible to take a sequential approach to planning. Having checked with the Local Planning Authority as to whether planning permission is required, the landowner should make every effort to accommodate his seasonal workers in existing buildings either on or off site.

If he does need to build and if there is nothing other than a green belt site to do this on, the Local Planning Authority will need to be convinced that there are very special circumstances and that all other alternatives have been examined.

The landowner will also need to show that the proposed site is the most suitable within his own land holding. He must also consult local residents prior to taking any action and comply with all other regulations, such as the caravan sites standards and the drainage requirements of the Environment Agency, Building Regulations etc. and, in addition, ensure that adequate arrangements are made for the disposal of refuse and sewage from the site in order to avoid causing pollution to the environment and nuisance to neighbours. These issues are likely to be dealt with by conditions in any planning permission.

