

- potential loss of inheritance tax business property relief on assets owned personally but used by the company.

A structure preferred by advisers may be to include a company as a partner within an existing partnership. The professional costs will be greater, but this should provide greater flexibility for the business.

Furnished holiday letting

Although the favourable tax treatment of furnished holiday letting (FHL) remains with us for 2010/11, a series of questions and answers published with the Budget notes advises that the Government is looking to introduce changes to the FHL rules from 6th April 2011 (1st April 2011 for companies). The proposed changes would:

- ensure the FHL rules apply equally to properties in the EEA;
- increase the number of days that qualifying properties have to be available for, and actually let as, commercial holiday letting; and
- change the way in which FHL loss relief is given.

Full details about the proposed changes will be published over the summer, for consultation.

Many farmers have other rental income, so that the way in which FHL loss relief is given may not have a significant impact. However, the current advantageous rules for capital gains tax reliefs mean that any changes will need to be carefully considered by farmers who have diversified into FHL.

VAT

The increased rate from 4th January 2011 will not directly affect farming operations, but will affect diversified property businesses either where VAT cannot be recovered due to exempt supplies or because it is difficult to pass on the increase to end users, such as with holiday accommodation.

Inheritance Tax

Apart from incidental mentions in the Budget Notes, there was mention in the Treasury notes that there will be consultation over the summer on bringing inheritance tax on trusts within the Disclosure of Tax Avoidance Schemes (DOTAS) regime. That will be one to watch.

Stamp duty land tax

Another one to watch is whether further changes will be made to the rules on stamp duty land tax on high value property transactions to "prevent avoidance in this area". It is not clear from the press notes how this will be 'examined' by government as to whether change is required.

PLANNING

Planning policy and travellers

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The Labour government's perceived lenience to travellers and its successor's more cautious approach has had the effect of highlighting the difficulties faced by farmers, landowners and householders when plots of woodland or agricultural land have been bought by gypsies or travellers and is being developed in breach of planning control.

The problems that arise out of the unlawful development of such sites are only one part of a more complicated picture. Local authorities are under a statutory duty to provide accommodation for gypsies and travellers within their areas and farmers, landowners and householders can find that land in their neighbourhood is being considered for a local authority traveller site.

This article focuses on what farmers, landowners and householders can do to influence a local authority's decision over the location of such sites and how best to halt to unlawfully developed sites, which may occur when adequate provision has not been made or which may be a property speculation by business men who happen to have or at least claim a gypsy or traveller background.

Local Authority sites

Local authorities are vested with a number of functions, including ensuring that adequate housing is available and that individuals have access to healthcare and schools. The powers and obligations that bind a local authority in each of these areas can come into conflict with each other and this is often the case when dealing with gypsy and traveller related issues.

These potential conflicts are heightened by the fact that, as an emanation of the state, local authorities are bound by the Human Rights Act 1998 and need to ensure that the decisions that they make, regardless of the sphere in which they are made, do not contravene the rights and duties enshrined in the European Convention on Human Rights. In particular, the local authority needs to ensure that its actions do not breach the travellers Article 8 rights to respect for private and family life.

A local authority is obliged to ensure that there is adequate provision for housing gypsies and travellers within its area both in its role as the local planning authority and as the housing

authority for the area. The process of identifying suitable locations for traveller sites is often very lengthy, as the local planning authority first needs to determine the number of pitches required within a particular locality and then identify the possible sites that could be made available for them and how many pitches each site can accommodate.

In order to reach the stage where specific areas can be allocated for development as traveller sites, a local planning authority needs to undertake a thorough public consultation exercise and fully consider all of the responses received from members of the public when making its final decision as well as the responses from its own officers and statutory consultees such as the highway authority for the area in relation to transport issues or the Environment Agency if the site is adjacent to a main river or an SSSI.

When commencing such a public consultation exercise a local authority is required to prepare a statement of community involvement, which sets out its policy on involving the public especially the local community in its plans for development and how it proposes to consult the public on planning applications generally. This statement sets out each of the stages at which a farmer or landowner or householder can become involved in the planning process in particular, as well as how and when he can attempt to influence it.

The first stage of public consultation will usually take the form of a series of public meetings and drop in sessions, held at town and village halls and other central locations in each parish. Subsequently, detailed draft policy documents will be published for comment and members of the public will be invited to make written representations upon them.

In order to successfully influence a local planning authority's decision as to the location of a new traveller site, you will need to ensure that you truly understand the selection criteria that have been published by the local planning authority. The sessions will also give you the opportunity to gauge the level of public resistance to each new site at a particular location and to identify others who would be prepared to work with you in opposing a

particular site for development as a gypsy and traveller site, bearing in mind that the local authority has a duty to provide sufficient sites and that they must go somewhere.

The most effective and persuasive consultation responses are those which tailor their objections to the specific selection criteria published by the local authority and demonstrate, with reference to those criteria, why a particular site is not suitable for use as a traveller site; or why it is less suitable than another site that has been proposed. It is crucial to ensure that the consultation response is clearly linked to the selection criteria, as local authorities are bound to dismiss any responses that appear to be motivated by prejudice or unreasoned fear of change or are based on a false premise or assumption.

The types of objection that are likely to be given most serious consideration are:

- issues relating to access, traffic flow and road safety; e.g. a proposed site does not have a safe point of access and egress onto a public network road that can accommodate an increased amount of traffic flow attributable to the site;
- conservation or environmental issues; e.g. a proposed site provides a habitat for rare plants or animals – quite possibly the only planning context in which badgers or bats or even a colony of great crested newts is likely to be welcomed.
- issues relating to local infrastructure; e.g. that local schools and health services will not be able to cope with the additional demand caused by the site or, alternatively, that the site does not have sufficient access to health or education services.

The objections that are likely to be dismissed include those that express:

- fears that the site will lead to an increase in crime;
- fears that the site will blight local property prices; and
- fears that the site will be an eyesore or will degrade landscape quality.

It is important to strike a balanced and impartial tone when drafting such responses and it is always sensible to focus on the need for such sites to go somewhere. The local authority is under an obligation to provide housing for gypsies and travellers as part of its housing strategy and will readily discount overly passionate responses as being founded in prejudice.

The key is simply to explain, as persuasively as you can, why the site you are objecting to is less favourable than all or any of the other sites that have been identified as possibly suitable for such development in the development plan document that is under consideration. It will always be sensible to express support for one of the sites on the shortlist.

Unlawful sites

The issue of traveller sites that are or have been developed in breach of planning control is much more complex and frustrating for farmers, landowners and householders to deal with than opposing the creation of a new local authority site in their vicinity. The primary difficulty is that, while the site may have been unlawfully developed, in the majority of cases the gypsies or travellers in question are the legal owners of the land they are developing. As such, there is very little that an individual can do to halt the development.

In these circumstances, the resident who does not have the resources to simply buy the land from the travellers, usually at a ruinous premium, is entirely reliant on the local planning authority to prevent the development proceeding further and

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to remove any development that has been done in breach of planning control.

The local planning authority does have a range of enforcement and other powers available to it and it is often helpful to understand what these powers are and why local planning authorities are sometimes reluctant to use them.

If a local planning authority is given advance notice of a gypsy or traveller development then it can withdraw the permitted development rights associated with that land by a direction under art.4, Town and Country Planning (General Permitted Development) Order 1995.

Permitted development rights allow specific types of development to occur without the need for planning permission and by withdrawing these rights, full planning permission will be required for any works done to the land, including pegging out pitches and laying hardcore on tracks or in gateways which would otherwise be beyond the scope of planning control.

An Article 4 Direction will not prevent unlawful development; it will, however, make it much more difficult as land subject to an Article 4 Direction is already on a local planning authority's radar and it is much more likely to intervene at an early stage, preventing a site being developed in breach of planning control becoming established.

Once a local planning authority has become aware of an unlawful development it will usually issue a temporary stop notice preventing further works from taking place. Temporary stop notices can be served as soon as an unlawful development is detected and last for up to 28 days. A gypsy or traveller owner is not able to appeal a temporary stop notice and so the notice cannot, in and of itself, lead to lengthy appeals or



challenges on human rights grounds. A temporary stop notice effectively buys the local planning authority time to investigate the site and to decide on the most appropriate steps to take next.

At this stage a local planning authority has a number of options. It can issue an enforcement notice, requiring the travellers to remedy the work done and put the site back into its original condition, or it can obtain an interim or full planning injunction against named or unnamed individuals, forbidding further development.

Enforcement notices do not take effect immediately. A period of 28 days must pass between the notice being served and its taking effect, and during this time the travellers may continue with the development. For this reason a stop notice is usually served at the same time, effectively bringing the development to a halt or an offence is committed.

Enforcement notices also carry with them the right of appeal, although any appeal must be lodged before the notice comes into effect. Once an appeal has been lodged the enforcement notice is suspended until the appeal process is concluded. The benefit of serving a stop notice at the same time as an enforcement notice is that the stop notice remains in force even though the enforcement notice has been suspended, preventing further development.

If the travellers do not comply with an enforcement notice then the local planning authority has the option of taking default action against them under s.178, Town and Country Planning Act 1990. This enables local planning authorities to enter sites to carry out the work required themselves, which can include removing caravans and digging up hard standings. The cost of the works is then charged to the gypsies or travellers. Local planning authorities tend to view these powers as draconian and will only use them as an absolute last resort for fear of judicial review challenges being made upon human rights or other grounds.

Injunctive relief

A local planning authority can seek a planning injunction through the High Court or the relevant County Court at any point. If a local planning authority has enough notice of a potential unlawful development, an injunction can be sought before any caravans or other vehicles or materials are moved onto the site. These injunctions are easier to obtain, as they will not raise any human rights arguments, as the travellers are not resident upon the site. It is possible to obtain injunctions after the travellers have begun to live on the site, but this will require a more thorough approach to evidence gathering

and otherwise support the application, as these injunctions will be scrutinised more closely by the Courts.

Breaching enforcement measures carries heavy financial penalties for travellers as well as the risk of eviction and even, on occasions, imprisonment – although this penalty is only available in extreme cases for contempt of court and is used only rarely. It is more usual for travellers to appeal the decision that has been made or to challenge it through the Courts on human rights grounds.

It is also common for travellers to seek retrospective planning permission for their developments to try and legitimise the site once it has been built. In recent years the Courts have begun to scrutinise these challenges much more closely and it is by no means certain that they will succeed, although they are more likely to do so if the local planning authority has failed in its duty to provide adequate provision for travellers within its boundaries – another good reason for supporting the least worst site during a development plan document consultation.

In one sense a retrospective planning application for a traveller site is to be welcomed, as it gives the community the opportunity to object to the development and these objections will be taken into account. The same principles and considerations apply to these objections as those discussed above in relation to public consultations for local planning Development Plan Document consultations.

If no such opportunity is presented, the focus ought to be on assisting and persuading the local planning authority to make the most appropriate use of the enforcement powers. Objectors can be instrumental in notifying a local planning authority of a potential unlawful development or the existence of a new and unplanned traveller site.

There are often early warning signs that are not readily apparent to local planning authorities, such as local rumours or deliveries of building supplies, and if these are noticed and reported to the local planning authority at an early stage then the local planning authority is more likely to be able to prevent the site from becoming established, thus avoiding a lengthy and expensive dispute.

New President for CEDR

At the postponed General Assembly of the European Council for Rural Law (CEDR), recently held in Edinburgh, ALA Council member Donald Rennie was elected President, to serve until the next Congress, to be held in Bucharest in September 2011.

Donald was for many years a solicitor in private practice, specialising in agricultural and European Union law, and joint editor of the 7th edition of *Connell on the Agricultural Holdings (Scotland) Acts*. He is a trustee of RSABI, Scotland's charity helping people who have depended on the land, and an honorary member of the European Lawyers Association and of the Scottish Agricultural Arbiters and Valuers Association.

Donald is the third President of CEDR to come from ALA, following Peter Langdon-Davies (1987-89) and Allan Lennon (1993-97). He looks forward to working with colleagues both in the UK and across the Continent to ensure that the

regulations affecting their daily activities are as simple and comprehensible as possible. "The regulations of the EU have a massive effect on the daily lives of farmers across Europe, in the areas of subsidy, food security, food safety and environmental impact. While working within CEDR, I have become more and more aware that the problems faced by farmers in Scotland or the UK are not unique to them and are mirrored across Europe", he said.

Donald's election as President brings to an end the term as Vice-President for the UK of ALA Chairman Roderick Mackay, a position he has held since 1997. There are many at home and elsewhere in the CEDR who owe Roderick great thanks, and his geniality, humour and, not least, his international diplomatic skills will be considerably missed in that forum.



Donald Rennie



Roderick Mackay