Court Ruling Prompts Japanese knotweed Warning

When lawyers act for clients who are buying land, it is conventional to ask the seller some pertinent questions about the land.

These queries cover a whole range of issues including such things as the environment, planning and services etc. One of the queries also asks about "injurious weeds" and, in particular, refers to a weed known as Japanese knotweed. Buyers of domestic property in recent years may also be familiar with a similar question.

> The weed was introduced to the UK during the late nineteenth century and has grown vigorously ever since.

Some regard it as a striking and attractive plant and it has also been seen as something which may have potential for animal feed. However the reality is that it is fast growing and through its underground roots can cause structural damage to property from blocking drains to overwhelming outbuildings. It is also notoriously difficult to control and eliminate.

The Court of Appeal has now ruled on an appeal brought by Network Rail against a judgment made in February 2017 by Cardiff County Court. Here a claim was brought by two property owners against Network Rail whose properties adjoined a railway embankment in South Wales where there was an infestation of Japanese knotweed. Network Rail had known about the weed and had been controlling it in order to maintain visibility on the railway. Although there was no proof of damage to the properties the Court awarded the claimants a sum of money as the presence of the weed on the embankment caused a reduction in the value of their properties and to cover the cost of eradication.

Network Rail appealed the judgment on two grounds, that the weed had not actually caused any physical damage to the two properties and that its presence on the embankment did not stop the property owners enjoying the use of their respective properties.

The Court of Appeal took a wide view of what constitutes damage and found that just because there had been no physical damage to the two properties it did not mean that damage had not been caused to the properties' intangible value.

The Court described Japanese knotweed as a "natural hazard" and that its presence carries a risk of damage in the future. The presence of the weed on the railway embankment had interfered with and damaged the ability of the claimant's to fully use and enjoy their properties and therefore had reduced their value.

As Network Rail were aware of the knotweed on the embankment behind the claimants' properties it was foreseeable by them that the weed had the potential to invade and cause damage to the two properties. Network Rail had therefore failed reasonably to stop the weed from interfering with the claimants' use and enjoyment of their properties. So, whilst no physical damage had occurred, it was enough that damage could occur and Network Rail had known as much.

The significance of the Courts' decision in this case should not be lost on landowners. The judgment firmly and clearly puts the onus on landowners to not only control the weed but also to take positive action to eradicate it. Passive management is not enough. Indeed when selling land any known Japanese knotweed on the property or adjoining land should be disclosed to the buyer. Failing to do so could leave the seller vulnerable to a considerable claim.

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Farm Succession Plans and the 'divorce trap'

Farms and farm businesses are very often passed down the family generations. Typically there are no formalised arrangements for this and there is simply a loose and sometimes unspoken understanding.

This is fine when all is well in the world but matters can very quickly unravel to create enormously difficult and completely unforeseen circumstances, when the unexpected happens.

Sons and daughters may marry having taken over the farm. Their spouse may take an active role in the farm business and even acquire a formal interest in it. But what happens if the marriage breaks down?

Divorce Courts have extremely wide powers including the ability to order the sale of a farm. The Divorce Courts have a statutory obligation to provide for both parties' future financial needs, and those of any dependent children, and the end result could well be a sale of the farm, in whole or in part, to satisfy the financial needs of the 'ex'.

Since a landmark Supreme Court decision in 2010 the status of prenuptial agreements has changed markedly in this jurisdiction. There is now a legal presumption that such agreements will be binding unless the terms are deemed by the Court to be unfair.

This provides a convenient way to protect the future of farms and to ensure that succession plans are honoured, as a prenup can preclude a former spouse from bringing a claim against farm assets and effectively keep them out of the divorce.

The specialist Family Law team at Langleys has considerable experience and expertise in handling cases with an agricultural dimension, and can advise on steps to be taken to protect your interests and those of your family.

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AGRICULTURE NEWS

November 2018

Increased fixed line payments
Woodland Tax exemptions
New Agriculture Bill
Fishermen in hot water
Japanese knotweed warning
Farmers 'divorce trap'

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WELCOME

In our ever-changing world, it is good to have some constants as a reference point. Looking back to the summer, what a harvest... quick and relatively painless with no drying costs.

If there was a downside, it was the remarkable number of combines which required the attention of the local fire fighters. At the end of the summer, the local agricultural shows and ploughing matches served to remind us of the vibrancy and fortitude of our agricultural communities. Long may they flourish!

The serious work is currently underway with our politicians debating the provisions of the newly published Agriculture Bill. Later in the newsletter, Judy Lankester reviews its provisions. Brexit will have happened by the time of our next newsletter so this is a crucial piece of legislation which will lay the ground for the future of the industry for some time to come.

I hope that you enjoy reading all the articles which reflect the breadth of the work with which we are entrusted. Please call any one of us if you have any queries.

Setting the standards

Our legal services are not only benchmarked by our clients they are also measured through two in-depth surveys which present a guide to the best law firms in the UK.

We are pleased to announce that once again our agriculturist estate team has been ranked Tier 1 in the Legal 500 for the East Midlands area and Tier 2 nationally. We have also kept our Band 1 ranking in this years Chambers & Partners.

The results recognise our teams across York and Lincoln and demonstrate the high level of quality and service we deliver to our clients.

We look forward to continuing to set high standards and raising the bar in 2019.

New fixed line wayleave framework increases payments to landowners

From the 18 October 2018 the national fixed line wayleave framework for landowners and infrastructure providers came into effect.

The framework represents significant progress towards the Government's policy of providing fast affordable broadband access for all regardless of where they live.

Currently some rural areas are poorly serviced with broadband access due to the high cost of installing the network to remote areas. The Government's intention now is that by 2033 everyone will have access to a broadband connection direct to their home. A key element of the Government's strategy is the revised Electronic Communications Code which makes it easier and cheaper for infrastructure providers to lay the cables and equipment necessary to implement the rollout. This means that landowners will see an increase in infrastructure providers requiring access to their land to install fibre optic cables through wayleave agreements.

As part of the new framework the Country Landowners Association (CLA) and National Farmers Union (NFU) have negotiated increased rates payable from Openreach and alternative infrastructure providers to landowners. The revised rates are estimated to be worth an extra £40 to £50 in payments to landowners. The new framework sets out the rights and responsibilities of the landowner and the provider and is designed to reduce the time and expense of individual negotiations.

There are two types of agreement where different rates apply: one for infrastructure deployed by Openreach and another for infrastructure deployed by alternative providers.

Please get in touch with our team for any assistance and advice you may need.

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The Not The Fatstock Show Dinner

The concept of a pre-Christmas livestock market and show is a very well established tradition across the country and is often followed by a dinner to celebrate the day's successes. In the past the Newark market was a full subscriber to this tradition and, of course, still holds its thriving Primestock Show.

However, fifteen years ago it decided to discontinue the dinner. There was some disappointment at the prospect of losing this aspect of the occasion and it inspired action by some local market users. The late Chris Waddington and brothers Bob and Mike Sheldon determined that an event should be held to perpetuate the event and they approached Langleys partner, Andrew Fearn, for help with its organisation.

At that stage, they didn't know whether it would attract 6, 60 or 160! Publicity was organised and the dinner was named *'The Not The Fatstock Show Dinner'*. This neatly encapsulated the fact that it was different from its predecessor but was a continuation of the old tradition. It caught the imagination and in the intervening period has attracted attendances of up to 200 diners. Prices have been kept at a reasonable level but a well-supported raffle has enabled the evening to raise funds for the Notts and Lincs Air Ambulance Appeal as well as LSRN (and, more recently Nottinghamshire Rural Support). In fact, well over £20,000 has been raised for these good causes in the period. Latterly, Amy Cowdell, also an agricultural solicitor from Langleys, has taken over the organisational reins and is supported by Andrew Fearn who retains a keen interest in the success of the event.

If you would like to join us for this year's dinner to be held on the 27th of November then please get in touch with Amy.

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If you own a woodland then you may be able to claim exemption from paying certain taxes such as income tax, inheritance and capital gains tax when the woodland passes to a new owner as a result of death or as a gift.

The Government has recently introduced the Conditional Exemption Tax Incentive Scheme to encourage landowners to preserve and protect areas of national heritage. Under this scheme certain property types including buildings, land and woodlands can be designated as heritage properties and as long as certain qualifying conditions are met the owner can claim an exemption from paying inheritance and capital gains tax.

To qualify the woodland has to be ancient semi natural woodland which is listed or could be listed on the inventories of Ancient Woodland that are kept by Natural England and Scottish National Heritage and be either of:

- historical interest;
- outstanding natural beauty; or
- outstanding scientific interest.

Other woodlands on ancient woodland sites may also qualify for this tax exemption. The new owner of the woodland must also make an agreement to look after the woodland and make it available for the public to view.

If your land is under either Environmental Stewardship or Countryside Stewardship then any grants you receive may be affected by any tax exemption you receive under the above scheme.

If you grow a timber crop on your land and manage it as a commercial investment then the crop will be exempt from capital gains tax although the land it grows will not be exempt. In addition any income you make from the sale of timber from commercial woodlands you own is also exempt from both income tax and corporation tax.

We would always recommend that you talk to your accountant before claiming any such exemptions.

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The new Agriculture Bill: A view of the future?

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The new Agriculture Bill under which farming policy will be formulated for years to come is currently going through Parliament.

The current system of direct payments will be phased out over seven years with a new system of "public money for public goods" to be put in place. One can but hope that the new system when introduced will be simpler in terms of both application and administration.

> You would be hard put to find anyone who would argue against the need to look after the environment, but does the new Bill go far enough in terms of also supporting farmers and the need to have a profitable and sustainable farming sector?

For 2019, direct payments will be made on the same basis as now, subject to simplifications where possible. These payments will be funded from the Common Agricultural Policy (CAP).

From 2020, direct payments whilst being broadly similar in terms of processes and payments being made, will be funded by the UK as by that stage we will no longer be part of the CAP.

2021 is when the transitional arrangements in England will commence and from 2027 direct payments will become a thing of the past. Reductions of payments are inevitable. There are various different options being proposed as to how those reductions will take place. It seems inevitable that whichever one or a combination of more than one is chosen, those who claim the largest payments will initially face the larger reductions.

The money saved by reducing the direct payments will be put towards environmental land management schemes under which the payments for providing the "public goods" will be made. The payments will not be linked to farming the land.

According to the government the Bill will supposedly also be underpinned by measures to increase productivity and invest in research and development. However, it has been questioned as to whether the Bill goes far enough in this.

Of course until our way of exiting the EU is finalised the government cannot really make any firm commitments. Regardless of that, the time between now and the inevitable reduction of direct payments should be used to continue with the process of planning for a future, one of a thriving and profitable business which is less reliant upon public funds for survival.

Fishermen in hot water

As if there were not enough arguments in Brussels at the moment, our deep sea fishermen have been clashing with French scallop fishermen off the coast of France but in unregulated waters. Happily, they have reached agreement now but not before the dispute threatened to escalate.

It all reminded me of the importance of coarse fishing in this part of the country. Lake fishing seems ever-popular and large sums are paid for the right to fish from the banks of the Trent. It was always said that coarse fishing was the largest participant sport in the country; an entirely credible claim.

Fishermen have a self-interest in ensuring that fish stocks are maintained or improved and thus the season for fishing is regulated. Traditionally this means that no fishing is permitted within a 3-month period from the middle of March to the middle of June. This is designed to cover the spawning periods of the fish.

Of course, the vast majority of fishermen respect the close season for what it is. Equally there are those who inevitably push at the boundaries and flout the law. Not only does the Environment Agency actively pursue those who fish illegally but it also ensures that the full glare of publicity is focused on the miscreants.

The spotlight has fallen on cases in Hull Magistrates Court this summer where three anglers have been punished for illegal fishing. The fines are not inconsiderable, ranging from £270 to £440 plus orders for costs and a victim surcharge. An expensive pastime! Interestingly, all three were caught by Enforcement Officers on a boat patrol on the River Tees.

Undoubtedly, these cases were small fry compared to the so called scallop war but the publicity they received was pitched to ensure wide coverage and to deter others next Spring!

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