

# AGRICULTURE AND RURAL ESTATES

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# Foreword

We are experiencing uncertain times for agriculture and land management in the UK, with a huge number of changes and challenges that landowners and managers are having to face, from ongoing updates to funding systems to unpredictable climate and financial markets. There are though also new and exciting opportunities emerging for this industry, and our Agriculture & Rural Estates Team at Trowers continue to support our clients to achieve their goals in this ever-evolving world. As we look to the future, we are also delighted to welcome Julia Moon, an Associate, specialising in agricultural property to strengthen our ever growing team.

As you will read in this Spring newsletter, we're turning our focus on to some key topics that we hope to continue to explore over the year ahead. In particular we will be focussing on the topic of next-generation farmers and succession planning. With the need to assess different income streams, we are also starting a new series of articles exploring alternative land use options for landowners, particularly with reference to supporting the pathway to net zero and sustainable energy production. We are looking forward to linking these issues up with the opportunities that are available to lead the way for our clients.

Continuing the theme of alternative land use, in 2023 we are delighted to sponsor the Diversification Award at the Devon Farm Business Awards again. We have the pleasure of meeting the finalists and arranging site visits to find out more about their innovative businesses ahead of the awards in May. The awards are an opportunity to share success stories and celebrate the brilliance of farmers in Devon; a community that we are proud to be part of.

Within the specialist Agriculture & Rural Estates Team we also offer expertise advising on equine law, renewable energy and telecoms. If you have any queries then please do not hesitate to contact us.

Our updated team sheet is at the back of this Newsletter. We are looking forward to working with you over the year ahead and helping you achieve your goals, whatever it throws at us!



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# Darwall versus Dartmoor

**The recent claim brought by Alexander Darwall against the Dartmoor National Park Authority has been watched with interest by locals, landowners, hikers and everyone with an interest in Dartmoor. It took place in the context of an intense debate about public access to wild places, the need for conservation and particularly the growing divide in resources and rights between the general population and the ultra-rich.**

In that context the actual legal arguments can seem almost a side issue, but of course, cases are determined by courts on the letter of the law, and it is important to examine what was actually legally at issue in this case.

## Who is Alexander Darwall?

Darwall is a hedge-fund manager who is owner of the 4,000 acre Blachford Estate on southern Dartmoor. He offers pheasant shoots, deerstalking and holiday rentals on his estate, and he argued that his rights were being infringed by public camping taking place without his permission and that the automatic right to camp was encouraging irresponsible camping and damaging the commons.

## What's the problem with wild camping?

It is of course the case that during the covid lockdown, camping on Dartmoor became much more popular, as a great many people who had no real tradition of hiking or wild camping descended on areas that were relatively close to car parks, and often left large amounts of rubbish and abandoned tents. The Park Authority, however, who were in the main responsible for dealing with these issues, argued that any such problems could be controlled by other byelaws, and that a few bad examples (very clearly related to an extraordinary period of time) was not a reason for overturning what has been a right exercised for nearly 30 years under the Dartmoor Commons Act and, many would argue, for generations before that.

On the matter of the damage to the commons caused by camping, it is ironic that Darwall has himself been warned by Natural England for releasing destructive pheasants close to a National Nature Reserve, Dengles Wood, in direct opposition to the conservation plan for the fragment of temperate rainforest on the edge of southern Dartmoor.

## Why did the judge make this decision?

Darwall's case rested on the interpretation of a very small phrase in the Dartmoor Commons Act 1985, which stated that the public had a 'right of access to the commons on foot

and on horseback for the purposes of open-air recreation'. The judge was in effect asked to declare that this did not give the public a right to camp, and that camping was ancillary to, rather than being in itself, 'open-air recreation'.

To help decide the issue, the judge turned to the National Park and Countryside Act 1949, where the phrase 'open-air recreation' was also found, but in which camping was referred to not as such but as part of the 'facilities' for the enjoyment of open-air recreation. He also decided that there was no 'necessary implication' that open-air recreation required camping. Stopping, sitting down, and picnicking were all likely to be implied by the notion of 'open-air recreation' but the activity of hiking did not necessarily require wild camping.

Of course, the many teenagers and adults who take part on the Ten Tors challenge may well beg to differ, as the hikes they are engaged on necessarily involve overnight camping, and it is the case that many of the most remote areas of Dartmoor are not accessible if the walker has to get there and back in a single day.

It is such arguments, regarding the precise meaning of 'open-air recreation', that are likely to be crucial in attempting to overturn the ruling. For many, however, the issue is more emotional: a well-established 'right' to access wild places, used by thousands of ordinary people, has been overturned by someone who simply wants to protect their exclusive pheasant-shooting business.

## What might happen next?

The Park Authority have decided to take the decision to appeal, but there are of course significant legal costs involved in taking such a step. In the meantime, they have negotiated a limited right to camp in certain areas in exchange for payment to the landowners, something that has generally provoked outrage among the walkers and hikers who see this as an automatic right. However, it may be that the Park Authority has half an eye on the growing political pressure to establish wider rights to roam and the right to wild camp by legislation rather than judicial interpretation. The appeal will no-doubt draw significant attention, with further implications for landowners and the public.



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# Succession planning series: Lifetime gifting

**When considering farm succession planning, most will focus on how they wish to pass on the assets of the business to the next generation upon death. However, lifetime gifting of assets is something that also falls under this umbrella term and can be a strategy worth exploring to help protect the future of the farm estate.**

Trowers' associates Victoria Borrow and Holly Bryan highlight a few important considerations for agricultural landowners looking to gift assets and why you should act now.

## The Capital Gains Tax conundrum

Capital Gains Tax (CGT) is usually charged where a person disposes of an asset and makes a profit (gain) that is capital in nature. The 'gain' is the difference between the value of the asset when you originally acquired it (e.g. purchase price) and the value of the asset upon disposal (e.g. sale price), less allowable deductions. One could be forgiven for thinking that CGT does not apply to gifts. Unfortunately, this is not the case.

Where you transfer an asset to another person at no charge, the market value will be substituted for the 'sale price' for the purposes of calculating the gain. Likewise, where an asset is transferred at an undervalue the difference between the amount received and the true market value will be considered a gift.

The rate of CGT applicable ranges from 10% - 28%, depending on the nature of the asset, the size of the gain and your taxable income.

Whilst the possibility of an immediate tax charge may seem prohibitive, this should not necessarily dissuade you from gifting property to the next generation if that is what works in the best interests of the farm estate. It should be noted that CGT is a lesser tax than Inheritance Tax (usually 40%) and there are ways in which CGT can be mitigated, as explained below.

## Annual Exempt Amount – use it or lose it.

The Annual Exempt Amount (AEA) is the amount of gain an individual can make in each tax year free of tax. In his 2022 Autumn Budget, Chancellor Jeremy Hunt announced that the AEA is to be slashed from £12,300 to £6,000 from April 2023 and £3,000 from April 2024.

As a practical example what this means is: currently a married couple could gift a field to a child with a gain of £24,000 and pay no CGT, but after 6 April 2023, the same transaction could potentially result in a CGT bill of £1,200 – £2,400.

The message being, if you are thinking about gifting property, timing is a significant factor.

## Reliefs

If the gain exceeds the AEA and gifting assets now is still the right option for you, there are ways in which we can help you plan ahead. Reliefs such as Principal Private Residence Relief and Hold-over Relief may provide an exemption from CGT altogether, a reduction in the amount payable, or a deferral of the tax to a later date.

When it comes to lifetime gifting of farm or agricultural land, Hold-over Relief can be a particularly useful tool for deferring the tax charge, especially given the increase in land prices over recent years. The effect of Hold-over Relief is that the chargeable gain is postponed until future disposal of the asset by the person who has received it, meaning the person gifting the land avoids a substantial tax liability where there are no cash proceeds available to pay it.

Whether a relief is available and which relief is appropriate will depend upon the type of asset, any previous relief claimed and the future intentions of the parties. In all instances the gain will need to be reported to HMRC and a claim submitted within the correct timeframe to avoid penalties.

Working in collaboration with your existing professional advisers, Trowers can help guide you through the process to best preserve the assets of the farm estate and achieve your succession aims.

## Protecting gifts for your intended recipient

If you elect to make a lifetime gift, whether for tax purposes or otherwise, it is important to properly consider whether your gift is protected for the intended recipient. There are a number of circumstances in which your gift could fall into the legal ownership of an unintended person, such as an unmarried partner or spouse. This can be incredibly difficult, and stressful, to recover.

If, for example, you make a lump sum gift to your child and this gift is used to purchase a property held in the joint names of your child and their unmarried partner, your gift may inadvertently have been transferred into the joint names of both your child and their partner, resulting in the partner being entitled to half of it if their relationship breaks down, irrespective of the fact that the gift was made by you to your own child.

The same applies for property; where a property is transferred into the joint names of two individuals, the legal presumption is that they are each entitled to half of the equity in it (irrespective of the source of the equity) unless otherwise confirmed in a document such as a Declaration of Trust (which is explained further below). If the property is held as 'joint tenants', on the death of one owner, it will pass automatically to the other (irrespective of whether the deceased owner contributed most/all of the equity). Whilst it is possible to rebut a presumption of equal equity entitlement, the process for this can be lengthy and expensive. The process for attempting to undo a property passing automatically to a joint owner on death is even more complex.

All of these scenarios can be avoided by seeking specialist asset protection advice, and if necessary, putting in place the asset protection documents below:

## Unmarried Couples

- Declaration of Trust: this document confirms the shares in which a property's owners hold its equity. The shares can be fixed to a gifted lump sum, or 'floating', to protect ongoing or additional contributions by one owner. Declarations of Trust are legally binding and enforceable at court and are effective asset protection tools.
- Cohabitation Agreement: A Cohabitation Agreement can not only include a binding Declaration of Trust as above, but also deal with various other issues and possibilities, including the management of household outgoings, protection in respect of bank accounts, and how the property should be dealt with on relationship breakdown. These documents are akin to Pre-Nuptial Agreements.

## Married Couples

- Pre-Nuptial Agreement: in order to ring-fence assets between married couples, it will be necessary for them to enter into a Pre-Nuptial Agreement (if prior to marriage) or Post-Nuptial Agreement (if following marriage). These agreements confirm how assets are to be divided in the event the marriage or civil partnership breaks down.

The above documents should always be entered into prior to the lifetime gift being made, if possible, to ensure your gift is protected immediately and you can have peace of mind that it shall be secure for your intended recipient.

For any private wealth advice, whether relating to farm estates or any kind of personal and family assets, please do not hesitate to get in touch with Trower's legal experts.



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# Tips for collecting debts

**While businesses in all sectors are facing increased costs of doing business, the high rate of inflation, high energy costs, grain and fertilizer supply chain disruption caused by the ongoing conflict in Ukraine as well as avian flu affecting poultry farming, all combine to present challenging trading conditions across the agriculture sector.**

It's not always possible to pass on the increased costs to the buyers; for example, when suppliers to supermarkets are locked into fixed price contracts. Even when it is possible, the cost-of-living crisis means that attempting to pass costs along the supply chain is risky as consumers are cutting back on spending and an increase in prices could reduce demand.

At times like this, cash flow is under pressure and payment timescales can start to slip, testing business resilience. Many agricultural business insolvencies are caused when an otherwise good business runs out of cash. Non- or slow-paying customers can be a big factor in that.

## Here are our top tips for collecting payments promptly:

- Know your customer. Who are they? Do you have complete contact details including for the person who will authorise payments to you? Are there any processes at the customer's organisation that you need to know about?
- Consider whether to credit check your customers. You might do this at the outset of a business relationship; but consider whether to update this during the relationship too.
- Make sure both you and the customer are aware of the applicable payment timetable. You might not be able to set this if, for example, the customer is a large supermarket chain requiring you to trade under their standard terms. But make sure those terms are adhered to. Draw attention to this at appropriate stages. If you have the ability to set the terms, review these so that they work for you.
- Invoice promptly and accurately at the appropriate milestone and make sure it comes to your customer's attention. Make sure there are no mistakes in the invoicing process and that these are addressed correctly.

- Communicate effectively and make sure the customer has all the information they need to make payment: purchase order numbers, bank details, and clarity within the invoices.
- Implement and adhere to a credit control policy: diarise and send reminders. Speak to your customers; a polite telephone call is harder to ignore than a letter. Find out when their payment runs are typically made and send reminders in time with these.
- Be aware of warning signs of insolvency. Later payments, director unavailability, excuses for delays, high staff turnover in finance teams can be warning signs. Don't ignore these.
- Don't be afraid to escalate the issue. Charge interest in accordance with your terms for late payments. Change your terms (where possible) to require cash on delivery, deposits or payments on account for persistent offenders. Consider formal debt recovery action.



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# Life on the land with award winner Jerry Sanders-Carr

**In 2022, Trowers & Hamlins sponsored the Farm Diversification category of Devon Farm Business Awards. Nicola Janus-Harris, Partner and Head of Agriculture and Rural Estates at Trowers, had the privilege of acting as a judge in the process, visiting the shortlisted nominees and agreeing on the winning finalist.**

With the 2023 awards now fast approaching, we thought it would be a good time to catch up with last year's winner, Jerry Sanders-Carr, to find out more about his farm business near Exeter, and how winning the award has impacted him.

## What's your background in farming?

I am a 5th generation farmer. After attending university and gaining a degree in Agriculture and Management I then worked at large farming businesses in Kenya and America, before returning to the UK which saw me leave agriculture for a while working in The City and for various international finance institutions. After 20 plus years sat in an office and travelling a lot, I decided I wanted a better quality of life. So, we moved back to Devon and I worked alongside my father allowing him to properly retire from the farm. It's certainly the best move I have made for my mental wellbeing and has given the kids space to grow up and appreciate the countryside.

## How have you placed your own mark on the farm?

The farm has always been a true Devon mixed farm, but mum and dad started to branch out some years ago with converting redundant barns to rental dwellings and starting a small caravan site. Dad had also taken livestock away from the farm as he got older. When I came back I wanted to reintroduce livestock into the mix and move more along the lines of [regenerative farming](#), not that it was called that at the time. I fundamentally believe mixed farming is right for our area and our soils. Along with bringing sheep and cattle back, I have moved away from plough based arable operations to direct drilling crops (now in the 14th year of doing so). Having livestock is improving our soil and allows for a more diverse income stream. It also made me realise that direct marketing of my lamb and beef put more control back in my hands rather than rely on markets.

The farming operation has to be able to stand on its own feet, but I have looked at diversification to increase the farms profitability. So alongside direct meat sales, I started a caravan storage business, and more recently converted a farmhouse into a high-end holiday let. I have also worked hard to develop a following for my breeding stock and now am the largest seller of breeding rams and ewes of the variety in the southwest.

## What do you consider to be most important in running your farm?

Building for the future and reducing risk are key, but also working in such a way that improves the soil and farmland environment. Soil is key to the farm; we are still learning about how it works and have some way to go yet. It is a slow process, but I am already seeing improvements. I am very lucky to say my job is also my hobby, or as my wife sometimes says, my passion. I don't look at it like I am going to work. I genuinely enjoy every day even with the challenges it can throw at you at times, though don't get me started on the weather! I will be very happy if I leave the farm in a better state than when I took it over, and that is not saying Dad did not do the same, he certainly did. I look around at other farmers striving to do the same. Social media is fantastic at giving an insight and inspiration in how others manage their farms.

## What challenges and opportunities are next for your farming business?

Without a doubt the changes ongoing to farm business support from the government is the biggest challenge to all farms. The loss of BPS and the very confused start to [ELMS](#) and [SFI](#) are making business decisions for the future a challenge. I am still unsure of the government's motivation behind the new schemes and fear their approach to food security is flawed. But I am still positive about farming and looking to invest in the pure farming part of the business further. Some of the new technology coming to the market is very exciting and I hope to take another step change to a true low disturbance direct drill in the next 12 months. I am also expanding my use of precision grazing techniques to hopefully reduce my fertiliser and feed bills. There are also further diversification opportunities I want to explore, one already in the pipeline is development of a secure dog walking field, as we are close to Exeter. The main challenge is finding the time to do all this!

## The Devon Farm Business Awards: What has winning meant to you, and what advice would you give to any future nominees?

It was great to get the recognition and feedback about how the farm has developed and meeting so many people at the awards. Winning was just the bonus. Getting through to the final three was great but winning was totally unexpected. If you are nominated, my advice would be to

embrace the opportunity: sit down before the judges arrive on farm to really think why you could win the category you are nominated in. Use the opportunity to do a review of the business and take a moment to look at the changes you have made and the challenges you have overcome. Who knows, it may even spark a new idea in your mind.

Trowers & Hamlins are proud to sponsor the Devon Farm Business Awards once again. The final awards ceremony takes place at Devon County Showground on Wednesday 17th May.



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# Unlocking development potential

**The UK is facing a shortage of development sites, with land availability being described as either limited or very limited. This shortage of development land, combined with developers' ambitions to meet the government's housebuilding target to address the chronic undersupply of housing, have led to continued growth in land values. There are a number of ways for landowners and developers to work together.**

Here are common examples of structures which can unlock these potential development sites and enable landowners to retain the use of their land for as long as possible.

## Conditional contracts

Conditional contracts are entered into between landowners and developers for the sale of land for development. The contract is conditional upon certain specified conditions being met before the land is transferred to the developer and the price paid. Often these contracts are conditional upon the developer obtaining planning permission. The benefit is that landowners can sell sites upfront without the need to obtain planning permission, whilst still realising development land values. Landowners can continue to use their land until the condition is met and the transfer completed. During the period that the developer is seeking planning permission, the landowner can continue to farm and claim land payments. Conditional contracts also give all parties certainty that (once the condition has been met) the transaction will be completed, meaning that the developer must buy the site from the landowner.

## Option agreements

Option agreements are more speculative than conditional contracts, generally lasting for several years. The option gives the developer the right to buy the site from the landowner during a defined period, called the option period, for either an agreed sum or a price to be calculated later. Option agreements are similar to conditional contracts in that the exercise of the option and completion of the sale is subject to conditions being met, usually the grant of planning permission. It is usual for the landowner to also receive an upfront payment in return for the grant of the option. However, the difference between an option and a conditional contract is that once the conditions are met, completion will only take place if the developer exercises the option. Which they may not wish to do, for example, if market conditions have worsened.

So, unlike with conditional contracts, the landowner does not have the certainty that the developer will buy the site.

As with conditional contracts, one of the main benefits of option agreements for landowners is that they can continue to use their land until such time as the developer calls for the sale. The landowner will benefit from an initial option fee and even if the developer does not proceed the landowner would generally benefit from the planning work undertaken by the developer.

## Promotion agreements

Promotion agreements cover a broad range of agreements. Generally, they relate to speculative sites that may not be allocated by the Local Planning Authority for development. As the name suggests, the aim of promotion agreements is to promote the site for development. The promoter will usually liaise with the local authority with the aim of allocating the site for development, seek to obtain planning permission and market the sale of the site to developers once permission has been obtained. The benefit of promotion agreements for landowners is that the promoter bears the upfront costs of obtaining the planning permission and marketing the site. Generally, the promoter is paid from the net sale proceeds, only if the land is successfully sold to a developer with the benefit of planning permission. As with conditional contracts and option agreements, landowners can retain the benefit and use of their land until such a time as the land is sold and allows the landowner to realise the uplift in value of this land with the benefit of planning permission.

## Overage agreements

Overage agreements are not strictly mechanisms by which development land can be sold and purchased, but they are a common means of safeguarding landowners from missing out on future value uplift after it has been sold. The benefit of an overage agreement is that it enables landowners to sell, confident that if the land is sold on by the developer or developed under a more valuable planning permission, then the landowner will be entitled to a further payment should the land attract a higher value. Importantly though, overage agreements do not guarantee future uplift or payment, but provide a mechanism to secure that the landowner shares in any uplift realised. The payment of overage will usually be dependent upon certain conditions being met such as the grant of planning permission or the amount of the developer's sale proceeds for the site exceeding an agreed threshold.



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# Pathway to net zero: Converting your land to battery storage

**Over the next year we will be looking at alternative and diversified land use options, and in particular those which contribute towards a more sustainable existence.**

## Battery storage

Battery storage will be key as the UK shifts from a reliance on fossil fuels to a greener electric method, enabling storage of renewable energy, releasing it as needed. It is particularly key considering the UK's aim to be net-zero by 2050, by which point it is estimated that the UK will require 25GW of battery storage. With only 4GW of storage currently being developed across the country and 40-60% of the UK's electricity currently sourced from gas, we will likely see a huge rise in battery storage projects. One of the UK's largest battery sites is in East Yorkshire, which has enough electricity to power 300,000 homes for two hours.

Further research was published in 2022 that showed potential for an even greener approach in the future: sand batteries. The battery contains large volumes of sand and is heated to a high temperature that then powers a resistance heater. When energy is required, the battery is able to discharge 200kW of power (enough to power 100 homes). A key benefit of sand batteries is that, unlike lithium-ion batteries, there is no chemical reaction and so, consequently, they do not continuously degrade or give rise to flammable danger.

As research continues to develop on the use and benefits of battery storage, those with land holdings may consider the financial benefit of investing into the growing area and consider the positive environmental impact that battery storage may have.

## The legal process

Electricity storage is governed by the Electricity Act 1989, which the Government has recently proposed to amend to provide further detail and include a definition of 'stored energy'. For landowners, utilising land as a battery storage site provides reliable income, minimal costs and a means of diversifying land investment by entering the energy sector.

The legal process will involve an option to lease, otherwise referred to as an option agreement, between the landowner and an energy company. This will grant only the specific named energy company a right to request a lease within the agreed option period, which is usually between 2-4 years and the landowner will then be contractually bound to grant the lease. A landowner should consider the potential risk of locking away land in this way, as during the option period they will not be able to interfere or freely

deal with the land and so it will limit how they are able to use it. To reflect these limitations on use, a landowner will be able to potentially gain additional financial benefit by charging a fee to the energy company for the grant of the option. Generally, an energy company will require the landowner to enter into an exclusivity agreement which will prevent the landowner from entering into an alternative agreement over the land for a period of 6-12 months.

If the right is exercised within that period the lease will be granted and commence upon construction and installation of the battery facility, and rental income is likely to be paid per acre or unit of energy produced on a quarterly basis (although this is dependent on terms agreed between the parties).

Planning permission will also be required to erect the battery storage site. The energy company will be responsible for obtaining the relevant planning permission, construction and installation of the battery. It will also be responsible for the day-to-day running and operation, repair and maintenance. At the end of the lease term, the energy company can be responsible for the removal of any equipment and be obliged to return the land to the landowner in its original state. The energy company will also generally cover any legal costs incurred.

## Things to consider as a landowner

- Land must be in a suitable location. It cannot be in a flood zone, protected land (i.e., part of a national park or AONB)
- Land should not be classified as "best and most versatile" agricultural land. Land that is grade 3b or poorer is the most suitable for battery storage.
- Battery storage usually requires around 3 acres of land, which is significantly less than would be required for a solar farm.
- As a result of noise disturbance, land should not be a part of, or near to, residential development.
- Ideally land should be flat, as a battery storage site will be constructed on a concrete base.
- Where considering granting an option agreement, land should be available for the full period of the option term.
- Tax advice should be taken to ensure that estate planning is not impacted by a change of use away from classic agricultural purposes.

If you are considering battery storage as an option, please contact a local ELMS and SFI advisor to understand the implications it could have on funding. To find out more about how best to diversify your land or advice on battery storage, please reach out to the Real Estate, Agriculture or Energy team at Trowers.



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