

Information

For

OWNERS OF AGRICULTURAL LAND WITH DEVELOPMENT POTENTIAL

Subject to

AGRICULTURAL TENANTS' RIGHT TO BUY

1. Introduction

Many local authorities, builders, NHS Trusts, mineral operators and others own ground, often on the urban fringe, which continues in agricultural use, typically with a tenant, pending the ripening of the ground for development. The introduction of a pre-emptive right to buy for agricultural tenants, has significantly complicated the realisation of development value from ground which is affected by the right.

2. Establishment of the Right

Every tenant under a pre 27th November 2003 agricultural lease, including partnership tenants, is entitled to a pre-emptive right to purchase what is let to him by registering an interest. The effect of registration of an interest is that the right to buy is crystallised either by the owner notifying the tenant of his proposal to transfer the land or the owner advertising the land or entering into negotiations (or continuing with existing negotiations) with a view to transferring the land. The price at which the right can be exercised is normally the price which might be expected between a reasonable owner and a reasonable sitting tenant taking into account special purchasers but discounting any value for a non-agricultural use for which planning permission has not been obtained.

3. Land Affected

The land affected is that subject to the lease at the time that the right arises. It does not affect, for example, land previously resumed from the lease.

4. Excepted Transactions

Gifts, intra group transfers, compulsory purchases, partnership changes and the carrying into effect of contracts (including options) concluded prior to registration of an interest are all matters which do not trigger the right to buy.

5. Action Required

- (a) Review all agricultural tenancies of land with development potential. The threat of the right to buy being exercised could be used to cause difficulties with commercial arrangements.
- (b) Review all grazing leases; the prospect of a right to buy gives a grazier an even greater incentive than before to claim an agricultural tenancy. Many graziers are found to be justified in doing so.
- (c) Consider whether advantage can be taken of any resumption clauses in the lease; if the land does not form part of the lease at the time that the right to buy becomes exerciseable it is not affected.
- (d) If planning permission can be obtained for the whole, or nearly the whole, of the leased ground an incontestable notice to quit can be given and the tenant will have to depart. BEWARE of having discussions about a sale prior to the notice to quit taking effect and the tenant departing as otherwise a right to buy could be triggered and/or the notice to quit would fall.
- (e) It may be possible to take advantage of the provision excluding contracts preceding registration of an interest from triggering the right to buy.

This is merely an outline of the considerations which may be relevant in any particular case. Turcan Connell would be glad to help in the review process and with any follow up action which is required as a result.

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This note is intended as a brief summary of the Agricultural Tenants' Right to Buy provisions of the Agricultural Holdings (Scotland) Act 2003. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. If you do not wish to receive further briefing notes and similar information from us please write to us at the address given above requesting that your name be deleted from our database.

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