



Napthens' Rural team is welcomed to Cumbria by Rob Sheasby of the NFU

Penrith expansion for Rural team

The Rural team at Napthens has been welcomed to Cumbria by the regional head of the NFU as the firm opened its new office in Penrith.

Napthens acts for a number of agricultural clients, and is an official panel firm of the NFU.

Now the Rural team – including two new recruits – will have a significant, permanent presence in Penrith at the Agriculture House offices on Cromwell Road – also home to the NFU.

Head of department, Andrew Holden, who will divide his time between Penrith and his base in Lancashire, said: "We have been able to look after our clients well from our existing offices but as our rural service has grown we

felt that a move to Cumbria with a permanent facility in Penrith would be a great boost.

"We see the office in Penrith as a base to service our clients throughout Cumbria".

"We are also looking forward to working in partnership with our colleagues at the NFU in Cumbria to the benefit of members' business interests."

Robert Sheasby, NFU regional director, added: "As an NFU recommended legal panel firm, NFU Cumbrian members have always been keen to use Napthens as they have been selected for their expertise, quality advice in rural and agricultural issues, and are carefully monitored to ensure that service standards are maintained.

"Andrew Holden and his team are keen to forge links with our Cumbrian farmer members and use the NFU Legal Assistance Scheme to provide members with cost effective legal support.

"By being based at the Penrith office we now have a great rural centre with Napthens and Mike Sanderson, the NFU Cumbria county adviser all under one roof, a one stop shop for agricultural expertise in the county."

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Welcome



Andrew Holden

Since the last edition of Rural Law, it has been a busy time for myself and the newly-expanded team.

As you will see from this edition we have opened a new office in Penrith as a central hub for our Cumbrian clients. As previously, we will still travel to see you at the farm where possible but this at least gives us a more local base for our more northerly clients and contacts.

Additionally I would like to welcome Siobhan Turner and Alex Sykes who have joined the team in Blackburn and Penrith respectively to ensure we continue to offer our clients the best service possible.

In this edition we have an update on employment issues, our new fixed fee probate offering and a piece on the potential changes to permitted development for planning applications.

On a final note we hope to be announcing a series of seminars on business structures and renewable energy schemes, so watch this space or call for dates and venues.

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Easements are often poorly defined

Easements explained

What are they? How are they created? What do they mean for the land-owner?

Easements go back to the earliest days of English law. An easement is a right which one landowner has over land belonging to another and which benefits the first landowner.

A right of way across a neighbour's land is amongst the most common. Unfortunately the extent and scope of the easement is often poorly defined. If your land is subject to a right in favour of somebody else, this can have a major impact on your use of the land and on its value.

What is the scope of an easement? If you have an access to a field, can you use that track to gain access to another field acquired at another time?

The answer is no – you cannot extend an easement beyond its original purpose.

Equally, a right of way for agricultural purposes does not automatically give a right to the same land for residential use.

And what about the width of the track? Modern machines are getting ever bigger. Court judgments give a mixed picture; often the courts will adopt a 'commercially purposive' approach – the courts will try to make the easement work in a modern context.

However, the judgement in the recent court of appeal case of *Oliver v Symons* would suggest that owners of such machinery cannot expect the easement to grow with the machines – to do so would effectively sterilize a corridor of land either side of the easement track which is clearly unfair to the owner of the land over which the track runs.

The real message which came out of *Oliver v Symons* was this: sort the problem out by negotiation and agreement. If you cannot reach agreement, get advice early and avoid getting into a dispute.

Disputes over easements can be very costly and it is critically important to ensure that the easement is properly drafted and fit for purpose from the very beginning.

If you require assistance, whether in relation to an easement or any other matter, please do not hesitate to contact us.

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Show time

As ever, Napthens' Rural team will be attending a significant number of agricultural shows this year so look out for us at Garstang, Dufton, Hodder Valley, Penrith, Appleby, Westmorland, Cockermonth, Dalston, Cartmel, Ulverston and North Lonsdale, Skelton and Cumberland shows.

We will hopefully be available at the NFU tents at most of the shows or alternatively please contact us on our mobiles, and we can find a quiet place for an informal meeting or chat.

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Planning announcement to bring wealth of opportunities

Guest Article



Earlier in the year, Communities Secretary, Eric Pickles announced a number of new planning measures to be implemented in the spring.



Simon Haley

For agriculture use, this opens up the potential for buildings to be converted to other business uses without full planning permission from the local authority. This definition of business use could include a wide range of uses, including heavy industry.

The new permitted development rights only cover change of use and do not allow conversion to residential use. However, certain agricultural buildings in the right location – if no longer suitable or necessary for agriculture – could be transformed into shops, offices and leisure facilities that are beneficial to rural areas, under permitted development with controls as yet unknown.

The scale of permitted conversions is still to be announced, and it is too early to speculate about restrictions, with a prior approval process in place for larger conversions. However, in principle this allows a considerable saving against submitting a normal planning application – a fee of

£80 compared with the £385 as is currently in place.

In essence, this process of changing business use will provide opportunities for redundant farm resources to be utilised in a more effective manner.

Reading Agricultural Consultants (RAC) has a long history of planning related work for both applicants and planning authorities, and regularly undertakes work to support applications, whether change of use, design and access statement, agricultural supporting appraisal justification, or the full process.

We believe that this planning announcement will bring forward

some very interesting diversification opportunities.

If the proposals are adopted then, dependant on timing, a number of cases where a full planning application is currently required may be classified as permitted development.

This would mean no fee and less stringent examination. As always, appraisals and plans will be important for future development and enterprise use.

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Simon Haley

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Meet the team

Alex Sykes has recently joined the firm as a rural solicitor based in the Penrith office.

I recently joined Napthens from a small rural practice in north Cumbria.

Based in the Penrith office, I act for farming clients on agricultural property issues including land

registration, easements, option agreements and leases for wind turbines.

I provide advice on manorial incidents, sales and purchases of farms and farm land and tenancy agreements.

Having lived most of my life in Cumbria (it was Westmorland when we arrived in Kendal in 1967) it is an area which I love and know well.

I went to school near Windermere and from there moved to work in forestry in the Scottish Borders before studying forestry at Aberdeen University.

I worked for two firms of land agents in north Cumbria as a professional forest manager, advising local farmers and estate owners for around 15 years before setting up and running a small hardwood sawmill, manufacturing and fitting wooden floors and custom-built furniture. Fun, but not especially lucrative!

Having experienced the agricultural sector from a practical and managerial perspective, I followed in my father's footsteps and moved into the legal profession, qualifying as a solicitor in 2009.

Work in a small high street practice was varied and interesting, including residential, commercial

and agricultural property issues as well as debt collection and private client work – family law and wills, trusts and probate.

However, my particular interest has always been issues which impact and affect the agricultural sector. My background has given me a unique insight into the industry, and I hope this experience will benefit my clients at Napthens.

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Alex Sykes

Are your employees eligible to work in the UK?

Recruiting staff can have its hazards, especially where your employees are not EU nationals.



In the rural sector, recruitment of foreign employees is high, but there is concern that few, if any, identity checks are conducted at recruitment – in particular checking whether the individual has the right to work in the UK.

Do you really know the nationality of the individual you have interviewed? They may sound or look European, but in fact may be a national of a non-EU country and so not eligible to work in the UK without permission.

Under the Immigration, Asylum and Nationality Act 2006, it is a criminal offence to knowingly employ a person who does not have permission to work in the UK.

A summary conviction carries a fine of no more than the statutory maximum (currently £5,000) for each person employed illegally and/or imprisonment of up to six months. On indictment, there is an uncapped fine and/or imprisonment of up to two years.

It is a civil offence to negligently employ an illegal worker and carries a penalty of up to £10,000 for each person illegally employed.

There is a defence if an employer can evidence that they have carried out all or some of the checks required in relation to an individual's employment before they started work.

In order to evidence an employee's right to work in the UK, an employer must undertake various checks and keep records of the same. Evidence can include:

- A passport or national identity card from a British citizen or national of the European Economic Area or Switzerland
- A passport showing an exemption from immigration control
- A residence permit or permanent residence card

- Visa or immigration documents issued by the Home Office
- A Biometric Immigration Document indicating a person's right to stay in the UK indefinitely
- A full UK birth certificate or adoption certificate

Next time you recruit an individual, ensure you carry out a full identity and right to work check.



Oliver McCann

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Helping you with probate

A family bereavement is always a devastating blow to those left behind, but arguably it will hit farming families harder than anyone else.

It is very rare for a farmer to 'retire' - they are often still heavily involved with the family business at the time of their death. They are usually partners in the business and often owners of a very valuable collection of assets.

Apart from the practical headaches of running the family farm without a key member of the team, there are worries about succession in the business and the possibility of Inheritance Tax being imposed if all of the necessary conditions are not met to gain Agricultural Property Relief.

We understand how difficult it can be to deal with practicalities at a time of loss. As rural business specialists with many years' experience in dealing with probate and estate administration, we can help you through the process, and remove the worry and confusion.

We understand costs will be a concern at a time of bereavement. We aim to remove this additional worry by providing a clear, fixed cost service.

Our wealth of experience means you can rest assured you will receive the very best legal support from trusted professionals.

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