RuralBrief

Summer 2025

The changing face of a family farm

Farming and family farms have changed and evolved many times over the years, but for many farmers, it must feel accelerated for their generation following post Brexit changes to the Basic Payment Scheme and replacement environmental schemes and then the announcement of changes to Agricultural Property Relief and Business Property Relief scheduled for March 2027. This coupled with endless red tape and legislation to get to grips with.

All frustrating at a time when the public's support for British farmers is at an all-time high and there has been a huge interest following TV shows such as Clarkson's Farm.

Whilst these issues are causing genuine anxiety there is now some time to plan and consider how your farm business will adapt. Be in a position to consider all the options and how they could work for you and your family, especially if you plan to hand over to the next generation.

When approaching reviewing and possibly restructuring any business, you begin by reviewing the whole business structure, operations and finances to help identify and improve efficiency, increase profitability and address current and future financial shortfalls. Here at Gullands, we can work with you to develop the legal framework to ensure the business continues to operate successfully.

Business structure

Start by looking at the business structure. How is the business and the assets held and in light of future changes is this still the most effective way? Farmers increasingly need to work with their tax and legal advisors as each farming business is unique, so you need to make sure you have a tailored solution which works for you and your plans now and in the future.

Business operations

Next, review your farming operations. The greatest threat to your future success might actually come from changes to the climate or market conditions. Diversification is one option but not the only option.

Diversification projects can be a good way for other family members who want a sustainable role in the farm, but where current operations don't allow for it. Risk needs to be limited and thought given to the structuring of any new business projects.

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Diversification could also involve renting land and/ or buildings to people outside of the family for their own enterprises. It doesn't mean all of the responsibility falls on you to change or adapt, just how the assets are used. Make sure you protect yourself and have an agreement in place that works for you to avoid any surprises or disputes along the way.

Do you have the right people in the right roles, i.e. those who need to make the day-to-day decisions able to do so?

All too often there are too many people involved in the business structure or are in roles doing tasks they have always done for pay it is difficult to justify. It's hard but ask if they still need that level of responsibility or if they are the right person for the role and is there a more efficient way of doing it. This is hard to address in a family business, but knowing when it is time to take a step back is important. Create a structure which is fit for the business you farm now and, in the future, not the one you farmed 20 years ago.

Review finances

When reviewing business finances, you might have assets that are no longer as effective to keep, or which might be sold and leased back to free up working capital or to provide funds to invest. Review all financial arrangements and make sure you are not tied into agreements which no longer work or are too expensive.

If you are considering a diversified project, then there might be alternatives to help you attract investment or grant funding available without you taking on all of the financial risk.

Finally, please do talk to your advisors about how they can help. We are at both the Weald of Kent Ploughing Match and have representatives at the Gravesend and Rochester Ploughing Match. Do come and talk to us and together we can help to lift some of that burden so you can make informed decisions which are right for your business.

Sarah Astley is an Associate Solicitor at Gullands Solicitors **www.gullands.com**

Is now the time for a Trust?

With the proposed changes to Agricultural Property Relief (APR) and Business Property Relief (BPR) from 6 April 2026, there may now be a place for a Trust as part of your estate planning.

There is a window of opportunity until 6 April 2026 to settle APR and BPR assets into Trust and this will not trigger an upfront IHT change as long as the settlor survives seven years. On or after 6 April 2026, if you place the same assets into Trust, there will be an upfront charge of 10% with a further 10% due if the settlor dies within seven years.

Trusts which hold APR and BPR assets will need to consider where the funds to meet an IHT charge will be held. Trusts which are within the relevant property regime (where there is a tax charge every 10 years) cannot use life assurance as an option to provide these funds. These Trusts might need to be changed to enable the income to be used to pay the IHT charges to avoid having to sell property assets.

A Trust may also be a consideration for those who have been widowed since 30th October 2024 and who are widowed up to 6 April 2026. Where the deceased had an interest in a farm or business this might want to be diverted away from the surviving spouse into a suitable trust to 'bank' the APR and BPR available.

Trusts can be complex and the purpose they were set up for may change over time. If you would like to review whether a Trust is the right structure for you, or to review an existing Trust, get in touch today.

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Join us at the Weald of Kent Ploughing Match

We would like to welcome you to visit our marquee at the Weald of Kent Ploughing Match on Saturday 13th September 2025 at Moatenden Farm, Maidstone Road, Headcorn TN27 9PT. Tickets are now on sale at www.wkpma.co.uk or on the gate.

Refreshments throughout the day for clients and guests and games to keep your little ones entertained.

Gravesend and Rochester Ploughing Match

We are delighted to support the Gravesend and Rochester Ploughing Match.

This year's match is on Saturday 20th September 2025, Beluncle Farm, Hoo, ME9 9LU.

Should I gift farmland to family members?

Until now there has been no tax benefit for making lifetime gifts of business or agricultural assets as the assets passed without Inheritance tax or Capital Gains Tax.

Changes announced in the 30th October 2024 budget mean that after 6 April 2026, there will be an Inheritance Tax (IHT) charge of 20% on business or agricultural assets which exceed the new £1m allowance and nil rate band allowance.

For those considering making a gift of agricultural land or property now or after 6 April 2026, you can still make an outright gift in your lifetime and if you survive for seven years after making the gift it is IHT free. Capital Gains Tax (CGT) can be held over on gifts of agricultural or business assets, so although there may be a gain in the future, i.e. if it is sold, no charge is triggered on the gifting itself.

There is now more incentive for farmers and business owners to consider lifetime gifting. This is why conversations around succession of the farm business are so important as this needs to be considered along with the ownership of assets.

It is also important to have an up-to-date valuation of the assets so that an informed decision can be made.

The government has now published further details following the recent consultation on APR and BPR and the draft Finance Bill.

As a reminder of the changes, after 6 April 2026, a married couple will between the be able to leave £2.65m free on IHT (this is two APR/BPR £1m allowances and two nil rate bands of £325,000). If either of their estate is valued under £2m on death, then a further £350,000 residence nil rate band may be available.

It is worth noting that pensions are brought into the scope of IHT from 6 April 2027.

If you do decide to gift parcels of land to family members for their own farming/recreational use, think about issues such as how it may affect rights of way and access, wayleave agreements, ELMS and your ongoing farming operations. If the land is for development to perhaps to allow them to covert a redundant farm building, consider a pre-nuptial or post-nuptial agreement or a co-habitation agreement if they have a partner, as you may not want a holding in the middle of your land sold because they have ended a relationship or marriage.

You could place a restrictive covenant on the land or building to ensure that what has been agreed remains in place, i.e. that they will only ever build one dwelling or the size of the dwelling.

It is also important to make sure everyone involved has an up-to-date Will as the rules of intestacy will apply after death if there isn't a valid Will, which could also see the holding leave family hands.

There is clearly a lot to think about when considering any gifting of land or buildings, so before you make any final decisions, chat to our team about all of the options available and along with your tax adviser, we can help you to reach the best decision for your farm business.

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Protect your land and property interests with an Option Agreement

With the Planning and Infrastructure Bill currently making its way through Parliament this summer, it looks increasingly likely that some land which had previously been ruled out for development or energy infrastructure projects such as solar farms, will now have greater potential for gaining planning permission in the future.

The government wants to build more homes and through the Bill it is also reducing the opportunities for legal challenge and aims to speed up the planning process. Planning in the future will become more strategic and local authorities will need to provide a strategic plan (Spatial Development Strategy) for each local area.

There will also be an increase in the number of development corporations, the publicly owned delivery vehicles that will help create new towns where they are most needed. The Ebbsfleet Development Corporation, for example, has been very successful in delivering new homes in North Kent.

Within the Bill there are currently more provisions for the compulsory purchase of land. Worryingly for some landowners is the possibility that a local authority may in the future be able to approve their own Compulsory Purchase Orders and disregard 'hope value' when deciding compensation.

Landowners, especially those who own land adjoining built-up areas, should be proactive and start considering now what the future use of their land might be, to ensure the maximum value is achieved.

Whether you decide to approach a developer or they contact you, what should you consider, to protect your interests?

Options Agreements

An Option Agreement is an agreement between a landowner and a developer and provides a way for landowners to increase the value of their land without having to incur the costs of obtaining planning permission. Typically, the developer may agree to pay for the landowner's legal fees and other upfront costs of the landowner which are then deducted from the final purchase price should the developer exercise the option and acquire the site.

The agreement is a contract which allows the buyer (usually a developer) to serve notice on the owner to sell them the land and/or property at the agreed price and agreed time, but being an option, the developer has the choice about whether to proceed with the purchase or not. For this they usually pay the landowner a fee to fix the option for a set period of time.

Landowners who are approached by a developer should consider a number of issues before entering into an option agreement, such as:

- What is the objective of the project, how will it affect their other land holdings/ farm operations and how much money can the landowner expect to receive?
- How much involvement do they want to have with the project, and will they need to appoint someone to act on their behalf?
- Can they continue to use the land whilst it is subject to the planning process?
- How much access to the land or property will the buyer need to carry out their own due diligence?
- Will the project impact on any other planning applications the landowner may want to make on neighbouring land or buildings as it is common for there to be a restriction in place?
- Will the landowner benefit from the full value of the land from the agreement, or could the developer seek to change the planning permission in the future?
- How long is the period of the Option for? Can the developer extend it?
- Is there scope for overage in the future to provide the landowner with additional payments if there is more intensive development of the site than originally envisaged?

There are alternative structures to an Option Agreement such as a Conditional Contract, Unconditional Contract, Promotion Agreement or a Joint Venture Arrangement which provide landowners with differing means of securing obligations from developers and realising the capital value of their property.

Whatever type of agreement you choose, it is important to ensure that all the terms are carefully considered and it is accurately drafted to protect the commercial and legal interests of each party.

Here at Gullands we have worked with many local landowners in Kent and beyond on various development projects, guiding them through the process to ensure they achieve their goals whilst protecting their legal interests.

If you would like to discuss your legal requirements regarding your land or buildings, please do get in touch with us today.

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Will a recent court ruling see an *increase* in claims in private nuisance law?

A recent High Court decision in *Nicholas & Ors v Thomas & Anor* illustrates how the courts might deal with issues around competing land use between neighbours when evaluating nuisance claims in the future.

This latest decision follows *Fearn v Tate*, which involved whether the Tate Modern's 360-degree viewing platform constituted a private nuisance to neighbouring residents, since gallery visitors on the platform could look inside their glass-fronted apartments. By a majority the court found that the occupation of the flats and enjoyment of the views from them as residents, as opposed to paying visitors, was a "general and ordinary" use of the land whereas the Tate could not demonstrate the viewing platform was "ordinary or necessary" for its activities as an art gallery. This decision represented somewhat of a departure from the previous approach of courts to nuisance claims which was to consider what was objectively reasonable.

Nicholas was a bitter dispute in rural Cornwall between the breeders of rare and expensive falcons for the Middle East racing market and a neighbouring farm. Despite conversations and warnings of the birds' sensitivity to sound and visual disturbance, particularly during their breeding season, the neighbour went ahead and built a barn in that season adjacent to the aviary and carried out a number of noisy and visually disturbing activities resulting in the deaths of some of the birds and loss of eggs. The claimants alleged they had suffered losses in excess of £1m.

The claimants made private nuisance, negligence and harassment claims. The court found that building the barn was a normal activity that a landowner might undertake but doing so in the breeding season without due consideration of the claimants and their business was an actionable nuisance as it was an unreasonable interference with the claimants' use and enjoyment of their land.

The defendants claimed their actions were ordinary for the location, but the High Court still found in favour of the claimants on both the nuisance and negligence grounds. The ruling highlighted the defendants had been on notice of the sensitivities of the falcons which were long established on the site but had carried on with their construction work anyway

The judge in Nicholas helpfully set out a distillation of the leading judgment of Lord Legatt in Fearn adopting a structured approach to the 'common and ordinary test' equally applicable in both rural and built-up environments. Key elements include:-

1. Balancing *the (sometimes) conflicting rights of neighbouring landowners, …..often described in terms of "give and take",*

2. Addressing *whether interference is substantial …. by reference to the standards of an ordinary or average person in the claimant's position*

3. Consideration of the ordinary use of the claimant's and defendant's land and the "locality principle" requiring the court to assess the immediate neighbourhood

The court found that falcon breeding in this location was in accordance with the rural and agricultural tenor of the locality. This was not a case where the claimants had applied a special use to their property in breach of the locality principle.

There is no limit as to what a nuisance might be, and landowners need to consider whether their actions go above and beyond normal 'give and take' or 'live and let live' which typically balances out the actions of neighbours.

Disputes between neighbouring landowners can escalate very quickly. This one cost the losing defendants £258,500 in damages. This ruling highlights it is important that in the future and whatever you do on your own land, you must do it with due consideration of your neighbours and paying particular heed to any requests made, taking advice where necessary from a land agent, surveyor or solicitor especially before investing in expensive plant or buildings.

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What is Alternative Dispute Resolution (ADR), and will it help me finalise my divorce faster and cost less than going to court?

ADR is a way to privately resolve a dispute between a married or cohabiting couple which is faster and cheaper than having to go to court. You need to approach it with an open and cooperative mindset and a clear idea of your goals along with a willingness to reach a compromise.

ADR can be:

Mediation – where a neutral mediator will help the couple negotiate an agreement.

Collaborative divorce – where each party has their own solicitor and everyone works together to agree a solution.

Arbitration – where decisions are made by an expert after reviewing information provided by both parties, who have agreed to abide by their decision.

Mediation can also help encourage a more amicable, longer-term relationship, as it encourages a former couple to be cooperative to sort out problems which is useful if you have children together. It also gives each of them more control over the outcome.

ADR is suitable where both parties are willing to communicate, there is no history of violence or coercive behaviour and where issues are straightforward and not overly complex. It helps to strip out the 'background noise' which often accompanies a relationship breakdown, so that the separating couple can focus on the issues which need to be dealt with.

If ADR sounds right for you then choose an experienced ADR solicitor and mediator to guide you. Decide whether you will use mediation, collaborative divorce or arbitration. Prepare all of the relevant financial information which will be needed. Finally, agree the terms for the negotiation and communication and stick to them.

Whilst there is a cost involved in ADR, whichever method you choose, the idea is that it will be cheaper than litigation where lengthy negotiations take place and court proceedings are issued.

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CONTACT

If you would like any additional information on any of the subjects discussed in this newsletter please do not hesitate to contact us.


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