

AGRICULTURAL RESTRICTIONS AND THEIR REMOVAL

Ellisons Property Litigation Department has recently been asked to advise on a number of properties which are subject to agricultural restrictions.

These types of restriction prevent occupation of the property to any persons other than those wholly employed in agriculture or forestry.

There are a number of routes for removal of these ties, but each depends on the type of document which creates the restriction.

If the restriction is included within the title of the property, or within planning permission, it is open to the owner of the property to make an application to the Upper Tribunal (Lands Chamber) for an Order that removes the agricultural tie. In order to be successful, the owner must establish that there is no market for either the sale or letting of the property with the tie. In order to demonstrate that there is no market for the property, extensive marketing must be carried out and a report must be provided to the Tribunal which shows that there has been no interest in the property whilst it includes the tie.

If the restriction is created by a previous planning permission, then there are a number of other options open to the owner. The first is to seek agreement from the Local Planning Authority to the release of the land from the restriction. This may involve payment of a sum, but it is a matter of negotiation to arrive at a figure acceptable to both parties.

The other route which could be adopted when dealing with a tie created by a previous planning permission is to make an application for a Certificate of Lawful Use under Section 191 of the Town and Country Planning Act 1990. This section allows an Applicant to obtain a certificate confirming that the use of the land in breach of the planning permission is lawful. In order to obtain the certificate, the Applicant must show there has been a breach of the planning permission for at least 10 years, and there is no current enforcement notice in force.

It is important to obtain clear advice on the prospects of success with regard to any of these options before spending what can be considerable sums in market testing exercises.

Should you require any further clarification or advice on the above please do not hesitate to contact Ellisons Solicitors Property Litigation Department.

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