



# michelmore

**CAAV National Tutorial 2024**

19 September 2024

# introduction

**David Steel, Chairman – CAAV  
Education and Examinations  
Committee**

# Welcome

- Housekeeping
- Structure of the day

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- No feedback form, no notes!

# Scenario Overview

Client/ Landlord: Bruce and Holly (Gennero Estate)

-Four children:

- Jack (31), Lucy (29), Karl (23) and Simon (19)

Gennero Estate – 750ha:

-Home Farm (400ha) – Lucy and Stuart in partnership with Bruce and Holly

-Argyle Farm (90ha): Dairy Farm – AHA 1986

-Hillside Farm (120ha)

-10ha bare land, commercial and industrial estate portfolio

-Golf course

**Conflicting interests between children**

# section one

Planning

## Question

The family wishes for the Estate to take steps to ensure its land can be developed in the future. There is a disagreement about whether the Estate should focus on the solar development or residential development. Karl believes that housing would be damaging to surrounding environment and that the local river is likely to be polluted.

On your tables consider:

1. The relevant planning policy (at national and local level) attributable to a future housing development on the Estate.
2. What steps the Estate should take to increase the chances of planning permission being obtained for residential development.
3. If, in your view, the Estate is better to pursue the solar development or residential development options.
4. Should the family be telling anyone from the neighbouring area about their plans before an application is submitted?

# The Planning System

# Overview of English planning system

- The use and development of all land and buildings in England are governed by the planning system
- Most planning matters are the responsibility of local planning authorities (LPAs)
- Planning officers
- Planning committee
- Secretary of State



# Plan-led system



## Planning policies

- National Planning Policy Framework (NPPF)
  - Framework for local plans
  - Material consideration in decision making
- Planning Practice Guidance (PPG)

# Planning considerations - summary



Local plan



Any applicable  
Neighbourhood  
plan



NPPF and PPG



Supplementary  
Planning  
Documents or  
Guidance



Planning  
conditions



CIL liability



CIL  
Regulations –  
statutory s 106  
tests

# Planning Applications

# Planning permission is required for the development of land

- 'Development' consists of
  - i. Operations affecting land; and
  - ii. Change of use of land.
- 'Operational development' includes building operations, engineering operations, mining operations and other operations
- 'Material' change of use

# Planning policy/considerations

LPA will decide a planning application in line with relevant policies in its local plan, unless **“material considerations”** indicate otherwise

NPPF; privacy; parking; highway safety; traffic; noise; impact on LB/CA; layout and density; design, appearance and materials; previous PP and nature conservation

# Permitted development

- **Planning permission or permitted development?**
- **Class Q**
- **Prior approval PD – needs Council sign off**
- **Agricultural use to school – Class S?!**

# S.106 Agreements



## What is a section 106?

- Planning obligations
- Planning obligations may:
  - Restrict the development or use of land
  - Require operations or activities to be carried out
  - Require land to be used in a particular way
  - Require payment of financial sums to the LPA

## Need for a planning obligation will tend to arise in larger developments.

Permission is granted subject to a S106 being entered

When the s106 is completed, permission should follow

Anyone with a legal interest in S106 land must enter into the S106 Agreement

Runs with the land

# Planning obligation can only constitute a reason for granting planning permission, if obligation is:



Necessary to make the proposed development acceptable in planning terms



Directly related to the proposed development



Fairly and reasonably related in scale and kind to the proposed development.



(Regulation 122, CIL Regulations 2010)

## Typical obligations

- Affordable housing
- Open space
- On-site BNG
- Financial contributions for infrastructure, education, healthcare etc
- Delivery of use/buildings

# Local Plan Review, Council and Neighbour engagement

- **Local Plan Reviews**
- **LPA Engagement**
- **Neighbour Engagement**

# Solar or Residential development?

- Big housing drive
- Local needs
- Check local plan policies/SPDs/any Climate Emergency declarations by the LPA
- Energy needs for the area
- High quality agricultural land unlikely to get PP for solar
- Conservation area and listed buildings
- Alternative locations assessment
- Alternative technologies considered assessment
- Mitigation of impacts employed
- Could solar panels be provided on existing industrial buildings and new houses?

# Should we tell the Neighbours?!

- **Trust**
- **Neighbour/community input**
  - Local housing needs**
  - Benefits/section 106 contributions**
- **Will be consulted as part of planning process – far better to hear it from the family first**
- **Much more likely to be granted permission if neighbours support it**

# sectiontwo

Farming Partnerships



# The Scenario

- Bruce – previous partnership with his in-laws (cannot find a written Partnership Agreement)
- Bruce, Holly, Lucy and Stuart - current farming in partnership in relation to Home Farm.
- Legal title to the entire Estate is in both Bruce and Holly's names.
- Bruce and Holly intend to retire from the business and leave the running of the Estate to the children.

- Bruce and Holly proposed that the Estate should be left to their children equally on Bruce and Holly's deaths
- Suggestion that an agreement should be prepared to govern the running of the Estate by the children (not received by the children well).
- Stuart and Lucy said they found it unfair that they would have to share the ownership, management and profits of Home Farm four ways with Lucy's siblings. They have been the only ones to take any interest in Home Farm for the past 10 years and they have both put their personal money into the farm.
- The other children are not particularly interested in Home Farm and Karl expressed that he did not want Home Farm, nor the tenanted farm to remain in the Estate.

## Break Out (10 minutes)

- Holly and Bruce want to discuss their concerns with you and their accountant, as they are worried that their suggestion that the Estate, as a whole, is run by the children together, may not be the best idea. Stuart and Lucy's comments have particularly concerned them.
- You need to prepare the key points which you will need to address in your meeting with Bruce and Holly. You need to focus on what the existing structure is and how this may be structured going forward to best effect the children's interests and wishes.
- Your role as agent would be to diagnose the issues and figure out which other advisers are required to assist with the Estates plans in relation to the re-structure.

# Partnership between Bruce and his in-laws

1. Was the partnership wound up?
2. What happened to the assets?
3. Does Bruce know what the partnership assets were?

# Current Agreement between Bruce, Holly, Lucy and Stuart

1. As we set out earlier, as there is no written agreement, the Partnership Act 1890 will kick in to provide default provisions.
2. Bruce and Holly need to be aware that if they retire from the current partnership, this would dissolve the partnership, as per section 26 Partnership Act 1890.
3. Is Home Farm currently a partnership asset?
4. What has been agreed between the current partners in relation to capital / profit shares etc.

## Potential Future Agreement(s)

7. Split the Estate?
8. How is the land going to be dealt with?
9. Get succession planning advice.
10. Should the agreement be for a fixed or indefinite term?
11. What are the partnership assets? How is the capital to be divided between the partners?
12. How is the land to be dealt with – will it be a partnership asset? If so, what proportion of the land capital will each partner own?
13. If it is not, what occupation rights are the partnership going to have in relation to the land?

## Potential Future Agreement(s) - Continued

1. What is happening with the tenanted land? How are the profits/losses to be divided between the partners? How much should the partners be entitled to draw on account of profits?
2. Bank accounts – how many signatories are required, are there to be any limits on expenditure?
3. Frequency of partnership meetings. What voting procedures should there be? Is there anything that requires the consent of all the partners.
4. What is to take place on the death/retirement of a partner? Notice periods, options to purchase and outgoing partners share, nominated successor partners?
5. In what circumstances would a partner be expelled?
6. How would any dispute be resolved?

***Break***  
***Back at 10:55am***



# section three

Tax

## Tax issues

We know that the Estate currently consists of a mixture of commercial, residential, and agricultural land. The split between in-hand operations and property let-out is roughly 50/50.

We are asked to set out the tax issues facing the Estate generally, and what the Estate could be doing to mitigate the issues.

We are told that Bruce and Holly own the Estate. Inheritance Tax is going to be a key driver when considering how to structure the Estate as part of their overall succession plan.

Accordingly, we should start by considering the availability of any potential reliefs from IHT for the composite parts of the Estate (750ha in total).

# Tax issues

## How to approach the question...

**Break down the composite parts of the Estate and consider them in turn**

The main capital tax to consider when structuring – **Inheritance Tax**

**Agricultural Property Relief (APR)** – Section 115 IHTA 1984

Agricultural value

Used for agricultural purposes

Occupied and used by the owner for at least two years

Occupied and used by a third party for at least seven years

Tenancies – rates of relief

Farmhouses

## **Tax issues**

### **Business Relief (BR) – Section 105 IHTA 1984**

Categories of relevant business property

100% BR or 50% BR

Trading / investment

### **Capital Gains Tax (CGT)**

20% or 24% (residential property) for higher rate taxpayers

Any available reliefs?

### **How does diversification affect the tax treatment?**

Solar development

Environmental schemes

# sectionfour

Recovery of land for development

## **A Note on AHA 1986 Tenancies and Notices to Quit:**

Why are Notices to Quit so important?

1. The regulation and operation of Security of Tenure
2. The right of the tenant to challenge the basis upon which the landlord can terminate the tenancy.

(MAKE SURE YOU KNOW THE PROCEDURE FOR BOTH S27(3) NOTICES AND THE INCONTESTABLE NOTICES TO QUIT (CASES A-H))

## Case Study- Development of Solar Farm

- You have been told that the Estate wishes to explore solar development opportunities, and the land identified for solar development is subject to the AHA tenancy.

## Case Study- Development of Solar Farm

The early resumption clause in the tenancy states:

*“The Tenant shall yield up possession of such part or parts of the Holding as are required by the Landlord for non-agricultural purposes from time to time within six weeks of the date of service of a notice to quit.”*

*And:*

*“The Landlord may at any time and at all times during the said tenancy enter upon the said premises with Agents, Servants, Workmen and others for the purpose of inspecting the same or for making roads sewers or drains or for any other purpose connected with his estate.”*



## Case Study- Development of Solar Farm

1. What is the likely procedure for obtaining vacant possession of the Holding considering the relevant facts, statutory framework and the early resumption clause?
2. Is there anything the Estate needs to do before it serves notice on Hans?
3. What is the appropriate strategy?

## When advising the Estate you will need to consider:

- The relevant statutory requirements pursuant to the AHA 1986 (CASE B AND S27(3)(f)- IF RELEVANT);
- The common law requirements; and
- Any further contractual requirements contained in the tenancy agreement.

## QUESTION ONE

What is the likely procedure for obtaining vacant possession of the Holding considering the relevant facts, statutory framework and the early resumption clause?

## The Starting Point...

- Hans has a tenancy governed by AHA 1986
- The Estate wants to obtain possession of part of the holding
- For the solar development

What are the mechanisms for obtaining VP under AHA 1986?

- Case B
- S27(3)(f)

## **CASE B Procedure:**

**Where the landlord requires the holding for a non-agricultural use which requires planning permission.**

- Landlord serves notice to quit;
- Tenant serves notice referring case to arbitration within 1 month;
- Arbitrator appointed by agreement or application to RICS to appoint arbitrator within 3 months; and
- Notice to quit suspended until outcome of arbitration.

## **SECTION 27(3)(F) Procedure:**

**Where the landlord requires the holding for a non-agricultural use which does not require planning permission and does not fall within CASE B.**

- Landlord serves notice to quit;
- Tenant must serve counter-notice within 1 month to contest the notice to quit;
- Landlord must apply to the Tribunal for consent to the operation of the notice to quit within 1 month;
- Tenant must submit reply to the Tribunal within 1 month.

## SECTION 27(3)(F) Procedure:

- Landlord must prove:
  - The notice to quit falls within s27(3)(f); and
  - That a fair and reasonable landlord would insist upon possession;

The notice to quit cannot take effect unless and until the Tribunal grant the landlord consent to its operation.

## Can the Estate obtain possession of part of the holding?

- At common law a NTQ part is invalid – 3 exceptions
- Is an exception relevant here?

Yes - the written tenancy contains a contractual clause that expressly allows for a NTQ of part (resumption of part clause)



## Can the Estate satisfy the requirements to serve a Case B notice?

The Estate must establish whether the land is required for a use other than for agriculture and planning permission has been obtained.

## Case B: “LAND”

- Check if all the land specified in the notice to quit is required for non-agricultural use.
- Check if all of the land is covered by planning permission (if this has been obtained).

## Case B: “Required”

The land can be required by either the landlord or an identified developer.

Can the Estate demonstrate:

- a clear **intention to implement** the planning permission;
- a **reasonable prospect of achieving it**; and
- that they are able to satisfy the **planning conditions** and any **reserved matters** during the notice period.

## Case B: “Planning Permission”

- Planning permission needs to be in place before the NTQ is served and would need to cover **all** the land subject to the NTQ.
- There is no planning permission here as of yet.

Will this be sufficient?

## Case B: “A use other than for Agriculture”

- Is the development clearly non-agricultural?

In this case, yes.

## Case B: “Planning Permission”

Outline planning permission has been found to be acceptable for the purposes of Case B.

**However**, it needs to be viewed alongside the requirement that the Estate will need to be in a position to implement the permission at the date the NTQ expires.

**Also, the Estate** will need to consider any planning conditions that may need dealing with before planning permission can be implemented.

## How long should the NTQ give Brian to Vacate?

- S25(1) AHA 1986 – NTQ will be invalid unless at least 12 months in duration expiring on term date
- S25(2)(b) exception – short notice can be permitted where the NTQ is given pursuant to provision in the tenancy which authorises part resumption for non-ag purpose

## Does a short notice period apply in this case?

The early resumption clause in the tenancy states:

*“The Tenant shall yield up possession of such part or parts of the Holding as are required by the Landlord for non-agricultural purposes from time to time within six weeks of the date of service of a notice to quit.”*

*And*

*“The Landlord may at any time and at all times during the said tenancy enter upon the said premises with Agents, Servants, Workmen and others for the purpose of inspecting the same or for making roads sewers or drains or for any other purpose connected with his estate.”*



## Other things to consider?

- What about access?- any provisions in the tenancy?
- What compensation may be due to the tenant in either circumstances?
  - Basic and additional compensation under the 1986 Act
- Could the Estate negotiate a surrender of the land required?

# Compensation

## Basic Compensation:

- 1 year current rent without proof of loss; or
- Actual loss or two years rent which is the lower.

## Additional Compensation:

- 4 times the annual current rent.

Compensation for Improvements and Tenant Right.

## QUESTION TWO

1. Is there anything the Estate needs to do before it serves notice on Hans?

## Should the Estate wait until it obtains full planning permission before serving a Case B NTQ?

- If the Estate obtains outline planning permission only and serves a NTQ giving only 6 weeks notice, as per the tenancy agreement, it is unlikely to be able to demonstrate that it “required” the land and is in a position to implement the planning permission at the date of expiry of the NTQ
- The Estate should wait until it receives planning permission and then serve the NTQ.

## **The Estate would also need to make sure the substance of the NTQ is correct**

The NTQ must be in writing and identify :

- The parties
- Description of the holding
- The reason – ie Case B or s27(3)(f)
- The part of the holding subject to the NTQ including a plan
- The expiry date and running words

The NTQ must be for the correct notice period (already considered)

## QUESTION THREE

1. What is the appropriate strategy?

***Lunch***  
***Back at 13:25pm***

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# section five

**Development Consent Orders**



## Planning Permission or DCO?

Depends on the scale of the “*generation station*”.

S15 Planning Act 2008 states that a generation station is within scope of the Nationally Significant Infrastructure regime where:

*It is in England*

*It does not generate electricity from wind*

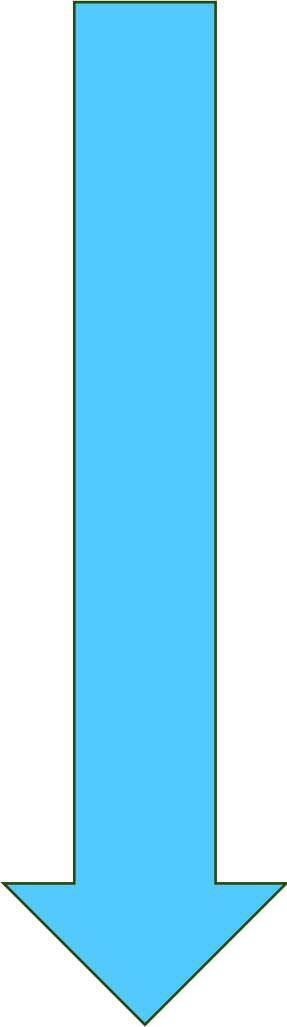
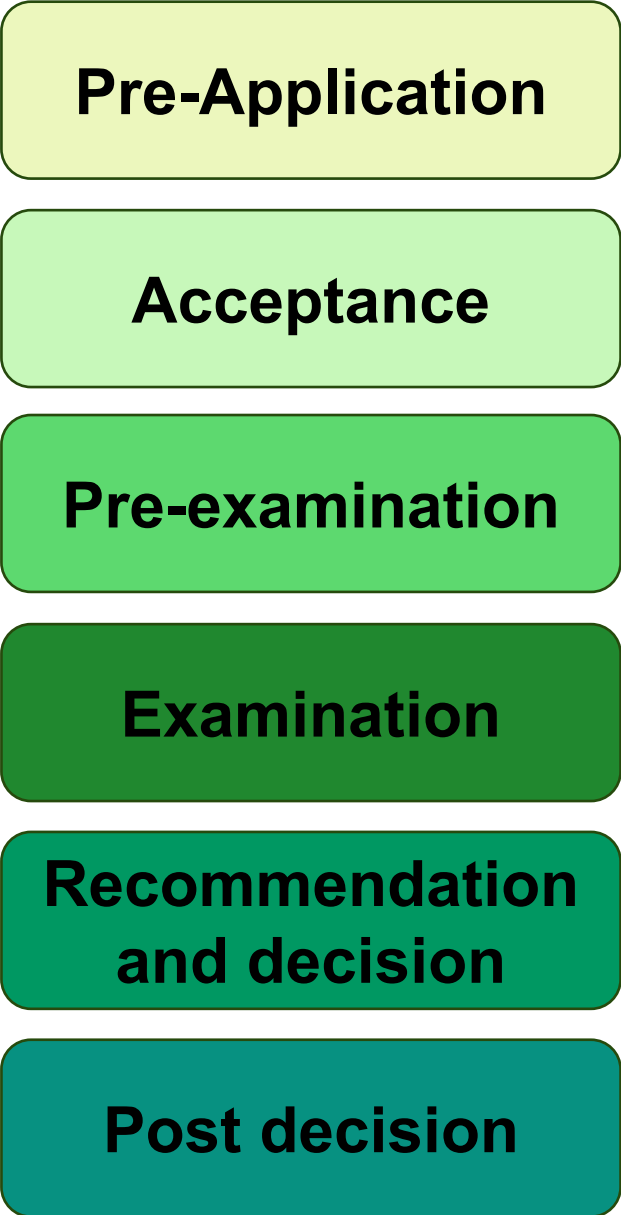
*It is not an offshore generating station*

*Its capacity is more than 50 megawatts*

Scheme must be >50MW to qualify for the DCO process.

Schemes <50MW are eligible by planning permission only.

**DCO Process**



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## Pros and Cons

### DCO's

**Unified  
Authorisation  
Process**

- Cost
- Inflexibility of post-consent alterations

**Certainty of  
Outcome**

- Time
- Scale

**Certainty of  
Costs**

### Planning Permission

• Scale

• Cost

• More Flexible

• Less Formal

• Time

• No guarantee of outcome

• No certainty of costs

• Consents may be required from other bodies

**any questions?**

# sectionsix

**Development Consent Orders:  
Compensation**

## Compulsory Purchase

- ❑ Legal mechanism by which certain bodies (known as ‘acquiring authorities’) can acquire land without the consent of the owner.
- ❑ Law surrounding Compulsory Purchase Orders can be hard to navigate, as it is fragmented; different powers for different acquiring authorities stem from different legislation (e.g. Acquisition of Land Act 1981, Transport and Works Act 1992, Town and Country Planning Act 1990, Water Industry Act 1991)
- ❑ Acquiring authorities will predominantly be local authorities, National Highways or various utility companies
- ❑ For valuation purposes, you need to be aware of Land Compensation Act 1961 (as amended)

# Compulsory Purchase, Nationally Significant Infrastructure Projects and Development Consent Orders (DCOs)

## S122 Planning Act 2008:

*“(1) An order granting development consent may include provision authorising the compulsory acquisition of land only if the Secretary of State is satisfied that the conditions in subsections (2) and (3) are met.*

*(2) The condition is that the land—*

*(a) is required for the development to which the development consent relates,*

*(b) is required to facilitate or is incidental to that development, or*

*(c) is replacement land which is to be given in exchange for the order land under section 131 or 132\*.”*

*(3) The condition is that there is a compelling case in the public interest for the land to be acquired compulsorily.”*

\*Commons, open spaces etc

## Scenario

Assuming the solar company decided that the size and scale of the proposed development warrants pursuing a development consent order, and that it has powers (or the relevant acquiring authority) to compulsorily acquire the land falling within the development, consider the likely heads of claim the Estate and its tenants may have in respect of compensation.

Assume that the Estate cannot reach agreement with the developer as to how the solar development will be structured.

For the purposes of considering the claim of the tenants, assume that all relevant notices have been served and the developer is in a position to compulsorily acquire the land it needs.



# **DCO Compensation**

## **Rules of Compensation**

# Implementation

## **Notice to Treat**

- Notice to Treat
- Notice of Entry
- Conveyance

## **General Vesting Declaration**

- Single Procedure

## Limitation

- ❑ Always be mindful of limitation period for compulsory purchase claims
- ❑ Generally, 6 year period to bring a claim, but different limitation periods can apply for different types of claim

## Rules of Compensation – Section 5 LCA 1961

1. No allowance is to be made because the acquisition is compulsory.
2. The value is to be the open market value assuming a willing seller. You will note that it is not a Red Book valuation but prescribed by statute.
3. Special suitability for a statutory purpose or where there is no market apart from the special needs of a particular purchaser is to be disregarded.
  - The value of the land will be assessed in light of the no-scheme principle set out in section 6A. Any increase or decrease in the value of land caused by the scheme for which the authority acquires the land, or by the prospect of that scheme, is to be disregarded (this is the Point Gourde principle codified).
4. Any increase in value due to use contrary to the law is to be disregarded.
5. Special and rare cases only can be dealt with on a cost of reinstatement basis.
6. Rule two above does not affect assessment of compensation for disturbance on other matters not based on the value of the land.

## Compensation – Valuation Date (Notice of Entry)

s.5A of the LCA 1961 (now) states as follows:

### 5A Relevant valuation date

(3) If the land is the subject of a notice to treat, the relevant valuation date is the earlier of–

- (a) the date when the acquiring authority enters on and takes possession of the land, and
- (b) the date when the assessment is made.

(5) If the acquiring authority enters on and takes possession of part of the land–

- (a) specified in a notice of entry, or
- (b) in respect of which a payment into court has been made,

the authority is deemed, for the purposes of subsection (3)(a), to have entered on and taken possession of the whole of that land on that date.

(unless there is another express provision to the contrary).

## Compensation – Valuation Date (General Vesting Declaration)

(4) If the land is the subject of a general vesting declaration, the relevant valuation date is the earlier of—

(a) the vesting date, and

(b) the date when the assessment is made,

and “general vesting declaration” and “vesting date” have the meanings given in section 2 of the Compulsory Purchase (Vesting Declarations) Act 1981.

S5A(5B) If—

(a) the land is the subject of a general vesting declaration, and

(b) the vesting date is different for different parts of the land,

the first of the vesting dates is deemed for the purposes of subsection (4)(a) to be the vesting date for the whole of the land.

## Compensation – Basis of Valuation

**“Willing Seller on Open Market”** - An open market does not mean a hypothetical market but the market in which, at the relevant date the seller could legitimately have sold his property and the buyer could have bought it. (*Gajapatiraju v Vizagapatam* [1939] AC 302)

**“Might be Expected”** - *“Expected refers to the expectations of properly qualified persons who have taken pains to inform themselves of all the particulars ascertainable about the property, and its capabilities, the demand for it, and the likely buyers”* (*IRC v Clay* [1914] 3 KB 466)

**“rebus sic stantibus”** – *“the value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities”* (*Fraser -v- City of Fraserville* [1917] AC 187)

## Compensation – Value, No Scheme Principle

“Disregarding effect of scheme” - *Point Gourde Quarrying and Transport Co Ltd v Superintendent of Crown Lands* [1947] AC 565 PC, *Waters v Welsh Development Agency* [2004] 1 WLR 1304

### Section 6A LCA 1961

**Rule 1:** it is to be assumed that the scheme was cancelled on the relevant valuation date.

**Rule 2:** it is to be assumed that no action has been taken (including acquisition of any land, and any development or works) by the acquiring authority wholly or mainly for the purposes of the scheme.

**Rule 3:** it is to be assumed that there is no prospect of the same scheme, or any other project to meet the same or substantially the same need, being carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers.

**Rule 4:** it is to be assumed that no other projects would have been carried out in the exercise of a statutory function or by the exercise of compulsory purchase powers if the scheme had been cancelled on the relevant valuation date.

**Rule 5:** if there was a reduction in the value of land as a result of—

- (a) the prospect of the scheme (including before the scheme or the compulsory acquisition in question was authorised), or
- (b) the fact that the land was blighted land as a result of the scheme,

that reduction is to be disregarded.



# DCO Compensation Heads of Claim

# Compensation – Heads of Claim

Remember: "LIDOF and LLAP I(T)"

- Land and Betterment
- Injurious Affection and Severance
- Disturbance
- Others
  - Basic Loss and occupiers' loss payments
  - Home Loss payments
  - Accommodation Works
  - Advance Payments
  - Interest
- Fees



## L – Land and Betterment

### Acquired Land

- What is the value of acquired land according to the valuation principles previously discussed?
- Are there any **special factors** that might increase the value the acquired land?

Note: *Section 6B LCA 1961*

The valuation exercise may account for certain actual and/or prospective **planning permissions**.

### Retained Land

- Would the development increase the value of the retained land? (**Betterment**)
- If so, the total compensation paid will be reduced by the amount of the increase in value.
- Compensation is paid in a single sum even when made of multiple heads of claim.  
Betterment is set off against the claim as a whole.

## I – Injurious Affection & Severance

### Injurious affection

- Injurious affection is the depreciation in value of retained land as a result of the development on the land acquired by the acquiring authority. This has the opposite effect to betterment.

### Severance

- Severance claims arise when the land acquired contributes to the value of the land retained, so that when severed, the retained land loses value.

### *Section 7 Compulsory Purchase Act 1965:*

*In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the value of the land purchased by the acquiring authority, but also to the damage, if any, to be sustained by the owner of the land by reason of the severing of the land purchased from the other land of the owner, or otherwise injuriously affecting that other land by the exercise of powers conferred by this or the special Act.*

## D – Disturbance

### Core principle

- That anything which is not too remote and is a natural, and reasonable consequence of the acquisition, is to be compensated.

### Entitlement

- Be an Occupier
- Have an Estate in land (freehold or leasehold interest)
- Have lost possession as a result of the compulsory acquisition

And, of course, the claim must be consistent with the basis of value of the land taken (there can be no double-recovery) (*Horn v Sunderland Corporation* [1941] 2 KB 26).

### Reasonable behaviour

## ○ – Other Claims (supplementary payments)

### Home Loss

To qualify for a home loss payment, the claimant must show:

1. They have been in occupation of the dwelling, or a substantial part of it, as their only or main residence;
2. Their occupation is by virtue of:
  - An **interest in the dwelling**, or
  - A **right to occupy** the dwelling:
    - As a statutory tenant
    - Under a contract (including an employment contract)
    - A license pursuant to statutory provisions
3. They have been in such **occupation for a year** ending with the date of displacement;
4. They are displaced **in consequence of the compulsory acquisition** of an interest in the dwelling.

(The Home Loss Payments (Prescribed Amounts) (England) Regulations 2023)

## ○ – Other Claims (continued)

### Basic Loss

A claimant will be entitled to a basic loss payment if:

1. They have a **qualifying interest** in land; and
2. That interest is **acquired compulsorily**.

### Interaction with Home Loss Payments

- Where a claimant is also entitled to a home loss payment, their entitlement to a basic loss payment is limited to the extent to which the basic loss payment exceeds the home loss payment.

### Calculation of basic loss payments

- 7.5% of the value of the property acquired, capped at £75,000.

(Land Compensation Act 1973, section 33A)

## **O – Other Claims (continued)**

### **Occupiers' Loss**

A claimant will be entitled to an occupiers' loss payment if:

1. They are entitled to a Basic Loss Payment; and
2. Occupied the land for the period on which that qualification is based.

### **Calculation of occupiers' loss payments**

- 2.5% of the value of the claimant's interest, capped at £25,000;
- the *land amount*;
- the *building amount*.

(Land Compensation Act 1973, section 33B-C)



## **O – Other Claims (continued)**

### **Occupiers' Loss**

#### **“Land amount”**

##### **Agricultural land:**

- Claim is for land < 100 ha – £100 per hectare or part thereof.
- Claim is for land > 100 ha – £100 per hectare for the first 100 ha,  
Then £50 for next 300 ha or part thereof.

##### **Other (non-agricultural) land**

- Greater of £2,500 or £2.50 per sq. metre of the area of land acquired.
- If only part of the land is acquired, the payment is limited to £300.

#### **“building amount”**

Compensation is the greater of £2,500 or £2.50 per square metre, measured externally

## **F – Fees**

Don't forget to include a claim for your fees!

If no claim is made, they will not be included in the schedule.

**Model Answer**  
**Heads of Claim for the Estate**

## Model Answer – The Estate

### What is the value of the interest in the acquired land?

#### Initial valuation

- The solar company is likely to acquire a leasehold interest in the land.
- The Estate must consider the value of the interest being acquired.

#### Does the land have any value beyond bare land?

- Apparently not, so there is no route to an increased claim there.

#### Are there any special factors that might increase the value the acquired land?

- Consider the Estate's prospects of obtaining **planning permission** for residential development.
- Apply the scheme cancellation assumptions under *section 14(5) LCA 1961*:
  - (a) the solar development scheme has been cancelled;
  - (b) no action has been taken by the solar developer for the purposes of the scheme;
  - (c) there is no prospect of the same or any similar scheme being carried out.

## Model Answer – The Estate

### Injurious Affection and Severance

#### Consider

- What is the impact of the acquisition of the leasehold interest on the retained land?
- Can the retained land still be reasonably farmed? **Likely.**
- Will Betterment apply to restrict this head of claim? **Unlikely.**

# Model Answer – The Estate

## Disturbance

### Principle

- Anything which is *not too remote* and is a *natural, and reasonable consequence* of the acquisition, is to be compensated.
- This might include:
  - Costs suffered by the Estate having to reduce its farming operation, and loss of production;
  - Loss of the Estate's silage crops due to dust from development;
  - Damage to vehicles belonging to the Estate caused by damage to access land.
  - Time spent by the Estate dealing with its agent, valuer, and solicitor;

### Remember

- Compensation must be consistent with the value of the land taken.
- The Estate cannot recover losses which are recovered under a separate head of claim.

## Model Answer – The Estate

### Occupiers' loss

- The Estate will be entitled to an occupier's loss payment for the greater of 2.5% of the Estate's interest, the "Land Amount", or the "Building Amount".
- The amount of the payment will depend on whether the land is agricultural land, and on how many hectares of land are acquired.
- Once determined, apply the provisions of the *Land Compensation Act 1973, section 33B-C*.

### Example

- The developer is likely to acquire agricultural land, so we will consider the "land amount":
  - Claim is for land < 100 ha – £100 per hectare or part thereof.
  - Claim is for land > 100 ha – £100 per hectare for the first 100 ha,  
Then £50 for next 300 ha or part thereof.

## Model Answer – The Estate

### Fees

The Estate would also be able to claim for its professional fees incurred.

This includes legal fees and agent fees.



# Model Answer – The Estate

## Rules of Compensation

Rule	Application
1. No allowance shall be made on account of the acquisition being compulsory.	The Estate will not be able to increase their claim simply because the acquisition is against their will
2. The value of land shall be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise.	The value of the Estate's interest in both the acquired land and retained land must be calculated based on being sold by the Estate as a willing seller on the open market.
3. The special suitability or adaptability of the land for any purpose which could be applied only in pursuance of statutory powers, or for which there is no market apart from the requirements of any authority possessing compulsory purchase powers.	The land owned by the Estate does not appear to have any special suitability or adaptability, and so Rule 3 does not need to be taken into account.
4. Increased value due to use which could be restrained by any court, or is contrary to law, or is detrimental to the health of the occupants of the premises or to the public health	There does not appear to be any use of land contrary to law, or detrimental to health, and so Rule 4 does not need to be taken into account.
5. No general demand or market for land for that purpose	Rule 5 does not need to be taken into account, given that both the present use of the land and potential residential development have demand or market value.

## Key Points – The Estate

### a) The value of the interest in the acquired land

- Value beyond bare land? Not evident from the scenario.
- Actual or prospective planning permission? Consider the potential residential development.

### b) The effect of the acquisition on the retained land (Injurious Affection and Severance)

- What is the value lost in the interest of the retained land?
- Significant material detriment to the farming operation?
- Betterment is unlikely to apply.

### c) Disturbance

- Covers any losses suffered that are not too remote.
- Dependent upon land taken, but there are many possibilities.
- The key is to ensure that it is consistent with the land value claim. If claiming on the basis of residential development (i.e. hope value), there is unlikely to be a claim for disturbance.

### d) Occupier's Loss

### e) Fees

**Model Answer**  
**Heads of Claim for the Tenants**

## Model Answer – Heads of Claim for Tenant

### Tenant:

#### Which tenants?

- Argyle Farm
- Hillside
- Other tenanted farms
- Unlikely to be industrial estate

#### Value of land interest

- Less straightforward to value than the Estate interest
- Consider terms of each tenancy e.g. Argyle Farm held under AHA tenancy with a second succession seemingly possible, and would be of particular importance to tenant, so higher value. Hillside on periodic commencing from Lady Day 2024, so less value.
- Other terms to consider which we don't have info on e.g. rent review terms, profit rent, improvements
- Valuation methods need to be tested to determine which will result in best claim for tenant.

## Model Answer – Heads of Claim for Tenant

### Disturbance

- Will depend on the circumstances and the extent to which each tenant is disturbed
- Argyle Farm has dairy operation which will likely be impacted.
- Ensure any loss claimed is consistent with valuation of land

### Occupiers Loss

- Can be claimed on 2.5% of interest, Land Amount or Building Amount

### Fees

- Professional fees including legal and agent.

***Break***  
***Back at 15:00pm***

# section seven

**Natural capital, biodiversity net gain and  
nutrient neutrality**

## Scenario check in - BNG

- They want to know from you:
  - 1. What the development company means when it refers to "biodiversity requirements" linked to its development and how such an arrangement between the Estate and the company might be structured.
  - 2. The relevance of the estuary catchment on the Estate's future plans to development the land into houses.



# Biodiversity Net Gain – in brief

- Objective is to exceed **pre-development biodiversity value onsite** by at least 10%:
  - *Post development BV onsite +*
  - *Any **registered offsite BV (gain)** allocated to the development +*
  - *The value of any **statutory credits** purchased*
- Defra Metric
  - pre-development baseline
  - BNG Plan
  - measure gains or losses post-development
- Explore onsite options first
  - Mitigation hierarchy (avoid, reduce and mitigate for impact of development)
  - Spatial risk multiplier



# Legal Position – Biodiversity Net Gain Timelines

## Environment Act 2021

NSIP/DCO – November 2025

Mandatory BNG applies to new planning applications made after **12 February 2024** (and Gain site Register opened)

Applies to small sites from **2 April 2024**

## Secondary legislation – Biodiversity Net Gain

[The Biodiversity Gain \(Town and Country Planning\) \(Modifications and Amendments\) \(England\) Regulations 2024](#)

[The Biodiversity Gain \(Town and Country Planning\) \(Consequential Amendments\) Regulations 2024](#)

[The Biodiversity Gain Requirements \(Irreplaceable Habitat\) Regulations 2024](#)

[The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024](#)

[The Biodiversity Gain Site Register \(Financial Penalties and Fees\) Regulations 2024](#)

[The Biodiversity Gain Site Register Regulations 2024](#)

## Current Position – BNG Guidance from Defra

Sub-divided into:

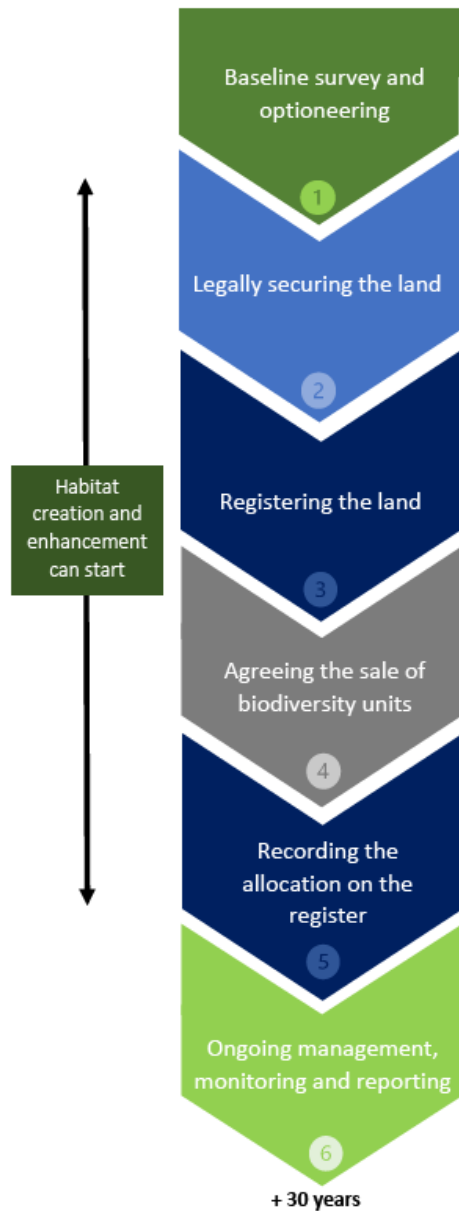
- [What biodiversity net gain is](#)
- [Land manager guidance](#)
- [Developer guidance](#)
- [Local planning authority guidance](#)
- [Calculate biodiversity value](#)
- [Legal agreements](#)
- [Habitat management and monitoring plans](#)
- [Planning practice guidance](#)
- [Manage biodiversity gains](#)

Latest addition 4 September 2024 - How biodiversity net gain (BNG) applies to [irreplaceable habitat](#).

# Defra resource – [BNG for land managers flowcharts](#)

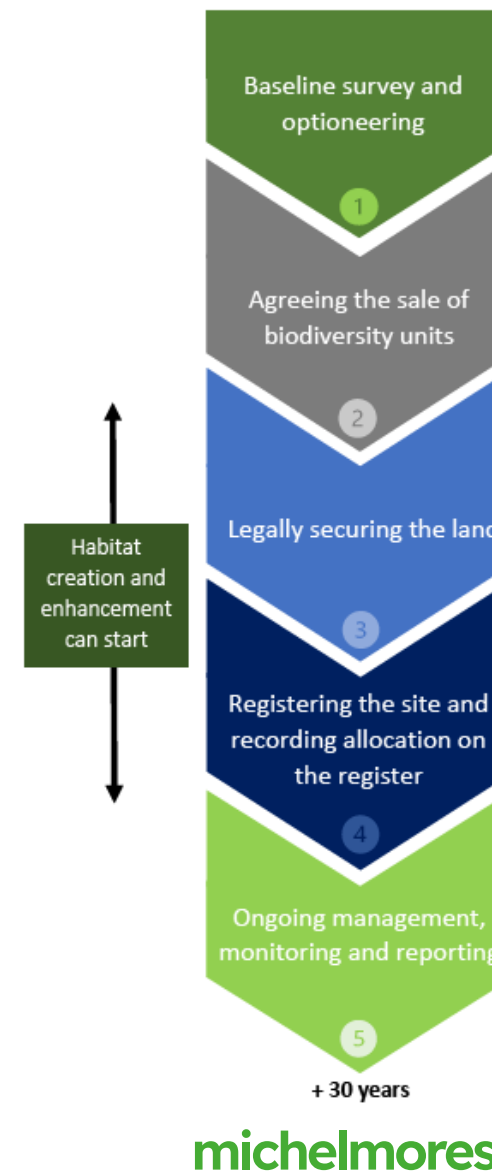
## Habitat Banking

Landowner begins habitat creation in advance of selling the corresponding biodiversity units



## Bespoke Habitat Creation

Landowner creates habitat to meet the requirements of a development, upon the sale of biodiversity units



## Strategic Site Location

- Mitigation sites **do not have to be in same LPA as development for BNG**, however:
  - Defra's biodiversity metric's "spatial risk multiplier" incentivises local off-site biodiversity gains
  - The greater the distance from the development, the lower the deemed value of the habitat
  - If a habitat bank is within the same LPA, then there is no penalty applied. If it is in the neighbouring LPA, then a 25% deduction is made. If it is beyond that, then a 50% discount is applied
- Takes into account strategic significance of certain sites - Local Nature Recovery Strategies (**LNRS**) have increased weighting – 1.0 to 1.1 to 1.15
- Magic map

## Biodiversity Net Gain – Solar Developer Perspective

- What can I do sensibly on site to meet BNG objective?
- SUDS, SANG and nutrient neutrality land
- Sch 3 Flood & Water Mgt Act 2010
- Mitigation and compensation measures for protected species – 10% rule
- Existing and future option/promotion agreements
- Scope for bigger land take for BNG buffer land
- Mitigation hierarchy – on site provision is best
- Can I sell excess BNG credits or use for another development?
- If identified in original biodiversity gain plan
- Issues also critical for landowners in negotiation with landowners

## Biodiversity Net Gain – Metric Considerations

- Small sites metric
- Spatial risk
- LNRS site strategy – all incentivising local provision
- Difficulty
- Time to target
- Advantages of habitat banking – advanced creation metric
- No exemptions for brownfield sites but zero baseline may do the job anyway
- Onsite BNG to be provided within 12 months of development completion/~~before~~ occupation



## Recent update on NSIP/DCOs

[DCO decision letter](#) made on 12/09/24 - 2 key points for BNG within DCOs at 6.14 - 6.15:

- November 2025 is confirmed for BNG becoming mandatory under DCOs
- Despite not being mandatory yet, government is still willing to grant Compulsory Purchase powers for the purposes of acquiring BNG land

## Nutrient Neutrality – in brief

Pollutants from:

- Agriculture
- Wastewater treatment
- Housing development in sensitive areas



- **Habitats Regulations Assessments**

- Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar Sites (i.e., wetlands of international importance)
- Various EU and domestic case law on this (including *Dutch Nitrogen*) - See *R (Wyatt) v Fareham BC & Natural England [2022] EWCA Civ 983*
- NE Technical Guidance Note (2020-2022) – NN is *one* approach to mitigation step under HRA AA
  - Offsetting to ensure P & N levels do not rise
  - Locations

## Calculating the nutrient burden

1. Calculate the proposed development's total nitrogen/phosphate that would be discharged into the catchment;
2. Calculate existing (pre-development) nitrogen/phosphate from the current land use of the development site;
3. Calculate nitrogen/phosphate for the non-built land uses proposed for the development site, such as public open space; and
4. Calculate the change in total nitrogen/phosphate due to the development:  $(A - B \pm C)$  including the 20% precautionary buffer.

If the result of Stage 4 is positive, then mitigation is required. If it is negative, mitigation is not required.

## Mitigation sites

- Unlike BNG, mitigation sites must be in the same catchment for NN:
  - Calculate the nutrient run off prevented by discontinuing the agricultural use
  - Hydrogeological surveys?
  - Trees useful but not essential

## Phosphate & Nitrate Neutrality

- Upgrading WWtW – 2030 deadline
- Factored into future HRA – assume work will be done
- 75% less P and 55% less N
- **Likely** impact 50% less credits needed post 2030
- National Nutrient Mitigation Scheme
- NE accreditation for private schemes
- No crowding out of private markets

## Example

- Difference in the total export of nitrogen from the measured area of land between current use and future use = **1351.81** kg p/a.
- Difference in the total export of phosphate is **6.97** kg p/a.

<b>Catchment:</b>	Upper Stour
<b>Soil drainage type:</b>	Freely draining
<b>Annual average rainfall (mm):</b>	700.1 - 750
<b>Within Nitrate Vulnerable Zone (NVZ):</b>	Yes

<b>Existing land use type(s)</b>	<b>Area (ha)</b>	<b>Annual phosphorus nutrient export (kg TP)</b>	<b>Annual nitrogen nutrient export (kg TN)</b>
Cereals	47.97	7.93	1495.72

<b>New land use type(s)</b>	<b>Area (ha)</b>	<b>Annual phosphorus nutrient export (kg TP)</b>	<b>Annual nitrogen nutrient export (kg TN)</b>
Woodland	47.97	0.96	143.91

## Nutrient Neutrality – recent updates

- **Levelling-up and Regeneration Act 2023**
  - amendments at bill stage defeated in the Lords
  - upgrading WWTW – 2030 deadline
  - Temporary v permanent credits
  - Septic tanks?
- **Brexit** implications →
  - UK remains bound by the Habitat Regulations 2017 (not revoked by the Retained EU Law (Revocation And Reform) Act 2023)
  - Amendments to European Union (Withdrawal) Act 2018 re courts' interpretation of assimilated (formerly 'retained') case law comes into force in October 2024
- **National Nutrient Mitigation Scheme** – short term measure
- **Caselaw** - *C G Fry & Son Limited v Secretary of State for Levelling Up Housing and Communities & Somerset Council*

**Phosphate & Nitrate Credits**

**Carbon offsetting**

**3rd Party Funder**

S.106/Conservation  
Covenant  
Agreement

**LPA**

**Habitat Broker/Landowner**

**Contractor**

Traditional s.106  
agreement

Minimum 30-  
year lease / FBT  
with sub-FBT

Conservation Management Agreement

Credit Purchase  
Agreement

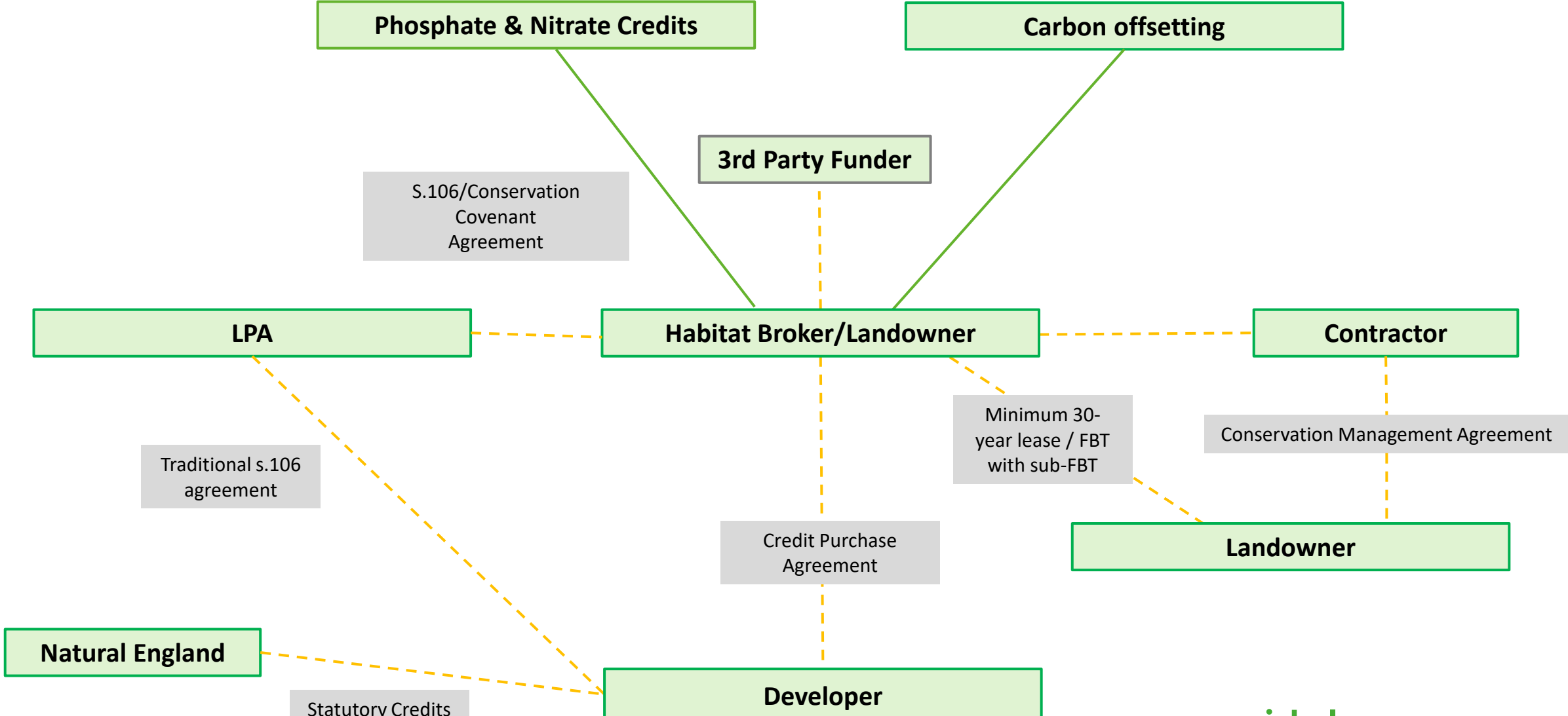
**Landowner**

**Natural England**

Statutory Credits

**Developer**

**michelmores**





## Natural Capital – The Opportunities

- Mainstream markets – BNG, Nutrient neutrality and Carbon
- Blending of public and private money
- Landscape Scale Recovery
- Green finance
- Tenant involvement
- Strategic site location
- Stacking and additionality
- What happens at the end of the scheme?



## Access to markets

- Defra sees value in private sector and private investment
- Public grants (support project preparation) eg Natural Environment Investment Readiness Fund
- Green Finance Institute - [Investment Readiness Toolkit](#)



## Market rules - Additionality

- Holistic view of multiple income streams provided separate definable benefits are realised
- *“additional or different outcomes and not paying for the same outcome twice”*  
BNG Consultation
- *“a real increase in social value that would not have occurred in the absence of the intervention being appraised”*  
Treasury Green Book 2018
- *“Property of measures to achieve biodiversity net gain, where the conservation outcomes it delivers are demonstrably new and additional and would not have resulted without it.”*  
British Standard on BNG

## Market rules - Stacking & Bundling

- Can I claim for ELMS and BNG?
  - Yes, can use the same land, but must baseline ELMS and start again. Cannot sell the ELMS enhancements as BNG or NN.
- Can I claim for BNG, Nutrient mitigation and Carbon credits etc?
  - *Biodiversity net gain and nutrient neutrality units can both be sold from the same project. These rules will apply until at least March 2025.*
  - WCC credits are currently an implicit bundle (include wider benefits of woodland creation alongside the quantified carbon unit).

**See the Nature Markets Framework – March 2023**

## What happens at the end of the scheme?

- What happens to the site after 30 years?
  - Unlikely to return to agricultural use
  - Rebasing of the site for further enhancement and additional credit sales
- Can I trash the land to create an artificially high improvement in habitat to maximise credits?
  - Line in the sand – 30 January 2020



# Conservation Covenants

-Part 7 Environment Act 2021

-In force from 30 September 2022

-What is it and why is it required?

*A conservation covenant agreement is an agreement between a landowner and a responsible body to do or refrain from doing something on their land for a **conservation purpose**, for the **public good (EA 2021, section 117)***

*“Conservation purpose” is defined as:*

- (1) Conserving the natural environment (flora and fauna, habitats, geological features) or natural resources of land;*
- (2) Conserving land as a place of archaeological, architectural, artistic, cultural or historic interest;*
- (3) Conserving the setting or landscape of any land which has any of these features”*

## Key elements

- A private voluntary legally binding agreement between a “landowner” and a “responsible body”
- Concerning an area of land
- Delivering a “conservation purpose” for the **public good**
- No need for benefitting land
- Executed by Deed and contain indication that parties intend to create a CC:  
s117

# The Parties

- Covenantor (landowner)

- Freeholder
- Tenant of lease > 7 years
- They must hold a “qualifying estate” in covenant land

- Responsible Body

- *Secretary of State; or*
- *Bodies designated by Sec of State under **sec. 119 EA 2021**, includes –*
  - *Local Authorities: must be **suitable** to be a RB*
  - *Other public bodies or charities with **mainly conservation related functions/purposes;***
  - *Private bodies/entities if **at least some of their main activities relate to conservation.***



# How will they work?

- **Duration (s.121)**
  - to bind land in perpetuity or such shorter term as agreed between parties
  - Leaseholders limited to remainder of lease term
  - BNG rules require minimum 30 year term: Sch 7A, TCPA 1990
  - Nutrient neutrality – maintain for minimum of 80 – 125 years
- Registrable as a local land charge
- Will complement existing statutory designations

# The terms

- Obligations can be:
  - Positive (requiring the party to do something on the land) and/or
  - Restrictive (requiring them to refrain from doing something)
  
- Likely to be a mix of obligations
  
- Include / annex appropriate management plan
  
- Focus on freedom of contract

# Other key points

- Monitoring and reporting
- Modification and Discharge
- Enforcement/ Breach:

## **Defences** (section 126):

- Outside party's control
- An emergency to prevent injury or loss of life
- Necessary to comply with (new) statutory controls
- Specific contractual defence

# Final thoughts

- Impact on land values
- Costs
- Interplay with s106 Planning Obligations
- Tax:
  - APR – occupying for the purposes of agriculture?
  - Agricultural value < market value
  - BPR as an alternative?

# BIODIVERSITY - summary

**B**aseline – ecology – what have you got to sell?

**I**nheritance – succession and family views of long term commitment

**O**utline of deal – Heads of Terms

**D**ocuments

**I**nsurance – sporting, mines and minerals and other threats to BNG etc

**V**aluation

**E**LMS – how does it fit in

**R**esponsible Body – conservation covenants

**S**tacking

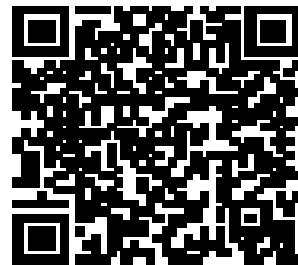
**I**nterference – the political angle

**T**ax

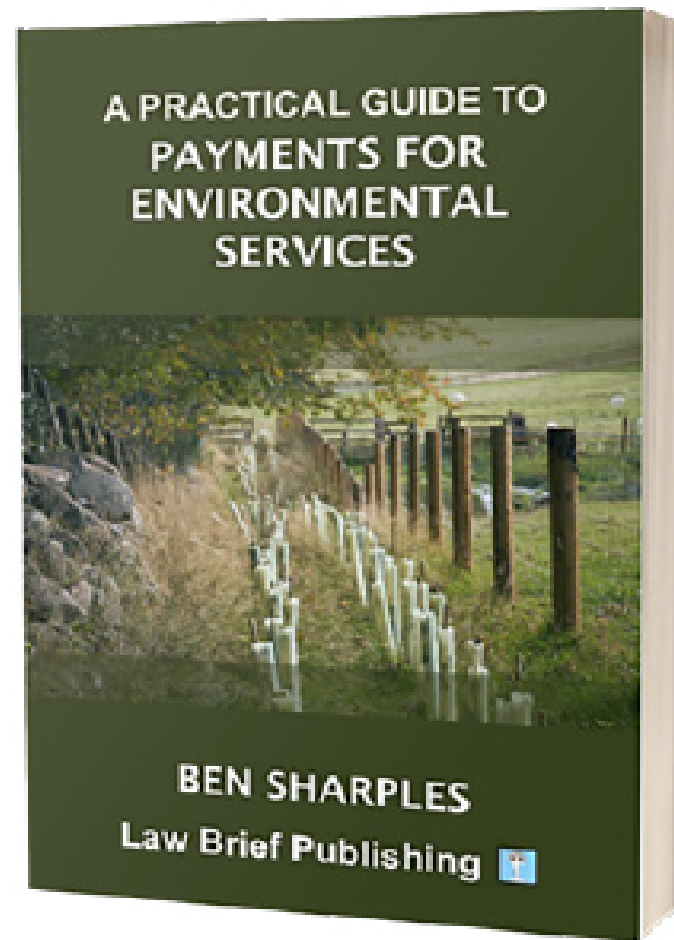
**Y**onder horizons – status of sites at end of 30 years etc

*Unlocking nature's value: a practical guide for lawyers, surveyors, landowners, students and others. This guide discusses the opportunities that exist in the market for environmental services, and the issue facing those who are responsible for providing professional advice.*

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# section eight

**Heads of Terms: Solar Lease and Access**

## The Scenario

- Overarching aim is to maximise income available to the Estate.
- Nakatomi Solar Limited (**Nakatomi**) wish to take an option for a 30 year lease of 50ha (123.5 acres).
- Included within the land identified for the solar development is 30ha that is subject to an AHA tenancy. Nakatomi will require access to the land during the option period for surveys/testing and vacant possession of the land on lease completion.
- It's likely planning will be applied for via a DCO.
- Nakatomi have asked if some land could be made available to meet the BNG of the proposed solar development.



## Break Out (10 mins)

Draw up HoTs for the Solar Option and Lease

Consider the following:

- Basic HoTs structure – who, what, when, how, at what cost and what if a party doesn't perform?
- Option Agreement and Lease - two separate but interlinked documents. Option will set out the conditionality to Lease completion and grant any pre-completion rights. The Lease will establish the basis of occupation for the term.

Remember the key facts:

- 50ha for 30 year term;
- Presume DCO and BNG provision required;
- Pre-completion access requirements/vacant possession on completion – AHA

Guess the rent – maximising income, what are the three constituent parts of the lease rent?

## Basic HoTs

- Subject to contract and confidential
- Parties
- Professional advisors
- Costs/Fees undertakings
- Option Area – edged red by reference to plan
- Landowner Retained Land – edged blue by ref to plan
- Generation size
- Initial Option Period
- Initial Option Fee
- Option Period Extension and Fee
- Longstop Date

## Option Period HoTs

- Direct Agreements/Funder step in rights
- Tenant right of access for surveys subject to entry conditions
- Landowner restrictions
- Landowner obligations
- Conditionality – planning/DCO, grid connection agreement and vacant possession
- Planning Agreements
- DNO Documents
- Assignment
- Crop Loss
- Schedule of Condition

## Lease HoTs

- Rent – solar acreage rent (inc. sterilised land/BNG habitat land), battery storage, top up turnover rent
- Term
- Tenant Break Right
- 1954 Act
- Repair/Contamination
- Alienation
- Reinstatement/Yield up – Decommissioning Security
- Biodiversity Net Gain
- Rates

**sectionnine**

**Mediation**

**any questions?**

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