trowers & hamlins

AGRICULTURE AND RURAL ESTATES

Winter/Spring 2025

Contents

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Foreword

The agricultural sector is facing, yet another, new set of challenges following the autumn budget and has been left reeling as to what the full implications could be for the future of the family farm. It has never been more important for rural businesses and professionals to work together to find a way through, and there are many reasons for optimism with careful and proactive succession and tax planning. Our latest newsletter picks up on the changes from the budget and also considers issues arising from alternative land uses. We look forward to working with all of our clients and contacts over the next year.

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Impact of the autumn budget on farming families

On the 30 October 2024 the long awaited budget changes were announced by chancellor Rachel Reeves. To the disappointment of the farming and rural communities both Agricultural Property Relief (APR) and Business Property Relief (BPR) have been targeted. The rationale is to clamp down on what the government perceive as 'tax dodgers' who buy rural land with the primary intention of passing tax free wealth to their beneficiaries.

The reality is that if the changes are implemented in the manner in which they were announced, the reforms will impact on a significant number of working family farms.

The main points from the announcement were as follows:

- From 6 April 2026 only £1 million of combined APR and BPR allowances will qualify for relief at 100% per taxpayer. It will be apportioned between the farming and business assets if worth more than £1 million;
- The rate of Inheritance Tax (**IHT**) on APR and BPR assets in excess of £1 million will be 20%;
- The £1 million allowance is not transferable between spouses and civil partners;
- The nil rate band (**NRB**) of £325,000, and the residence nil rate band (**RNRB**) of £175,000 will remain transferable between spouses and civil partners, but the thresholds have been frozen until April 2030. This means that as land and house prices increase in value, more estate will be brought into the IHT regime. In addition, the RNRB begins to reduce when an estate is valued at over £2 million;
- Shares that are AIM listed or 'not listed' will see the rate of BPR reduce from 100% to 50% though will not use the £1million allowance;
- Although the legislation has not been published, the £1 million allowance will apply to lifetime gifts and the transfers made on or after 30 October 2024;
- The allowance will be available to trustees, but trusts created by the same settlor after 30 October 2024 will share an allowance between them. So trusts created before this date will each have their own £1 million allowance; and
- The positive news was that the APR will extend to land managed under environmental agreement with an approved body from 6 April 2025.

While industry bodies are lobbying for the £1 million threshold to be raised, in the meantime it is even more important to plan ahead and take professional advice.

What can be done to minimise IHT:

- **Lifetime gifting** – consideration will have to be given to capital gains tax and holdover relief, but reducing the value of assets falling into an estate, will enable more of the estate to fall within the £1 million threshold;
- **Rebalancing assets** – spouses and civil partners may want to ensure that assets are distributed between them to maximise reliefs;
- **Restructuring of assets** – there may be opportunities to reduce the IHT exposure by incorporating businesses or entering into family partnerships or expand existing partnerships;
- **Tax efficient Wills** – Wills which seek to 'bank' reliefs and prevent assets accumulating to a surviving spouse or civil partner may be appropriate; and
- **IHT Insurance** – it is possible to obtain IHT insurance, although professional advice must be obtained to ensure the insurance is effective for tax mitigation.

Practical implications

The impact of the legislation can be illustrated by way of simplified examples, shown here:

David and Linda are married and have one son, James. They live in the farmhouse but have retired. The land is tenanted to James.

Pre-budget position if David predeceased Linda and she dies:

Farmhouse	£400,000.00
Land	£1,600,000.00
Two Cottages	£3,500,000.00
Savings	£100,000.00
Total	£2,600,000.00
Less APR	-£1,600,000.00
Less RNRB (reduced due to tapering)	-£50,000.00
Less NRB (£650,000 available)	-£650,000.00
Taxable estate	£300,000.00
Tax at 40%	£120,000.00

Post-budget position if Linda dies after 6 April 2026 and no advice is sought:

Farmhouse	£400,000.00
Land	£1,600,000.00
Two Cottages	£500,000.00
Savings	£100,000.00
Total	£2,600,000.00
Less APR at 100%	-£1,000,000.00
Less APR at 50%	-£300,000.00
Less RNRB (reduced due to tapering)	-£50,000.00
Less NRB	-£650,000.00
Taxable estate	£600,000.00
Tax at 40%	£240,000.00

In this example, the tax bill has doubled.

Position if David banks the relief in his Will:

David's death

50% share of farmland to James	800,000.00
Residue of estate to Linda	
APR applies to whole of gift to James at 100%	
No IHT on gift to Linda due to spouse exemption	

Linda's death

Farmhouse	400,000.00
50% Land	800,000.00
Two Cottages	500,000.00
Savings	100,000.00
Total	1,800,000.00
Less APR at 100%	-800,000.00
Less RNRB	-350,000.00
Less NRB	-650,000.00
Taxable estate	0.00
Tax at 40%	0.00

By 'banking' the relief on first death, the tax bill is reduced to nil as the RNRB is now fully available on Linda's death and all of the land qualifies for APR at 100%.

This has now become a more complex area and it is more important than ever that families seek advice from solicitors who can work together with their trusted advisers to ensure the long-term viability of family businesses.

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Red Flags on the acquisition of agricultural land

With all the changes in the agricultural sector, we have seen a number of farmers deciding to sell up and this has led to opportunities with land being brought to market for the first time in several generations. Whilst many landowners have been through the process before, the purchase of agricultural land can come with its own set of difficulties. Here are some of the red flags to look out for when buying agricultural land:

Licences

It is extremely common to see grazing or cropping licences granted for short periods of time to allow grazing of livestock or production of crops. It is also a familiar story that these are often allowed to run on over a number of years and unwittingly the occupier can accrue rights, if they have exclusive use of the field in return for paying rent. The warning is that even if it is called a licence, that will not prevent it legally as becoming a tenancy if the right criteria are met.

Agricultural Tenancies

Agricultural tenancies do not need to be in writing and unless they are granted after October 2003 for a term of more than 7 years then they will likely not show up on Land Registry official copies. There are two main types of agricultural tenancy and both can make it difficult for the landowner to recover possession.

Agricultural Holdings Act 1986

Usually, after a short initial period of one or two years, the term is expressed to run from year to year. As they are only a few pages long, and the term sounds as though it is flexible, people may think that these are not cause for concern, but due to the security that they afford they are valuable tenancies and can reduce land values by up to 50%.

There are two ways to terminate this type of tenancy. The first is by serving an "unqualified" notice to quit allowing a notice period of 12 months, to expire on a term date. The tenant can serve a counter notice and if that happens, the notice is suspended unless the landlord can rely on sound estate management grounds, and even then the First Tier Property Tribunal must withhold consent if "in all the circumstances it appears to them that a fair and reasonable landlord would not insist on possession".

Alternatively, you can serve an "incontestable notice" by relying on one of the grounds (known as Cases) as set out in the Act. The most common ground is Case B, where planning is obtained for the whole of the holding for a non-agricultural use. The tenant cannot serve a counter notice but can challenge the ground relied on, by referring to arbitration. This would not help where the acquisition is for agricultural purposes though.

Farm Business Tenancies

Subject to a few exceptions, if a tenancy is granted for the purpose of an agricultural business since 1 September 1995 it will be a "Farm Business Tenancy". If granted for 2 years or less then the term will end on the expiry date, or earlier if there is a break option that is exercised. If granted for more than 2 years then you cannot contract out of a 12 month notice period and after the contractual expiry date, if occupation continues then it will convert to a yearly periodic tenancy so that the 12 months' notice must expire at the end of a year of a tenancy.

Due to the difficulties and time that it takes to recover possession, a surrender is usually negotiated but under both types of tenancy, compensation may be payable to the tenant and the whole process can be very expensive.

Sporting Rights

Agricultural land may be subject to sporting rights that could restrict future use of the land. If not noted on the Land Registry official copies, we would recommend carrying out a Search of the Index Map to check if there are any sporting rights registered with their own title number (known as a "profit").

Restrictive covenants

Agricultural land may also be subject to covenants that restrict or prevent future use, such as the construction of buildings or accessways and other services. If not noted on the Land Registry official copies, we would recommend carrying out a Search of the Index Map of adjoining properties to see if they benefit from those covenants.

Easements

Early consideration should be given to the provisions of any express rights of access and services. If there are no express rights of access or to use services, then it may be possible to claim "prescriptive easements" through continuous long user of at least 20 years but as this would be based on the current and historic agricultural use, we would usually recommend consideration of an "absence of easement indemnity insurance" policy.

Horses

As horses are not livestock they will not qualify as "agricultural" use unless they are farmed for meat and so there is a risk depending on the use of the land of the occupier benefitting of protection afforded to commercial business tenants under Part II of the Landlord and Tenant Act 1954. It is important to check the circumstances and to understand if the horses are kept for business purposes.

Unregistered Land

Agricultural land often remains in the same farming family for generations and so there is still a high proportion of unregistered land. Whilst ideally, the owner will be asked to register it at the Land Registry before an acquisition, if you end up buying unregistered land then you need to make sure that you have the right legal expertise to deal with the application. These applications can take a very long time to be processed by the Land Registry (12 – 18 months) and so it is advisable to plan ahead and get any applications submitted as quickly as possible.

With the right early checks, proper planning time and land agents and lawyers engaged with the right expertise then many of these red flags can be overcome but it is important to be aware of these red flags so that proper importance is given and sufficient money and time can be ring fenced for dealing with them.

If you need any advice then please contact the specialist Agriculture & Rural Estates team at Trowers & Hamlins.

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Increased rent and negotiating position for telecoms site providers

The Vache Farm decision brings welcome news for landowners on rental levels and the inclusion of re-development break clauses in telecoms leases.

Background

The case (EE Limited (1) and Hutchison 3G UK Limited (2) v AP Wireless II (UK) Limited) centres around the renewal of a telecoms lease of a greenfield site at Vache Farm in Buckinghamshire. The site itself is a grass field, adjacent to a woodland area.

The landlord was AP Wireless II (UK) Ltd (**APW**) and the tenant was EE Limited and Hutchison 3G UK Limited (**EE/H3G**).

The contractual term of the lease under which EE/H3G occupied had come to an end in May 2020, with EE/H3G continuing to occupy pursuant to the Telecoms Code. New rights were requested, but could not be agreed by consent. The main terms in dispute were:

1. The level of rent to be paid; and
2. The insertion of a re-development break clause.

The Rental Position

Previous cases have held that a rent of £750 per annum should be payable for a rural mast site which is isolated from residential dwellings.

In Vache Farm, though, APW argued that £750 per annum was too low and presented expert evidence by way of comparables to support its view. The appropriate rental level, it said, should be £2,850 per annum.

EE/H3G resisted this submission, presenting its own expert evidence on the basis that the rent should be £1,000 per annum.

The Insertion of a Re-Development Break Clause

The parties also disagreed over the insertion of a re-development break clause. Many of the points of contention were those typically associated with sites where re-development may be envisaged, either in a Code setting or a broader commercial setting under the Landlord and Tenant Act 1954.

Those points included:

1. Whether APW should have the opportunity to terminate the lease where it intends to redevelop in connection with a use connected to electronic communications;
2. Whether that right should be at any time, or only after 5 years;
3. Whether APW needed to show a "settled intention" to re-develop, or whether it simply needed to 'desire' to re-develop;
4. Whether APW would need to show that it could not reasonably re-develop without obtaining vacant possession; and
5. Whether APW should have the right to terminate the lease at all (based on paragraph 21 of the Code no longer being satisfied).

Decision

Having considered all of the expert evidence, the Tribunal held that a suitable rental level would be £1,750 per annum.

It did not, however, update the figures set out in Affinity Water, with the Tribunal noting that it did not consider this a necessary step. It did, however, reiterate "*the impact of inflation on figures determined in previous years*".

On the re-development clause, the Tribunal held that a break clause should be included allowing APW to terminate the lease on 18 months' notice expiring on the fifth or any subsequent anniversary of the term commencement date, where it intends to re-develop all or part of the site and cannot reasonably do so while the lease continues.

The Vache Farm decision demonstrates that rental levels can be adjusted from those set out in previous cases. This will be relevant for negotiations on new leases as well as rent reviews under existing leases.

Similarly, Vache Farm shows that a landowner is able to ensure that sufficient protections are included in any agreement so that they are not restricted in what they can do with their land in the future.

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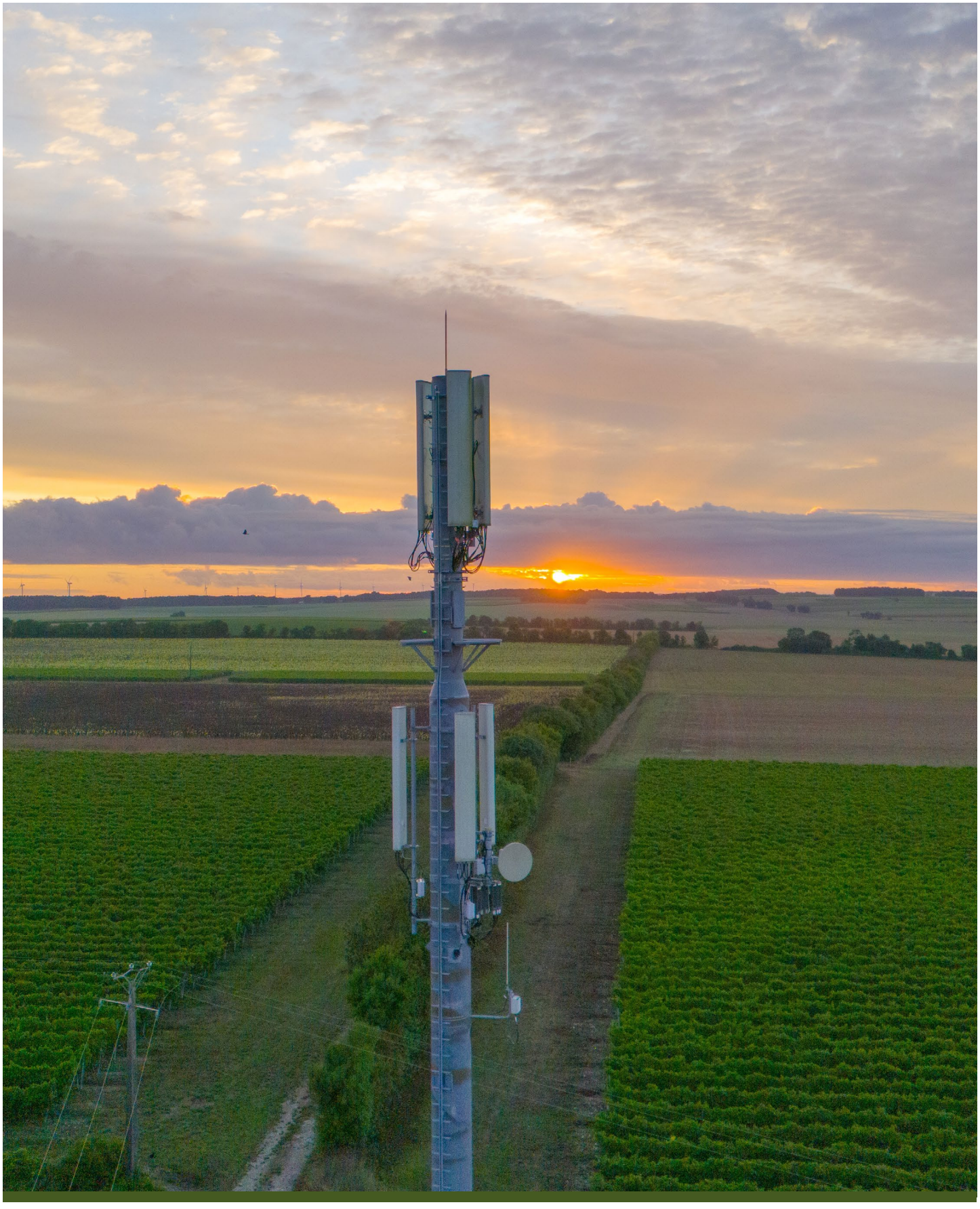

Dog training and walking fields: do you need planning permission?

Dog ownership in the UK has been dramatically on the rise since 2020. In 2024 approximately 36% of households now own a dog, equating to 13.5 million dogs. This is up from an average 25% of households between 2010 – 2020. Predictably, this growth in dog population has increased the demand for dog-friendly recreational spaces and training facilities.

Landowners across the country have responded by setting up new fenced sites in fields and agricultural land, allowing dog owners to train and play with their canine friends in a comfortable environment.

Is planning required?

Planning permission is required where the statutory definition of "Development", as set out in Section 55 of the Town and Country Planning Act 1990 (the TCPA 1990), is met. Development falls into two categories: (1) operational development – building things; and (2) material changes of use. Provided that no operational development is proposed, the use of land for dog training could be considered a material change of use of land dependent on the facts.

Assuming that you are looking to use land formerly or currently in agricultural use, the first question that needs to be considered is the character of the use of the land and whether that use proposed or taking place is materially different to an agricultural use. Materiality is determined by "fact and degree" in each case. If the use of the land falls within the definition of Agriculture, then no development for which planning permission is required will have occurred and, therefore, no planning permission is needed. However, precedent tells us that the starting point is that a dog training use likely comprises a material change of use.

Agricultural use

"Agriculture" is defined within s336 of the TCPA 1990 to include the following: horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes. Notably, there is no specific reference to the training of dogs.

Horsiculture

The scope of an agricultural use has been explored by the courts in several cases. One of the most recited cases is **Sykes v Secretary of State for Environment**. The Sykes case considered the keeping of horses on land and whether this comprised an agricultural use or whether a material change of use had indeed occurred. It was held that in such circumstances the primary purpose of the land use is pertinent. If horses are simply turned out on the land with a view to feeding them from the land, clearly the land is used for grazing and, therefore, in agricultural use. In contrast, however, if horses are kept on land but being fed by other means, then they are not on the land primarily to graze, and so the land is not in agricultural use through their use of it. If the use is not agricultural, then it must be in a different use, and a material change of use will likely have occurred. A useful analogy was noted within the judgement which stated: if somebody goes to a restaurant and smokes after the meal, they do not go to the restaurant in order to smoke: they go for the meal. In terms of the keeping of horses, the courts have determined that around six different use types can be established by having horses on land.

Are dog training fields agricultural?

Utilising this primary purpose test, the training of dogs on land is not an agricultural use if the primary purpose of the use of the land is to train dogs. For example, whilst you may keep ducks, chickens or other game birds in coops on the land and use these for steadiness training of gundogs. You will likely tend to this livestock daily out of good animal husbandry. However, if the land is primarily utilised, say, for the training of gun dogs, and the livestock in situ as a steadiness training aid, then clearly the primary purpose of keeping that livestock is not agricultural, even if there are no or very limited physical changes to the land as a result of the training use.

As dog training fields and facilities have grown with popularity since the pandemic, planning policy is now catching up and we have seen several appeal cases in recent years seeking consent for dog walking paddocks and training facilities, even if that use is limited in frequency. For example. the land is used for one hour a week to walk pet dogs whilst cattle are strip grazed, then this would clearly not be a material change of use.

So what are the next steps?

If you are thinking of setting up a new facility you should consider seeking advice on submitting a full planning application. You should also consider if you will be implementing any operational development (for example – a grasscrete car parking area) that would also require planning consent. If you have already set up a facility there are two options available to regularise the position:

(1) If the use has been in place continuously for more than 10 years and is still in use, you could seek advice on the merits of applying for a certificate of lawfulness; or (2) if you cannot demonstrate 10 years continuous use, you could apply for retrospective planning consent.

Trowers & Hamlins have agricultural planning experts who are knowledgeable in this area and have recently been involved with a successful appeal case for our client in West Oxfordshire who is a renowned gun dog trainer. Our client had been using his land for more than 10 years to train gun dogs (including his own personal dogs and his clients' dogs). The local planning authority initially refused a certificate of lawfulness for the continued use of his land as a gundog training facility and a separate full planning application for a new build dwelling and kennels on site. We were successful in both appeals and now our client is able to continue with and expand his business (and livelihood) whilst also fulfilling his dream of living on site.

If you are thinking of starting a dog walking / training facility and you would like advice on seeking planning permission or you have already opened such a facility and would like to seek retrospective consent, please do get in touch with **Jasmin Andrews** or **Jacqueline Backhaus** to see how we can assist you.

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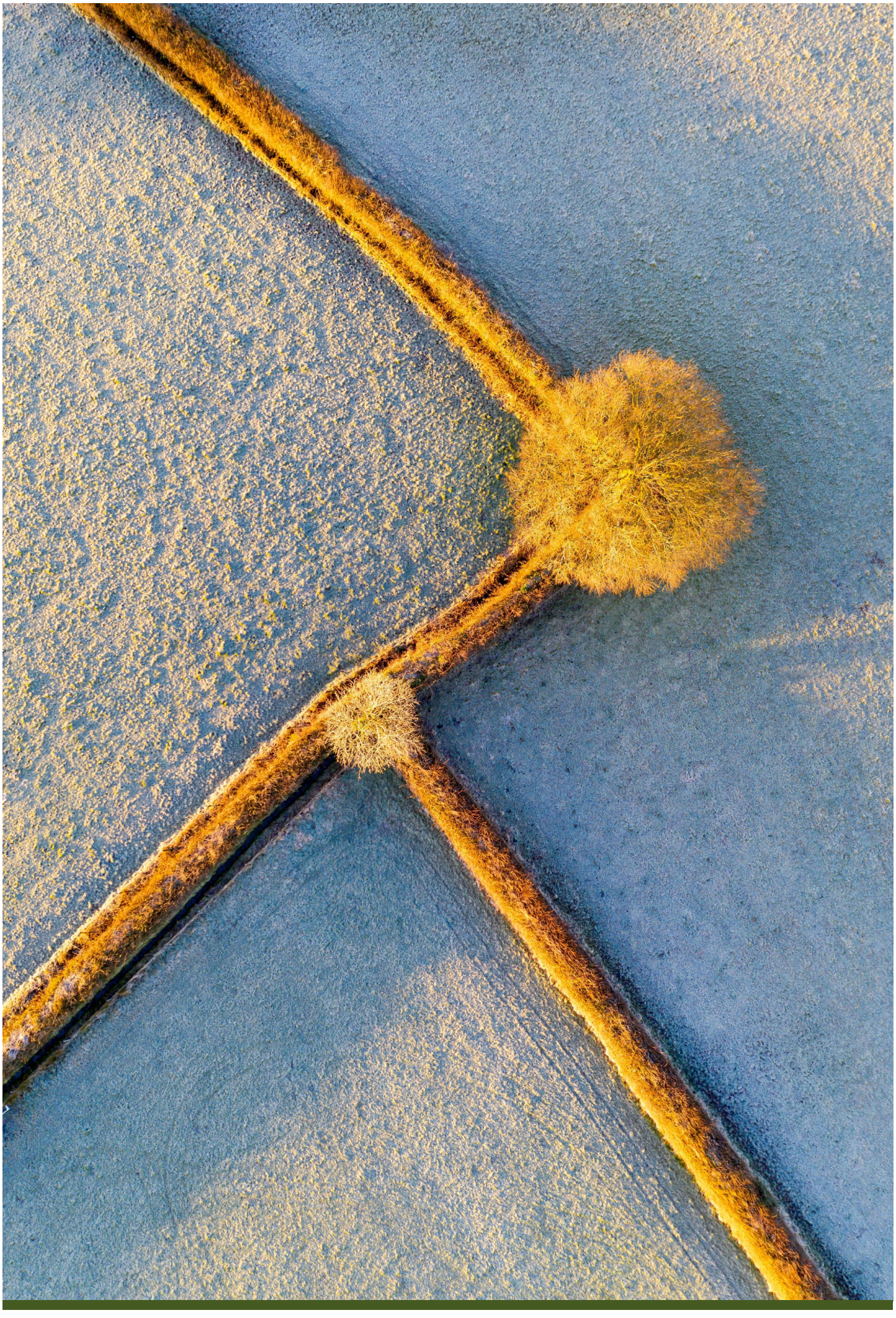

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