

## Case Law Spotlight

*Trustees of the North Berwick Trust v James B Miller & Co* [2009] CSIH 15

This case involved the interaction between Agricultural Holdings Legislation, the right to buy and the Planning Acts. The Trustees, as landlords of 103 acres of agricultural land at North Berwick Mains entered into a development agreement with the Walker Group, giving Walker an option on part of the holding. The agreement also obliged Walker to pursue a planning application for residential and commercial development. The holding was proposed for housing in the local plan, but as part of that allocation, it was indicated that a s 75 agreement would be required as part of that development whereby the Trustees would transfer part of the land to the planning authority for a school extension or some other community use. In terms of the Agricultural Holdings legislation, the Trustees as landlords were required to serve a notice to quit on the tenants in order to obtain vacant possession. If the purpose of the notice to quit was in order to carry out purposes “in the interests of the sound management of the land” then the tenant was entitled to serve a counter notice requiring the landlord to obtain the consent of the Land Court for that purpose.

However, if the purpose of the notice to quit was because the land was required for a use other than agriculture for which the necessary planning permission has been obtained then the notice to quit is incontestable. A notice to that effect would have been a straightforward matter had it not been for the fact that the tenants had previously registered an interest in acquiring the land in terms of the Agricultural Holdings (Scotland) Act 2003. In terms of that legislation, a landlord intending to dispose of land to another person, requires to send a notice in writing to that effect to the tenant, triggering the right to buy. The right to buy is also triggered where the landlord takes *any action with a view to transfer* of the land, where that transfer would be notifiable and such notice has not been given.

The curious twist to these provisions and the particular circumstances was that, although under pre-2003 legislation, the landlords would have been entitled to obtain planning permission and serve an incontestable notice to quit, it was not possible to do so in this case. The right to buy would, in the landlords view, have been triggered as soon as negotiations commenced with the local planning authority in connection

with the s 75 agreement as being “any action with a view to transfer.” They therefore sought the consent of the Land Court for a notice to quit in the interests of the sound management of the land. The Land Court dismissed that application and on appeal, the Court of Session agreed. The application was irrelevant, it held because there would be no land to manage: All steps regarding the obtaining of planning permission would be purely preparatory to the object of the exercise – to sell of the land for development. That is not a change in management as there would ultimately be no estate to manage.

This case demonstrates the complexities of obtaining agricultural land for development where there is a sitting tenant, particularly where an interest to purchase has been registered, complexities which required the landlords in this case to jump through what proved to be fruitless procedural and legal hoops..

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