Business Clinic

Whether it's a legal, tax, insurance, management or land issue, *Farmers Weekly*'s experts can help

Could a solar farm cause damage to our farmland?

Q Our farmland is used for a variety of crops including carrots, potatoes, onions and parsnips. I am researching leasing some of the land for a solar farm. Is it realistic that the ground can be fully restored after the solar farm is decommissioned and therefore allow these crops to be grown again? Or would the contamination from construction and decommissioning make this unlikely? I want to ensure that the land is usable in the future.

Tom Hilton
Senior energy specialist
Carter Jonas

ADOBE STOCK

A Contrary to common misconceptions, solar still offers good opportunities to diversify income streams. There is much to consider other than the issues you've raised and I recommend you seek expert advice, particularly regarding the suitability of your land and the lease terms.

The short answer to your question is that it is possible for your land to be useable in the future, but you will need to include certain obligations in your agreement with the solar developer.

You can request that the land be reinstated to its previous condition with complete removal of all equipment. Alternatively, you can undertake the decommissioning yourself and scrap the leftover equipment to cover the costs, which may be an option to consider.

Typically, the equipment that would be left would be the solar panels and frames, cabling and electrical infrastructure. Ancillary infrastructure, such as footings and access tracks, would also need to be removed to restore any soils and vegetation and ultimately return the site to its pre-development condition.

There have not, to date, been enough decommissioned solar farm projects to make it possible to predict the extent of reinstatement and the quality (and, therefore, scrap value) of the materials left on site.

When we work with clients who have similar requirements, we would negotiate a reinstatement (decommissioning) bond for the land leased by the solar farm.

This bond adds financial security for the decommissioning plan at the end of the anticipated life of the project, and will have an updated salvage projection mechanism, reviewed periodically, as well as a reserve factor to help protect against changes in market values over the life of the project.

The bond can be formed in one of two ways. One is that it is paid by the developer in full at the start of the project, but the money is kept in an escrow account which protects the funds for the lifetime of the project and the account is only accessed at the end.

The second is that a percentage of the income from the project is put aside to cover the future decommissioning costs.

We would also require the developer to produce a "record of condition" prior to entering the site and starting construction. This would be agreed with you and provides evidence of the state of the land prior to development, so you can be content that it is reinstated to the same condition at the end of the period.

You should have nothing to worry about with contamination – once the infrastructure is cleared, you will be able to resume farming.

It's worth noting as well that, again depending on the terms of the lease, you should be able to graze sheep around the panels to gain additional farming income – or potentially implement an environmental scheme between or around them.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *Farmers Weekly* will put your question to a member of the panel.

Send your enquiry to Business Clinic, *Farmers Weekly*, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS, and include a telephone number. You can also email **fw-businessclinic@markallengroup.com**

Our expert partners

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Can CGT exemption be claimed on barns for development?

Q I own a small farm (34ha) with a farmhouse and six barns. All barns are used for light industrial purposes. We have recently been granted full planning permission to convert the barns into up to 12 residential dwellings.

I understand that up to 0.5ha is exempt from Capital Gains Tax (CGT) and that I can choose which 0.5ha to nominate for this.

Must I claim this on a single plot of up to 0.5ha containing some of the barns, or can I claim it on several areas so that in total these make up less than 0.5ha?

Andy Ritchie
Head of agriculture
Azets

A When a private residence is sold, the house and gardens can be exempt from CGT. The rules are complex, but in the situation described the exemption would not apply to any of the barns.

Garden and grounds not exceeding 0.5ha can qualify, and larger areas can still qualify depending on the setting.

The garden or grounds can include buildings standing on that land, so a building such as stables or a garage that isn't part of your dwelling house can qualify for relief in certain circumstances.

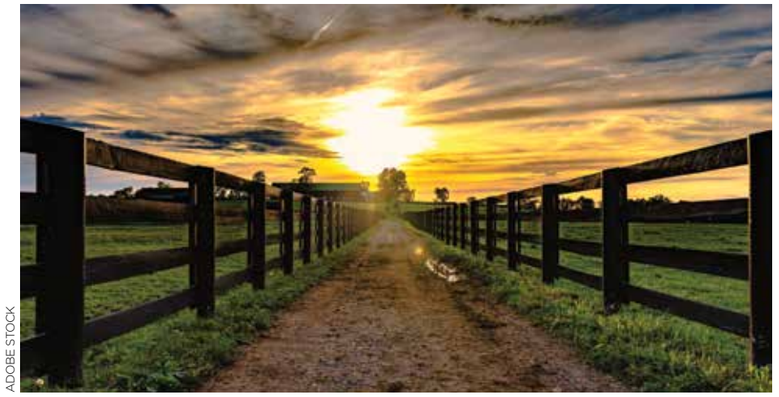
The garden or grounds will include any enclosed land surrounding or attached to your dwelling house and serving chiefly for ornament or recreation.

However, not all land you hold with your dwelling house is treated as the garden or grounds of that residence.

You are not entitled to relief for land let or used for a business. In this case, the industrial buildings are used as a business. Had they been used for private purposes – say to keep garden equipment – at the time of disposal, they may have qualified.

In this case an aerial photo showed the buildings are not part of the grounds, garden or curtilage of the house, so regardless of use they would not qualify.

It is not relevant to this case, but worth highlighting, that land which at the date of disposal has been fenced or divided off from a garden for development, or has been developed or is in the course of development, would not qualify.



ADOBE STOCK

Neighbour's fence is restricting our right of way

Q We have a right of way for all agricultural purposes over a private road through the middle of our neighbour's farm. Our neighbours have put up a fence right on the edge of the road which is restricting our right of way. The road also needs to be maintained. We have no obligation to maintain the road. We have written to them about this several times but have received no reply.

What can we do to encourage them to remove the fence on both sides as it is only 11ft across in places? What could we do to make them maintain the road for all vehicles including cars, and to what standard? The road is also partly a bridleway.

Russell Reeves
Partner
Thrings

A The first part of your question relates to the extent of your right of way, in particular its width. The burden would be upon you to prove to a court that the right of way is wider than 11ft and that your neighbour's fencing amounts to a substantial interference with that right. If so, you could obtain an injunction to force your neighbour to remove the fencing.

I am assuming your right of way is expressly set out in a deed, in which case the first thing to consider is the deed itself, which may provide some more detail on the width of the right of way. For example, it may specify a width in feet or make clear that the right of way is restricted to the metalled surface.

If the deed does not make this clear, the width of the right of way is open to interpretation. The relevant facts can then be considered to help determine the width, such as whether there are any gates which were in situ when the deed was entered into, which would have restricted the width of the right of way.

Alternatively, one might be able to infer that "agricultural purposes" must include usage by typical agricultural vehicles or those used when the right of way was granted. For example, if the farm was in arable production at the time of grant and the right of way was used by a combine harvester with a 10ft header, it could be argued the right of way must be at least 10ft wide plus a reasonable clearing distance from obstacles on each side (say 1ft), making 12ft in total.

If bigger agricultural vehicles or those requiring wider "swept paths" were used, then arguably the right of way is wider. Specialist advice from transport planners could be obtained to demonstrate the necessary swept path needed for common agriculture vehicles or those in use at the time.

Regarding maintenance, again the first point to consider is whether the deed contains provisions. If the deed is silent on maintenance, you could still be liable for a proportion of the maintenance costs relevant to your usage. If your neighbours will not carry out the maintenance themselves, you may do so to the extent that is necessary but only in a reasonable manner. You may alter the surface of the land to accommodate your right, for example by reinforcing concrete (if it is already concreted) or spreading gravel, so long as there is not undue interference with the rights of the owner.

There is generally no contribution towards the costs from the landowner in the absence of a requirement in a deed or agreement, so it is advisable to try to obtain agreement if possible before carrying out the work. I suggest writing to your neighbour to set out what works you propose doing, and when, and providing them with a reasonable timeframe within which to respond.

As these cases are all unique and can turn on the specific facts, it would be advisable to obtain independent legal advice as early as possible.