Business Clinic

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

Are we allowed to fell our overgrown Christmas trees?

Q We planted half an acre with pine trees in 1999, to harvest and sell five years later as Christmas trees. They were never harvested and are now 20ft tall. I want to thin out the woodland to plant some different species. The trees were spaced for five years' growth, so the woodland is greatly overpopulated. Are there any laws we need to consider before felling any trees or can we just go ahead, as it was planted for harvest anyway?

Marc Liebrecht
Arboriculturist and forestry manager
Carter Jonas

Some types of tree felling require a restocking plan, which must then be followed

ADOBE STOCK/IRINA FISCHER

A This topic is frequently misunderstood. Under the Forestry Act 1967, as a general rule you need a licence to carry out any tree felling. There are exceptions to this, which I will come back to.

To get a felling licence, you need to submit an online application to the Forestry Commission (FC). This requires disclosure of details about the work you're seeking to carry out, including the type of operation (thinning, felling, selective felling or regenerative felling), as well as the species of the trees in question and the volume of trees to be felled.

Some types of felling will require restocking and, in these cases, you will need to also enter details about the planned restocking – you'll then be bound to implement this.

Preservation orders

It is your (the applicant's) responsibility to check whether any tree preservation orders (TPOs) are in place, or if the woodland falls into a conservation area, and to flag this in the application. If this information is not included, it would render any licence void, and therefore mean the subsequent felling was illegal.

It's worth getting a forestry consultant, or an FC officer, to visit the woodland – they will be able to indicate what is likely to require a licence, as well as advise on the process.

Once submitted, the FC has target timelines for issuing the licence. It can take less time, or a lot longer, but you must not begin felling until you have received your licence.

These target timelines are 35 days for selective thinning, and 77 days for selective or clear felling. The longer timeframe is due to a requirement for the application to be included on a public register for 28 days, allowing statutory bodies or the general public to raise any concerns.

As mentioned, there are exceptions to this general rule – including an exemption for any tree with a diameter of 8cm or less at 1.3m height (or, if thinning, 10cm). There is also a personal allowance of up to 5cu m for every calendar quarter, of which no more than 2cu m can be sold. A full list of exemptions is on the FC website.

Outside these exemptions, you will need a licence. I strongly recommend that you collate and retain any evidence you can to prove any exemption that you think applies and, if in doubt, check.

Usually, in the case of Christmas trees, the 8cm exemption would apply, since they are generally harvested within four to five years. Once they pass this threshold, they become woodland and will be protected by the Forestry Act, the purpose of which is to prevent deforestation.

Suitable species

I think very few of the trees you planted in 1999 will fall under this diameter limit, so you would need a felling licence to carry out selective thinning. I think you would stand a good chance of being granted a licence to thin 20-25% of the crop, perhaps even 30%, but it's unlikely you'll achieve more than that. When replanting, make sure you choose suitable species for the site.

It's important that you look into this very carefully, as any felling without a licence would be a criminal act.

Importance of correct approach to tax relief

Q Can I claim tax on my new dairy unit?

Simon Tapp
Associate partner
Moore Scarrott

A Yes, at varying percentage rates, depending on the type of expenditure. When spending money on acquiring or constructing buildings, tax relief can be claimed through capital allowances, with expenditure classified as:

1. Plant and machinery This should include the milking parlour equipment, pre-cast (moveable) concrete panels, cubicles, feed barriers, silage clamps and slurry storage/handling equipment. The first £200,000 qualifies for 100% tax relief under the annual investment allowance (AIA), with the rest securing 18% relief a year.

2. Integral features allowance (IF) Water systems and electrical installations typically fall under this category and qualify for 6% tax relief a year, although it is possible to claim AIA on integral features as above.

3. Structures and buildings allowance (SBA) If the expenditure on the buildings does not fall within (1) or (2), the costs may qualify for SBAs at 3% a year, including design and construction fees. Expenditure on renovating non-residential buildings and structures should also qualify for SBAs.

Furthermore, if a limited company is buying and using new plant and equipment, some of the costs could qualify for the 130% super deduction, which is available alongside the AIA, between 1 April 2021 and 31 March 2023. Companies also benefit from a 50% super deduction on assets that would otherwise qualify for 6% writing down allowances in excess of the AIA.

The principles above apply on any new building. For example, if a new grain store is simply a large shed that can also serve as a machinery store, thought needs to be given to maximising the AIA (and the 130% super deduction) on any grain handling equipment, with the balance qualifying for IFs and SBAs, in that order.

If, however, it is a specialist grain handling and drying facility, incapable of any other use, then the entire cost may qualify as plant, using the £200,000 AIA with the balance obtaining 18% relief a year.

Note that when equipment is first brought into use, when physical payment is made and when any contractual agreement is signed can all affect the accounting periods in which tax relief can be claimed.

How can I get other partners to sell land that we own together?

Q I am a part owner of land over which there is disagreement with partners in the land as to what to do with it. I am keen to sell. How can I get the other partners to put the land up for sale?

Jonathan Thompson
Senior associate
Thrings

A Property ownership is difficult when divisions of interests occur. A court application can resolve issues. First, consider the practical background and everyday use of the land. While the law assists in one way, there are other possible remedies.

Land can be owned in different ways. It's important to distinguish whether you:

- own the land between you as people named on the Land Registry title (or unregistered title deeds);
- are not a joint legal owner but have a beneficial interest in the property;
- are one of the owners on the legal title but others have a beneficial interest; or
- are a partner in a business where the partners are either allowed to use the land by one of the partners who owns the land or have been granted a tenancy by that partner.

Partnership dispute

If you are a partner in a business that is permitted to use the land by the owners (who might also be partners) or has been granted a tenancy, you may have no say as to that decision to sell. If the partner who owns it decides to sell, legally he or she can do so. That might lead to a partnership dispute, but that is a separate Business Clinic question. However, there are solutions here that are explained below.

Legal remedies: a pragmatic commercial response is "can the disagreement be settled by mediation?" That is done by a qualified mediator, accredited by organisations such as the Agricultural Law Association.

A mediator may help both parties find a pragmatic solution, mindful of the law but also the background situation and any commercial or relationship issues.

Focusing on legal issues, the Trusts of Land and Appointment of Trustees Act 1996 (TLATA) was introduced to modernise how land is owned and provide a mechanism to resolve legal disputes between co-owners.

Under TLATA, you could make an application to court for an order on a number of questions. These could be:

- whether the property should be sold;
- what shares people have in a property as co-owners and/or co-occupants; and
- where an individual is not on the legal title, whether that individual has an interest in the property (which will have a value). This might include a partnership situation.

Under trust

These questions can lead to an order that a property is held under a trust of land and should be sold or split up. However, a court cannot make a person with an interest sell to another.

The court will consider why the trust of land was created and the wishes of all those with an interest in it. If the land includes a farmhouse with a young family in it, that is a further factor.

The case of *Bagum v Hafiz and Hai* (2015) provided that a beneficiary can be given an opportunity to purchase the property from another person, with a beneficial interest at a value set by the court.

Finally, the commercial relationships between farm business partners and landowners can be relevant. The case of the *Estate of RJ Kingsley v Kingsley* (2020) provided for the sale of a farm to the surviving business partner, where the deceased brother and his still-living sister (who were the business partners) had owned the farm equally.

In this case, the land was not a partnership asset and the partnership was allowed to use the land – the key point being that the same people can own the land but their commercial partnership is a different commercial being (for instance, the same people could be landlord and tenant but in different capacities).

In summary, you can address the issue by mediation or a TLATA application potentially. Mediation will be quicker and less costly.

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**

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