

Business Clinic

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

How much should I pay to rent a cattle finishing shed?

Q I have located a beef finishing building that is well equipped, in good order and unused. I plan to house 100 cattle from 10 to 24 months old in it. Bedding, feed, labour and tractor inputs will be to our own account. Electricity and water is to be provided by the landlord. The contract would be for five years – what would a fair rent would be, either per square metre, or per head and what is the usual basis for such agreements? Also, is there anything else I should consider in the arrangement?



John Dearsley
Farming consultant
Savills

A There are several considerations when taking on a building like this – all will affect the level of rent.

The rent will be determined by local competition. Other farmers may be interested and, depending on location, non-agricultural uses might also push up rents.

The changes to permitted development rights (relaxation of planning rules for some buildings) make non-agricultural use much easier in many situations.

In terms of rent, £1.50-£2 a head/week is a guide which equates to about £1.50/sq metre. Ancillary services such as cattle handling facilities, straw storage, silage clamps and slurry stores will all affect value and demand from local competition.

Usually the landlord would recharge water and electricity in addition or place a cap on total usage, depending on how easy or not it is to measure.

Rent would often be paid in quarterly in advance but cashflow will need to be considered if renting the building is an expansion with cash also needed to purchase new livestock.

Muck for straw deals are still common but thought needs to be given to who is responsible for cleaning the sheds, spreading the muck and any NVZ requirements.

The five-year term means that a Farm Business Tenancy would likely be the best basis for an agreement. This will quantify each party's



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liabilities, such as dealing with any slurry run off or what should happen if the water supply fails. Insurance responsibilities and damage to the building should also be covered in the agreement.

Assuming the barn is on a separate holding number, thought will need to be given to TB, especially if you are unable to move the stock at the end of the tenancy.

Making use of redundant resources is certainly appealing but any five-year commitment needs to be carefully considered by both parties before a commitment is made.

A break clause at the three-year point may make sense for both parties, as would a provision for rent reviews.

This would also allow for adaptation should legislation change over the next five years, for example tighter controls on pollution or disease.

Have I been poorly advised over tax affairs?

Q I farmed in partnership with my two brothers, each jointly owning the farming property. One brother died a few years ago and we were forced to sell approximately a third to pay his children. They paid inheritance tax, however, my brother and myself have now found we have to pay stamp duty land tax (SDLT) on the property sold, which I understand was because we had to purchase their share from them, and also capital gains tax (CGT) because we sold the property. All of this is on the same property and would therefore appear to be double taxation. Have we been poorly advised?



Peter Griffiths
tax director,
Hazlewoods

A Whether tax liabilities could have been reduced depends on the specifics of your situation which are not entirely clear. Where three brothers farm together in a trading partnership for more than two years and all land and buildings are included in the partnership accounts and used in the trade, inheritance tax (IHT) should not be payable on the death of a partner.

This is because the value of any assets should be covered by business property relief (BPR) or

agricultural property relief (APR).

IHT may be due if land and buildings are held outside the partnership and have some development potential, as BPR will only cover 50% of any development value. Similarly, IHT may be due if the value of any farmhouse is not fully covered by APR because it is not considered of a "character appropriate" to the land occupied with the houses.

You indicated that your deceased brother's children inherited his assets on his death. This would have been at market value at death. Therefore, if the assets had been bought from his children by yourself and your other brother shortly after they had inherited the assets, there was unlikely to be any capital gains tax (CGT) due as the disposal proceeds would be very similar to the tax base cost and hence there would be no or a very small capital gain.

If there was any CGT to pay by your brother's children, this is likely to be a result of there being a significant period of time between his death and you acquiring the property from his children, meaning that the property had risen in value. This rise in value would have been charged to CGT on his children.

If you and your surviving brother suffered CGT then this is likely to be because you sold other property to buy the property from your deceased brother's children.

It may have been possible to rollover the proceeds from the property that you sold provided it had always been used in the farming business and the property you bought was also to be fully used in the farming business. No tax would have been payable if all of the proceeds had been reinvested in qualifying assets.

Rollover relief would have been restricted if assets sold or bought were not business assets,

for example, let properties or farmhouses.

If the properties being sold and acquired by you were not all business assets, it may have been possible for you to not suffer CGT, if you had entered into what is known as an exchange of joint interests with your deceased brother's children. This involves individuals who own property jointly exchanging their interests so joint owners give up their interest in one property and receive an interest in another property.

In the right circumstances, this can mean that neither CGT nor SDLT is payable on exchange. However, this will depend on the interests in the properties being exchanged, the values of the properties and whether any properties are occupied by the joint owners as their principal private residence.

On any acquisition of farm land and buildings, other than in a joint exchange, SDLT is normally paid by the purchaser if the consideration is greater than £150,000. So you will be charged SDLT on the acquisition of property from your deceased brother's children if the amount you paid was more than £150,000.

It may then have been possible to reduce the IHT payable by your brother's children if farmland and buildings they inherited had been included in the partnership balance sheet instead of being held outside of the partnership. Additionally, any CGT they paid on selling property to you and your surviving brother would have been minimised if this sale had happened shortly after the death of your other brother. You may have been able to avoid suffering CGT on the sale to fund your acquisition, if rollover relief had been available and claimed, or if it was possible to exchange joint interests in properties.

How do I approach a tricky right of way issue?

Q I own a property where the only access to a council-owned road is an unregistered lane. The local farmer places a gate across this lane when he moves his cattle. If we see cattle movement we open and close the gate, but sometimes he closes the gate and it could be an hour before any cattle arrive. Is it reasonable to open and close this gate when there are no signs of cattle movement, especially as it is a lane not owned by the farmer?



Mark Charter
Partner Thrings

A The first task is to understand the rights of way benefitting your

property and the precise status of the unregistered lane. For example, who owns the lane? What rights is it subject to? Are there public rights of way over it? If so, what type?

You will also need to find out the rights of way over the lane that benefit the farmer's land. Not all rights of way are the same and they can vary in terms of how those routes are used, for example: with or without vehicles, only at certain times or for agricultural purposes only. It is useful to be aware of any specific restrictions to the rights.

The extent of the right of way can sometimes be determined by how it was acquired. Broadly speaking this will be in one of three ways: by express grant (ie, granted in a legal deed), prescriptive rights (where the right is acquired by use over a long period) or by easements of necessity. Once the details are determined, for you, the farmer, and any public rights of way, the next question to ask is: Does the farmer's action constitute an unlawful interference with those rights?

If your property benefits from an unequal-

ified, or unrestricted, right of way over the lane, the farmer should not interfere with you exercising your right of way. In that context it is quite reasonable and appropriate for you to open and close the gate when there are no signs of cattle movement.

Like all these situations, they are best resolved by a common sense and pragmatic approach if at all possible. Consequently, we would recommend to speak to the farmer and see if you can arrive at a consensus as to how the gates are used and when.

If you cannot reach an agreement, you could take a more formal approach by asking a solicitor to investigate the rights of way, review your position and provide specific advice. Your solicitor, in the first instance, could write to the farmer on your behalf.

In any event, whatever rights of way you may have, you should be very careful not to open the gates if there is any danger that cattle may escape onto the public highway or other people's property. If an accident or damage were caused as a result, you could be liable for the consequences.

DO YOU HAVE A QUESTION FOR FW'S EXPERTS?

Outline the issue in no more than 350 words. Please give as much information as possible.

Send your enquiry to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS and include a telephone number.

You can also email your question to fwbusinessclinic@rbi.co.uk

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