

Business clinic

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

Grants can help fund tree planting on marginal land

Q I am thinking of planting trees on some areas of more marginal land on my farm in Devon. Are there any grants to help with the costs and if so, how do I go about making an application?



Oliver Thompson
Forestry consultant
Savills

A Planting trees on more marginal areas is worth looking into and there is government support available, in the form of the Countryside Stewardship Woodland Creation Grant (WCG). Subject to various criteria being met, this offers up to £6,800/ha.

This grant previously had a relatively short application window but is now open all year round.

Before applying, you need to work out exactly where you plan to plant the trees and makes sure the total area is at least 3ha. This can be split into smaller blocks of no less than 0.5ha.

There has to be a sound business case for planting the trees that complies with the UK Forestry Standard. For example, this might be enhancing biodiversity and/or improving water quality.

Other points to consider are soil type and its suitability for the types of tree you plan to plant; the aspect of the land and its height, alongside the species of trees. These must be predominantly native, although up to 20% non-native conifers is allowed.

Once you are clear your proposal complies with the standard, the next step is to make sure the land is registered on the Rural Payments Agency's rural land registry.

You are then in a position to apply online to Natural England, via the gov.uk website.

When your application has been processed, the Forestry Commission will arrange a site visit to check your application and amend any finer details on the ground.

There will also be a consultation period with local relevant stakeholders, covering aspects including archaeology, wildlife and conservation and planning to ensure the planting will have no adverse effects on the landscape above or below ground.

Once the application is approved, you have two planting seasons to complete the planting and put in your grant claim. This must be supported with evidence such as photographs



and relevant receipts. The RPA generally pays WCG claims within two to three months of submission.

The maximum grant of £6,800/ha includes tree protection and fencing and should cover between 60% and 75% of the total cost, assuming 100% native trees planted on to former pasture land using your own labour, rather than contractors.

There is also a 10-year maintenance grant, which you will be offered once the planting is complete, providing an additional £200/ha a year.

Again, you will need to provide evidence of the ongoing maintenance, which can take the form of site notes and photography showing adequate weeding has taken place, as well as the replacement of dead trees.

£1,200 down on the sale of an apparently healthy cow

Q We sold a cull cow at market that was subsequently condemned by the Food Standards Agency (FSA) at the abattoir for suspected TB and we were placed under movement restrictions.

This cow had tested negative for TB during our annual herd test (8 May 2018) only 56 days prior to slaughter. The culture from the sample taken at the abattoir came back negative for TB from the Animal & Plant Health Agency (APHA).

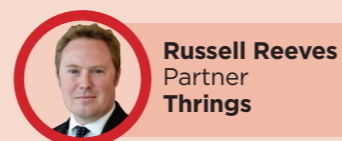
The cow made £1,200 at market. We have not been paid anything as it was condemned by the FSA.

If this cow had TB it would have been picked up during our annual TB test, she would have been slaughtered as a reactor and we would have been compensated for her by APHA.

When the APHA phoned to say

that movement restrictions had been lifted I queried whether in fact she did have TB. They replied no, as they couldn't prove it.

We feel very aggrieved that we have been deprived of £1,200 with no proof of anything being wrong with the cow. APHA suggested we complain to the FSA. Please can you advise us of the legal position.



Russell Reeves
Partner
Thrings

A There are two legal issues which need investigating:

- whether the FSA has been negligent in its determination that the cow was unfit for human consumption;
- whether the buyer can refuse payment despite the cow being sold at auction.

What are the stamp duty land tax implications of our farming partnership's land?

Q My brother, my brother's son and I farm together as a partnership. My brother and I own land outside the partnership with development potential, which we will shortly transfer into the partnership as we understand this has potential inheritance tax benefits.

However, we have been told there may be a stamp duty land tax (SDLT) cost. Is this correct?



Peter Griffiths
Tax director
Hazlewoods

A SDLT is payable by the purchaser when acquiring land or buildings, when the consideration exceeds the nil rate band, which is currently £125,000 for residential property and £150,000 for non-residential.

However, an SDLT liability can occur on a property transfer, even if no consideration is paid.

For example, if a father gifts farmland worth £500,000 to a son and the son agrees to take over a mortgage on the land worth £300,000, then SDLT will be due on the transfer, based on a deemed consideration of £300,000.

The position would be the same for a transfer between spouses, where debt is also transferred.

Transfer of property into a trading partnership

Certain family members are regarded as "connected" for SDLT purposes. This means that "deemed" transfers between them will not create an SDLT liability.

This will include spouses, lineal descendants, siblings and spouses of siblings. However, children of different siblings are not regarded as connected.

So, if farmland and buildings are transferred into the partnership, an SDLT charge could arise even though no consideration has passed.

You are not regarded as connected for SDLT purposes with your nephew, so depending on the profit-sharing ratios in your partnership and the value of land being transferred, the proposed transfer may result in an SDLT liability, even if no debt is being transferred.

Profit-sharing ratios will determine the deemed transfer on which the SDLT charge is based.

Transferring property to a company

Many farming businesses operate as a company, or a company may exist alongside a partnership. Transfers of assets to a company can also have SDLT implications.

When transferring a trading partnership, or part of a trading partnership to a limited company, any land and buildings used in the trade and also transferred will not suffer SDLT under the partnership rules.

This is providing that the individuals in partnership have the same interests in the

partnership and company.

However, there are no such reliefs when transferring property to a company on other occasions.

Even if this is by way of gift, with no consideration, an SDLT charge can arise where the transferor controls more than 75% of the company.

Therefore, if an individual who controls at least 75% of a trading company gifts to the company a property or land they personally own but which is used in the company's trade, SDLT will be due if the value transferred exceeds £150,000.

Advice should be taken before implementing any transfers of property.

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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Claim against FSA

In order to bring a successful claim for negligence against the FSA, you would need to prove:

- that the FSA had a 'duty of care' in relation to the tests it carried out at the abattoir;
- that the FSA breached its duty of care in relation to these tests; and
- that you have suffered consequential financial loss.

The first two are relatively easy to prove. The first point because the FSA is a regulated government body responsible for ensuring the quality control of food intended for human consumption.

As a result, it was tasked with carrying out checks on the cows at the abattoir. The second point because you have lost the value of the cow.

In order to prove the second point – that the FSA has breached its duty of care – you would need an expert vet to confirm in writing that the FSA failed to use reasonable care and skill throughout the process and that consequently the FSA incorrectly condemned the cow. Ideally that vet would want

to inspect the carcass or, at the very least, photographs of the carcass.

Given the passage of time, I suspect these are no longer available – which could present you with difficulties. The vet would also wish to consider any relevant FSA paperwork (particularly any contemporaneous notes), which the FSA has a duty to send you should you request it.

Why has the buyer not paid up?

You should also investigate why you have not received the monies.



One of the advantages of selling property at an auction is the certainty that the contract becomes binding at the drop of the hammer. The buyer is then obligated to complete the purchase on the date stated in the sales contract.

You will need to review the sales contract to see what the terms are in relation to payment from the buyer. Importantly, you will need to consider whether there are any restrictions in the contract that could prevent the buyer making payment in a situation like this.

I suggest contacting the market for a copy of the terms and conditions that governed your contract.

It may be that the buyer should have paid you but has failed to do so, in which case you may have a claim against the buyer for the purchase price.

Or there may be an express or implied term of the contract that the buyer can reject the cow within a period of time should it not be of satisfactory quality or fit for purpose.

The terms of sale are key and require consideration before I can advise you on this point.