Business Clinic

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

Will my edge of village site get planning permission?

Q I own some land next to a small village of about 70 houses. No new houses have been built there for some 30 years. A couple of planning consultants said I wouldn't get planning permission as there is no bus stop, school or shop. Is this true? One suggested trying for a few self-build projects. Will the new planning white paper help me?

Nicola Palfrey
Rural associate
Carter Jonas

A To start with, some context as to why the consultants you spoke to might have thought you would not get planning permission.

First, development in open countryside is not typically permitted, except in certain circumstances defined in your local plan. It is likely that your small village does not have a defined settlement area and therefore the land would be considered as open countryside.

A main concern for development in the open countryside is its unsustainable location. This is where the absence of a bus stop, shop or school comes into play, as it would mean that residents would have to drive to another location.

Small-scale development is more likely to receive support than a larger scheme in the open countryside on the edge of a village. For residential, major development is defined in the National Planning Policy Framework as development providing 10 or more homes, or where the site is 0.5ha or larger.

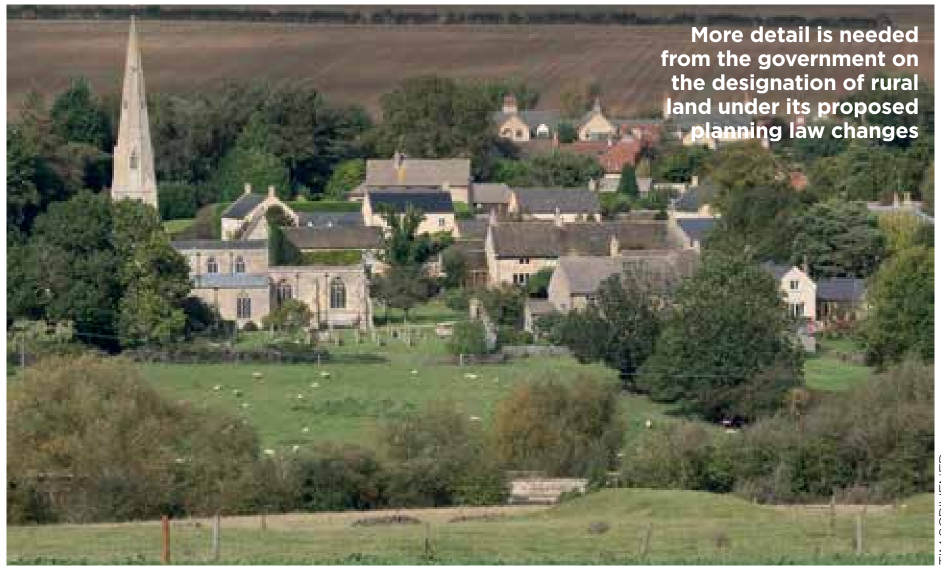
If you are proposing a large scheme, I suggest that you wait until your local planning authority makes a call for sites and submit your site at that stage. The likelihood is, however, that you would need to provide some local services within the proposal, such as a shop or school. Whether the size of the development is enough, with the existing local residents, to make the shop/school viable would need to be assessed.

Regarding whether the white paper will help, this will depend on whether the area around your site would be considered a renewal area or a protected area.

Renewal areas are considered suitable for development. The white paper states that this "would cover existing built areas where smaller scale development is appropriate. It could include… development in rural areas that is not annotated as Growth or Protected areas, such as small sites within or on the edge of villages. There would be a statutory presumption in favour of development being granted for the uses specified as being suitable in each area…"

Protected areas, on the other hand, "would… include areas of open countryside outside of land in Growth or Renewal areas" and are deemed unsuitable for development.

At this stage, we do not know which area your land will fall under and so we need to wait until more detail emerges.



More detail is needed from the government on the designation of rural land under its proposed planning law changes

TIM SCRIVENER

How can we split capital gain on our improved cottage?

Q My brother and I are partners in a farming business. We recently sold a cottage which he and his family have lived in since 1988. Prior to that, from 1981 my wife and I lived there. The property was left to my brother and myself in 1983 and valued then at £45,000. When I lived there, I carried out minor improvements, (new kitchen, bathroom and central heating) at my cost. When my brother moved in, after four years he added a 14sq m ground floor extension, (lounge, hall, downstairs shower room and toilet, extended kitchen) at his expense. We sold the property for £410,000 and I will have to pay tax on my half. We plan to use the proceeds to develop some of our old farm buildings, on which we have recently gained residential planning permission. As my brother extended the cottage, can we apportion the added value to his tax-free part of the sale?

Chris Thorpe
Tax partner
Moore Scarrott

A The capital gain on the cottage will be split between you and your brother, however as you both lived there (presumably as your principal residence) after 1982, some of your gain will be exempt by virtue of Principal Private Residence (PPR) relief based on the times you each lived there.

Enhancement expenditure made by you or "on your behalf" can be added to the property's base cost. Therefore, any added value of the new kitchen, bathroom and central heating which you contributed can be added to your half of the gain, but equally it could be applied to both of your shares equally; as could the value of the extension your brother added to the property.

Capital expenditure on a private residence may be set off against a potentially taxable gain

ADOBE STOCK/JOYCE D HOLYOAK

The starting position would be to ask whose money was used for the work (your own or the partnership's) and in whose name it was carried out. Likewise, if there were any agreement/loan between the two of you that one would pay for the works on the other's behalf.

If it were carried out in your individual names and with your own money, the default position would be that your own expenditure would only go against your own portion of the gain. However, it might be arguable to spread the total combined expenditure across both of your shares if you were both partners in the business, which might be more beneficial to you as you have fewer years with the property as your PPR.

The next issue is whether there's the possibility of rolling over any remaining gain into the old farm buildings. If the cottage was occupied as a farmhouse then rollover relief would be available, but only if the old farm buildings also retained some agricultural use at the time you spent the proceeds. However, if the spending on those old buildings is to convert them into residential properties, then no such relief would be available.

So, the answer to your question would be – yes, half of the combined costs, or your brother's own added value costs can be apportioned to his share of the cottage sale. Much of that resulting gain should be then be largely tax free on his share, due to the amount of time he's been living there as his PPR.

How can we protect farm from sons' divorce risk?

Q Our two sons, both in their late 20s, have recently joined the farming partnership with myself and my wife. They will eventually inherit the farm, which is owned by myself and my wife. However, we are concerned that if either of them marries and it doesn't work out, the farm assets will be at risk. How can we protect the farm? We don't have any other children and won't be retiring for at least 10 years.

Gavin Smith
Senior associate
Thrings

A The best protection for the farm from the potential future divorce of your children would be to continue to own it yourselves, and outside of the partnership.

At the moment, you own the farm and you could do with it as you please, subject to any agreement you may have with the partners of the partnership.

Your sons are now partners in the partnership and they have an interest in the assets of the partnership.

We are not told what is owned by the partnership, nor what share the sons have in the partnership. Both of these would be set out in a well-drafted partnership agreement but the default position in terms of valuing their current interest would be to analyse what they would receive on a winding up.

Clearly, if they inherit your shares in the partnership outright upon your death, their shares will increase significantly, and the farm assets would be at risk should they have matrimonial difficulties.

You should ensure that you and your wife have up-to-date wills. They might be flexible wills – which include trust provisions – which would allow your sons to benefit from the assets in the trust after your deaths so that they could continue to operate the farming business, but which would not give your sons ownership of the farm.

Adding the farm as a partnership asset may be beneficial from an inheritance tax point of view. If the farm were to be added to the partnership here, it may be possible to ringfence its value by creating a land capital account for you and your wife and crediting that account with the value of the farm.

You would lose ownership of the farm itself and would instead own interests in the partnership which reflected your contribution of the farm. Careful drafting and tax advice would be required.

You may decide that you wish to gift some of your partnership interest to your sons during your lifetime and, in view of the concerns you raise, you could consider a gift into trust rather than an outright gift. Again, careful consideration and tax advice would be needed.

Alternatively, if you were minded to make outright gifts in your lifetime, before either son marries you could encourage them to enter into a pre-nuptial agreement in an attempt to protect the farming assets.

Although pre-nuptial agreements are not yet formally binding under English law, there is increasing case law to show that if they are entered into correctly – not least, with both parties having taken independent legal advice and having made full financial disclosure – the court can find them compelling.

Similarly, if action is not taken before marriage, a post-nuptial agreement could be entered into in an attempt to ringfence assets.

If the sons are not yet married but living with a partner, a cohabitation agreement would be useful to set out the intentions of the parties in the event of any future dispute.

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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