

Business Clinic

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

Q I'm looking into converting some redundant barns into holiday cottages. I've had experience of doing similar projects, so I'm used to going through the planning process, but we may have a bat issue. How might this affect things?



Charlene Sussums-Lewis
Rural planning expert
Carter Jonas

A Cavities in barns (as well as trees and other structures such as warehouses, historic buildings and churches) make ideal roosting sites, and so have long been the preferred residence of the UK bat population.

When it comes to the demolition or conversion of barns, bats and bat roosts can cause additional costs and delays.

In fact, it's not just major conversions; even roof repairs and reroofing works, repointing, loft conversions, external lighting in proximity to a roost, and works to mature trees can require consideration of bats.

Crucially, bats are an endangered species in the UK and bat species, their breeding sites and resting places are fully protected by law.

They play an integral role in preserving the balance of our eco-system since they are the primary predators of night-flying insects.

If the works you propose affect bats, you will need to obtain a mitigation licence. Depending on your location, you'll need to get this from either Natural England or Natural Resources Wales.

You're breaking the law if you:

- deliberately capture, injure or kill bats
- damage or destroy a breeding or resting place
- obstruct access to their resting or sheltering places
- possess, sell, control or transport live or dead bats, or parts of them
- intentionally or recklessly disturb a bat while it's in a structure or place of shelter or protection.

The punishment for being found guilty of an offence includes an unlimited fine and/or imprisonment for up to six months, so it's extremely important that you follow the appropriate processes and acquire the right licences.

Now is actually a perfect time to get organised for the upcoming bat season, in advance of spring.

The first step is to get a full bat survey conducted, which is actually a pre-requisite for most planning applications, especially for barn conversions.

This may establish that there is no evidence of bats, in which case you can continue as



Timing is everything if bats are in buildings you plan to develop

MICHAEL CLARK/FLPA/IMAGEBROKER/SHUTTERSTOCK

What you need to know about bat surveys

normal with the planning process.

If there is evidence of bats, your ecologist can liaise with Natural England or Natural Resources Wales to apply for a mitigation licence prior to works commencing on site.

Avoid potential delays

They may need to undertake more than one emergence survey, which must take place between April and September, so this has the potential to delay a project.

I recommend that you get your bat survey done as soon as possible and get your ecologist booked and ready for the start of the season.

If you miss the season, you will have to wait for the next year. From a planning perspective, it is absolutely key that the surveys are undertaken to the appropriate standard and that any required mitigation is designed into the scheme at an early stage.

There are a few key steps which can reduce the impact that bats can have on your project. Know the window of opportunity; get organised and ensure you have an ecologist booked.

I recommend seeking professional advice – surveyors and ecologists will guide you on the best strategy, particularly if the works form part of a planning application.

Ability to lift ag tie depends on test of wording

Q We are trying to lift an agricultural tie from our house. The wording is: "Occupation of dwelling by persons employed or last employed in agriculture or in an activity mainly dependent upon agriculture". Has anybody come across an agricultural tie with this particular wording and/or are aware of any case law where it has been tested and subsequently removed?



Alex Madden
Head of planning
Thrings

A In England, the standard form of wording for an agricultural occupancy condition is as recommended in model condition 45 of the retained Appendix A of now-cancelled government circular 11/95.

It reads: "The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower of such a person, and to any other resident dependents."

The first observation here is that the wording of your condition is not in the standard

form – and there appears to be a plausible explanation. Essentially, the very first ministerial guidance issued on the subject of agricultural occupancy conditions, which dates back to 1948, advised restricting occupation to members of the local "agricultural population" and defined those words as including those employed in "an industry mainly dependent upon agriculture".

"Activity mainly dependent upon agriculture" is thus intended to cover those "mainly working in agriculture".

The officer's report that sits behind the decision notice granting the planning permission (if it still exists) may provide some useful background information.

In practice, the test for satisfying the term "mainly working" or "mainly employed" in agriculture, and thus complying with the condition, will be whether more than 50% of a normal working week is spent in genuine and productive agricultural work.

If it can be demonstrated that time spent is less than 50% of a normal working week, the condition is not being complied with. By way of an example, the divisional court found in *Epping Forest DC v Scott* in 1987 that the condition had not been complied with.

The circumstances were that the husband had a business as a builder – which was his main occupation – and he worked on nearby

land every evening and most weekends.

His wife also worked every day and most weekends on the nearby land. However, the land did not produce a living wage. Further appeal decisions where it was found that the person was not engaged in agriculture included the occupation of a dwelling by employees of an agricultural estate as a domestic help and as a gardener.

In that case the inspector found that the employment was residentially related and the appellants were not members of the "local agricultural population".

Similarly, where the occupier's last employment was in a wholesale fruit and vegetable distribution firm that did not meet the test of being employed in "an industry mainly dependent on agriculture".

Ultimately, whether or not the condition has been complied with will require a detailed analysis of the employment history of the occupiers of the dwelling.

And while the appeal decisions are useful in that they provide an indication as to likely trends and inspector interpretations of conditions, they are persuasive rather than binding.

This is a complex situation and both the law and procedure heavily depend on your specific facts. It is therefore recommended that you seek specialist independent legal advice to assess your situation.

Protecting the public from ash dieback dangers

Q We have a number of trees suffering from ash dieback on our farm. Finding a contractor to remove them is taking time and I am concerned as some of the trees are adjacent to a minor road and others a public footpath. If a tree comes down and causes injury or damage, will my insurers deal with the resulting claim and is there anything I can do to protect myself in the meantime?



Nigel Wellings
Broker
Acres Insurance Brokers

A Ash dieback is likely to become an increasing problem for farmers and landowners over the next decade as this disease becomes more widespread in UK trees. Ash is the third most common UK broadleaf tree, so the effects will be serious.

The first thing farmers will need to establish is who is ultimately responsible for the trees. As an occupier of land, you have a common duty of care under the Occupiers Liability Act



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of 1957. This means you must take all reasonable precautions to ensure the safety of those on your land.

There are further duties under the Health and Safety at Work Act 1974 to ensure people are not exposed to risks to their health and safety. An owner occupier will have full liability but on tenanted or rented land responsibilities can vary, so check your agreements.

In normal circumstances I would expect a farmer's public liability insurance to pick up any liability that emanates from a falling tree that causes damage or injury.

However, be aware that any insurance policy will have a clause within it saying that

the policyholder must take all reasonable precautions to prevent losses and comply with all current legislation.

To ensure compliance, farmers should have a written risk assessment regarding trees on the farm, especially those bordering areas of public access – for example, roads and footpaths.

This can be carried out by the farmer, but will better stand scrutiny if carried out by an arboriculturalist or forestry consultant. Part of the tree risk assessment will involve a plan of how to deal with the diseased trees.

Advice from the forestry industry favours the use of mechanised harvesters and tree shears, with many arboricultural contractors working from cherry-pickers.

Risks are high for the operative using traditional felling techniques because of the unpredictability caused by the disease.

If you have done such a risk assessment and are about to implement tree management measures then I would expect your farm public liability insurance to deal with any claim that should arise from the trees.

Consider the limit of indemnity on your policy though – £10m is a minimum and in many cases an increase may be required. ➤

Can I recover VAT on the cost of repairs to my farmhouse?

Q Can I recover VAT on farmhouse expenditure?



Liz Jones
Partner
Baldwins

Where a farming business incurs expenditure on repairs relating specifically to the farmhouse (rather than the farm generally), there is often some confusion as to whether any of the VAT incurred on these costs can be reclaimed.

This is because the farmhouse generally doubles up as the home of the farmer and his family (a private function) and the place from where the business is run.

The farm office is often located within the house, business meetings are held there and day-to-day decision-making takes place there. All of these can be considered a business purpose.

As such, when expenditure is incurred on repairs to the farmhouse, there will clearly be both a private element and a business element of these costs, giving rise to the option of reclaiming some of the VAT through the farm's VAT registration.

Mistakes are often made, however, when deciding how much to reclaim. Some will claim 100% – which is incorrect as it does not make any allowance for the private use of the farmhouse.

However, others will not reclaim any – which is also incorrect as it does not allow for the business use of the property.

Given that it is very difficult to ascertain the accurate split between business and private use, the NFU agreed standard apportionments with HMRC many years ago and these allocations are still used now.

For a full-time working farmer, HMRC will accept a claim of somewhere between 40% and 70% of the input VAT, depending upon the size and scale of the farmhouse in relation to the size of the farm.

Every case will turn on the individual circumstances. However, someone with a large country house on a relatively small acreage, for example, could expect to be able to claim closer to the 40% end of the range.

A claim for a traditional farmhouse located close to or with the other farm buildings and on a larger, more appropriate acreage would probably be closer to the 70% allowance.

For a part-time farmer, however, the reclaim is limited to a maximum of 40%.

The size of the house, in relation to the farm, will determine how much repair VAT can be reclaimed



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DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue in no more than 350 words and *Farmers Weekly* will put your question to a member of the panel. 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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