Business Clinic

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

Selling a farm with a solar lease and let buildings

Q I'm thinking of selling my farm, which includes a leased solar project, in year five of a 25-year lease. Also, we rent out redundant farm buildings on short fixed-term leases. Should we get vacant possession before marketing the farm? All tenancies have signed lease agreements.

Andrew Chandler
partner, rural
Carter Jonas

Investors may be interested in a separately lotted leased solar project, but consider the implications of lotting on the sale prospects of the remaining parts of the farm

ADOBE STOCK

As soon as you begin to think about selling a farm, it is worth considering the details, so it is great you have already turned your attention to these matters. The more issues reviewed before launching to the market, the smoother the sale process often is – it can also reduce the likelihood of a sale falling through once agreed.

The first step for your solar farm is to look at the lease carefully. We know the remaining term, but it is worth checking for break clauses, rent reviews and any other details and conditions.

The solar farm could be lotted separately, as it will likely have a different pool of potential buyers to the main farm – namely investors. That said, I have known of agricultural buyers being happy to buy the whole, inclusive of the solar farm.

Even in these circumstances, however, it is important to consider lotting as a potential option, as it could help maximise the value of that asset. The question of access will be a central consideration – can the solar farm be reached in a way that has minimal impact on the rest of the holding?

I advise getting the solar farm valued by someone experienced in this sector. The principles of valuing this type of property are very different from those for agricultural property.

There are two schools of thought regarding the let buildings. The short answer is that there is a market for holdings with either let or vacant buildings. Much depends on the use of the buildings, proximity to the rest of the holding and/or the principal dwelling, disturbance and so on.

We see a lot of buyers looking to acquire holdings that have income streams in place, which can help to service debt from the outset. If the buildings are not adjacent to the main holding, you could consider longer-term leases to further increase yields and security of income, improving value and saleability.

As you have signed lease agreements already in place, you should be ready to go the market with them as they are. There is no good reason to terminate such short-term leases unless a buyer requests it. If you find a buyer who would prefer vacant possession, you can always terminate the leases at that stage.

If you are thinking of selling, it's worth getting in touch with an agent sooner rather than later as there could be other matters that are easily rectifiable or used to your advantage if picked up in the early stages.

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**

Our expert partners

AZETS
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Can I claim VAT on a building conversion?

Q Can a farmer converting a farm building into residential accommodation with the intention of selling it recover the input VAT on the conversion through the farm VAT returns? Would the sale be zero-rated and, therefore, input VAT fully recoverable?

Craig Tolliday
associate director
Azets

A VAT on conversions can be a complex area. In most circumstances the sale of a building that is not new would be exempt from VAT, which would prevent the recovery of VAT on conversion costs.

However, the sale of a non-residential building following its conversion to a dwelling can be a zero-rated supply.

This would then allow for recovery of VAT on any conversion costs. In this instance, to zero-rate the supply, the following basic conditions need to be met:

- You subsequently grant a major interest in the building (typically by selling the freehold or granting a lease for a term exceeding 21 years).
- The building is the subject of a "non-residential conversion" (this is typically when the building being converted has never been used as a dwelling. HMRC guidance gives examples of a number of such buildings, which include an agricultural building such as a barn).
- The building is not converted into a holiday home (typically this is where the purchaser is prevented from residing in the accommodation throughout the year, or as their principle private residence, by the terms of a covenant or planning restriction).
- You have "person converting" status (this usually means that you physically converted, or commissioned another person to physically convert, a building that you own or have an interest in).
- The grant of a major interest is your first grant (for example, only the initial sale, or long lease, of the building can be zero-rated).
- Where necessary, you hold a valid certificate (only relevant for specific categories of buildings).

The above is a very brief outline, and within HMRC's guidance (VAT Notice 708) you can find much more detailed information about the various conditions which need to be met.

TIM SCRIVENER

How can we regain possession of inherited land?

Q My grandparents have just passed away and we have inherited their land. We are due to sell the house and keep the land to use for business purposes. A local farmer rents the fields for grazing and has done for about 40 years. I am not aware of any written agreements/contracts and would like to give them notice as I would like to regain control of the land. I am not familiar with the law surrounding this area and would benefit from your advice.

Duncan Sigournay
head of agriculture
Thrings

A The starting point is to determine when the arrangement began, what has been happening on the land in the meantime, and whether the farmer has had exclusive possession of it.

The payment of rent is another indicator, albeit it is not a prerequisite for such a claim. Likewise, there is no legal requirement for any agreement to be in writing.

Answers to these queries will make it possible to ascertain whether the farmer has grounds to claim a tenancy. Given that it looks like the farmer has been in occupation since the early 1980s, any tenancy is likely to be governed by the Agricultural Holdings Act 1986, which gives tenants significant security of tenure.

There is also every likelihood that the tenancy will have succession rights for close relatives of the tenant. Those rights enable up to two succession applications to be made, but any such applicant would still have to demonstrate they satisfy the eligibility and suitability criteria.

There are, however, several statutory grounds that a landlord can use in order to seek to regain possession.

These include where the tenant has failed to comply with a notice to pay or notice to remedy, has committed an irremediable breach or where they have become insolvent. Another ground is where the landlord has obtained non-agricultural planning permission for the holding and has a settled intention to implement the permission.

A landlord can also seek to recover the land upon the death of the tenant, although such a notice would be ineffective against a successful succession application. The above grounds can be contested by tenants, although a well-prepared landlord would ordinarily have the upper hand in such cases.

There are also other discretionary grounds that can be pursued by landlords, although proceedings would require the involvement of the tribunal.

It is possible that the farmer will have acquired significant rights, meaning you may not have any immediate grounds available to regain possession of the land.

If you are determined to regain possession in the short term, you could consider seeking to negotiate the surrender of the tenancy. That would, however, probably require the payment of significant surrender premium to the tenant.

One issue worth highlighting to landlords: where there is no written tenancy, the tenant can transfer the tenancy to themselves and/or another party – including a company – without the landlord's consent.

There is a mechanism within the 1986 Act whereby either party can serve a Section 6 notice, which requests that a written agreement be entered into.

Significantly, where that notice is served by a landlord, a prohibition on any assignment of the tenancy immediately arises, thus removing the risk of the tenancy being transferred to others including to a company tenant. I would therefore recommend the immediate service of a Section 6 notice.

Your situation is not particularly unusual, but it is important that you act quickly to protect your position.