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

What is risk from mountain bike riders in woodlands?

Allowing cyclists to use the woodland could create a right of way

ADOBE STOCK

Q Our farmland includes private woodland on the edge of a village. Some locals have been using it as a mountain bike track, going as far as building up mounds of earth for ramps. We do not object to them using the woodland, but are concerned that we may be held liable if one of them were to have an accident. Can you please advise on the legal situation and what steps, if any, we should take.

Ken Kaar
Solicitor
Thrings

A This is an unusual situation in the rural context, because most landowners will strongly object to the general public using their land in the way you describe. The primary concerns are potential liability for injury to a trespasser and the possibility of creation of rights of way.

Firstly, there are two Occupiers' Liability Acts, one from 1957 and one from 1984. The 1957 act applies to "visitors" and the 1984 act applies to others – for example, trespassers. If you have control over the state of the land in question, you are the "occupier".

In your case, it sounds like the cyclists are trespassers and that you have not given them permission. An occupier owes a lesser duty of care to trespassers than to visitors.

The duty is to take such care as is reasonable in all the circumstances of the case to see that the trespasser does not suffer injury due to known dangers on the land. There are three elements to this duty of care.

First, do you know of or have reasonable grounds to believe a particular danger exists on your land? Second, do you know or have reasonable grounds to believe a trespasser will come into contact with that danger?

Finally, in all the circumstances, might you reasonably be expected to offer the trespasser some protection from the danger? If the answer to all of these is yes, then you must take steps to protect the trespasser.

In terms of the steps you must take, this is more difficult to answer because the legislation simply says that you must "take such care as is reasonable in all the circumstances of the case to see that [the trespasser] does not suffer injury on the premises by reason of the danger concerned."

However, it goes on to say that in "an appropriate case" the duty is discharged by warning trespassers of the danger, provided the warning is specific enough to enable the trespassers to be safe.

Thankfully for landowners, the legislation says no duty is owed if a risk is willingly accepted by the trespasser. The courts have since clarified this by saying that occupiers do not owe a duty to protect trespassers against obvious risks or self-inflicted harm.

In your case, it seems that the activity, cycling through woodland, carries obvious risks and if one of the cyclists fell and injured themselves it could really only be described as self-inflicted.

What many readers will consider to be the more pressing issue upon reading your question is the creation of a right of way.

If the cyclists continue to use the route through your land continuously for 20 years, this can give rise to that route becoming a public right of way for evermore, like a footpath. To prevent that happening, you can give the cyclists express permission to cross your land. However, if you did that they would no longer be trespassers. They would be your visitors for the purposes of occupiers' liability and you would therefore owe them a higher duty of care.

It therefore seems that turning a blind eye to this activity and treating the cyclists as trespassers for liability purposes could backfire in the future. Your better option is either to formalise the cycling route, ensure you have the necessary insurance and take care to maintain the route properly, or prevent the cycling altogether.

Your local authority may agree to entering into a permissive right of way agreement whereby they take responsibility for the route but a public right of way is not created.

If you choose to allow the cycling to continue in future, we would strongly advise that you take specialist advice to ensure you are protected.

Can my farm be sold tax-free after inheritance?

Q Can I leave my farm to any individual on my death and be eligible for 100% agricultural property relief (APR) from inheritance tax (IHT), assuming the property meets the conditions for relief? Would the person inheriting then be able to sell the farm with no tax liability, assuming the value has not changed after my death?

Elizabeth Jones
Partner
Baldwins

A Provided a property meets the relevant conditions for APR, it can be left to any individual on your death and qualify for 100% APR from IHT.

These conditions are that it has been owned by you and occupied for the purposes of agriculture for a period of at least two years if occupied by you, or seven years if occupied by someone else, with appropriate agreements in place.

That person will inherit the property at the full market value and, if they wish, can immediately sell it using the value at the date of death as their base cost for capital gains tax (CGT) purposes. If the value has not increased, they would not be liable to any CGT. However, the APR will only cover the agricultural value of the property, not the market value if this is higher, as a result of hope or development value, for example.

For any value in excess of agricultural value to be covered, the farm must qualify for business property relief. This means the farm must be held by you and have been used in your business or a partnership you control for at least two years prior to the date of death.

You would only obtain APR on about 70% of the value of the farmhouse – though in some cases this may be higher. APR will also not cover the value of any farm cottages unless they qualify "in the round" or are occupied by farmworkers.

Remember insurance and disease considerations when renting out buildings for stock

TIM SCRIVENER

What should I consider when renting out cattle housing?

Q I am considering renting out some cattle sheds on my farm. What should I charge? I can sub-meter the electricity and water so that would be charged on top. What else should I consider and what should a brief agreement cover?

Jack Mitchell
Associate partner
Carter Jonas Rural

A Allowing someone else to make use of temporarily or permanently unused farm buildings can be a good way of generating income with relatively low input. Allowing another farmer to keep their cattle in them is quite a common way to do this.

There are two principal ways to structure this and different considerations will apply.

You firstly need to establish who is going to look after the cattle. If the owner of the cattle has sole responsibility for them, and exclusive occupation of the building(s), the best option would be to put in place a tenancy agreement to cover the terms of the arrangement.

In this situation, a fundamental factor will be the length of occupation. You should consider whether you need to use the buildings for other storage purposes during the spring and summer months, when the cattle will most probably be grazing.

If this is the case, you need to ensure that there is an obligation for the manure to be cleared out by a certain date.

It's worth noting here that, if you will not be letting any land with your cattle sheds, you may wish to include in the arrangement that some of the manure is to be spread on your land.

In terms of what you should charge, it's difficult to say exactly without knowing where you are in the country, and I would recommend speaking to a local expert, who will be able to specify market value depending on the location and condition of the barns, and the terms of the agreement.

I am based in the West Country and I would normally expect, depending on the quality of the buildings and the livestock involved, a rate falling in the region of £1 a head a week.

Payments are also sometimes calculated on a square footage basis; these are typically in the region of 50p/sq ft/year. Demand is generally good for cattle sheds in livestock areas, but it is very dependent on location.

If you decide to go down the route of a tenancy, it is worth having this drawn up properly so that the terms of the occupation are formally documented and both parties know where they stand with regard to bringing the agreement to an end when required.

The other option would be an arrangement on a "bed-and-breakfast" basis. In this case, you would undertake to provide the silage, feed and bedding and to look after the stock.

This second option may offer advantages from a tax perspective, since you will be providing a service rather than renting out space – your accountant will be able to advise based on your specific circumstances.

Whichever structure you go for, you also need to consider TB, repairs and insurance. You should ascertain the TB status of any prospective occupier's stock and bear in mind the rules for pre-movement testing depending on the proximity of their holding to the buildings in question. In terms of repairs, it would typically be your responsibility to maintain the buildings.

Finally, you should inform your insurers of the proposed occupation of the buildings by a third party.

DO YOU HAVE A QUESTION FOR THE PANEL?

Outline the issue and *FW* 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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