Business Clinic

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

How do boundary rules work for hedges and ditches?

Q Please can you clarify something which I believe stems from the practice of establishing ditches by hand? If the soil was thrown on to one bank and was of poor quality, then a hedge would probably be planted on it. This established ownership in many cases – that is, the hedge owns the ditch.

In general agricultural use, wherever hedge and ditch were together, unless there was agreement to the contrary, the hedge owner claimed the ditch. Does that apply to both banks of the ditch or as far as the bottom of the ditch on the hedge side only?

If the latter, what is the position if one owner wants to clean out the ditch? What about access over the neighbour's land?

Also, if the ditch is the boundary between two properties and the deeds contain no information to identify ownership, is it normal practice to assume "hedge claims ditch" – again, where is the dividing line?

FLPA/REX/SHUTTERSTOCK

The boundary is usually the edge of the ditch furthest from the hedge, unless documents show otherwise

Honor Gilbert
Associate
Thrings

A There is a presumption that where two agricultural properties are divided by a hedge and a ditch or a bank and ditch, the boundary is along the far side of the ditch from the hedge or bank.

In reality it is two presumptions: the first being that the ditch was dug after the boundary was drawn; and the second that a landowner would cut the ditch at the very extremity of their own land, throwing the soil back onto their own land to create the bank on which a hedge may then be planted. Both presumptions can be rebutted by evidence showing a contrary position.

Where the presumption applies, the boundary is the far lip of the ditch from the side with the hedge and therefore would include both banks, so the owner of the hedge would also own the whole of the ditch and the banks of it up to the top of the far side of the ditch from the hedge.

As you will see, the first presumption is that the ditch was dug after the boundary was drawn. Therefore, the boundary itself is already established and the hedge and ditch are merely evidence of it.

Although it is usual practice to apply the hedge-and-ditch rule to confirm boundary ownership, the presumption applies only where there is no conflicting evidence: namely, if the deeds clearly set out the boundary position and ownership, this will take precedence over any presumptions.

There are exceptions to the hedge-and-ditch presumption – for example, if the ditch is natural, if there are two ditches either side of the hedge or where the land was conveyed/transferred by reference to an ordnance survey plan.

Moving away from the hedge-and-ditch scenario, a boundary feature's ownership is dealt with in the same way as any other boundary – for example, a fence. If there is no indication as to ownership, the presumption is that it is party (shared).

If the property is described by reference to a plan taken from an Ordnance Survey (OS) map, the boundary line in relation to boundary features (for example, a hedge, fence or wall) is taken to be the centre line of the boundary feature. A plan usually prevails over other presumptions that might otherwise apply, unless the plan is for identification purposes only, and in that case the wording of the document takes precedence.

Where land is registered, almost all Land Registry title plans are prepared under what is referred to as the "general boundaries rule". The rule means that the exact line of the boundary of a property will be left undetermined by the Land Registry unless an application is made for the exact boundary line to be fixed.

If there is any doubt or lack of clarity about the ownership of a boundary, such as a hedge and ditch, the owners involved can do a boundary agreement and register this with the Land Registry. An OS map would be needed at a scale that allows accuracy when marking the boundaries on the title plan.

If one neighbour needs access to another's land for works, such as clearing a ditch, it is usual for neighbours to discuss this and come to an arrangement. There may be a right granted in the title deeds allowing access and regulating it. If access is refused, an application can be made under the Access to Neighbouring Land Act 1992 to the court for an order to grant access.

Should I convert to organic arable production?

Q I am a conventional arable farmer and face increasing problems with herbicide-resistant weeds. I am also worried about the number of chemicals being removed from the market. I am considering converting to organic production. Is this a good idea, and what should I consider?

TIM SCRIVENER

Organic offers lower operating costs but capital investment will be needed

Tom Cackett Food and farming consultant
Savills

A Encouragingly, there is currently a strong market for organic produce – within the EU, demand has increased by 13% in the past year alone. Also, at the moment 80% of the UK's organic livestock feed requirement is imported, so this could represent a big opportunity for local cereal growers after Brexit.

In the UK, benchmark figures from the Soil Association are enticing: the average gross margin for organic wheat in 2016 was put at £784/ha, compared with £641/ha for conventional wheat.

At an overall farm level, the average net farm income for organic cereal farms recorded by the Farm Business Survey for 2015-16 was £211/ha, compared with the non-organic average of £96/ha.

Bearing this in mind, there are some primary considerations which will help shape your decision-making, including the availability of conversion grants.

Under stewardship schemes, Natural England has historically offered financial support for producers considering converting to organic status. Under the most recent Countryside Stewardship Scheme, payments were £175/ha for the two-year conversion period and then a £65/ha organic maintenance payment for the remainder of the agreement. Whether this will be available in the future is an important consideration.

You will also need to factor in the timescale, as it typically takes 24 months to convert land from conventional to organic status.

You will need to apply to a certification body. The two most common are Organic Farmers and Growers and the Soil Association. It is best to open conversations with both and see which one you gel with best. There is no advantage or disadvantage to working with one over the other.

There is no obligation to convert all the farm at the same time, and you can use this to your advantage – for example, by keeping high-yielding conventional first wheats out in the first year.

It will be important to plan how much of the farm starts conversion in relation to your cropping plan.

This will form part of your detailed "conversion plan", a document agreed with your certification body, showing how you propose to manage the conversion process.

Capital investment will be needed if you choose to move to organic farming in order to acquire the appropriate machinery. Be honest with yourself and consider whether you really have the capital available to change your system. There will of course be a reduction in operating costs which could be used to fund this change.

Stockless arable systems are possible, but it is essential to consider how you will manage the fertility-building phase of the rotation to maximise fertility and catch crops.

You must assume that a third or a quarter of the farm (depending on the rotation) will be planted with some form of fertility-building ley at any one time. Livestock is a useful way to manage this phase, and sheep are particularly good if temporary electric fencing can be used. If you have no livestock yourself, you will have to explore whether a neighbour can help.

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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When is SDLT due on change in farming business structure?

Q I recently decided to incorporate my farming trading business, but have been informed that moving land from a sole trader business to a company will incur stamp duty land tax (SDLT), even if gifted.

However, a partnership business transferring to a company does not incur the same liability. If I move the sole trader business into a partnership, how long must we wait before then transferring it into a company to prevent an SDLT charge?

Peter Griffiths
Tax director
Hazlewoods

A SDLT is an often overlooked potential cost when reorganising a farming business. When an interest in land is being transferred, this can result in an SDLT liability arising, even if the land is being gifted and no actual consideration (generally payment) is being received.

This is the situation where an individual transfers land to a company that they control, as the transfer is treated as being at market value for SDLT purposes.

Where a partnership trading business has been transferred to a company under family control at the same time as land used in the partnership business, no SDLT arises.

This is the result of a statutory calculation that results in nil consideration. It is advisable to write to HM Revenue & Customs to confirm that they agree in advance of the transaction that no SDLT arises. No SDLT is due even where actual consideration is paid or debt is being transferred. This can allow entrepreneurs' relief to be claimed on capital gains on the land, and then effectively amounts can be extracted from the company after incorporation with a 10% tax liability, as the funds are drawn down.

Where a sole trader business becomes a partnership, if the partnership business is then transferred to a company within three years, SDLT will still be charged because of relevant anti-avoidance legislation. Subject to the facts of the situation, it may be possible to reduce the three-year period.

As with any business restructuring, advice should be taken well in advance of an incorporation to prevent unexpected tax liabilities arising, including SDLT.