Can we make neighbours stock-proof fences?

Q We have a beef and sheep farm on the beautiful North Yorkshire coast. One of our fields is bordered by a row of bungalows built in the 1960s. Each property's garden borders one of our livestock fields and over the years all the properties have replaced the original fence with their own. Some of their garden fences are now wholly inadequate as a livestock fence, but allow the property a superb view over our land to the coast beyond. Where do we stand if our stock gets into their gardens? Can we ask/force them to raise the standard of their fences?

Mark Charter
Partner
Thrings

A The title documents of your farm and the neighbouring bungalows may contain information as to whether you or the neighbouring bungalow owners are under a positive obligation (covenant) to fence, and if so whether the obligation imposes a requirement to fence to a particular standard or specification (and indeed maintain and repair a fence).

It could be worth you exploring what these documents provide initially. Provided the respective titles to the bungalows are registered at the Land Registry, you will be able to obtain copies of your neighbours' title deeds via the Land Registry. If the bungalow owners are not subject to a covenant (in your favour) to fence to a particular standard you cannot oblige them to improve their garden fence.

Despite what the title documents might say, it is important to bear in mind the ownership of livestock brings with it various legal responsibilities. Some of these responsibilities are set out in the Animals Act 1971.

Cattle and sheep are included in the definition of "livestock" in the 1971 Act and you could be liable for damage done by the livestock to land and any property of other people, including the owners of the bungalows. To prove liability under the relevant section of the 1971 Act (section 2 (2)), the keeper can be liable if the damage caused was likely to be caused by that animal unless it was restrained, that particular animal's characteristics were exceptionally likely to cause damage and the keeper was aware of the characteristics.

That section of the Act is not the easiest to follow but, thankfully, its meaning was explored in the recent case of Williams v Hawkes [2017] EWCA Civ 1846. In this case, a Charolais steer was killed having jumped a 6ft fence, run on to a dual carriageway and was in a collision with a car. The car was badly damaged and its driver suffered significant injuries and brought a claim against the steer's keeper for negligence and liability under the 1971 Act. Section 8 of the 1971 Act provides for a duty to take reasonable care to see that damage is not caused by animals straying on to a highway. Despite the fencing being, in the judge's view, "entirely appropriate", which ruled out the negligence claim, the keeper was held to be liable for the damage caused by the steer under section 2 (2) of the 1971 Act.

The decision is a reminder livestock keepers should ensure they have adequate insurance against negligence and 1971 Act claims.

Section 4 of the 1971 Act further provides that where livestock stray on to the land in the ownership or occupation of someone, obviously other than the person the livestock belong to, the livestock owner is liable for damage to that other person's land or property, and also for any expenses incurred by that person in keeping the livestock, until he or she can establish who the owner of the livestock is.

Subject to what the title documents might say in terms of fencing, it may (in any event) be worth discussing your position with the owners of the bungalows to see whether you could agree to share the cost of making the existing fencing stock-proof.

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 the panel. Please give as much detail as possible

Send your enquiry to Business Clinic, *Farmers Weekly*, RBI, Quadrant House, The Quadrant, Sutton, Surrey SM2 5AS. You can also email your questions to fwbusinessclinic@rbi.co.uk

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Stock owners could be liable if their animals cause damage on another's land, also for the cost of keeping animals until ownership is established

Manure management plan advice for beef and sheep on arable land

Q As an arable farmer with my own land, I am looking to create a mixed holding incorporating beef and sheep enterprises to improve soil health. As part of the justification for the livestock buildings I have been asked to provide a manure management plan. What do I need to do?

Stephen Lockwood
Associate
Savills Food and Farming

A You will be relieved to know developing a manure management plan is not overly onerous. It is also an essential part of ensuring you are nitrate vulnerable zone (NVZ) compliant.

As a livestock producer it will also form part of the protocol for meeting your Red Tractor Assurance standards.

The plan must assess the pollution risk to ground and surface waters from spreading manures, litters, slurries and other organic wastes on your land. It helps minimise the pollution risk by identifying when and where to spread these materials.

The first stage of the plan is to calculate the minimum area required for spreading based on your livestock numbers and the winter housing period. Standard data tables are available from a number of sources including www.Gov.uk. For example, a suckler cow would require 0.019ha of land for each month it is housed.

Having calculated the area required, the second stage is to identify the manure-spreading limitations of your land. You will need to account for the areas likely to flood, the degree of any field slope, the presence of effective land drains and any environmentally sensitive areas or agri-environment scheme restrictions. The soil type is also an important factor especially where you have slowly permeable or shallow soils (less than 30 cm).

On a farm map, identify all the water features and sources. Each field will need to be assessed and risk categorised into low (green), high (yellow) or very high risk (orange). Certain fields will be unsuitable for spreading under certain conditions and at certain times of the year.

No-spreading zones (red) should be marked for example within 50m of a spring, well or borehole or 10m of any surface waters. Low-risk areas are likely to be suitable for applications year round, but do keep in mind if you are within an NVZ area, there are closed non-spreading periods for slurries, litters and manures that have a high readily available nitrogen content. If possible design the housing system to avoid the creation of slurry.

If there is insufficient land available to spread your manure you must ensure there is enough suitable storage capacity to hold any manure that cannot be spread. Storage of solid manures in temporary field heaps is permitted for a 12-month period before they must be relocated.

The heaps can only be on low-risk areas with their locations marked on the risk map.

Alternatively, you could reduce your stocking levels or make arrangements to export surplus manure to a neighbour.

Keep detailed records of your calculations and applications for a minimum of five years. It is important to review and update your plan regularly to account for any changes in circumstances. An effective plan will use the manure to the maximum benefit of the soils, save fertiliser costs and protect the environment.

Further guidance can be found in Defra's *Code of Good Agricultural Practice* for protecting water, soil and air.

Inheritance tax issues of different farming structures

Q My uncle has for many years farmed 162ha in hand. However, in recent years he has engaged a number of third parties to undertake much of the work.

Is this likely to jeopardise his future inheritance tax (IHT) position?

Peter Griffiths
Tax director
Hazlewoods

A Farming can be a very tax efficient activity in relation to IHT. It can mean that on death no IHT is suffered on the value of farming assets, including the value of a farmhouse, due to the availability of agricultural property relief (APR) and business property relief (BPR). This can be a significant tax benefit following the increase in the value of farmland in recent years.

For various reasons, a farmer may decide that part or all of their farm is farmed under a contract farming arrangement, share farming agreement or grazing licence, depending on the type of farming activities carried out. Contract farming arrangements are usually only seen where arable or fruit and vegetable production is carried out, with grazing licences used in grass areas.

Structured correctly, contract farming arrangements, share farming agreements and grazing licences can mean the landowner is still eligible for valuable IHT reliefs. In all three cases, the landowner must remain in occupation of the land for agricultural purposes and continue to claim the basic payment. In addition, all agreements should reflect what is actually happening in practice.

Under contract farming arrangements, although it is possible for any contractor to acquire the crops grown, this should not be a done deal, as this will be interpreted by HM Revenue & Customs as effectively being a tenancy agreement. In addition, the landowner must be deciding what crops are grown.

Where a grazing licence is in place, it is essential the landowner is regarded as growing a crop of grass for sale. Therefore, they need to be rolling and harrowing the land, reseeding the land, fertilising the land, and maintaining hedges and ditches.

It is possible for the grazier to be carrying out certain work for the farmer, but this needs to be done in a contracting role, with invoices being issued to the farmer for the work carried out.

Any licence should only be for a limited period each year, with the grazier removing their stock from the land outside of the licence period. The amounts to be received by the farmer under the grazing licence should not be a fixed amount each year, but should vary depending on the quality and quantity of grass produced each year.

Structured and implemented correctly, contract farming arrangements, share farming agreements and grazing licences can ensure farmers remain eligible for the valuable IHT reliefs available.

If land and buildings have been owned for a period of at least seven years, then APR can be obtained if the land is let under a farm business tenancy, and it is occupied by another party for agricultural purposes.

However, APR is only available up to the agricultural value. Therefore, if there is development potential, this part of the value will not be covered by APR. BPR covers the full market value but is only available if the land is farmed in hand or under a contract farming arrangement, share farming arrangement or grazing licence.

Similarly, APR on a farmhouse is only available if the land is farmed in hand or under a contract farming arrangement, share farming arrangement or grazing licence. Therefore, so your uncle's future IHT position is not jeopardised it may be necessary for him to ensure parts of his land are not occupied under tenancies.