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Letting out agricultural buildings for business use

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An increasing number of farming businesses are now renting out disused agricultural buildings on commercial leases to non-farming businesses. For many farming businesses this can be a useful source of additional income, however there are a number of factors to be considered before entering into any form of agreement with a non-agricultural party.

The first factor to consider is the planning permission that was granted on the building originally, as most farm buildings do not have the required permission to be used for commercial businesses. It is important to realise that depending on the wording of the agreement between the landlord and the tenant; if the Local Planning Authority (LPA) were to issue an enforcement notice to cease the use of the buildings for any non-agricultural use, the tenant may have legal recourse to recover their costs and losses from the landlord. It would therefore be advisable to obtain the correct planning permission for the use of the buildings before an occupation for non-agricultural use begins.

For the building to be eligible for conversion under Class R it will need to have been used solely for agriculture on or before the 3rd July 2012. If the building did not come into agricultural use until after the 3rd July 2012, a period of 10 years is required before a development under Class R can begin. The floor space of the building to be converted cannot exceed 500 m2. Prior approval under Class R can be sought for the following use classes A1 (shops), A2 (financial and professional services), A3 (restaurants & cafes), B1 (business), B8 (storage or distribution), C1 (Hotels) and D2 (assembly and leisure).

The next important factor to consider is the type of agreement that should be used when renting out an agricultural building for non-agricultural use. There are two common forms, a lease and a licence; however the difference between the two arrangements is not just the name. This can be illustrated in the case of Street v Mountford Lord Templeman; which stated that there are three necessary components which need to be present for a lease to exist:

- Exclusive possession;
- Determinate term;
- A term less than the grantor (i.e. a landlord cannot grant a lease for a term longer than his own lease).

If the above are present then the agreement is a lease and will be governed by the Landlord and Tenant Act 1954 which would therefore give the tenant security of tenure and the right to renew their tenancy at the end of the term. The landlord can object to renewing an existing lease; however the circumstances in which this is possible are limited.

The second type of agreement is a licence which in effect involves the tenant sharing occupation with the landlord and in this case the tenant would not necessarily enjoy any security of tenure.

If a lease (tenancy agreement) is considered the most appropriate for the situation, the landlord may want to "contract out" of this type of security of tenure. This is most commonly done by the landlord serving notice at least 14 days prior to the commencement of the tenancy. The tenancy agreement must make reference to the service of the notice and the parties' agreement to contract out of the Landlord and Tenant Act in respect to security of tenure.

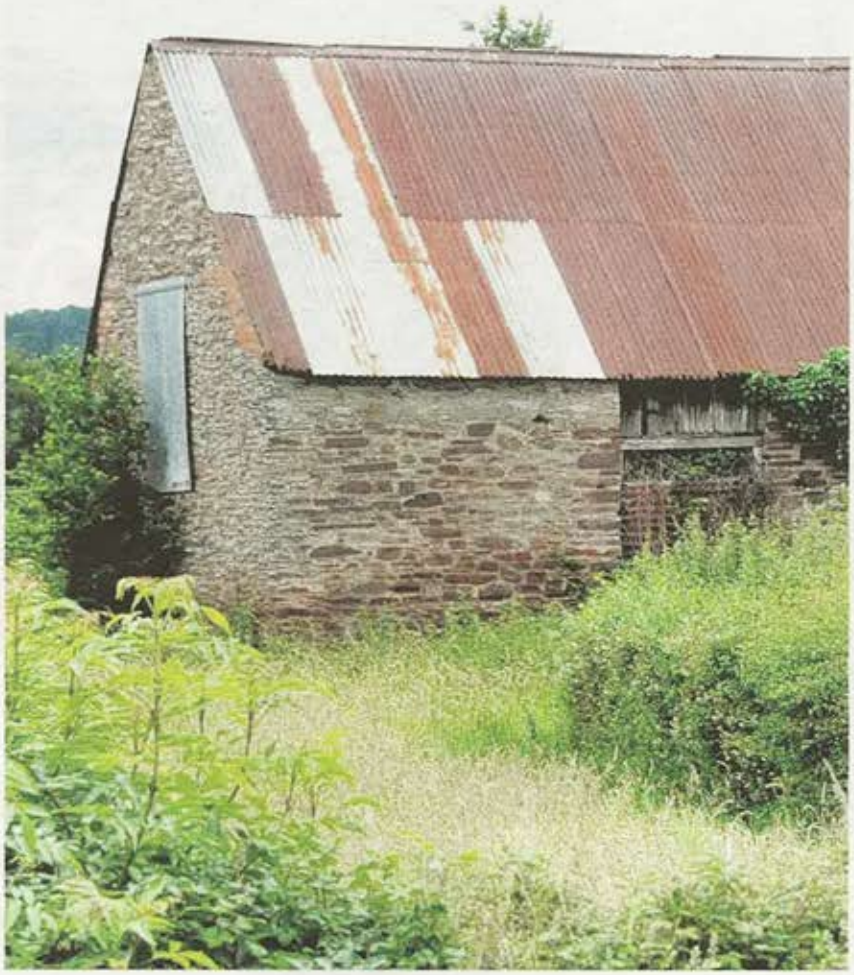
There are also a number of tax implications that need to be well thought out before a landlord rents out a building to a commercial tenant such as Inheritance Tax planning. Stamp Duty Land Tax may also be payable upon the granting of the lease if the net present value of the rent is more than £125,000. This is calculated (by the lessee) using the annual rent over the term of the tenancy plus any premium. VAT, income tax, as the rent will be unearned income, and capital allowances should also be carefully considered before the agreements are signed.

A landlord should be aware that an Energy Performance Certificate is also required for the building, should be displayed if the building is more than 500 m2, and should always be made available to the tenant unless the following applies:

- The building is listed or officially protected and the minimum energy performance requirements would unacceptably alter it;
- The building is a temporary building only going to be used for two years or less;
- The building is used as a place of worship or for other religious activities;
- The site is industrial, a workshop or non-residential agricultural building that doesn't use much energy;
- The building is a detached building with a total floor space under 50 m2 (538.196 ft2).

Another consideration is whether the building could be converted to a residential dwelling using permitted development rights under Class Q. For the building to be eligible for conversion under Class Q it will need to have been used solely for agriculture on or before the 20th March 2013. If the building did not come into agricultural use until after the 20th March 2013, a period of ten years is required before a development under Class Q can be considered. The floor space of the building to be converted cannot exceed 450 m2.

The final and maybe the most overlooked matter to consider are the Health and Safety requirements. These can be numerous and varied depending on the type of building, its location, access, and prior use, the services included in the letting, its commercial use and the terms of the tenancy etc.



Renting out disused agricultural buildings can be a useful source of additional income PICTURE: FRAN STOTHARD

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