

SMALL BUSINESS TENANTS IN THE RECESSION OPTIONS FOR LANDLORDS

Businesses across the UK are feeling the negative effects of the credit crunch at the moment. Small businesses in particular are suffering and in many cases are facing insolvency. Landlords of converted farm buildings and smaller office complexes may well fear that their small business tenants will become victims of the downturn. If a tenant stops paying rent or goes into administration (or both), landlords will be wondering how to get the tenant out, how to recover the rent and/or how to ensure the tenant continues to pay. Depending on the landlord's objectives there are a number of different options for dealing with a tenant in trouble.



Non-payment of Rent

It is advisable for landlords to keep in close contact with their tenants, and if necessary negotiate appropriate solutions to prevent financial problems from affecting the ability to pay rent:

- Rent deposit – deposits can be used against non-payment of rent and it may be possible to negotiate payment of the outstanding rent over a set period.
- Rent reliefs – it may be beneficial in the long term to agree to a rent holiday or negotiate a rent reduction to current market rent. Alternatively, paying monthly rather than quarterly may be a more pleasing yet still effective option for the landlord.

If the tenant is unlikely to ever pay rent again, these options may be more appropriate:

- Forfeiture – where there is another tenant waiting to occupy the unit, landlords can forfeit the lease, i.e. repossess the unit by peaceable entry, using an S146 notice. Where there is no new tenant ready, beware of empty property rates, which kick in after three months for commercial units.
- Appoint bailiffs to enter the property and recover unpaid rent through seizing goods from the property.

Administration

If a tenant goes into administration, the landlord's options to deal with unpaid rent are more limited. A statutory moratorium is placed on actions against the company without the administrator's or court's permission, thus preventing the landlord from using usual remedies such as forfeiture. However, with careful negotiation with the administrator, it is possible for landlords to achieve acceptable results.

- Surrender tenancy – the administrator must be in agreement.
- Assignment – there may be a new tenant waiting to occupy or seek to assign the tenancy to the "revived" company.
- Pursue guarantors or third parties for outstanding rent.
- Rent deposit – the landlord should make use of rent deposits. As it is the administrator's aim to keep as much money in the company, it may not be worth asking the administrator to pay any rent owing.
- Re-market property for a new tenant. If the current tenancy has not terminated, been surrendered or forfeited, a new tenant could be assigned the tenancy.

A final advisory note: if an Energy Performance Certificate has not already been obtained for the property, one is required by law for new lettings to new tenants. This includes assignments and companies that have been wound up and remain trading from the property under a new company name.

If you are experiencing any problems with tenants and need advice, please contact Sophie Oliver on 01604 782703.

Comment

Whilst the recession continues to ravage the exposed commercial enterprises at the fringes of land and property businesses, there remains plenty of opportunity and much to do in the world of farming, food and renewable energy – a flavour of which can be seen in the pages of this issue. Take the snippets on the inside pages about micro-hydro and HLS – both good business opportunities for those in the right place.

We have considered the outlook for food producing businesses for the second issue in a row with no apologies. An economically viable and sustainable agricultural sector is so crucial to underpinning the long term future of land and business in the countryside that we all need to be aware of the issues and form our opinions, be they bullish or bearish, and make plans accordingly.

We are neither skilled nor qualified to make predictions on interest rates or exchange rates, but both have moved significantly in the last 6 months with massive effect for businesses. Hedging exchange rate risk associated with the single payment is a popular subject in the press, but read two different forecasts and you will have two very different answers. The main benefit in exchange rate hedging is locking into the certainty of a rate which gives a healthy income on farm compared to previous years – no different from forward selling wheat.

On interest rates the forecast is perhaps more simple – they can only go one way, the question is when. If you have borrowings now and expect to still have borrowings in say 10 – 15 years time, think about some form of protection strategy.

**William Tongue
Managing Director**



CALLING LANDOWNERS NEXT TO WEIRS

A level drop in a watercourse, such as a weir or old mill race, coupled with an electrical connection to the national grid, gives an opportunity to consider micro-scale hydro power.

With the Environment Agency's consent and sufficient head and flow, it may be possible to pipe some of the water around the weir and drop it down a simple turbine arrangement such as an Archimedes screw linked to a generator. A typical project may cost £100,000 to set up with the potential for grant funding and asset finance to ease the investment. Annual returns will depend on the power generated but might be £20,000/year after operating and maintenance costs – an attractive return on capital (particularly in the presence of grant funding) and a useful and low input additional source of income to the business.

If you think this might be for you, please call William Tongue on 01604 782719.

PROTECT YOUR LAND FROM RIGHTS OF WAY

The public can create a new Right of Way (RoW) over your land through continued use.

To prevent this, lodge a Section 31 Deposit with the Council: a map, a statement of existing RoWs and a statutory declaration. This will be registered to protect your land from new RoWs.

Stay protected by updating these documents at least every 10 years. We can ensure your S31 Deposit is accurate and deal with the Council on your behalf.

For more information, please ring Sophie Oliver on 01604 782703.



FOOD FUTURES

Regular readers may recall we pontificated on the future direction of food production in our Oct 08 issue, presenting a number of supply/demand scenarios and concluding that managers of food-producing businesses need to keep an eye on longer-term issues in addition to the day-to-day pressures of business management.

From the farm business perspective, we also need to be thinking about the hard cash of business income and outgoings in the next few years, and consider how this may affect operational and investment decisions. The future of the Single Payment is vital to this and, with the CAP under significant pressure from EU expansion at a time when all economies are struggling with massive recession, what will happen post 2012?

No one knows a certain answer to this, but we do know the current stance of the various governments – ours hates the idea of agricultural support whilst some of our European colleagues are a little more protectionist. The result of these opposing opinions, when fed into the EU system, is inevitably going to be a fudge or halfway house of some form. Those that study this more scientifically are predicting payment levels reducing to 1/3rd of current levels, so say £30-40/ac by 2020, with change beginning perhaps in 2013... three harvests away.

With such stark projections, we need to consider the factors that may affect returns from the market or political opinions of food security. There are seven fundamentals:

- **Population growth** – currently 6.7 billion, projected 9 billion by 2050. World grain production less than demand in seven of last eight years, rapid urbanisation.
- **The nutrition transition** – increasing meat consumption, over consumption and waste.

- **Energy** – the cost of and dependency on (e.g. production of 1t of US maize requires 160lt of oil). Competition between energy and food cropping.

- **Land** – limited additional land available for production, slowing growth of yield/ha. Import dependency, soil erosion.

- **Water** – a scarce resource in massive demand for food production. 1kg beef takes 15m³ water compared to 0.4-3m³ for 1kg cereals.

- **Labour** – reducing labour forces in the countryside as population growth is centred in urban areas.

- **Climate change** – crop failures, animal disease, reduction on croppable areas and yields. The presence of a bluetongue threat and last year's harvest are said to be indicators.

There is real potential for demand growth to outstrip production and the resultant supply of abundant and cheap food could be threatened in developed countries as well as the more vulnerable developing countries. It would seem, and many economists are screaming this at the Government, that the UK can no longer afford to take its food supply for granted.

What does all this mean at farm level? If we shout hard enough, hopefully some of the food security message will feed through to post 2012 farm policy and we might see a true reflection of the true costs of resources in price norms.

There will be significant challenges of adjustment and a need for continual novel thinking; however, in the author's opinion, the outlook for agriculture is bullish.

If you require advice on your future business strategy or feel that your business would benefit from a full appraisal, please contact William Tongue on 01604 782719.

PROPERTY INVESTMENT

Pitiful interest rates and plummeting property prices. You may be wondering if now is the time to start spending some cash on property. There are a number of investment options, but your choice depends on your objectives, desired return on capital, budget and level of involvement in managing the land/property. Although property markets have been affected by the downturn, farmland, offices and houses are still out there for the taking but, if you want low fuss, hands-off management, residential property is your best bet.

Residential Property

In today's market, expect a healthy return of 5-6% on a buy-to-let investment based on a two bed terraced property in Northampton purchased for £110,000 and let at £600 per calendar month, or a two bed flat in the town centre bought for £90,000 and let at £500 pcm, factoring in a managing agent's commission of 10%. Purchasing repossessed properties can increase return significantly but consider miscellaneous capital costs, such as refurbishment, when budgeting.

Farmland

Agricultural land prices are past peaking but remain strong in the East Midlands at an average of £4,600/acre for arable and £3,450/acre for pasture, according to a national agent. Activity in the land market has been stable and RICS market surveys predict land values may increase in the second half of 2009, making it a good time to buy. Investment in farmland also brings tax advantages, particularly for Inheritance Tax but beware of 'elephant traps' that could scupper your reliefs.

Retail, Offices and Industrial

Commercial property transactions are few and far between at the moment. The rental market is at a record low and the threat of empty property rates is enough to put investors off. However, RICS Commercial Market survey reports that capital values are still on the decline, so look for properties let on a long lease term to a tenant with a good trading history.

For a confidential discussion on property investment, please contact Sophie Oliver on 01604 782703.

PROTECT YOUR PROMOTION AND OPTION AGREEMENTS

Do you have a land deal with a developer? If so, here's the good news: developers still want to build houses (remember the Government's pledge to deliver 3m homes by 2020?). Now for the bad news: your agreement may not remain as lucrative as you had hoped when you signed on the dotted line. As expected, the negative effects of the recession continue unabated for developers and other investors, so landowners should be prepared for firms to want to renegotiate deals for lower land purchase prices.

Developers can approach renegotiations from a number of angles. If a minimum price per acre was agreed in more buoyant times, developers are most likely to start at trying to chip away at this. The key question for landowners to ask is 'Does this still make the deal worthwhile should development/promotion go ahead?'

Another likely target for negotiations is planning obligations particularly in the form of Section 106 agreements relating to infrastructure. Developers may attempt to agree these obligations with the local authority without the landowner's involvement. Ever-changing Government policy isn't helping matters either; if the Community Infrastructure Levy is officially rolled out, land values will be its first victim so it has never been more important for landowners to protect the value of their deals and it is essential that they are fully represented by an experienced agent like Samuel Rose.

Please contact Lennox Thomson on 01604 782715 or Sophie Oliver on 01604 782703 for a confidential discussion.



A14 KETTERING BYPASS TO THREE LANES

The Highways Agency has recently announced its intention to widen the A14 between Junctions 7 and 9 at Kettering to dual three-lanes. All works are programmed to be within the existing highway boundaries and commence in 2011.

This work builds on junction management changes at Brampton Hut, planned dual three-lanes around Huntingdon and Cambridge and plans for a revised junction at Catthorpe (Junction 19 of the M1) with the expectation of improved journey times for all.

The wider benefits for landowners are a general improvement to the regional economy. For owners of development land in particular there is the prospect of a partial solution to countywide congestion issues which have served as a drag on the progress of strategic urban extensions as part of the region's growth strategy.



HIGHER LEVEL STEWARDSHIP (HLS)

Now is a good time to be applying for HLS as Natural England has amended its targeting strategy. Many areas now have more general targets to aim for such as farmland birds and BAP species and habitats. These are similar to before but the bar is not so high. Natural England has money in its budget and is looking for new applications, especially from those with old CSS agreements which are ending.

To discuss the suitability of your farm, please contact James Barker on 07958 768116.

CASE STUDY

Gordon and Haydn James farm in partnership in Bozeat, Northamptonshire. The 400ac farm supports a dairy herd of 130 cows and a flock of 300 sheep and the arable enterprise grows maize and wheat for silage and fodder or commercial sale depending on markets.

Haydn contacted Guy Banham at Samuel Rose in January 2009 for a record-keeping audit to ensure that existing records were being kept in accordance with cross compliance requirements and the new Nitrate Vulnerable Zone (NVZ) legislation. While the majority of records were up-to-date with a slight modification being made to the disposal of hazardous waste and addition of consignment notes to the file, it was the NVZ regulations that were found to have the biggest effect on the future of the business. A detailed description of the process, advice on the records that need to be kept and a calculation of the slurry storage requirements was carried out by Guy.



As the farm is already in an NVZ the audit showed that, under the new slurry storage rules that require producers to provide enough capacity to store for 5 months between 1 October and 1 March (enforceable in 2012), the capacity would need to be increased by 206,000 gallons (double the existing facility); this will require significant planning.

Shortly after Guy's visit and his subsequent written report detailing all of the different records that need to be kept and amendments to existing records in order to be cross compliant, an Environment Agency inspection took place to assess compliance with:

- The Groundwater Regulations 1998
- The Action Programme for Nitrate Vulnerable Zones (England and Wales) 1998
- The Sludge (Use in Agriculture) Regulations 1989.

The inspection went smoothly and the farm passed on all counts. Interestingly, the inspector used Guy's report as a checklist for the areas of compliance that needed to be covered.

This case is an illustration of the varied skills of the Rural Business Consultants at Samuel Rose, not just sitting at computers doing budgets and filling in forms but using practical experience and knowledge to advise on all aspects of the farming business. If you require any advice relating to cross compliance or the new NVZ regulations, please contact Guy Banham on 01604 782727.

Point-to-Point

Always keen to support local events, Samuel Rose sponsored the Ladies Race at the recent Pytchley Hunt Point-to-Point at Guilsborough. Guy Banham, an avid point-to-point follower, who enjoys riding out for local trainers Caroline and Gerald Bailey, presented the prize to Mrs A Webster, winning owner of Danaeve who was ridden by Miss Tammy Webster.

Breakfast Meetings



We have run a series of breakfast meetings over the course of the winter focusing on Land and Business opportunities. Instead of one person lecturing for an hour, we took a different approach to the meetings and 12 different business strategies and ideas were presented by different practitioners. The topics were diverse, ranging from free range chicken farming to starting up a cattery and investing in a SIPP. All meetings were well attended and well received – perhaps the full English before we started helped!

LAMMA Competition Winner

Samuel Rose exhibited at the LAMMA Show for the first time this year and we were thrilled by the level of attendance and interest shown by farmers to our stand. We ran a competition to win a meal out to the value of £250. Brian McColm from Lockerbie was a very worthy winner (especially as he spent seven hours in his car getting to the event!). He is involved with a farming and contracting business covering a wide area in Dumfriesshire and was at LAMMA to finalise the specification of a new self-propelled sprayer which will cover around 15,000 acres annually. He used his prize money to enjoy a meal and overnight stay with his wife at the Peebles Hydro Hotel in the Scottish Borders.



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