Agricultural land - farm sales framework

Introduction

The requirements of The Crown Estate Act 1961 as amended by the Scotland Act 2016, place a statutory responsibility on Crown Estate Scotland (Interim Management) to maintain and enhance the value of the estate and the return obtained from it, with due regard to the requirements of good management.

While Crown Estate Scotland's revenue profit is paid to Scottish Government, any capital investment in the assets needs to be met from receipts from sales, permissible transfers from revenue to the capital account or other capital transactions such as a transfer of rights. [1]

Crown Estate Scotland is further restricted in that the business cannot trade. This means that to invest money in improving assets for our tenants' use or other investments to develop and stimulate business sectors, attract potential tenants and invest in long term projects etc. – thereby increasing value and generating revenue – we must first raise that money. This must be done in a way that pays due regard to public benefits.

As well as fulfilling our statutory responsibilities, investing in the estate also enables Crown Estate Scotland to contribute towards delivering Scottish Government's Economic Strategy[2] and National Performance Framework[3], as well as stimulating investment in physical and natural infrastructure.[4]

Within this context of having to invest capital and to raise capital, when agricultural land/farm units become vacant (in-hand) because of a lease expiry, surrender or for any other reason, Crown Estate Scotland needs to make decisions about its future use. This framework[5] sets out the factors that CES takes into consideration when decisions regarding the potential re-let or sale of agricultural units are being made. Larger potential sales of significant areas of agricultural land comprising more than one unit or parts of an estate are not part of this framework as these will require a different assessment methodology which is not included here.

Title to the land and property assets manged by Crown Estate Scotland is reserved to The Sovereign. Crown Estate Scotland is therefore not considered to be a public body under the terms of The Community Empowerment Act Scotland 2015 which provides community bodies with a right to request to purchase, lease, manage or use land and buildings belonging to local authorities, Scottish public bodies or Scottish Ministers. Despite the legal position, Crown Estate Scotland seeks to identify opportunities to contribute to the principle of the Community Empowerment legislation and this framework takes due account of the ambitions in this legislation.

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[1] Generally, revenue is used for maintenance and keeping units and buildings in good working order, capital is used to increase the value of the estate. Capital works involve improvements such as putting up a new modern agricultural building of a larger size to replace a number of smaller outdated traditional ones in a steading; installing a new roof made of modern materials; tarmacadaming a stretch of estate road which was previously only gravelled. Revenue spend would be used on repairs and maintenance.

[2] Scotland's Economic Strategy March 2015 - http://www.gov.scot/Resource/0047/00472389.pdf

[3] National Performance Framework 2016 - http://www.gov.scot/Resource/0049/00497339.pdf

[4] Framework Document – public corporation Crown Estate Scotland (Interim Management)

[5] This is an interim framework subject to review once the Corporate Plan and Investment Strategy has been agreed by the CES(IM) Board.

Agricultural Estate Assets

Given the nature of the rural business and the land tenure arrangements that exist across Crown Estate Scotland assets, there is an ongoing requirement for decisions to be taken regarding the occupation of agricultural units, their investment and maintenance requirements, their rental value and current and future operational requirements. This process also involves strategic decisions regarding how farm units are managed when tenancies fall vacant or are surrendered for various reasons, or expire. Under these circumstances, a wide range of factors need to be accounted for before a decision is taken regarding the future use or potential sale/disposal of the unit.

Policy Framework

This framework identifies these factors and the criteria involved in decision-making. Due to the wide variety of elements involved in asset management decisions, this framework is intended as a guide only and each decision will depend on the exact circumstances of each case. As with all Crown Estate Scotland asset management decisions, the primary context is The Crown Estate Act 1961 and the duty to maintain and enhance the value of the estate and the return obtained from it, ensuring best consideration and with due regard to best practice / good management. The requirement for best consideration relates to financial value, while considerations relating to good management relate to established codes of practice / accepted standards and delivery of Scottish Government National Outcomes.

Every unit and each circumstance is different and there may be a broad range of options (sale of whole, sale of part, re-let of whole, re-let of part, restructure/combination with adjoining units, alternative commercial use for part or whole of land and buildings) that may require consideration.

Any decision should be based on the individual estate plans and an appropriate business proposal that clearly identifies the various options and the benefits and implications for Crown Estate Scotland for each option. The primary purpose in any decision is to ensure that both the financial value to Crown Estate Scotland (capital and revenue) and the benefits that are delivered to local communities and the wider environment are optimised as much as possible. A judgement of these factors should be made by Crown Estate Scotland staff with advice from professional land agents, with all decisions assessed within the delegated authority limits set out in the Scottish Government CES(IM) Framework Document. All decisions should take account of a range of options (including re-letting) with the recommendation set out in an appropriate case sheet which identifies each option and their respective pros and cons followed by a clear rationale for the recommended course of action.

Re-letting

When farm units become vacant / in-hand as tenancies are surrendered/vacated or when considering extension of re-let of tenancies that expire, as a long-term agricultural landlord it is the general policy of Crown Estate Scotland to re-let the unit for agricultural use, unless there is a clear justification for an alternative commercial use or sale / disposal of the unit / part of the unit in response to wider business considerations or specific factors relating to the unit itself.

A decision to re-let the unit is generally subject to due consideration being given to the following elements:

- The size of unit and its sustainability and viability as a going concern, given current and forecast agricultural economic conditions and an appropriate business plan.
- Possibility of letting on a new basis to the next generation of the family
- The unit's suitability for new entrant letting.
- The provision and condition of fixed equipment– buildings, farmhouse, storage facilities, fencing and other capital infrastructure.
- The condition, provision and balance of farm land including quality and type and the proportion of different types of land in relation to farm business requirements.
- Future investment requirements in terms of both fixed equipment and land.
- The rental value of the unit and future potential for maintaining or increasing passing rent assessed against the ERV (Estimated Rental Value). (ERV is the rental value assessed by professional land agents as part of a rent valuation exercise).
- The potential forecast revenue/rental yield as a percentage of capital value of the unit.
- Opportunities for maintaining and increasing capital value and rental income through shared investment /third party investment and/or improvements in husbandry / business development.
- Current tenure arrangements – i.e in the case of the expiry of a short-term tenancy (SLDT, LDT, MLDT) – the circumstances of the existing tenant.
- The need to maintain flexibility for alternative development requirements/opportunities

Following detailed assessment of these factors decision a to re-let the unit would be expected to be made if the balance of these elements indicated that the unit was economically viable, was in an appropriate condition with the requisite balance of land types to support a viable business plan, passing rent can be maintained close to the ERV, and the unit did not require significant capital investment which could not be justified given the return on investment in comparison to alternative investment opportunities and the rent offered.

A decision on the duration and type of any future tenancy will be a factor in the decision and this is subject to the details of the business plan submitted by the potential occupant, the suitability of the (potential) occupant and other factors, including various legal considerations associated with agricultural tenure law. These factors will also be considered against opportunities for CES(IM) to contribute towards Scottish Government Policies regarding farm tenancies.

Sales

A decision to dispose of/sell an agricultural unit on the open market rather than re-let would be considered principally in respect of units that are peripheral and have come in-hand following surrender of a tenancy or vacant possession being obtained through other circumstances (such as the retirement or death of a tenant where there are no successors to the tenancy). There may also be circumstances where a sale to a sitting tenant is under consideration.

In both cases the factors identified below should be assessed as part of the decision-making process. However, several additional factors will also require consideration when a sale to a sitting tenant is being proposed as this will involve a detailed valuation exercise and an assessment of respective share of vacant possession value and the value of tenant improvements /way-go valuations negotiated as part of the deal, with the need for appropriate independent benchmarking against market values to ensure best consideration is achieved.

Any decision should be based on a balanced judgement, accounting for all the factors identified below. However, in reaching a decision, financial considerations should be given greater weight, particularly ongoing capital investment requirements in the holding and future rental values/ yield in comparison to other agricultural holdings within the portfolio. A decision to proceed with a sale should also be assessed against the requirement of the CES Business Plan and the Corporate Plan, particularly with respect to capital and revenue budget targets alongside the need to maintain opportunities in the agricultural tenant sector.

Factors that should be considered when assessing the potential for the sale of an agricultural unit are detailed below.

Classification (core / non-core)

Units considered as 'core' should not normally be considered for sale – unless there are specific circumstances that would justify a sale. The definition of 'core' and 'non-core' is currently based on financial performance (current yield, capital value/growth potential, maturity, investment requirements) and location. Other factors might also be assessed depending on the requirements of the CES Corporate Plan.

Location (core or peripheral)

Sales of units/land that are considered core to the estate/property should not normally be considered unless there are exceptional circumstances. Where units are geographically located in the centre of an estate or are not considered peripheral, a sale may compromise long-term future value and may affect the integrity of the estate. Where units are considered as being geographically peripheral and where there may be marriage value with an adjoining property, then the potential for sale/disposal would be considered more favourably.

Capital values/revenue performance

Consideration should be given to the long-term impact on capital value of the remaining estate and its financial performance. Sales which are likely to compromise this should not normally be considered, particularly if the unit's performance/yield compares well against other holdings, passing rent is a significant element of estate income and long-term capital value might be negatively affected as a consequence of the sale.

Market conditions / value

Prevalent market conditions are a key factor. Sales should not normally be considered if the market is depressed or there are indications that the appropriate value in relation to the book value of the property cannot be achieved. Where the market is buoyant and the sale value is likely to exceed the book value, this would be in favour of a sale – other factors being considered.

Requirements of adjacent holdings / units on the estate

A unit should not be considered for sale if there is likely to be a detrimental impact on adjacent holdings or if there are opportunities for adjacent holdings to benefit from extending/combining their use of land or buildings coming in-hand, in ways that will impact the longer-term viability and revenue from the combined unit. This will involve consideration of an appropriate business case/plan to justify re-letting the unit in this way.

Opportunities for re-letting to a new entrant

Sale of the unit should not normally be considered if the unit is deemed suitable for letting to a new entrant and/or it is likely that an appropriate tenant with a viable business plan can be found. In these circumstances the sale of the unit/part of the unit should only be considered if significant capital investment is likely to be required and where other factors significantly out-weigh the opportunity to make the unit or part of the unit available for future letting.

Future strategic development opportunities

Where opportunities exist for future strategic development on the land or in the vicinity (e.g .single or multiple plot sales or larger development sites for housing and/or commercial use or possible commercial-level renewables potential) sales should not be considered. In this situation flexible letting arrangements are preferable to allow opportunities to be pursued as they arise.

Liabilities

Units that are likely to involve / include an existing or future liability which is deemed unacceptable or a potential business risk should be considered for sale or part sale, depending on the nature of the liability. This may involve environmental factors such as susceptibility to flooding or erosion or liabilities associated with fixed equipment. Property liabilities can take many forms and any liabilities need to be assessed against potential opportunities and the respective costs and benefits associated with each respective asset feature.

Public benefit / community impact

In every decision, consideration should be given to the public / community impact of the decision. Where this is potentially negative this should be fully assessed and balanced against other business considerations. If appropriate, a community consultation exercise may be required to ensure community views are fully understood and accounted for.

In certain circumstances sales or lease of land and property to community groups may be an option and this should be investigated if deemed appropriate. While Crown Estate Scotland is not considered to be a public body under the terms of The Community Empowerment Act Scotland 2015 it is subject to other rights to buy as set out in this act and the Land Reform (Scotland) Act 2003 as amended. Despite the legal position, where opportunities arise to contribute to the principle of the Community Empowerment legislation or emerge from an expression of interest from a community body, these should be actively considered as part of the options appraisal for any decision regarding the future use of land or property and all potential sales should take account of any opportunities that may be present.