Tenant Farmers Association

Proposed Rosefield Solar Farm.

1. Introduction

1.1 The Tenant Farmers Association (TFA) is the only organisation dedicated to representing the interests of farmers and farm businesses who do not own the land they use for agriculture in England and Wales. TFA membership comprises farms of all types and sizes but active, family farms predominate. The core membership of the TFA are farmers occupying land under tenancies regulated by both the Agricultural Holdings Act 1986 (AHA) and Agricultural Tenancies Act 1995 (ATA).

1.2 Day in and day out the TFA advises its members on their rights and responsibilities in respect of these tenancies and other agreements. A regular area of advice to TFA members relates to the implications for their security of tenure following applications made by their landlords either individually or with developers to seek change of use of the land that they farm including, as in this case, for development as solar farms.

2. Public Policy in Respect of the Impact of Development on Occupiers

2.1 In terms of the public policy around the impact of solar farm development on occupiers, and specifically tenant farmers, the TFA would highlight the remarks of the Prime Minister when, as Leader of the Opposition, he addressed the conference of the National Farmers Union in February 2023 to say this about solar farms:

"Tenant farmers need a fair deal. They need to know their futures are secure. I want to see more solar farms across the countryside. We've got high hopes for solar energy in our green prosperity plan. There'll be opportunities for farmers, opportunities for rural growth, cheaper bills, and in the long-term, real energy independence. But we can't do it by taking advantage of tenant farmers, farmers producing good British food on carefully maintained, fertile land. They can't plan properly if the soil beneath their feet isn't secure. It's a huge barrier to planning sustainable food production, so we've got to give them a fair deal, and we've got to use our land well".

2.2 The TFA would argue that this clear statement of policy needs to be reflected in the decisions made within the planning process when considering the impact of solar farm development on tenant farms.

3. Case Law Relating to the Impact of Development on Occupiers

3.1 There are two principal pieces of case law that underline that consideration must be given to the potential impact of a development on an occupier of land or property where that occupier is not party to the application for development. These are as follows:

Great Portland Estates v the Mayor and City of Westminster, House of Lords, 1984

R (ex parte Adams) v Vale of Glamorgan District Council, High Court ,2000

3.2 In respect of the House of Lords case above, the words of Lord Scarman in giving judgement in that case bear repeating:

"Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhumane pedantry to exclude from the control of our environment the human factor. The human factor is always present, of course, indirectly as the background to the consideration of the character of land use. It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance. But such circumstances, when they arise, fall to be considered not as a general rule but as exceptions to a general rule to be met in special cases. If a planning authority is to give effect to them, a specific case has to be made and the planning authority must give reasons for accepting it".

3.3 Informed by that House of Lords case, the Hon Mr Justice Richards in giving judgement in the Vale of Glamorgan District Council case under which he quashed a planning consent for the change of use to agricultural buildings subject to an agricultural tenancy said:

"The members [of the planning committee] were advised that the position of the tenant, though a material consideration, was 'not in the absence of any other objection, sufficient ground to sustain a refusal of the application'. The members were effectively being told that the tenant's position and the loss of the buildings to agricultural use could not amount to a freestanding planning consideration capable of justifying the refusal of permission; that there had to be some additional ground of objection such as the highways objection that had been the basis of the original recommendation of refusal. In my judgement that was an erroneous approach. It adopted too narrow a view of the relevant policy framework".

3.4 In reaching a decision about this application for solar farm development, the TFA would urge the Inspector to ensure that the impact of development on the personal circumstances of those occupiers who are not party to the application for development are properly considered such that, where those impacts are significantly negative, they would be sufficient to deny consent for change of use.

4. Compensation Payable to a Tenant in Receipt of a Notice to Quit Following the Granting of Planning Consent to their Landlord

4.1 An agricultural tenant renting a holding under and AHA tenancy is entitled to compensation for disturbance following the service by a landlord of a successful notice to quit under Case B of Schedule 3 of the AHA where the landlord requires the land for a use other than for agriculture and has obtained planning consent for that use. The provisions as to compensation are set out under Section 60 of the Act in terms that it is calculated as a multiplier of the rent passing for that bit of the holding given up so that typically a tenant may receive five or six times the annual rent in respect of what is removed from the tenancy. The TFA has been concerned for some time that this is an inadequate mechanism for setting levels of compensation and that landlords should be required to provide levels of compensation which properly reflect the tenant's actual loss and where there is a failure to agree what that might be, arbitration could be used to resolve the dispute.

4.2 In industry guidance (attached) it is stated that these statutory levels should be regarded as minimum levels of compensation and that particular consideration should be given to ensuring that agreed levels of compensation reflect the tenant's actual loss. The TFA would urge the Inspector to consider the extent to which this guidance has been followed in this application for solar development. Landlords must be required to ensure that occupiers losing access to land are properly compensated for their real loss.

4.3 These issues were debated on the final day of the Report Stage in the House of Lords during the passage of the Planning and Infrastructure Act 2025 following amendments tabled by Baroness Kate Rock. Those amendments were withdrawn by Baroness Rock on the basis that the Planning Minister, Baroness Taylor of Stevenage, agreed that new guidance needed to be drafted so that the inspectors were clear that the statutory minimum compensation should not be treated as the final word on what landlords needed to do. We would therefore urge the inspector to take this on board when making a decision about this development.

Conclusion

4.4 The TFA would urge the Inspector to ensure that if the compensation payable to tenant farmers been displaced by this development is not sufficient to meet their real loss and the application for development should be refused.

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10 March 2026
GWD/0808

1986 ACT TENANCIES AND CASE B NOTICES TO QUIT

A JOINT CLA/NFU/TFA/NFYFC GUIDANCE NOTE

ISSUE

This note sets out our recommendations in the way those advising should act when considering compensation and other matters arising from a Case B Notice to Quit which affects the whole or a substantial part of a 1986 Act tenanted holding.

The guidance set out herein recognises that, in certain circumstances, landlords do offer more compensation than that currently prescribed by law, and that many tenants suffer substantial financial hardship on development affecting their holding.

This guidance has been endorsed by the Country Landowners' Association, Tenant Farmers Association, National Farmers' Union and the National Federation of Young Farmers Club.

BACKGROUND

The tenant's entitlement to statutory compensation for disturbance was introduced at a time when there was no statutory security of tenure, with the aim of mitigating the tenant's position to some extent. The scheme was retained after the introduction of security of tenure in 1947, and was not changed to increase the amount of compensation when succession was introduced in 1976, or when succession rights were reduced in 1984. The law is now contained in sections 60-63 of the 1986 Act.

Since the introduction of Farm Business Tenancies under the 1995 Act, a tenant does not have the opportunity to obtain land on similar terms to those which he surrenders on the resumption of the land by his landlord. Nonetheless, independent research shows there are now many more opportunities for tenants to replace land lost to development by obtaining a new FBT than before the passing of the 1995 Act.

The 1986 Agricultural Holdings Act (the Act) provides the only enforceable basis of payment to a tenant when possession of land comprised in a contract of tenancy is required by the landlord following grant of planning consent. The landlord is entitled under such circumstances to serve an incontestable notice to quit the area covered by the planning consent under Case B of Schedule 3 of the Act.

The compensation payable under Section 60 of the Act is based on a multiplier of the apportioned passing rent for the area taken, usually 5 years, which can be increased to 6 years if the tenant serves the appropriate notice on the landlord. These levels should be regarded as minimum levels of compensation to the tenant, but advisers need to bear in mind the provisions of S.78 of the Act which states that a landlord or tenant shall be entitled to compensation in accordance with the Act and not otherwise and shall be so notwithstanding any agreement to the contrary.

This guidance note is not intended to cover situations arising under resumption clauses in a contract of tenancy which reserves the landlords rights to seek possession of a part of the holding for an alternative use.

THE CURRENT LEGAL POSITION

The 1986 Act provides that:

- "basic compensation" (i.e. one year's rent) forms part of any "compensation for disturbance" payable to a tenant.

- Disturbance compensation is only payable where the tenancy terminates by reason of a Notice to Quit given by the landlord, or following a counter-notice by the tenant enlarging a landlord's Notice to Quit part of the holding.

- Furthermore, the tenant must actually quit the holding as a consequence of the appropriate Notice to Quit. This essential causal link must exist. Compensation is not payable, for instance, following a surrender or forfeiture at common law.

- A higher level of "basic compensation", equal to two years' rent, or the amount of the tenant's actual loss on removal, whichever is the less, is payable to the tenant if he serves the appropriate notice on the landlord.

- The landlord must be given a reasonable opportunity for a valuation of the tenant's goods and chattels.

- The tenant's "actual loss" is "the amount of or expense directly attributable to the quitting of the holding which is unavoidably incurred by the tenant upon or in connection with the sale or removal of his household goods, implements of husbandry, fixtures, farm produce or farm stock on or used in connection with the holding, and includes any expenses reasonably incurred by him in the preparation of his claim for "basic compensation"

- In addition to "basic compensation", "additional compensation" being an amount equal to four years' rent is payable under Case B when the holding is repossessed for a non-agricultural purpose. (A Case B Notice may be served on the tenant where planning permission has been obtained or is not required in order to establish the non-agricultural use).

- "Additional compensation" is also payable where a plain notice to quit is given purporting to terminate the tenancy for the purpose of a non-agricultural use not falling within Case B. With the latter, the planning permission is not required by virtue of the exemption provisions in the planning legislation.

- Compensation for disturbance is payable in addition to any compensation to which the tenant may otherwise be entitled under the 1986 Act (e.g. tenant right, improvements etc).

RECOMMENDATIONS

In cases where the planning consent extends to the whole, or a substantial part of the tenancy, such that substantial harm to the holding may be envisaged, or where a piece of land or building vital to the tenant is to be regained by the landlord, the Land-owning and farming organisations recommend the following factors should be taken into account:

- As the process of securing planning consent gets ever more complicated, and in the light of the values that are achieved pursuant to a successful application for some types of development, it makes good practical sense for the parties to seek to agree terms for the resumption of possession to go ahead without dispute. This should be done in writing. Accordingly, landlords should keep tenants informed of the prospect and progress of major development proposals from an early stage.

- Landlords should be aware that in some cases access to the land to undertake pre-consent works, such as archaeological, hydrological or stability investigations will be helpful. Not all tenancy agreements reserve sufficient rights to the landlord to ensure these can take place before possession is granted.

- Tenants should be aware that landlords will find it easier to justify meeting claims for compensation when such access has been afforded the landlord.

- Tenants should carefully consider whether to object to the landlords planning application, and are advised to raise this with their landlord at an early stage in the proceedings

- Tenants should be aware that statute permits claims (where justified) on resumption for improvements, tenant right (including growing crops, cultivations, unexpired manurial values), milk quota, disturbance, "high farming" (as defined at Section 70 of the Act[1]), market gardens, and tenants fixtures and fittings.

- Landlords should be aware that any dilapidations or damages arising from a breach of tenancy agreement may be set off (where justified) against the tenants statutory claim.

- Landlords should be aware that resumption at a date earlier than would be permissible (under the tenancy agreement or Statute) may be valuable.

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[1] High Farming is the adoption of a system of farming which has been more beneficial to the holding than the system required under the tenancy agreement or that normally practised on comparable holdings. The tenant has to show he has made a formal record of the condition of the holding and the fixed equipment before adopting the special system and has to give notice of the claim at least one month before the termination of the tenancy. Compensation due is limited to the increase in value of the holding having regard to its character and situation and the requirements of an incoming tenant reasonably schooled in husbandry. It is very rarely successfully claimed.

- Landlords should consider with their tenant how :

  1. the access required for site investigations etc.

  2. the passage of the planning application without an objection from the tenant

  Could be used to pay a higher sum by way of compensation than statute would require, bearing in mind the provisions of S.78 of the Act.

  Particular consideration should be given to ensuring that the agreed compensation reflects the tenant's actual loss. But, any such increased payments must comply with both Inland Revenue Guidelines and S.78.

- The parties should be aware that an agreement to surrender land entered into before the creation of a tenancy is not enforceable at law. Accordingly the parties should carefully consider the timing of the progress of the planning application.

- In some cases it may be appropriate to agree an early surrender on suitable (written) terms reflecting enhanced compensation with a re-grant of a new short term tenancy or other arrangement which affords the access and eventual possession that is required, But tax advice on this should be obtained before either option is progressed.

- Both parties should seek independent valuation and legal advice on the documents which record the agreement and any compensation.

CONCLUSION

The land-owning and farming organisations jointly recommend that members seek negotiated solutions to the issues arising from development of tenanted land, taking into account their own circumstances, the terms of the relevant tenancy agreement and the above.