

differences with the comparable holding, the same ratio of rent to pre-rent surplus can be applied to the subject holding as applied to the comparable holding in order to arrive at an overall figure for the holding (inclusive of the farmhouse) for the rent. This will avoid the need to have a separate valuation of individual parts.

Where more than one good comparable of equal weight exists, it may be appropriate to take an average of the available comparables in proportionate terms.

Approach 2

This approach involves looking at both the comparable and the subject holding in component parts and is probably the more common approach. Taking the rent for the comparable holding first, an analysis should be carried out to break the rent down into its component parts in order to calculate the effective rent for the farmhouse. In so doing it is important to bear in mind that in assessing rent levels for the land elements it is not appropriate to take rental values from bare land lettings. Such lettings tend to carry much lower fixed costs and can generate higher land values because they are lettings at the margins of profitability. In dealing with a whole farm situation it is important to recognise all the costs involved.

In this case the farmhouses on both holdings are of a similar size and nature which allows a calculation based on the area of the farmhouses to be carried out. A simplified example split of a comparable is provided in Table 1. The comparable rent is for a largely arable holding of 360 acres with traditional buildings, one worker's cottage and a farmhouse, with the rent payable at just over £63 per acre.

These figures can then be unitised so that they can be directly applied to the subject holding. Table 2 assesses how these unit values could be applied to a subject holding in order to arrive at an overall rent. The subject holding is assumed to be a 400 acre arable holding with traditional buildings, two workers' cottages and a farmhouse.

Indeed it would be appropriate to carry out the assessment based on both approaches and then allow the ultimate decision to be informed by taking into consideration the answers provided in both circumstances.

NOTE: This document is only for general guidance and is not a substitute for professional advice. Every effort has however been made to ensure that the information herein is accurate at the time of publication. No responsibility can be accepted for any errors, omissions or illegal inaccuracies. Please note that this Guidance Note replaces all others issued by the TFA on this subject prior to the date shown below.

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Table 1

Item	Rate	Value (£)
(A) Total rent	£63/acre	22,700
of which....		
300 acres grade IIIa arable land	£50/acre	15,000
60 acres permanent pasture	£35/acre	2,100
6000 ft ² traditional buildings	£0.1/ ft ²	600
1 Workers Cottage	£2,000/cottage	2,000
(B) Total rent before farmhouse		19,700
1200 ft ² Farmhouse (A-B)	£2.50/ ft ²	3,000

Table 2

Item	Rate	Value (£)
400 acres grade IIIa arable land	£50/acre	20,000
8000 ft ² traditional buildings	£0.1/ ft ²	800
2 Workers Cottages	£2,000/cottage	4,000
1150 ft ² Farmhouse	£2.50/ ft ²	2,875
Total rent	£69.19/acre	27,675

CONCLUSION

The farmhouse is one of the relevant factors that need to be taken into consideration in every case during the rent review process, as it forms part of the character and situation of the holding. However, in assessing its value, it is important to employ mechanisms appropriate to the legislation and case law which has amassed over time.

The TFA would commend this Guidance Note to landlords, tenants and their agents in order to clarify the methodology which should be used and reduce the extent to which there is contention in rent reviews.

RENT REVIEWS UNDER THE AGRICULTURAL HOLDINGS ACT 1986 THE VALUE OF FARMHOUSES

INTRODUCTION

This Guidance Note seeks to provide a framework for assessing the correct contribution made by a farmhouse to the rent properly payable for a holding let under the Agricultural Holdings Act 1986 (the 1986 Act). For the purposes of this Guidance Note the term "farmhouse" is used to mean the main residential dwelling on the holding whatever its size or character. In recent years deciding upon the correct level of contribution for farmhouses has arguably been the most contentious issue in 1986 Act rent reviews.

This contention has been borne out of the large increases in rents for houses let on Assured Shorthold Tenancies (ASTs) in the private residential sector in past years coupled with a perception amongst landlords and more particularly their agents of a low income return on an asset of high capital value. There has also been a significant degree of volatility around a very low base for farm incomes making it difficult in recent years for any rent increase to be justified by landlords on agricultural economics alone. Other matters have been brought into the debate to a more significant degree and these include not only the value of the farmhouse but sub-let cottages, diversification activities, off-farm income and farm support through SPS and agri-environment schemes.

The mixture of personal and business interests also act to make the question of farmhouse value more difficult to assess. Unless used for a bed and breakfast or other enterprise the farmhouse itself does not generate money within the business for the tenant. On the contrary, the farmhouse can cost the tenant a lot of money in maintenance. Often it will be too big for the reasonable requirements of the tenant and yet it can have a significant benefit and value to the tenant. It is this value which must be taken into account as a relevant factor when assessing the rent properly payable for the whole holding being let.

STATUTORY PROVISIONS

The law as set out in the 1986 Act is not prescriptive in how to deal with the valuation. Accordingly the approach to and calculation of the rental value of the farm, and particularly the farmhouse, is left open to the parties, their agents or the arbitrator. Different people will have different approaches.

The procedure for assessing a rent for a tenancy let under the 1986 Act is set out in Section 12 and the criteria for assessment in Schedule 2 of the 1986 Act. More details are provided in the TFA's Guidance Note 'Practical Issues for Rent Reviews'.

Schedule 2 of the 1986 Act states what must be done, but not how to do it. The process has been informed by case law but there have been relatively few cases taken through the courts. Because arbitrations are private matters there are seldom reports on what has happened and how the arbitrators have reached their decisions. In any event an arbitration award does not create a binding precedent, although rent levels set out in arbitration awards inform the assessment of comparable evidence as a relevant factor in the rent review process (see below).

The 1986 Act defines the rent properly payable as the rent at which the holding might reasonably be let by a 'prudent and willing landlord' to a 'prudent and willing tenant', taking into consideration all relevant factors and in every case:

1. The terms of the tenancy.
2. The character and situation of the holding.
3. The productive capacity of the holding and its related earning capacity.
4. Rents being paid on comparable holdings.

In assessing the rent, the fact that a tenant is in occupation of the holding must be excluded as should the value of any tenants' improvements which might include for example, in the context of the farmhouse, items such as new kitchens, bathrooms and extensions.

It is important to stress that the rent review process is to find the rent for an **entire holding** and not for the individual component parts of the farm. Whilst it is common practice to use component valuations, as below, these must be conducted with great care so as not to undermine the process of assessing the rent for the whole of the subject holding.

COMMON MISCONCEPTIONS

As has been noted, deciding on a reasonable value for a farmhouse in a rent review has been a major contentious issue in recent years. Much of this contention has been based on a number of common misconceptions. This section reveals some of these misconceptions, in order to provide a clear basis for

assessing the rental value of farmhouses in line with the 1986 Act.

1. The farmhouse has no value.

This is a common misconception amongst many tenant farmers. It is fuelled by the belief that the only relevant factor that needs to be taken into consideration is the earning capacity of the holding. However, as can be seen from the legislative background above, this is not the case. It is the case that the farmhouse will have a value and will therefore impact on the level of the rent for the whole holding. It is also true that the value of a farmhouse will differ according to a range of factors including size and location. It is therefore important for tenants entering into rent negotiations with their landlords to be realistic about the rent levels that they are likely to achieve.

2. Rents passing in relation to Assured Shorthold Tenancies are irrelevant to the rent review process.

The statutory provisions require that in assessing the correct level of rent that 'all relevant factors' are taken into consideration. The definition of 'all relevant factors' has been the subject of close scrutiny through the courts in previous years. Taking this case law into consideration it is difficult to claim absolutely that rents on ASTs are completely irrelevant to the rent review process under the 1986 Act. Indeed, where a rent review is resolved by arbitration, an arbitrator will be required to admit all evidence presented and then to attach such weight as is appropriate. The arbitrator has a wide discretion to apply whatever weight he considers appropriate to any evidence that he is receiving under the general banner of 'all relevant factors'. Given the 1986 Act specifically directs arbitrators to take into consideration comparable rents as defined by the 1986 Act, he can afford to and should give a very low weight to any evidence presented to him based on AST rents. He might only consider it beneficial to look at how AST rents have changed over time in order to get an overall impression of the change in residential values over the period the rent review is being considered. So whilst he would be erring in law to disregard AST evidence completely, he would also be in error to apply anything other than a low weight to its significance.

3. Assured Shorthold Tenancy rents are direct comparables.

The statutory provisions of the 1986 Act are clear that one of the relevant factors that must be taken into consideration in every case is comparable rents. The 1986 Act goes on to define comparable rents as those being paid in respect of holdings let under similar terms. Therefore, these can only be tenancies to which the 1986 Act applies. In the same way as rents

under Farm Business Tenancies are not direct comparables with those let under the 1986 Act, neither are ASTs.

Most AST lettings are of a short term nature with very few obligations on the tenant and an ability to walk away at short notice. Such obligations as exist are usually by reference to Section 11 of the Landlord and Tenant Act 1985 and are much less onerous than the model repairs clauses common under 1986 Act tenancies let alone for tenancies let under full repairing and insuring terms. Also most AST lettings are for properties in good condition, usually carpeted, curtained and with appliances. Some 1986 Act tenancies include farmhouses of very poor quality or involving high maintenance and in some cases disregarding the tenant's works would render the farmhouse uninhabitable.

This does not mean that AST rents are completely irrelevant to the process but they cannot be taken to be direct comparables.

4. It is appropriate to take a discount of an AST rent and apply it to a 1986 Act farmhouse rent.

It has not been unknown in the past for landlords and their agents to sometimes use the argument that they will use an AST rent as the basis from which they derive the relevant rent for a farmhouse under the 1986 Act by applying a discount factor. Typically, this might be a third or a half. However, there is nothing in the statute or the case law which gives this approach any weight whatsoever. Indeed, the way in which the 1986 Act is constructed drives those involved in settling a rent review away from the market towards a constructed position based on the main tenets of the legislation. The market is therefore not the correct place to start the analysis of the rent properly payable for the holding. Whilst applying an arbitrary discount to an AST rent might achieve the correct figure, it will be by accident as opposed to design.

5. The farmhouse should be valued separately.

A recent phenomenon has emerged where landlords and their agents argue that it is appropriate to settle a rent for the holding and then to add to that a value to the farmhouse. Various methods of calculation are used to assess that additional value but it is often based on taking a proportion of an AST rent (see above). Whatever valuation approach is taken it is clear that there are no grounds for this approach under Statute or case law. The rent for the holding has to be assessed for the whole of the holding and not with or without the dwelling. This does not however negate the practice of assessing the rent on a component valuation basis (see below).

6. The exclusion of AST rents is "unfair" to landlords.

It is important again to consider the statute in responding to this misconception. The 1986 Act requires that in assessing the rent properly payable that both the landlord and the tenant are prudent and willing. The question of whether or not the landlord would prefer to let the farmhouse on an AST is therefore not relevant. The process assumes that he is willing to let the holding as a holding under the 1986 Act. It is therefore not a question of being fair or unfair to the landlord but that the rent is assessed on the basis as set out in the 1986 Act. There are a number of circumstances where property attracts a different value depending either on location or the legislation impacting upon it. These are facts of life that all parties have to live with.

In addition, whilst some landlords will try to claim that a farmhouse would be let out on an AST for a monthly rent of many thousands of pounds and that the farm rent under a 1986 Act tenancy should reflect this, there are also practical reasons why this line of reasoning is incorrect. In the first instance the repairing liabilities for a tenant with an AST are very different to a tenant under a 1986 Act tenancy. For example, an AST tenant would not be expected to pay for half the cost of repainting the outside of the house, nor would they be required to clean the drains or deal with a wasps nest in the attic or even repair a dripping tap! These issues would fall to the landlord of the AST tenant.

Some owners of large farmhouses may suggest that it is unfair that the grandeur of the farm house is not reflected in the rent paid by a 1986 Act tenant. However, in practical terms a seven bedroom Listed farmhouse may attract the same rent as a three bedroom 1980's bungalow let under the 1986 Act. The 1980's bungalow will have much lower heating bills, require less cleaning and can be repaired using standard materials available from any multiple DIY store, as opposed to the Listed farmhouse which will be more expensive to heat, clean and maintain. Therefore the price for grandeur can easily be cancelled out by the higher costs of management.

The fact that most 1986 Act tenancy agreements will require the tenant to live permanently in the farmhouse provided by the landlord is also a factor to consider. The tenant has no choice as to where he will live. Whilst he may not want the particular farmhouse on offer, as the farm and farmhouse come as a package, he cannot have one without the other.

However, in cases where a farmhouse is no longer required by the tenant and consent has been granted by the landlord for it to be sub-let to a third party, the basis of the rental valuation will usually be negotiated between the parties and will fall outside of the 1986 Act legislation.

THE CORRECT APPROACH TO VALUING FARMHOUSES AS PART OF A RENT REVIEW

Having considered and disposed of the common misconceptions, we need now to consider the correct basis upon which farmhouses should be included in rent reviews. As set out earlier the law tells us what to do but not how to do it. Different factors will apply in different areas. The importance of a farmhouse within a letting in the Cotswolds for example will be significantly different to a farmhouse let with land somewhere less desirable. Ultimately the rent to be assessed is that which may be reasonably expected and in that respect it is the expectation which must be reasonable, not necessarily the level of rent.

There are two principal approaches which can be used and both of them depend to a large extent on comparable evidence.

As noted above, comparable evidence is one of the factors that need to be taken into consideration in every case when a rent is to be assessed for a 1986 Act tenancy. As 1986 Act tenancies are no longer offered as new lets, except in very limited circumstances, the source of comparable evidence on rents now comes from other rent reviews conducted for established tenancies governed by the 1986 Act. To repeat what is said above, a comparable rent must be from a holding let under similar terms. Therefore they can only be other 1986 Act rents and not rents under other tenancy codes including Farm Business Tenancies, Assured Shorthold Tenancies or even tenancies under the Fair Rent legislation.

Approach 1

This approach involves selecting one or more suitable comparable holdings and constructing for each of them a budget taking into consideration the productive capacity of the holding, the terms of the tenancy, the character and situation of the holding and any other relevant factor. It will be important to ensure that this budget is constructed on the basis that the current tenant of the comparable holding is not in occupation of the holding. Of course this will not be a straight forward matter given that it may not be possible to have access to all the relevant information required to produce a viable budget. However, in presenting a rent as a comparable it will be important to ensure that sufficient information can be brought to support the contention that the holding is comparable with the subject holding.

Having assessed the budget and produced a figure for the pre-rent surplus, it will then be possible to assess the percentage of the pre-rent surplus made up by the agreed rent.

Turning now to the subject holding and having made any necessary adjustments to the budget for the subject holding to take into consideration any