

KR: OFC - Ensuring Tenanted Land Is Fit for a Regenerative Future

Introduction

Thank you and I am delighted to be here today.

I am a tenant farmer and recently chaired The Rock Review into agricultural tenancies in England which was published in October 2022. I want to pay particular tribute and thanks to OFC's Chair Emily Norton who was an invaluable member of the Review's Tenancy Working Group.

Half of England's agricultural land has a tenant farmer as its steward. In order to produce quality food, sequester carbon, clean our rivers, and restore wildlife, it is essential that the incentives to do this are accessible to tenant farmers. The Rock Review, built on solid evidence and extensive consultation, sets out clearly how this can be done.

Historically, the concepts and practices that form the basis of our understanding of regenerative agriculture have always been writ large within farm tenancy agreements. Whether it is about the protection and maintenance of permanent pastures, the requirement to use rotations, the management of hedgerows, the application of manures, the use of cover crops and ensuring the health of soils, you will find clauses in tenancy agreements which provide the basis upon which landlords and tenants can work together to achieve these private and wider public benefits.

However, in many cases, taking on these actions can result in a yield penalty or have associated costs that a business has to swallow. We therefore need a modern take on those clauses that will reward good stewardship of the natural capital of a farm for the benefit of all.

The positive benefits of moving to and operating a regenerative system can take many years - certainly more than the average length of FBTs which are now less than 4 years.

The new Sustainable Farming Incentive is meant to support farmers to make this transition.

However, what a scheme cannot do is to lengthen the terms of a tenancy – meaning tenant farmers have to work within their existing tenancy structure.

So let's discuss that structure.

In the post war era up to the mid-1990s, agricultural tenancy legislation provided tenants with lifetime security and, in some cases, security for three generations. This security of tenure enabled tenants to take a long-term view of their businesses and actively invest in their farms including the natural capital of the holding.

However, the proliferation of what became known as Gladstone v Bower tenancies, that let land for fixed periods of up to 2 years, and Ministry consent tenancies, which provided security for up to 5 years, meant that the pendulum swung towards shorter-term agreements. This short-term approach was then cemented by the introduction in 1995 of the Agricultural Tenancies Act which brought Farm Business Tenancies into being.

Whilst the 1995 Act did provide freedom of contract; given the scarcity of land available to let in comparison to the demand, rents have been exposed to market volatility and landlords virtually have free rein to determine the terms under which land is let.

Unfortunately, the extent to which the flexibility of the legislation is used today has become far too narrow – a fact recognised by many in the industry and by Government. This can be seen most clearly in the short security of tenure now afforded to tenants. Over the last nearly 30 years, the average length of an FBT agreement has been never much above four years and today it currently stands at just above three years.

An inevitable impact of this is that a tenant farmer's planning horizon shortens to match their shorter tenancy. Even where agreements are assumed to roll over on a year-to-year basis, there is no guarantee of continued occupation into the long term. A landlord can serve a notice to quit at any time. Sadly, this has consequences for the management of the natural capital assets of the holding.

So even if a tenant wants to take actions to move to a regenerative system, they are not incentivised to do so within a short-term planning horizon. They need a long-term view.

The Rock Review also found that the 1995 legislation has impacted the ability and the desire of the tenant farmer to invest on the holding as they did under the 1986 legislation.

So what is the solution to ensure that tenanted land is fit for a regenerative future?

We need to move to a state where agricultural tenancy is characterised by long-term agreements, with landlords and tenants working collaboratively for their wider and mutual benefit. In the same way that post-war legislation changed the structure of agricultural tenancies to suit the changing needs of society, we now find ourselves going through another societal change. The recognition of climate and biodiversity crises and the changes to government payments mean that we must seriously consider further structural changes so that tenanted land can play its role in a regenerative future.

In The Rock Review we found evidence of good practice where landlords and tenants were working together collegiately and collaboratively with benefits to the wider environment. However, sadly, this was more the exception rather than the norm. Too often we found an overly short term, commercial and acerbic approach to the management of tenanted estates.

In response, The Review has provided a set of recommendations that seek to champion what we found as good practice and to nudge all parties - landlords, tenants, land agents and government - towards the better practice that we all need. Much of the focus of the Review is on how DEFRA needs to design the Environmental Land Management Schemes to ensure that tenant farmers can participate fully. It was pleasing to see Ministers take on board and implement some of our early thinking and recommendations. I hope that DEFRA will take a much bolder approach with focus on both food production and nature. They are bringing out a wider range of tenant friendly SFI standards and I hope that a substantive offering under what is to become an evolved Countryside Stewardship will ensure the widest participation of tenant farmers. This is absolutely critical given 64% of farmable land is on partly or wholly tenanted holdings.

The Review also highlights the need to develop new schemes in ways which will allow both landlords and tenants to participate jointly. It has been the case that DEFRA allows landlords to claim the ability to have sufficient management control to solely enter agri-environment schemes. In the context of the exclusive occupation given to farm tenants, the Review did not feel that it was appropriate for landlords to have this unilateral access on tenanted land. However, in working jointly with tenants, it is completely appropriate for DEFRA to enter into joint agreements with landlords

and tenants. This marries the multi-generational land interest of landlords with business planning interests of tenants.

Additionally, we need to be careful that we do not end up losing a substantial amount of land from the tenanted sector with landlords seeking to enter land into schemes for woodland planting, rewilding or for renewable energy. Not only will these provide limited benefit to wider society with impacts to the rural economy from closing down tenant farm businesses, but they will also damage the resilience of the tenanted sector and its ability to innovate and be sustainable for the long term.

The Government also needs to reform the taxation framework within which landlords make decisions about letting land. Changes to agricultural property relief from inheritance tax made in 1999 mean that all agricultural landlords, regardless of how long they let for, are entitled to 100% relief on the agricultural value of their estates. This tax advantage is delivering very little public benefit and it would be better if this was targeted to encourage longer term agreements within which regenerative systems could thrive.

To achieve the radical refocusing of attention on long-term sustainability and improved collaboration, particularly for the land agent community, the Review proposes the establishment of a Tenant Farming Commissioner who will have responsibility to develop and oversee a code of good practice for use within the landlord tenant system and to challenge DEFRA and other parts of government to ensure that regulations, legislation and policies are cognizant and relevant to the issues impacting the tenanted sector of agriculture. I am pleased that the proposal for a Commissioner has had wide-spread industry support.

Of course, structural changes will require some changes in legislation and the Review recommends that DEFRA engage the Law Commission to investigate further. A particular issue highlighted is with the Rules of Good Husbandry which underpin both the legislative codes for agricultural tenancies in England and Wales. These rules were written in the immediate post-war period and require that tenants farm their holdings to maximise the efficiency of their production. There is no mention of wider environmental considerations so issues of sustainability and regeneration need to be built into that underpinning legislation. The Review heard of situations where these rules had been used as leverage against tenant farmers who were building environmental considerations into their farm management decisions.

Furthermore, the Review heard from many industry voices that the definition of agriculture needs to be revisited. This is important not just for the management of agricultural tenancies but the way in which agricultural land is taxed. We need to ensure that issues around biodiversity, the management of carbon and other ecosystem services in the context of using land for food production and for nature become part and parcel of a new definition of agriculture. It is very important here that we are talking about the farmed environment. Care needs to be taken on the definition as if it is extended too widely it could lead to issues around food production and food security.

The Review is now sitting on ministerial desks of not just DEFRA but also 10 Downing Street, the Treasury, DLUCH and other Government departments and we await the Government's Response.

I am also pleased to see that the Welsh Government has launched a tenancy working group and I would be delighted to share with them our insights and conclusions.

We all have a role to play to ensure the sustainability of the agricultural tenanted sector and its ability to engage with and deliver the principles of regenerative farming.

Our nation's tenant farmers are of vital importance to our rural communities and our rural economy. With some changes they will be especially well placed to deliver the regenerative approach demanded by today's society and the society of tomorrow. But we will need everyone to play their part in making this not just an ambition but a reality.

Thank you.