

Review of retirement age of farming tenants with farm business tenancies granted under the Agricultural Tenancies Act 1995

To: Commercial & Investment Committee

Date: 19 February 2021

From: Tony Cooper, Assistant Direct - Property

Electoral division(s): All

Forward Plan ref: N/a                      Key decision: No

Purpose: To confirm a proposed amendment of a management policy for the Rural Estate.

Recommendation: approve an amended policy so that agricultural tenants are given the opportunity to apply for a new FBT that takes them to the year in which they reach state pension age (or thereabouts) with an end date of October to match the recognised end of the farming year

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## 1. BACKGROUND

- 1.1 Commercial & Investment (C&I) Committee approved management policies for the Rural Estate at its meeting of 21<sup>st</sup> February 2020. [[Rural Estate Strategic Review report](#)]
- 1.2 This included a policy [2.8 at the link] by which tenants of holdings let to them under the Agricultural Holdings Act 1986 (AHA) could farm beyond the set retirement age of 65 years required in their tenancy agreements to be in line with the State Pension age which is changing. Government policy endorsed this alteration in the recent Agricultural Bill.
- 1.3 CCC's policy as drafted did not address the retirement of tenants of holdings let to them under the Agricultural Tenancies Act 1995 – more commonly known as Farm Business Tenancies (FBT) which are fixed term tenancies.
- 1.4 FBTs comprise the majority of CCC farm tenancies. The provision of a FBT is a commercial agreement for the use of land and is not one relating to employment. FBTs vary in length, but none currently extend beyond, or thereabouts, the tenants 65<sup>th</sup> birthday.
- 1.5 There is no legal requirement to extend or renew an FBT once it comes to an end. Notwithstanding this and following requests from a number of tenants whose FBTs end close to but before the revised State Pension age, it is considered that it would be fair, equitable and consistent to extend the tenancy agreement so that it ends on the October after the State Pension age is reached.

## 2. State Pension Age

- 2.1 Government changes to retirement dates impact when our older tenants are due to qualify to receive their state pension depending on their year of birth. Currently the State Pension Age is 66 but will increase to 67 in 2026 and to 68 in 2027. This age applies to both males and females.
- 2.2 It would be prudent and equitable to review the policy so that all agricultural tenants nearing the end of their current tenancies and approaching State Pension Age are offered new tenancies in a consistent way. This will help ensure that all CCC Farm Tenants, where on AHA or FBT agreements, are treated equitably as they approach State Pension Age.

### 3 Options for Change

3.1 There are three options: -

3.1.1 Option 1 – do nothing and maintain the status quo.

3.1.2 Option 2 – allow tenants to apply for new tenancies beyond 65 years of age for as long as they feel able to farm.

3.1.3 Option 3 – offer all tenants when they reach age 65 years the opportunity to apply for a new FBT that takes them to the year in which they reach state pension age (or thereabouts) with an end date of October to match the recognised end of the farming year.

3.2 Option 1 would effectively penalise those FBT tenants approaching State Pension Age whose tenancies end prior to the commencement of the State Pension. This would create inequality between tenants on different types of tenancies and create an income gap for some tenants of up to 3 years between loss of their farm income and receipt of their state pension. There are approximately 13 tenants in this position in the next 5 years.

3.3 Option 2 would reduce the availability of holdings for new entrants and existing tenants looking to expand and develop their businesses. It also risks tenants farming a holding whilst in receipt of a retirement income, which may affect the commitment to the farm business. In recognition of the significant challenges facing the farming sector post-Brexit, Defra are introducing a lump sum retirement scheme in 2022 to encourage older farmers to leave the industry. Defra are also putting renewed efforts into encouraging new entrants into farming. This is aligned with existing CCC policy as set out in 1.2 above.

3.4 Option 3 would provide consistency between tenants on different tenancies across the estate and is aligned with wider estate objectives.

3.5 Decisions on any extension will be considered on a case by case basis with responsibility for implementation with the Rural Asset Manager and their team, but will require criteria to be met such as tenant having a good track record of rent payment, meeting all tenant obligations required of the current tenancy agreement and agree a revised rent if not already at market level. In addition, if the tenant reaches pension age by the end of year the FBT was due to end it should not be extended as the financial impact on the tenant is limited.

3.6 Non-renewal of a tenancy is a farm estate management decision rather than employment decision and does not force or require a tenant to retire or cease

working. Any decision to retire or to continue to operate a farm business remains entirely at the discretion of the tenant. It is recognised that relocation from an existing farm may influence individual decisions but relocation is not uncommon or insurmountable for farm tenants who are continuing in the sector.

## 4 ALIGNMENT WITH CORPORATE PRIORITIES

Report authors should evaluate the proposal(s) in light of their alignment with the following four Corporate Priorities.

### 4.1 A good quality of life for everyone

There are no significant implications for this priority.

### 3.2 Thriving places for people to live

There are no significant implications for this priority.

### 3.3 The best start for Cambridgeshire's children

There are no significant implications for this priority.

### 3.4 Net zero carbon emissions for Cambridgeshire by 2050

There are no significant implications for this priority.

## 5. SIGNIFICANT IMPLICATIONS

Report authors should evaluate any further significant implications using the seven sub-headings below. These significant implications should also be evaluated using the questions detailed in the table below. Each specific implication must be signed off by the relevant Team within the Council before the report is submitted to Democratic Services.

Further guidance and a checklist containing prompt questions are included at Appendix 2.

### 5.1 Resource Implications

There are no significant implications within this category.

### 5.2 Procurement/Contractual/Council Contract Procedure Rules Implications

There are no significant implications within this category.

### 5.3 Statutory, Legal and Risk Implications

There are no significant implications within this category.

### 5.4 Equality and Diversity Implications

- 5.4.1 Reference is made to State Pension Age in the report, both AHA's and FBT's are tenancy agreements set on commercial terms under landlord and tenant legislation. They are not a form of employment and not subject to employment law.
- 5.4.2 In relation to possible age discrimination, under the Equality Act 2010 there is a prohibition on age discrimination on adults in relation to the provision of services and public functions except where there is legally defined exception or where there is an "objective justification". Age discrimination is only prohibited under the Act where there is a harmful treatment that results in genuinely unfair discrimination. Different treatment based upon age is permitted where it is justifiable or beneficial ([Equality Act guidance hyperlink](#) )
- 5.4.3 Examples of beneficial or justifiable difference in treatment can include taking positive action to benefit a particular age group or provide other positive outcomes (e.g. encouraging new entrants into farming, preventing an income gap prior to retirement). In this case the proposal is a positive step to assist tenants in aligning the treatment of FBT tenants with established CCC policy and Government policy regarding AHA tenants, encouraging new entrants into farming and maintaining rental income.
- 5.4.4 The Agriculture Act 2020 specifically amended the existing provisions of the AHA to align it with the smallholding retirement provisions of the Pension legislation. This proposal matches this for those tenants on FBT's that expire close to State Retirement Age and it is argued that it meets the objective justification criteria in that is aligned to existing parallel (AHA) legislation, ensures that CCC tenants do not suffer an income gap immediately prior to retirement due to tenancy expiries, and continues to ensure the council maintains its rental income and support for new entrant farmers. It is aligned with wider Government policy such as DEFRA's proposals to incentivise older farmers to leave farming with lump sum payments.
- 5.4.5 Legal advice has been previously sought that advised each case would be judged on its merits and if necessary determined by a Court as the statute does not provide clear guidance. Each individual case would be decided upon its merits in terms of any renewal of individual tenancies.

5.4.6 The proposals and the State Pension Age apply identically to male and female tenants so there is no known discrimination based upon gender or other protected characteristics.

5.5 Engagement and Communications Implications

There are no significant implications within this category.

5.6 Localism and Local Member Involvement

There are no significant implications within this category.

5.7 Public Health Implications

There are no significant implications within this category.

## Sign offs

Have the resource implications been cleared by Finance? Yes Name of Financial Officer: Justine Hartley

Have the procurement/contractual/ Council Contract Procedure Rules implications been cleared by the LGSS Head of Procurement? Yes Name of Officer: Gus de Silva

Has the impact on statutory, legal and risk implications been cleared by the Council's Monitoring Officer or LGSS Law? Yes Name of Legal Officer: Fiona McMillan

Have the equality and diversity implications been cleared by your Service Contact? No Name of Officer: Beatrice Brown

Have any engagement and communication implications been cleared by Communications? Name of Officer: Christine Birchall

Have any localism and Local Member involvement issues been cleared by your Service Contact? Yes

Have any Public Health implications been cleared by Public Health? Name of Officer: Kate Parker