



facts you need to know if considering a wind farm

Wind farm developers generally provide landowners with their own version of lease and option documents which may not always take into account the landowner's best interests.

Clients should always seek legal advice from expert land agents and solicitors.

In relation to taking advice on the terms of the documents always ask the developer to guarantee payment of reasonable professional fees whether the development proceeds or not. **Neil Stevenson, Partner and Agricultural Expert** at Latimer Hinks provides tips on Options and Leases.

Options

An option is preferable to an Exclusive Licence if the term is longer than 6 months. Neil suggests a maximum option period of 3-4 years (with an option to extend to no longer than 6 years if planning is delayed).

Fee

The option fee can be either a lump sum or annual payment. Ensure provision for payments to continue if the option period is extended.

Legal Title

A detailed plan of the option site should be provided and based on the legal title documents.

Location

The location of turbines, ancillary buildings and access roads should be discussed and agreed with the landowner. Existing roads should where possible be used.

Security

If the documents enable the contracting developer to assign the benefit of the agreement, ensure

"due diligence" on any assignee can be undertaken. Landowners' consent should always be a prerequisite even on assignment to group companies. Every safeguard needs to be in place to ensure that the assignee has the financial strength and relevant experience to undertake the development.

Compensation

The developer should indemnify the landowner against any damage caused to the land and provide compensation for loss of crops and subsidies. The developer must provide adequate public liability insurance cover. Consider whether the developer should also cover consequential losses.

Developer Activities

Determine (and ideally restrict) the activities that the developer can carry out on the land during the option period. Farmers need to be able to carry out their usual agricultural activities during the option period.

Lease

Term

The terms of a lease are usually 25 years plus 1 or 2 years for decommissioning. Consider contracting out of the Landlord and Tenant Act 1954.

Rent Calculation

Consider how rent should be calculated eg. base rent, plus additional rental referable to gross income and electricity output. Base rents should be indexed where possible. Consider whether royalty rents can be reviewed - every 5 years perhaps.

Demised Area

The demised area should be limited to areas required for hardstanding, monitoring masts, substation and control building areas. Access roads do not need to be demised.

Assignments and Underlettings

Provision needs to be included for landlord's consent to be obtained even if the transfer/underletting is to a group company of the developer. Can a guarantee be obtained to ensure that the assignee can pay the rent?

Multiple Owners

If the site is in multiple ownership there should be provision for each owner to receive a minimum rent even if there is no turbine on his portion of the site.

Access

Does the site of the turbines provide access to a wider area? Extended access should be resisted or ensure that the payment terms reflect the full extent of the access.

Reinstatement

Consider what needs to be removed and to what level. Can access roads remain for use by the land owner?

Decommissioning

Costs for decommissioning should be provided for at the start of the lease and the cost figure reviewed on a regular basis.

Insurance

Adequate third party liability insurance cover is vital. The figure should be reviewed to the higher of RPI or market level.

Loss of Payments

The developer should cover the loss of eligibility/payments under the Single Payment Entitlement and Stewardship Schemes.

Mines and minerals

Check the ownership of mines and minerals and negotiate an indemnity from the developer if mines and minerals are likely to be disturbed by the development.

Clawback/overage

Arrange for the title deeds to be checked for clawback covenants and factor into the payment schedule any liability in this respect.

Termination

Consider including provision for the landlord to terminate the lease if construction is not commenced/completed within five years from date of the lease.

Siting and Sizing of Turbines

Consider limiting the size/dimensions of turbines so that terms can be renegotiated if the developer requires larger turbines during the term of the lease.

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