

CAAV 2005 ORAL QUESTIONS

QUESTION

Identify the factors you would need to consider in advising a tenant under an Agricultural Holdings Act tenancy who has decided, on financial advice, to give up dairying on the holding.

ANSWER:-

Candidates should refer to:

The terms of the tenancy and whether or not in particular he is required to maintain a dairy enterprise on the holding;

Whether the tenant's business is confined to the Agricultural Holdings Act letting or whether he has other land;

The commencement date of the tenancy agreement in the context of the quota situation and the tenant's entitlement or otherwise to quota under the Agriculture Act 1986;

The amount of milk quota, whether or not there has been any apportionment and whether or not the tenant has purchased any quota or bought any quota from elsewhere to the holding, both the Landlord's and tenant's intentions with regard to their quota and in particular whether or not the Landlord wishes to retain any quota for other holdings and the mechanics involved;

Tenant's dairy fixtures and how these are to be treated;

Landlord's dairy improvements, particularly those still attracting an interest charge, and how they are to be treated;

The level of rent and the scope for some reduction, particularly if the Landlord is able to release his milk quota.

What other uses sensibly can the holding be put to?

Is the fixed equipment suitable for such business eg is he trying to convert to a sheep and corn farm when he only has cubicles and parlour.

QUESTION

What are the key tax considerations for a farmer wishing to use a former farm building for non-agricultural use?

ANSWER

Business Rates – Likely inclusion of the property for non-domestic rating in the current National Non-domestic Rating List (NNDRL)

Assessment to Rateable Value [RV] [effectively the FRI rental value] (which is dependent on planning permission granted ie office, workshop, retail etc. and location, demand, age, condition) in current 2005 Rating List [valuation date 1 April 2003]

RV then multiplied by UBR (currently 41.5p in the £ (for small businesses) in England and 42.1p in the £ in Wales (no small business rating relief in Wales)).

Inheritance Tax – On death or following a lifetime transfer (gift inter vivos) there will be loss of Agricultural Property Relief (APR) on the building or buildings not used for agricultural purposes. Business Property Relief (BPR) will still be available but not automatically at 100%. If the property is transferred prior to death or lifetime transfer to a company of which the farmer was/is a director or partner, BPR will be at 50%

Agricultural Buildings Allowance (ABA) – This is likely to be claimed back by HM Revenue and Customs if the building now used non-agriculturally is transferred out of the farmer's current land holding (ie to an individual or a company).

QUESTION

You are asked to advise what provisions can reasonably be incorporated in the easement deed for a proposed gas main where there is a suggestion that the land through which the pipe passes may have some long term hope of development.

ANSWER

1. The preferred solution is an absolute requirement on the Grantee to "lift and shift" entirely at the Grantee's expense.
2. The requirement should be exercisable by the Grantor on say 6 months notice following receipt of planning permission.
3. The Grantee will require the Grantor to use reasonable endeavours to provide alternative route within same ownership and to grant fresh easement to facilitate same.
4. Note should be made of the fact that planning consent may be refused/adversely affected with gas mains due to Health & Safety margins for any development and such should be covered by above
5. Alternatively in limited circumstances it may be possible for the Grantee to carry out protection works at their expense.
6. Finally if the above cannot be achieved then the Grantee must be required to compensate the Grantor for the losses arising from the presence of the gas main.

QUESTION

Explain your basic approach to assessing the capital value of a freehold property let on an FBT with an unexpired term of 19 years.

ANSWER

- Key principle here is a valuation of the rent passing in the term (current rent passing and as might be reviewed/ varied under agreement) and then of the reversion (probably to capital value, but could be to a full rent).

Appraise the tenancy:

- rent
- rent review/variation provisions
- break clauses (opportunities for possession/threats to rent security)
- burden of landlord's obligations (repairs, etc)
- assignable?

Robustness of rent

- quality of tenant
- support from farming and other earnings potential, public schemes, subletting

Market evidence for comparable sales

- direct comparables
- evidence for yields for the investment valuation of term and reversion

Liability to compensation for improvements already agreed/routine improvements - dilapidations may be remote at this stage

Assess unencumbered value for reversion

Assess potential for special purchaser.

Etc.

QUESTION

How would you protect a Landlord who wishes to let under an FBT an area of land, part of which may become available for development?

ANSWERS:

- a) consider letting on a short term only.
- b) include a break clause, whether general or partial. Note if the tenancy is for 2 years or more, then the break will need a minimum 12 months notice to be operable. Such a break/resumption provision will operate with the greatest certainty if specific conditions trigger the occasion for its use, eg: grant of planning permission .
- c) consider separately identifying the part most likely for development and letting this under a separate short-term FBT.
- d) consider excluding this land from the FBT altogether and offering instead a short-term grazing licence or herbage arrangement, or, if arable land, farming in-hand using a contracting arrangement.

NOTE: there may be significant tax (CGT) advantages in farming the land in-hand up to the point of sale.

QUESTION

What factors should you consider in seeking to secure possession of a range of barns with planning permission for development which are part of an AHA holding?

ANSWER

a) consider tenancy agreement – is there written agreement? If not, and assuming that an arrangement cannot be agreed with the tenant, the only way in which the issue might be forced is by severing the reversion.

b) assuming there is a written agreement, look for resumption clause, whether partial, or just in event of putting entire holding to non-agricultural use. Unless there is a right to resume part, the Landlord's recourse is as a) above. If there is the right to resume part, then serve the required notice. At all times, however, dialogue with the Tenant is wise.

c) the Tenant will be entitled to a reasonable rent reduction in respect of the abstraction. The amount of this may reflect not only what is strictly being removed from the holding but its effect on the remainder of the holding. Care may have to be taken to ensure that such a change, or no change, does not prejudice the normal 3 year rent review cycle.

d) the normal rights and obligations of each party re: dilapidations and 'tenant right' matters, and the Tenant's rights with regard to Tenant's fixtures, still technically apply, even though part only of the holding is being given up, so the relevant notices may have to be served.

e) practicalities – will the new use of these barns conflict with farming on the remainder of the holding, and vice-versa? Has enough land been taken out of the holding to provide a 'buffer', or are there other screening possibilities?

f) accommodation works/replacement buildings. Will new sheds have to be provided, for instance? If so, consider siting carefully, so as not to prejudice these barns or any further traditional buildings which may be taken out of the tenancy in future.

g) a deed of surrender will be necessary.

h) separation of services etc.

