**CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS**



**CAAV EXAMINATIONS 2018**

**15TH NOVEMBER 2018**

**NATIONAL ORAL QUESTIONS**

**Each Group is to choose TWO questions from the four and then ask those same**

**two questions of all the candidates in that Group.**

**Question 1**

**Sale of Property subject to an Agricultural Occupancy Condition**

Your client sold his farm 5 years ago but retained a three bedroom detached bungalow, garage and gardens situated on the outskirts of a rural village. Planning consent for the bungalow was granted in 1975 subject to an Agricultural Occupancy Condition. Your client now wishes to and is willing to sell the property.

**a)** **What information do you need to establish prior to marketing the property?**

**Answer**

Need to see the wording of the planning condition and establish if it is a ‘standard’ condition or more specific.

Need to establish who has been living in the bungalow and for how long. **(½ mark)**

**b)** **Assuming the wording of the condition is standard, what** **advice would you give to your client if it is established that the bungalow has been let to and occupied continuously for the last 12 years by a local school teacher?**

**Answer** (May be variations in terminology in different parts of the UK)

Advise that it may be possible to prove that the occupancy condition has been breached for a continuous period of 10 years and the breach may have become immune from enforcement action or a ‘Breach of Condition Notice’. An application can be submitted to the Local Planning Authority (LPA) for a Certificate of Lawfulness of Existing Use or Development (CLEUD) together with sufficient supporting evidence such as witness statements.

If successful, enforcement action is prevented against an occupier who does not comply with the condition – in this case the school teacher. The next stage would be to either market the property with the benefit of the CLEUD or submit an application to the LPA to vary or remove the occupancy condition; the existence of the CLEUD should carry significant weight in the determination of such an application. **(2 marks)**

**c)** **If your client, who was previously employed in agriculture, is occupying the bungalow, what advice would you offer your client and what course of action would you take to optimise its value?**

**Answer - Advice**

Advise the client that the property can be marketed subject to the occupancy condition at a price which reflects its existence for an agreed period. If, after that agreed period, no acceptable offer from a purchaser who complies with the condition has been received, an application can be submitted to the LPA to have the condition removed on the basis that there is no need for it.

**Answer – Course of Action**

Enter into discussions with the Local Planning Authority to establish and agree the requirement for a marketing campaign to include:

Duration – each LPA will have its own criteria but usually a minimum of six to twelve months.

Geographic coverage – interpretation of ‘in the locality’. It may depend on the type of farm and location. It may be interpreted by travel time or distance. LPAs will have varying criteria.

Advertising campaign.

Price - range of discount from unencumbered market value, often 25-40%. Agree the value with the LPA prior to marketing.

Sales particulars – state the wording of the condition and any clarification from discussions with the LPA.

Records - copies of advertisements, details of all enquiries, compliance with condition, viewings and offers. **(2 marks)**

**c) What do you and your client do if an acceptable offer is received from someone who complies with the Occupancy Condition and what are the consequences if your client rejects it?**

**Answer**

Confirm the offer verbally and in writing to your client who is bound to accept it in accordance with the Consumer Protection from Unfair Trading Regulations 2008.

A rejection of the offer would be a breach of the Regulations punishable by a fine or, in serious cases, up to two years’ imprisonment. **(½ mark)**

**Question 2**

**England and Wales** - You act for the owner of a farm situated on the edge of a market town. 5 acres have been allocated as residential development land and planning consent has been obtained. The farm is occupied by a tenant with security of tenure under the Agricultural Holdings Act 1986. There is a written Tenancy Agreement with an April term date. The landlord wishes to obtain vacant possession as soon as possible.

**Scotland** - You act for the owner of a farm situated on the edge of a market town. 5 acres have been allocated as residential development land and planning consent has been obtained. The farm is occupied by a tenant on a Limited Duration Tenancy. There is a written Tenancy Agreement with a Whitsun term date. The landlord wishes to obtain vacant possession of the five acres as soon as possible.

**a) What document would you ask the landlord for and what might you look for in it?**

**Answer**

England and Wales - The Tenancy Agreement. Does it contain a part resumption clause? **(1 mark)**

Scotland – The Tenancy Agreement. This resumption is possible unless it prohibits the resumption of at least that much of the holding for non-agricultural use for which planning permission has been obtained? **(1 mark)**

**b)** **Assuming the power to take possession exists, how does the landlord go about obtaining vacant possession?**

**Answer**

Serve a written Notice to Quit on the ground that the holding for non-agricultural use for which planning permission has been obtained?  **(1 mark)**

**c)**  **Assuming the Notice is served now, how long is the Notice and when does it take effect?**

**Answer**

England and Wales – Without a short notice clause, the Notice period is 12 months to the next term date, so a Notice served now would end in April 2020. **(1 mark)**

Scotland -The Notice period is not less than 1 year to the date of resumption (s.17(2)(b)) – so resumption could be achieved in later November 2019. **(1 mark)**

**d)** **What is the basis of compensation payable by the landlord on termination?**

**Answer**

England and Wales

1. The usual tenant right valuation including growing crops, UMVs, RMVs etc and any tenant’s improvements taken (there may be fixtures affected).

**(½ mark)**

b) Compensation under Section 60 of the Agricultural Holdings Act 1986

* + 1. Basic compensation equating to one year’s rent for the area taken

**(½ mark)**

* + 1. Or the actual amount of loss but not to be more than two years’ rent **(½ mark)**
    2. In addition to the basic compensation, additional compensation is payable, being the amount equal to four year’s rent for the area taken **(½ mark)**

(NB – there are qualifying factors for compensation in Part ii above – no need for those to be given)

Were there a short notice resumption clause then the tenant could also claim for lost benefit

Scotland

a) The usual end of tenancy compensation including any tenant’s improvements taken (NB no provision for fixtures under the 2003 Act) **(½ mark)**

b) Compensation under Section 52 of the Agricultural Holdings (Scotland) Act 2003 – applying Section 43 of the 1991 Act

1. Basic compensation equating to one year’s rent for the area taken

**(½ mark)**

1. Or the actual amount of loss **(½ mark)**
2. For the benefit lost to the tenant of the notice not running to the next term date not less than 12 months after 2 months before the resumption  **(½ mark)**

**Question 3**

You have been approached by a new 50 year old client who has recently inherited 45 hectares of arable land and 5 hectares of grassland. She is an accountant with no farming experience but a farmer friend has agreed to crop her land under a Contract Farming Agreement in the short term. She thinks the land should be eligible for ‘subsidy’ but knows it has not been claimed on before and has sought your advice on how to claim?

**a) As a new client, what should you confirm prior to advising her?**

**Answer**

Confirm there is no conflict of interest, confirm exactly what she requires, confirm her identity re Money Laundering Regulations 2017, confirm your client’s instructions in writing and provide terms of business including details of the basis of your fee. **(1 mark)**

**b) What do you need to undertake now in advance of submission of a BPS application in 2019?**

**Answer**

***Note –*** *There are similar procedures with equivalent forms and agencies in Scotland (RPID) and Wales (RPW).*

Obtainplans of and inspect the land, identify eligible and none eligible features, complete and submit an RLE1 form to the Rural Payments Agency (RPA) to register all the parcels on the holding.

Instruct your client to register on the Rural Payments service, either online with GOV.UK Verify or via the Rural Payments helpline. Ask your client to give you access to her business with the required permission levels.

When registration is complete, request a Holding Number from the RPA if your client doesn’t have one and check the accuracy of your client’s details on the Rural Payments service.

Confirm the current and proposed cropping with your client and her Contractor to ensure the crop diversification rules will be met. (You may also identify Ecological Focus Area features). **(2 marks)**

**c) Advise your client on how she can obtain Basic Payment Scheme Entitlements to support her claim.**

**Answer**

Assuming your client meets the definition of a ‘new farmer’, instruct her and her accountant or solicitor to complete a new farmer certificate to be submitted to the RPA by 15 May 2019.

Alternatively, your client can choose to purchase entitlements in the open market by 15 May 2019. **(1 mark)**

**c) What information do you require and what do you need to calculate and identify prior to submitting your client’s application? (**Examiners may wish to remind the candidate of the area of the holding and that it is arable and grassland**)**

**Answer**

Cropping details and establish how long any parcels have been down to grass. Confirm the crop diversification rules have been met. Calculate the Ecological Focus Area requirement and identify which features are to be used. Confirm the currency your client wishes to receive her payment in – pounds or euros. **(1 mark)**

**Question 4**

Two parties are in dispute over agricultural property. It does not concern a tenancy. They have already tried to resolve their differences by mediation but to no avail. Fearing cost and publicity, neither party wishes to go to Court or Tribunal but they want an answer from a third party.

**a) What are the two options available to them for settling the dispute?**

**Answer**

Arbitration or Expert Determination **(1 mark)**

**b) How do they differ? (**Examiner to advise candidate of the two options if they fail to answer part a) correctly**)**

**Answer**

**Arbitration**

i) The procedure is governed by The Arbitration Act 1996 Arbitratio9n (Scotland) Act 2010) **(½ mark)**

ii) The Arbitrator acts in a quasi-Judicial capacity, hearing evidence and examining witnesses **(½ mark)**

iii) An Arbitrator can only find/make a decision in accordance with the evidence put in front of him **(½ mark)**

iv) Costs can be awarded by the Arbitrator as he sees fit. This includes both parties and the Arbitrator’s costs **(½ mark)**

**Expert Determination**

i) There is no legislation covering this, therefore the procedure must be agreed by the Expert with the parties **(½ mark)**

ii) The expert should give each party a fair opportunity to present his case, to

know the opposing case, and to challenge the opposing case **(½ mark)**

iii) The decision is to be based on the Expert’s own knowledge. He has a duty to investigate to discover relevant facts (may determine without hearing any evidence but this is very unusual) and also is allowed to use his own knowledge beyond any matter presented to him by the parties **(½ mark)**

iv) The Expert has no power to award costs unless it is part of the agreed procedure/contract **(½ mark)**