

**CAAV EXAMINATIONS 2011 – ORAL QUESTIONS**

**CAAV EXAMINATIONS – NOVEMBER 2011**

**National Oral Questions**

**Note – Each Examination Centre should select three of these six questions for use. Those three chosen questions are to be asked of all candidates attending the Oral.**

**Each question carries 5 marks and so this section of the Oral carries 15 of the 50 marks with the remaining 35 marks turning on the topic.**

**Centres with candidates whose experience is in Wales or Scotland should consider this when selecting the questions and marking any points arising from that practice which may be given in their answers.**

**Question 1**

A client has inherited 50 acres (20ha) of agricultural land. The land is let on a tenancy that started in 1970. There is no written agreement. The rent is £40/acre, paid on March 25<sup>th</sup> and September 29<sup>th</sup> each year.

He has asked for your help as follows:

- 1) Under what legislation is the tenancy held?
  
  
  
  
  
  
  
  
  
  
- 2) Do you consider the rent to be a full market rent? If not what might it be?
  
  
  
  
  
  
  
  
  
  
- 3) How can he vary the rent and when?
  
  
  
  
  
  
  
  
  
  
- 4) What other notice would you advise him to serve and what effect will it have?

**Answers:**

- 1) Agricultural Holdings Act 1986 (in Scotland Agricultural Holdings (Scotland) Act 1991.
  
  
  
  
  
  
  
  
  
  
- 2) This will be a regional answer and vary between types of farm. It therefore may be ‘yes’ or ‘no’, but candidates should consider whether it is arable or grass and have a reasonable handle on an answer. Entitlements should be mentioned.
  
  
  
  
  
  
  
  
  
  
- 3) Serve a notice (s.12 in England and Wales) at least 12 months in advance of the term date to reserve the right to seek arbitration unilaterally. The term date which needs to be ascertained provided. That date must not be less than three years since the rent was last varied by agreement or set by arbitration.
  
  
  
  
  
  
  
  
  
  
- 4) Serve a notice (s.6 in England and Wales) to require that a written tenancy agreement recording the oral terms (and the Schedule 1 items) be put in place. This will need to be followed up, if necessary by arbitration, to achieve that written agreement. That notice will prevent assignment of the tenancy.

**Question 2**

Give an indication of the likely market value for the sale of the following in your area:

- 1) 100 acres of good accommodation land with no buildings.
  
- 2) 10 acres of amenity/agricultural land on the edge of an excellent village, but with no planning potential for residential or other development.
  
- 3) A good building site with detailed planning consent to build a quality 5 bedroom house of 2,500ft<sup>2</sup> (235m<sup>2</sup>) in ¼ acre (0.1ha).
  
- 4) A likely range for tendered rents for FBTs this autumn for good land, no buildings for a 6 year term with a review at 3 years.

**Answers:**

Candidates' answers will obviously be based on regional results.

For the land questions they should differentiate between arable and grass where applicable and consider availability or otherwise of entitlements.

**Question 3**

For each of the following items of work, what do you consider to be the most beneficial fee basis and the likely rates charged by your firm:

- 1) Selling 100 acres of land by public auction or formal tender.
  
- 2) Selling a small village bungalow in excellent condition in a good village by private treaty.
  
- 3) Fully managing an all let 2,000 acre (800ha) agricultural estate with bare land, FBTs, fully equipped AHA tenancies on model clauses and cottages under ASTs.
  
- 4) A senior partner preparing an expert witness report for a court.
  
- 5) A qualified assistant negotiating on behalf of the landowner a new rent under an existing lease for an Orange communications mast.

**Answers:**

Firms will have their own approaches and charge rates but the following are suggested as generally typical:

- 1) Commission basis, perhaps 1½% - 2 ½ %, but perhaps charge for experience on top.
  
- 2) Commission basis, perhaps 1¼ % - 2%. Expenses?
  
- 3) % of rent roll most likely – 5-10%?
  
- 4) Hourly rate plus expenses - £150-£200/hour
  
- 5) Hourly rate plus expenses - £60-£100/hour.

**Question 4**

A client has sold off his landholding and is left with a three-bedroom detached house extending to 1,000 ft<sup>2</sup> (92.9 m<sup>2</sup>) in a small plot about 2 miles (3 kms) from the nearest village. The house was built in 1968 subject to an Agricultural Occupancy Condition in standard form.

- (i) **What steps can he take to maximise its value?**

Answer

Suggested answer to cover:

In advance of an application to remove the Condition, discuss and agree with the Local Planning Authority the requirement for a marketing campaign to include:

- Duration – usually a minimum of six and more likely twelve months.
- Geographic coverage – interpretation of “in the locality”; some LPAs suggest within 10 miles (16 km).
- Publications – usually at least one in the trade press such as Farmers Weekly/Guardian.
- Price – range of discount from unencumbered market value; usually 25-40%.
- Particulars – stating the condition and any clarification from discussion with the LPA.
- Recording – format for recording interest received and the form of a final report.

- (ii) **What do you do if you receive an offer from someone who complies with the Agricultural Occupancy ?**

Answer

Suggested answer to cover:

- The requirement of the Estate Agents Act 1979 to report the offer verbally and in writing, together with full particulars of the person making the offer.
- Implications of the Act as to marketing meaning a genuine intention to sell the property.

- (iii) **Would your advice be different if the house had been occupied continually throughout the past 11 years by a wife who works full time on the adjoining agricultural holding and her husband who is a dentist earning £100,000 per annum?**

Answer

Suggested answer to cover:

- Even if she complies, he could not be considered to be dependent upon her so would have been in breach of the typical form of the Condition. Evidence should be provided and an application for a Certificate of Lawful Existing Use or Development (CLEUD) could be made to retain the property without complying with the Condition.

**Question 5**

I have obtained planning consent for a single house of 2,000 ft<sup>2</sup> (186 m<sup>2</sup>) in my large garden and am thinking of selling the plot.

**(i) How can I protect the value of my existing house for so long as I still own it?**

Answer

Suggested answer to cover:

- Restrictive covenant.
  - Enforceable as it benefits adjoining property.
  - Impose restrictions which are personal to me as Transferor, such as to implement only the planning consent which I have obtained (and with which I am satisfied) and not to make any alterations in the external appearance nor make any additions to the dwelling house without my absolute prior approval.
  - Impose restrictions which benefit me and my successors in title, such as to use the house as a single private residence and not to do anything which may be a nuisance or annoyance to me and my successors in title as owners and occupiers of the retained land.

**(ii) Could a restrictive covenant be challenged in the future?**

Answer

Suggested answer to cover:

- Yes.
  - S.84 of the Law of Property Act 1925 (as amended) confers upon the Upper Tribunal (Land Chamber) (still known as “The Lands Tribunal”) power to discharge or modify restrictive covenants which affect land.
  - The LT may wholly or partly discharge or modify a restrictive covenant on being satisfied that –
    - By reason of change in the character of the property or the neighbourhood or any other material circumstances the restriction ought to be deemed obsolete or
    - That the persons entitled to the benefit of the restriction have agreed either expressly or by implication to the restriction being discharged or modified or
    - That the proposed discharge and modification will not injure the person entitled to the benefit of the restriction.
    - In a case where the continued restriction would impede some reasonable use the LT may discharge or modify restriction which does not secure any practical benefits of substantial value or advantage to the person entitled to the benefit.
  - The procedure is prescriptive but if challenged can be protracted and expensive.

**Question 6**

A client owns 100 acres (40 hectares) of land between a principal village in the administrative area of Difficult District Council and its bypass. It has direct access to a highway and is well screened. DDC is progressing its Local Development Framework which allocates housing numbers to the principal villages but does not identify this land.

- (i) **If approved as drafted, would the National Planning Policy Framework be relevant and why?**

Answer

Suggested answer to cover:

- Possibly (and until DDC's LDF is formally approved) as it re-introduces the presumption in favour of sustainable development of an appropriate scale.

- (ii) **He has no money to promote the land himself, what can he do?**

Answer

Suggested answer to cover:

- Enter into either an Option with a developer or a Land Promotion Agreement with a third party.

- (iii) **What is the principal difference between an Option and a Land Promotion Agreement?**

Answer

Suggested answer to cover:

- Option – developer has the option to purchase the site at an agreed discount from market value based upon a theoretical valuation with recourse to an expert determination.
- Land Promotion – owner retains the land and the promoter covers all costs of obtaining a planning consent. The site is then marketed on the open market and sold, at which point the promoter takes agreed share of sale value.

- (iv) **If he decides to sell the land now, how do you protect his interest?**

Answer

Suggested answer to cover:

- Restrictive covenant; only works if he retains adjoining land which would benefit.
- Overage agreement to share in future development value; percentage and term to vary. Range typically 30-50% of uplift over 25-40 years.