

CAAV WRITTEN EXAMINATION – NOVEMBER, 2003

PAPER 1, QUESTION 1

METHODS OF SALE OF A PROPERTY – EXAMINER'S COMMENTS

The question was attempted by 35 candidates, of which 23 passed. The question asked for a letter to the Executors of their late brother's estate outlining the various methods of sale, the terms of agency and advice on the sale in the light of

1. the fact that one of the Executors did not want a particular neighbour to buy the farm and
2. the re-appearance of an estranged son who may have a legitimate claim on the estate.

The question was answered reasonably well in that it included, in most instances, all four methods of sale, i.e. a sale by private treaty, a sale by public auction and sales by informal and formal tender. The letter also asked for comparisons and contrasts to be drawn between the various methods of sale and the model answer looked for comments on the speed and certainty of an auction sale compared to the lack of certainty under a private treaty sale. The question also expected the answer to the question as to which method of sale would be best in the particular circumstances outlined in the question to be that of formal tender as that gave the Executors total control over the purchaser of the farm. The comparing and contrasting might have been done better.

When it came to the consideration of the method of sale in the situation where the estranged son had re-appeared, several candidates had got the wrong impression in that they thought that the son would be able to claim ownership of the Estate rather than a share in the proceeds of sale.

The answer to the question that was being sought was that the method of sale, in those particular circumstances, would have to change from a formal tender basis to an auction sale basis so that complete transparency of the sale process could be maintained and no criticism could be levelled against the Executors by any of the beneficiaries or potential beneficiaries.

REPORT ON CAAV WRITTEN EXAMINATIONS 2003

Paper One, Question Two

The question was sat by 73 of the 79 candidates, which indicates that it is a subject that most candidates know something about. Generally, the question was well understood and candidates presented their advice to the client on most, if not all, of the issues, in a logical manner. However, non-point scoring 'waffle' in answer to the whole or part of question demonstrates a lack understanding of the issues or a failure to appreciate examination time constraints. Please don't bother to recite the whole scenario, just to fill the page. The question was passed by 34 candidates (47% pass rate).

The question clearly asks for a letter and the majority of candidates complied, only resorting to notes where time was short. Marks were available for presentation, i.e. construction of the letter, logic and clarity of thought and general style of letter. It was concerning to see the frequent use of colloquialisms, jargon and, in some cases, almost disrespectful phraseology, when writing to a client.

High Field Farmyard

- Village development boundary? - presumption in favour of development?
- Other policies PPG7 and PPS – overlying policies- residential v business/tourist use
- Market evidence of value/ demand creating value – residential v business/office/tourist accommodation
- Greenfield and brown field sites
- Timing – speed of obtaining PP – risk to value
- Other development planning issues – sympathetic conversion, worthy of retention?
- Potential impact of residential development on farm activities
- Highways/other likely planning conditions
- Tax implications
- Availability of financial resources to carry out development himself?

On the whole, most candidates understood the implications of office development rather than residential development, although different experiences with different local Councils obviously affected the advice given in the letter. Whilst quite a number of candidates suggested the client should carry out the development himself, few commented on whether the client would actually have these finances available or had the skill or aptitude to carry out such a development himself. Few commented on impact of development on the rest of the farm. Some candidates were aware of possible planning "trade off" with regard to other possible developments on the farm.

Church Field

- Potential for allocation, physical characteristics of site
- Village development boundary and green belt – implications
- Green Field v Brown Field sites
- Implications of development of this size in village
- Implications of Local Plan review
- Option Agreements, alternative of clawback v option v selling with PP
- Suggested terms for Option Agreement

Few candidates grasped the opportunity to raise capital to use for other projects by sale of the land or interest in the land and the need to ascertain the client's overall future strategy. Few dealt with the key points that would need to be covered in either a clawback/overage agreement (i.e. initial sale value, period, uplift percentage, trigger points) or the key issues of an option agreement (i.e. initial payment, discount on OMV on sale, costs covered, factors affecting sale value, continued control of site). A surprising number of candidates happily merged a clawback and option into the same agreement! Whilst most candidates recognised the importance of making representations to the Planning Authority regarding the designation within the Local Plan, few candidates considered the cost of promoting this site properly through the planning system and the possible advantage to the client of entering into an option agreement where these costs were covered. Some candidates commented on the inter-relationship of the cost of doing so with the potential sale of other assets on the farm. Other points made were the possibility of selling some garden land – would this keep the potential objectors appeased if they extended the garden as a buffer between themselves and potential new development. Some candidates also recognised the opportunity of negotiating with other developers for similar option agreements.

Farm Bungalow

- What is affect of Agricultural Occupancy condition on value and potential to sell
- Planning policy on removal and justification for doing so
- Procedure to be followed – marketing and establishing demand
- Time-scale involved
- Consequences of non-compliance with condition
- Precise wording of condition.

I have yet to come across a situation where occupation of a property by a retired farm worker, who has worked on the farm, is ~~on~~ in contravention of an AgTag, but ~~it~~ seems that some candidates felt this was an obvious possibility! Many, therefore, advised making an application for a CLEUD. They did not score points, but those who recognised the possibility for the future did. Some candidates recognised the opportunity to market the property with some land so that the occupier could comply with the condition. Most recognised the impact of an AgTag on the value and the need to market the property to collect evidence. Few commented on the practical steps to fully test the specific market. Those candidates who commented not only on the potential lack of demand but on the fact that the client's business no longer included cattle, i.e. the original function or need for the

property had gone, also scored an extra point. Candidates' individual experiences of demand for such properties also reflected in their answers.

New Grain Store

- Reasons for selecting site, Potential consequences of siting grain stores close to residential properties or entrance to farmyard
- Permitted rights under GDO.- does this comply
- Prior approval procedure

Although this was not a building design question, an understanding of the GDO rights and the potential size of the proposed grain store did help. However, provided there was an understanding of the GDO rights, candidates were not marked down if they did not have a calculator available! One or two candidates seemed to assume this was livestock building! Some candidates did recognise the opportunity to avoid thwarting a potential development site and use these current GDO rights to establish a grain store which was well sited within the working farm.

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PAPER 1, QUESTION NO.3

**AGRICULTURAL HOLDINGS ACT TENANCY AGREEMENTS/
FARM BUSINESS TENANCIES**

EXAMINER'S COMMENTS

Students generally answered this question well, highlighting the pros and cons of each type of Agreement.

Many, however, failed to realise that succession to the existing tenancy was a possibility and that this may have been the best way forward for the tenant without being of any significant disadvantage to the landlord.

They also failed to realise that if an FBT was to be accepted, existing tenant's improvements and fixtures need to be dealt with and that the milk quota needed to be apportioned and the tenant's excess and fraction finalised.

Many answers were poorly structured, making it difficult for the reader to follow the advice that was being given. It seems to be forgotten that not only do we need to discover whether those sitting the exam have the relevant knowledge but also, are they capable of applying it.

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PAPER 2, QUESTION NO.1

PROBATE VALUATION

EXAMINER'S COMMENTS

Generally students were well-prepared and quoted in “parrot fashion” the usual headings one would expect to see in a “Red Book” valuation.

They, however, were generally poor in identifying personal assets and company assets and virtually everyone failed to suggest that the company tenancy may have a value.

The better answers made it clear that considerable supporting information and more details on ownership and company structure would be required from solicitors and that agricultural property relief and business property relief would have to be carefully considered.

Many students forgot matters such as growing crops, tenant's improvement, tenant's fixtures etc.

Generally I felt that not enough thought was given to answering the question and students strove to provide me with accurate but irrelevant information, rather than dealing precisely with the matter in hand.

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Examiner's Report on:-

➤ Paper II. Question 2

Generally, this was a well answered question by 63 out of a total of 79 candidates, with a 75% pass rate.

The question required detailed notes on the procedures for acquiring a water pipe easement, heads of potential claim and an indication of what payments might be expected.

Easy marks were obtained by candidates who provided detailed but clear and concise heads of claim and some basic knowledge of the statutory procedures.

The failed answers were muddled and convoluted, with the result that an essay emerged which lacked detail. In some cases there was confusion between a water easement and a new road scheme.

EXAMINER'S REPORT

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QUESTION 3 PAPER II

The question sought to test candidates' practical approach to an increasingly common situation relating to the re-use of traditional farm buildings. The question was phrased in such a way that redundancy for modern agricultural practices could be assumed, as could the basically sound structural condition of the buildings as well.

The location, close to a National Park, was intended to give a steer as to possible alternative uses and a concise report was asked for to consider alternative uses.

The question was a popular option selected by 72% of candidates, of which 57% achieved a pass mark.

To achieve a pass mark candidates needed to identify the planning issues, particularly with regard to PPG 7 and the need to engage the Planning Authority in informal discussions over the options for alternative uses given the location, size and condition of the buildings.

In considering the alternatives, the location close to the National Park, the demand for residential, commercial and light industrial uses, needed to be rehearsed against the financial viability of the cost of conversion and the alternative options of self-funded schemes as opposed to a sale-off given an appropriate consent.

The best answers touched on the tax implications of a sale-off.

The provision of services, availability of grants and the location and impact of any development within the client's land holding were additional factors.

In summary, the advice within the concise report needed to be laid out under the following headings:

1. ***Planning***
Consult with the Local Planners as to the options for alternative use within their policy and national policy.
2. ***Costs***
Establish costs of obtaining Planning Consent, Architects' drawings, planning fees and project management.
3. ***Added Value***
Assess added value a Planning Consent for viable alternative uses would give.
4. ***Viability***
Budget viability of income against cost of scheme.
5. ***Management Demand***
Consider the management demand of the alternatives, such as holiday lettings, and to consider whether the required skills and time are available.
6. ***Financial***
Investigate the availability of grants and the impact of Capital Gains Tax.

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PAPER 2, QUESTION 4

This asked for a briefing note outlining the action that could be taken under the Model Clauses by both Landlords and Tenants where repair obligations were not being met and the consequences that might flow from any actions either the landlord or tenant might take. This was attempted by 32 candidates but answered successfully by only 6.

The question asked for a briefing note to themselves and this should, therefore, have taken the form of several one or two line bullet points just highlighting the main features of the 1973 "Model Clauses" Regulations. Many candidates were confused as to the liabilities and responsibilities of the landlord and tenant and some thought that, in the case of the landlord not carrying out the works, the tenant could give a Notice to Quit! Most of the candidates were able to give the first two or three steps under the Regulations but became less sure when it came to service of counter-notices and requests for arbitration and the consequences of a failure to carry out repairs by both the landlord and tenant.

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➤ Paper II. Question 5

This was a straightforward question on procedures both for settling claims at the end of a tenancy and for referring matters to arbitration, whether under the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995.

Only 44% of the total candidates attempted it and disappointingly only 21 candidates gained a pass mark. However, those that did pass did so well with very good answers.

Candidates who did well provided a clear and concise file note setting out the potential claims from both landlord and tenant and reference to the sections of the Agricultural Holdings Act 1986 where appropriate. Timescales were most important and should have been detailed.

The arbitration procedures are again time-related and a few bullet points would have resulted in marks being awarded. Relatively few candidates were sure of the differences between the 1996 Act and 1995 Act – the latter being dealt with only under the Arbitration Act 1996.