



RA/63/2006

LANDS TRIBUNAL ACT 1949

RATING – Drainage rates – annual value – arable farm and egg production unit – methodology of assessment - Section 41 Land Drainage Act 1991- appeal allowed – annual value determined at £15,000

**IN THE MATTER of an APPEAL from the
SUFFOLK VALUATION TRIBUNAL**

BETWEEN

J W BROWN & SON

Appellants

and

BURNT FEN INTERNAL DRAINAGE BOARD

Respondent

Re: Poplar Farm, Burnt Fen, Bury St Edmunds, Suffolk IP28 8EA

Before: P R Francis FRICS

**Sitting at: Bury St Edmunds Magistrates Court, Shire Hall, Honey Hill,
Bury St Edmunds, Suffolk IP33 1HF**

**on
12 April 2007**

J B Beaney FRICS FAAV of Lacy Scott and Knight for the appellants, with permission of the Tribunal

TEJ Jones FRICS of Carter Jonas LLP for the respondent, with permission of the Tribunal

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DECISION

1. This is an appeal by the ratepayers, J W Brown & Son, from a decision of the Suffolk Valuation Tribunal (“the VT”) dated 15 June 2006, which determined the existing annual value of Poplar Farm, Burnt Fen, Bury St Edmunds (“the appeal land”) for drainage purposes under s.41 of the Land Drainage Act 1991, at £24,300 pa. By agreement between the parties, the appeal, which was lodged with the Lands Tribunal on 14 July 2006, was conducted in accordance with the Simplified Procedure under rule 28 of the Lands Tribunal Rules 1996.

2. Mr Rowland John Baxter Beaney FRICS FAAV, a partner in Lacy Scott and Knight, Chartered Surveyors of Bury St Edmunds appeared for the appellants and produced an expert valuation report. He also called Mr Peter Brown as a witness of fact who, with his wife, farms in the partnership of J W Brown & Sons. Mr Timothy Edward John Jones FRICS, a partner in Carter Jonas LLP, Chartered Surveyors of Cambridge, appeared for the respondent Drainage Board, and produced an expert valuation report.

3. It was the appellant’s case that the VT’s determination was incorrect and excessive in that it had not been properly made in accordance with the provisions of section 41 of the Land Drainage Act 1991. Having regard to the quality of the land and the composition of the holding together with the extent of the fixed equipment, and in consideration of the economic circumstances surrounding the agricultural industry as at 1 April 1988 (the valuation date for the purposes of assessment), and taking into account all relevant factors, the holding should have been assessed in the sum of £15,000. The Internal Drainage Board (“IDB”) contended that that the VT was correct in upholding its revised assessment of £24,300, with effect from 1 October 2004.

Facts

4. The parties produced, alongside their expert witness reports and Mr Brown’s statement, an agreed bundle of documents. From these, and my inspection of the appeal land on the day of the hearing, I find the following facts. Poplar Farm is located on the edge of the peat fens about 15 miles northwest of Bury St Edmunds, and just outside the village of Mildenhall. It comprises a compact and more or less rectangular block of level land, now principally in arable use, extending in all to some 124 ha (306 acres). There is a modern farmhouse positioned towards the centre of the block and approached across a long drive leading from the main road. There is also a former farmhouse and two cottages all of which are redundant and dilapidated, together with a range of farm buildings, some of which are in poor order having formerly been livestock units from when the farm was in mixed arable and stock use. There is a grain store with bin storage for about 270 tonnes. The cropping area of 119.42 ha (295 acres) is currently mainly laid to winter wheat, linseed, sugar beet and potatoes although there are about 6.6 ha (16.3 acres) of permanent pasture housing a small suckler herd of beef cows. The land is Grade 2 (MAFF Land Classification Map) and is free-draining. The cropping area also includes 13.2 ha (32.62 acres) which is given over to a free-range egg enterprise which was commenced in 2004 as an integral part of the farm. It comprises a new, purpose built timber framed and clad egg production unit of 1,480 sq m (15,650 sq ft) with a capacity for 12,000

birds and includes an egg-packing room and chiller store. In accordance with DEFRA policies, there is an adjacent 12 ha (30 acres) of ranging area. The unit produces approximately 10,000 eggs per day and was erected at a capital cost of about £250,000 of which £106,000 relates to equipment. Principally Mr Brown's son runs it. Mains electricity is connected to the holding, and water is from a private borehole.

5. The farm had formerly been assessed by the IDB at an annual value of £13,626, but following the completion and bringing into use of the egg production unit, it was re-assessed at £25,776 with effect from 1 October 2004. That assessment was modified to £24,300 when it was realised that an element of double counting had occurred, and the VT on appeal confirmed that sum.

Issue

6. The sole issue for determination in this appeal is the correct annual value of the appeal land for drainage purposes as at 1 April 1988, assessed in accordance with the provisions of section 41 of the Land Drainage Act 1991, following the parties' failure to agree a common approach to the correct method of assessment for the egg production unit.

Case for the appellant

7. Mr Beaney, in setting out the background to the appeal, explained that whilst the principal issue between the parties arose from the method of assessment of the poultry building, it was necessary to consider the whole holding, under the provisions of s.41, in the light of the fact that it was originally arable and dairy, but is now an arable and egg producing enterprise. In terms of that section, and Schedule 6, it was necessary to carry out the assessment by reference to the productive capacity and related earning capacity of the farm. This was his methodology, he said, whilst Mr Jones had valued the egg building on a value per sq ft basis having reference to comparables.

8. Before dealing with his report, Mr Beaney called Mr Brown who produced a statement explaining that his family had farmed the appeal land since 1912, and that he had personally been farming there since 1978. At that time it was a mixed arable and dairy unit but, following the sale of their milk quota in 2002, and his son's return from university in 2003, they decided to set up a free-range egg enterprise. He said their principal customer was Marks and Spencer and it was an extensive 7 day a week, 365 day a year operation which was run by his son, with some assistance from himself, as a part of the farm enterprise, rather than as a separate, intensive unit. Mr Brown said that Mr Jones had valued the egg production part of the business as though it was an intensive use such as a broiler unit or battery operation, but that was incorrect. In his view, the 80% increase in the rating assessment demonstrated that the Drainage Board had singled them out unfairly.

9. Mr Beaney said that the new enterprise was a significant diversification away from the normal arable holdings found in this part of Suffolk, and accepted that there were no direct

comparables in the area. The farmland itself was of limited productive capacity, the MAFF Grade 2 classification flattering its quality. There was little indication, he said, that either the original or the revised assessments had been made in accordance with the provisions of section 41, but they appeared to have been made in general terms by reference to other assessments. Under the Act, the correct assessment must be made for the entire holding rather than as individual parts – the hypothetical tenant being one person or body. Mr Beaney said that that tenant's reasonable expectations as to productive and related earning capacities were to be taken at 1 April 1988, and his figures for the arable part, which Mr Brown agreed to be feasible, were based upon averaging research data available from the University of Cambridge Report for Area 10 – The Fens, and Area 2 – The Rockland's. However, it was acknowledged that at the relevant date there were very few free-range egg operations in existence, and none of the type and scale now operated by the Browns, so the University data was no assistance in respect of that part of the business. Nevertheless, some information was available from the farm management books published by Nix and ABC, and, together with the Browns' actual 2004/05 gross margin figures, he was able to produce his assessment of the annual value of the holding (set out in Appendix 1) rounded to £15,000.

10. For the purposes of s.41, Mr Beaney said that it should be assumed that the egg production building must be taken to be the landlord's property (so no depreciated capital cost was allowed), but it could be expected that the tenant would fit it out with equipment. His estimate of the capital cost of that, at 1988 was £60,000, that figure being used in his calculation. Although, as he had said, there were no direct comparables of holdings that contained egg production units, Mr Beaney said that his analysis of the arable part of the land, at £34 per acre, was fully supported by a rent review he had settled by agreement on Park Farm, Little Livermere, Bury St Edmunds in 1988. That assessment, under Schedule 2 of the Agricultural Holdings Act 1986 (upon which Mr Beaney said, s.41 of the 1991 Land Drainage Act appeared to be based) at £41.66 per acre, included the farmhouse and two cottages but analysed to £32.50 per acre if the dwellings were excluded.

11. Cross-examined on his use of a gross margin of £3.75 per bird for the egg production unit (there being no material issues regarding the figures used for valuing the arable area), Mr Beaney said due to the lack of historic evidence, he had simply averaged the ABC 1988 and 1989 figures of £2.86 and £4.63 respectively. On the question of interest, Mr Beaney admitted that that would not normally be put in the calculation before the landlord/tenant's 50/50 split, but said that as the expenditure had been disproportionately high, the tenant would expect to achieve a sensible return on those costs. Mr Jones accepted this point, in submissions.

12. In closing, Mr Beaney said that the IDB had tried to short-cut the matter of reassessing the annual value by effectively taking the original value, and adding the value of the egg production unit. They had not considered the productive and related earning capacities which were specifically required by the Act. It was necessary to look at the holding in its entirety, and allow for the considerable change that had occurred in terms of its character. It was no longer principally a livestock farm, but was now 85% arable, 11% egg production and 4% permanent pasture. Mr Beaney said that the IDB, in its approach, had done precisely what the secretary to the Association of Drainage Authorities (a Mr David Noble) had cautioned against in a letter to all clerks regarding the procedure for revaluation of intensive units dated 25 September 2002. That letter said, in part:

“After discussions with MAFF, it was felt necessary to restate the approach which we believe should be adopted by valuers in assessing [intensive] units.

1. Stand-alone.

Where the unit occupies a site ... solely for the intensive operation ... then the rental value of that site should be determined ...

2. Integrated.

Where the intensive unit comprises land which is part of a larger agricultural holding it should not be valued as independently rentable, but should be considered along with other farm buildings and the affect on the overall rental position of the holding determined. In such circumstances the view should be taken that the entire holding will be included within the rental agreement and that intensive units would not be the subject of an independent arrangement with another tenant...

Some examples have been referred where intensive units have been considered independently and then apportioned across the area of the holding, with in some cases doubling the rent per acre. In reality, such rental figures could never be obtained, and whilst the presence of such units and indeed any other high value buildings will increase the land rental figure, this must be contained within realistic rent levels. Whilst it may in theory be possible to rent separately such intensive units within a larger holding, the problems of two tenants operating on the same site, control of disease etc are matters which reduce substantially the attraction of such an arrangement”.

13. In an addendum to his expert witness report produced after the hearing (with the agreement of Mr Jones), Mr Beaney said that he had spoken to Mr Noble who confirmed that the valuations carried out in the early 1990s of poultry and glass house units had caused particular problems but eventually, through collaboration and co-operation between the valuers acting for the various IDBs, a consistent approach had been adopted, particularly for stand alone units. He had said he was not aware of many integrated units, but that valuers had been conscious of the need to take account of the complications inherent by letting units with other land. Mr Beaney said that his researches through agricultural surveyors had shown that integrated poultry units of the type in this appeal were a rare commodity but he had found one, through the minutes of the Black Sluice IDB, where the reassessment of a farm which had an 800 sq ft free range duck unit had resulted in only a marginal overall increase – from £27,719 to £32,134 in April 2006.

14. Mr Jones said that he had been appointed by the IDB in 2004 to carry out the re-assessment following the construction of the free range egg unit, and acknowledged that that had resulted in the value being virtually doubled. He explained how the IDBs approached the initial assessments in 1992, most of them appointing external valuers to carry out “beacon” assessments – the inspection of about 10% of properties in the boards’ areas, and the application of their findings as a ‘tone of the list’, with the assistance of their engineers, to all relevant holdings. This produced values that ranged from £80 per acre for the very top quality land, to £25 per acre for the poorest. Specialist units, such as poultry or pig units were considered separately, and whether or not they were stand alone or integrated with a larger

holding, as here, was taken into account – in this case by reducing the original estimate for the building on the basis of £0.90 per sq ft to £0.75. 90 acres of Poplar Farm was included in the original beacon exercise. Mr Jones said that he was surprised the appellants were, by undertaking a review of the whole holding, seeking to reduce the original 1992 assessment on the non-specialist area of the farm from £44 per acre to the claimed £36 per acre (including the value of old livestock buildings and shooting) now.

15. He said he accepted that, for the purposes of the Agricultural Holdings Act 1986 and under section 41 of the Land Drainage Act 1991, the valuer was required to consider the productive and related earning capacities and that his assessment had not been undertaken on that basis. This was due to the fact that virtually no specialist units of this type exist as part of an integrated holding, and free-range egg production units were all but non-existent in 1988. His methodology and valuation is set out at Appendix 2. It shows the annual value of the whole land area calculated at £40 per acre (equating to £41.50 on the basis of the agreed cropping area), with increases for the agricultural buildings and size, together with the poultry building at £12,150 – £0.78 per sq ft. The total of £24,300 therefore becomes £79.41 per acre.

16. Mr Jones said that, although not an overriding factor, the return that the hypothetical landlord would require was a factor of interest to be considered in justifying the capital requirement. In his view, the landlord would want to recover his capital cost in, say, 10 years, whereas it was the appellants' case that the costs would be written off over 40 years. However, he admitted that he had not undertaken a detailed analysis on this basis. He said that he had taken the value of the croppable land at the figure in the original assessment, and had added the new building at a per sq ft figure that he considered appropriate in the light of comparable assessments and, as he had said, he then made an allowance for the fact that it was an integrated rather than a stand alone operation.

17. He referred to Mount Pleasant Farm, Pymore which had 3 specialist duck-fattening buildings extending to over 100,000 sq ft on 15 acres. They were re-assessed on appeal in 2001 from £0.85 per sq ft to £0.64 per sq ft, and whilst they were specialist poultry units, Mr Jones accepted in cross-examination that they were very different from, and not suitable for free-range egg production. Barcham Farm, which was in the Middle Fen and Mere IDB area also had 3 poultry buildings where assessments were agreed at £0.85, £0.80 and £0.45 per sq ft respectively. He also produced a schedule of the existing assessments in the Burnt Fen IDB area which, he said, showed that Poplar Farm's original assessment was towards the lower end of the range, although he admitted that he did not have any information as to what the holdings contained, other than their acreages.

18. In cross-examination by Mr Beaney, Mr Jones admitted that it had been impossible to find direct comparables, and in response to the point that his valuation had virtually doubled the assessment, he said he agreed with the advice that had been set out in the letter from the Association of Drainage Authorities [set out above].

Conclusions

19. The relevant parts of section 41 of the 1991 Land Drainage Act provide:

“41.- (1) Subject to section 38 above and section 47 below, a rate made by the drainage board for an internal drainage district shall be assessed at a uniform amount per pound throughout the district on the annual value of the agricultural land or agricultural buildings in respect of which it was made.

(2) For the purposes of this Chapter the annual value of any chargeable property shall (subject to sections 43 and 44 below) be the amount, determined in accordance with section 42 below, which is equal to the yearly rent, in respect of a holding comprising the chargeable property, at which the holding might reasonably be expected to have been let, by a prudent and willing landlord to a prudent and willing tenant, on a tenancy from year to year commencing on 1st April 1988 and on the relevant terms.

(5) In determining for the purposes of subsection (2) above the yearly rents at which a property might reasonably be expected to have been let, any liability for the payment of drainage rates shall be disregarded, but account shall be taken of all other relevant factors, including, in every case -

(a) the character and situation of the holding (including the locality in which it is situated);

(b) the productive capacity of the holding and its related earning capacity; and

(c) the level of rents for comparable lettings current on 1st April 1988.

(7) In this section –

“productive capacity”, in relation to a holding, means the productive capacity of the holding determined (taking into account fixed equipment and any other available facilities on the holding) on the assumption that the holding is in the occupation of a competent tenant practising a system of farming suitable to the holding;

and “related earning capacity”, in relation to the productive capacity of the holding, means the extent to which, in the light of that productive capacity, a competent tenant practising such a system of farming could reasonably be expected to profit from farming that holding.

20. In its decision, the VT said that in the absence of rents on directly comparable properties, it looked in detail at the claimants’ submissions on productive capacity and related earning capacity, as was required under section 41. It noted that, in relation to the area of the farm that excluded the egg production facility, Mr Beaney’s figure was less than had been applied in the 1992 assessment – which had not been appealed. As to the egg production unit, the VT made assumptions as to the relationship between gross margins and the figure of £1.70 per bird adopted by Mr Beaney, and questioned the accuracy of the data. It found that, with the onus of proof falling upon the appellant, Mr Beaney had failed to demonstrate that the drainage rate assessment was excessive, and adopted Mr Jones’s approach based, as it was, upon the agreement between the main agents involved in the 1992 assessments as to the underlying tones of value for poultry buildings.

21. I find that I am unable to agree with the VT's conclusions. In my view, Mr Beaney has undertaken precisely the exercise that was required of him under the Act and he produced a detailed calculation based upon the best evidence available. He accepted, in connection with the egg production unit, that there was considerable variance between the ABC 1988 and 1989 gross margin figures and, quite reasonably in my judgment, took an average between the two to arrive at the direct labour costs per bird. As to the rest of the farm, he gave his reasons for reducing the price per acre and I accept them. The enterprise is quite different now from what it was in 1992, and I believe this has been adequately reflected in his figures. It is true that £34 per acre is below any of the assessments set out in the table produced at Tab 8 of Mr Jones's report, but in the absence of anything more than the acreages (the addresses of the holdings were not even given), I am unable to attach any weight to that evidence. I accept the comparable referred to by Mr Beaney at Park Farm, Little Livermore.

22. Mr Jones admitted that the exercise he had undertaken was not that which was required under the Act, and I note that he accepted that the advice given by the Association of Drainage Authorities was correct. As Mr Beaney said, the IDBs assessment at almost double the original one flew in the face of that advice. Mr Beaney's figure of £15,000 represents £50.84 per acre on the croppable area, and although it is only some £1,400 more than the original assessment, this assessment has been carried out in accordance with the provisions of section 41. Thus, comparing this re-assessment and the original 1992 assessment, like is not being compared with like.

23. In the circumstances, I find that the VT was wrong to dismiss the appellant's arguments, and determine the existing annual value at £15,000.

24. The appeal having been heard under the simplified procedure and there being, in my view, no circumstances that would justify an award of costs, I make no such order.

DATED

6 June 2007

Signed

P R Francis FRICS

POPLAR FARM, BURNT FEN
ANNUAL VALUE ASSESSMENT by RJB BEANEY FRICS FAAV

<u>Arable Gross Margins</u>	Ha		av £/ha		
Winter wheat	71.4	x	509.1		£36,350
Spring Barley	5.3	x	242.2		£ 1,284
Sugar Beet	18.5	x	893.6		£16,532
Potatoes	<u>6.5</u>	x	1507.8		<u>£ 9,801</u>
	101.7				£63,967
<u>Less Fixed costs</u>					
Labour			149.4		£15,194
Power and Machinery			233.1		£23,706
General overheads			78.3		<u>£ 7,963</u>
					<u>£46,863</u>
					£17,104
Margin for division 50:50					£ 8,552
Rental value (equivalent to £84.07/ha (£34/acre)) say					£ 8,550

<u>Egg gross margins</u>	ABC		NIX		REAL	
	1988	1989	2004	2004	2004/05	
Egg returns	(252)	(276)	14.46	(300)	17.50	15.79
Less livestock depreciation	<u>2.11</u>	<u>2.05</u>		2.80	<u>2.75</u>	
Output (bird pa)	10.28	12.41		14.70	13.04	
Variable costs:						
Food	7.00	7.18	6.64		5.77	
Miscellaneous	<u>0.42</u>	<u>0.60</u>	<u>1.12</u>		<u>1.30</u>	
	<u>7.42</u>	<u>7.78</u>		<u>7.76</u>	<u>7.07</u>	
Gross Margin (bird) pa	2.86	4.63		6.94	5.97	
Direct labour costs			<u>1.70</u>	<u>3.65</u>		
			£2.93	£3.29		

12,000 birds at £3.75 per bird average	45,000	
Direct labour at £1.70 per bird	<u>20,400</u>	
		24,600
Allow; Machinery costs @ 5%	3,000	

Interest: Machinery	60,000		
Birds	26,400		
Misc for 1 month	<u>7,780</u>		
At 12% on	94,180	<u>11,302</u>	
			<u>14,302</u>
			10,300
Margin for division: 50:50			5,150
Rental value			£ 5,150
Add			
Livestock buildings, say			£ 500
Permanent Pasture 4.50 ha @ £60			£ 270
Shooting, say			<u>£ 300</u>
			£14,770
Rental value say £15,000			

BURNT FEN IDB

POPLAR FARM – ANNUAL VALUE AS AT 1st APRIL 1988

Plan No	Field No	Acres	Hectares	Annual value
TL0168	0034	39.903	16.15	1596.12
TL0169	8887	0.069	0.03	2.76
TL0178	0003	34.022	13.77	1360.88
TL0178	3320	0.689	0.28	27.56
TL0178	3421	0.479	0.19	19.16
TL0178	4104	0.42	0.17	16.8
TL0178	4700	0.44	0.18	17.6
TL0178	5851	36.058	14.59	1442.32
TL0178	5900	28.764	11.64	1150.56
TL0178	6629	39.498	15.98	1579.92
TL0179	0006	9.185	3.72	367.4
TL0179	0078	14.977	6.06	599.08
TL0179	0091	25.099	10.16	1003.96
TL0179	2487	1.06	0.43	42.4
TL0179	3340	0.46	0.19	18.4
TL0179	3370	14.537	5.88	581.48
TL0179	4761	23.256	9.41	930.24
TL0179	4798	0.2	0.08	8
TL0179	4949	4.087	1.65	163.48
TL0179	5300	3.687	1.49	147.48
TL0179	5590	1.329	0.54	53.16
TL0179	6194	1.881	0.76	75.24
TL0179	6788	2.031	0.82	81.24
TL0179	7179	2.721	1.10	108.84
TL0179	7500	6.988	2.83	279.52
TL0179	7969	3.079	1.25	123.16
TL0179	8076	1.139	0.46	45.56
TL0179	8800	10.139	4.10	405.56
TL0179				
		306.20	123.92	12,247.88
				8% increase for buildings
				980.00
				3% increase for size
				379.00
				Poultry building
				12,150.00
				Less adjustment for 32.62 acres @£44/acre which is used in conjunction with the poultry business but included in the assessment above
				1,457
				£24,300.00
				Rent per acre
				£79.36
				Rent per hectare
				£196.10