

PRELIMINARY REPORT

PREPARED ON BEHALF OF

CLARGES STREET INVESTMENTS LIMITED

WITH REGARD TO

SCARISBRICK BANKS' ESTATE

29th June 1989

Smith Hodgkinson McGinty
Auctioneers, Valuers, Agents

Chorley, Lancashire.

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The preliminary report is prepared on facts available to us at the present time and should not be construed as final and absolute, and will be subject to necessary amendments as more detailed information becomes available.

This report is prepared on behalf of Clarges Street Investments Limited for their and their professional advisors' sole use, any liability to any third party acting as a result of information contained within this report is disclaimed.

1.0 Instructions

1.1 To provide brief recommendations for the managements of the Scarisbrick Estate.

1.2 To provide proposals for the management of the estate by Smith Hodgkinson McGinty

2.0 Appraisal

2.1 The Scarisbrick Banks Estate extends to 829 acres, or thereabouts, and is fully let on a variety of differing agreements. A report of the tenancies on the estate and their legal implications is included in appendix 'A'.

The estate consists of good quality agricultural land, the majority of the land being classified as grade 1 by M.A.F.F.

2.2 The estate has 5 farmsteads, 2 of the original farmsteads having been excluded from the sale to Clarges Street Investments. The estate also has the benefit of a Keepers Cottage which is let in conjunction with sporting rights.

2.3 Of the estate's 829 acres, 747 acres are let on tenancies protected by the Agricultural Holdings Act and 54.29 acres are held on tenancies outside the act.

A breakdown of the tenancies are shown in appendix B.

It must be noted from this that the land on agricultural tenancies, being protected by the 'Act', is less flexible and there is considerable security of tenure with a right to successions in all tenancies dated before 1984. This being the case, the land is tied up for a number of years and any proposals for the estate must have regard to this fact.

Rent may be reviewed every third year subject to notice being served at least 12 months in advance. We are, at this stage, unaware of the date of the last review and of the position of the serving of notices. It is advisable, therefore, to wait until the position is clarified on this matter before a decision as to rent reviews is made.

The 54.29 acres covered by agreements outside the 'Act' is more flexible, there being no security of tenure on the expiration of these agreements. We are led to believe the Gladstone and Bower agreements were renewed on 10th February 1989, but we are unaware, as yet, as to the length of the new agreements. Suffice to say that they will be less than 2 years but greater than 1 year.

We are also led to believe that 4.13 acres is let on a grazing agreement of less than 365 days, however, we do not at present have a copy of the current agreement.

This 54.29 acres will thus be vacant within the next 18 months and a decision should be made as to whether the land is relet to the current tenants.

2.4 The land off Cabins Lane, let on Gladstone v Bower tenancies to Caunce and Rimmer, is at present being farmed less than adequately for what one would expect of land of this calibre. Recent inspection throws considerable doubt over the occupiers' farming abilities. The position, at the end of these fixed term tenancies, should be considered very seriously indeed.

2.5 Again the state of the crops in the field and the ground deterioration and tidiness of the farmyard of Holly Farm throws a dark shadow over the abilities of Caunce. It is suggested that immediate action be taken to remedy this, by informing Caunce of our dissatisfaction and, if no remedy is forthcoming, then by the serving of the appropriate notices.

It would appear that active management is a necessity in this area of the estate in order to stop a deterioration in the farmstead and land.

2.6 The remainder of the estate appears, from our initial inspection, to be reasonably well farmed, our only causes for concern being the state of the farm buildings as Goose Dub Farm and B de's Farm. These problems will have to be rectified once further information is available as to the repairing obligations affecting them.

A further cause for concern is the existence of building debris on one of the fields let to Baxter at High Brow Farm. We are informed that this is in position for the filling of a dyke. The nature of the material, however, is inconsistent with soils of the area and we would recommend immediate action in the short term.

2.7 From our inspection and discussions with Mr. Crook, on site, we have identified the areas shown on appendix 'C', as potential development land for residential building, subject to necessary planning consents.

The site to the east of Banks is predominantly occupied by Gregson, as part of Neales Farm, the tenancy agreement for which has a clause for 'notice to quit part' should planning permission be obtained, thereby making possession of the land easier to obtain. The remainder of the site is occupied on an annual grazing agreement, thereby ensuring no security of tenure.

2.8 The other identified site is the poultry farm in New Lane. This would appear to be an infill site and one well suited to development. The site is let on a tenancy protected by the 'Act'.

2.9 Other potential for development within the site lies in the farm buildings at Goose Dub Farm and Brade's Farm. Both these farms are occupied by Bond. As discussed in 2.6, they are in a poor state of repair, reflecting their viability as useful agricultural buildings. There may be merit in approaching Bond with a view to him surrendering the farm building in return for the estate erecting new buildings, at cost less the value of the existing buildings.

The houses at these holdings are a valuable asset and would command high prices if sold on the open market. There may also be merit in offering compensation for surrender, or perhaps offering a new house built under Section 52 (Agricultural Worker's Cottage) agreement, and moving the working farmyards away, thus releasing the existing yards for development.

2.10 Planning applications have been granted for the drilling of gas by Lancashire County Council, adjacent to Goose Dub Covert. This is at present being discussed with West Lancashire District Council, but it appears that drilling will be allowed to go ahead somewhere in the area of Goose Dub Covert.

The estate, prior to the sale to Clarges Street Investments Limited, had been in negotiations with the Oil Company, although no outcome had been reached.

2.11

All woodland on the estate is in hand, the sporting rights over the estate being let until 1991.

Included in the let of sporting rights is a Keepers Cottage which must be used for a service tenancy to the gamekeeper.

This cottage will be vacant when the sporting rights agreement comes to an end in 1991

- 3.0 Recommendations
- 3.1 The estate should be managed in order to maximise income and capital growth. We are informed that the estate is considered by the company as a medium to long term investment. This being the case, it should be managed effectively so as to increase its capital value whilst maintaining a reasonable return by way of income.
- 3.2 As a result of two farmsteads being lost from the estate, the possibility of the creation of new farms, from land attached to these farmsteads, should be explored. This will not only increase rents from the estate, but will also create a capital asset.
- 3.3 90% of the land on the estate is let under tenancies protected by the Agricultural Holdings Act. As these tenancies come to an end, the possibilities of lettings with less security of tenure should be investigated, thus giving flexibility to the position of the estate.
- 3.4 The position regarding rent reviews should be clarified and the necessary action regarding notices for review made.
- 3.5 The land at Cabins Lane, let on Gladstone v Bower tenancies should be relet, when the agreement expires, to alternative tenants with proven husbandry skills under a similar arrangement, in order to improve the land, or perhaps create another holding for sale.
- 3.6 Immediate action should be taken in order to ensure that Holly Farm is reinstated to a standard of tidyness and husbandry that should be expected of such a farm.
- 3.7 The planning possibilities for the areas identified as potential development should be investigated. Should the land prove to have the capability for development then vacant possession should be strived for by the mechanisms available to the estate under the Agricultural Holdings Act.
- 3.8 Development potential of the farm buildings at Brade's and Goose Dub Farms should be explored and negotiations entered into to release these buildings and yards for conversion.
- 3.9 Negotiations should be continued with regard to the possible gas drilling, in order that agreeable terms are reached with the oil company and the estate.

4.0 Management Proposals

4.1 Smith Hodgkinson McGinty propose that the general management of the estate be carried out by themselves, to cover the following items :

- Collection of rents
- Supervision of tenants
- Making of estate payments
- Keeping the necessary estate cash accounts
- Specifying and supervising repairs and maintenance by contractors.
- Ordinary management of woodlands
- Maintaining estate ordnance sheets, terriers and records.

on a day to day basis.

4.2 It is proposed that regular visits are made to the estate in order to supervise tenants and to see that necessary works are being carried out on a weekly basis. That we liaise with Mr. Crook and that regular meetings are arranged on the estate to discuss management. In addition, a quarterly report to be prepared for Clarges Street Investments Limited. Also that directors attend managements meetings whenever possible.

4.3 The fee for the above management would be at a reduced rate of 8% of rental income. As is usual, this fee does not normally cover the following services :

- Valuations (including dilapidations and tenant right);
- Lettings and rent reviews
- Sales and purchases of property
- Preparation and supervision of woodland plans and accounts and sales of timber and underwood
- New building work
- Improvements and other architectural services
- General control and accounts of home farm and/or marked garden
- Surveys
- Plans and terriers
- Attendance at valuation and other courts, enquiries, tribunals or arbitrations.

R E P O R Ton certain Agreements affecting land at Scarisbrick Lancashire

Note: In this Report

(a) The Documents will be referred to by reference to the number assigned to them in the contract for the purchase of the land.

(b) "The Act" means the Agricultural Holdings Act 1986

(c) It is assumed that the land referred to in each document is agricultural land, being land used for agriculture which is so used for the purpose of a trade or business.

1. The Law

1.1 Agreements to which the Act applies.

1.1.1 The Act applies to agreements for the letting of agricultural land from year to year.

1.1.2 Any agreement which purports to let a person use agricultural land for an interest for less than a tenancy from year to year or a person is granted a licence to occupy land for use as a agricultural land that agreement shall be treated as if it were a tenancy from year to year and one to which the Act applies. It is also essential that the grantee have exclusive occupation of the land. There are however certain exceptions:-

(a) The statutory exceptions:-

(i) Tenancies or licenses to use land for grazing or mowing for some specified period of the year

(ii) Certain tenancies which have received ministerial consent to the exclusion of the terms of the Act.

(b) The Case Law Exception - Gladstone -v- Bower:-

Tenancies of more than one year but less than two years.

1.2 Effects of the Act's application

1.2.1 Notices to Quit

1.2.1.1 If the agreement pursuant to which land is let is an agreement to which the Act applies:-

(a) A Notice to Quit the holding, notwithstanding any provision to the contrary in the contract of tenancy, shall be invalid if it purports to terminate the tenancy before the expiry of 12 months from the end of the then current year of tenancy

(b) where, not later than one month from the giving of the Notice to Quit the Tenant serves on the Landlord a counter notice in writing, the Notice to Quit shall not have effect unless, on the application by the Landlord, the Agricultural Land Tribunal consents to its operation. There are a number of exceptions to this. For the purposes of this Report I shall only specifically mention one namely case B of Schedule 3 to the Act that is where:-

"the notice to quit is given on the ground that the land is required for a use, other than for agriculture:-

(i) for which permission has been granted on an application made under the enactments relating to town and country planning or

(ii) for which, otherwise than by virtue of any provision of those enactments, such permission is not required.

and that fact is stated in the Notice".

The Tenant may however challenge the reasons given by serving a Notice requiring arbitration.

1.2.1.2 It will not be possible to serve a Notice to Quit part of an agricultural holding unless the contract of tenancy contains a provision permitting such a Notice or the Notice to Quit states that it is given for a purpose, inter alia, the making of a road or other work connected therewith (Section 31 of the Act). If the Agreement contains such a provision the period of notice must be reasonable. It must give the Tenant at least enough time to serve the appropriate notices.

1.2.2 Succession

1.2.2.1 For tenancies granted prior to 12th July 1984 close members of a tenant's family may be able to succeed to the tenancy either on the death of the Tenant or upon the Tenant's retirement. Generally this is only possible on no more than two occasions.

1.2.2.2 For tenancies granted on or after 12th July 1984 this right of succession will not be available to a Tenant's family unless

(a) it was agreed at the time the tenancy was entered into that it would apply or

(b) the grant of a tenancy is to an eligible close relative of a tenant who died prior to 12th July 1984, as a result of that death.

1.3 Rent Review

1.3.1 Section 12 of Schedule 8 of the Act gives each party the right to demand arbitration as to the rent payable in respect of the holding. The arbitrator would then be under a duty to determine the rent payable. The Notice in writing must be served on the other party demanding that the rent to be payable in respect of the holding as from the next termination

date shall be referred to arbitration. The next termination date following the demand is the next day following the date of the demand on which the tenancy of the holding could have been determined by Notice to Quit given at the date of demand .

1.3.2 The provisions of Section 12 can only be invoked 3 years after the commencement of a tenancy or 3 years after the last determination of rent.

2. The Documents

On the basis of the above, the documents can be divided into 6 different groups:-

2.1 Documents numbered 12, 24, 29 and 32

These are all tenancies of agricultural land granted from year to year prior to 12th July 1984 and to which the rules of succession apply.

2.2. Document number 36

Though a tenancy of agricultural granted from year to year granted after 12th July 1984, it contains a declaration that it is a "first sucession" from a tenancy granted prior to 12th July 1984 and is therefore a tenancy to which the succession rules apply

2.3 Documents numbered 35, 37, 38 and 40

Again these are all tenancies of agricultural land granted from year to year but these were granted after 12th July 1984. They are not expressed to the "successions" therefore they do not appear to be tenancies to which the succession rules apply. It would however be advisable to obtain confirmation that they are not tenancies granted pursuant to a succession.

2.4 Documents numbered 33, 34 and 44

2.4.1 These documents are expressed to the licenses for a period of 18 months which do not confer exclusive

possession of the grantee. Document number 33 apparently expired on 30th September 1986 as did document number 34 but that appears to have been renewed for a further period of 23 months expiring on 30th September 1988.

2.4.2 Exactly what is the nature of these agreements will very much depend on the facts during the continuance of their term and what has happened since their expiration. Either they are

2.4.2.1 Non exclusive licences which are not converted into tenancies from year to year (whilst the documents specifically state that they do not grant exclusive possession to the licensees this may in fact not be the case. The rights reserved for the grantor will not necessarily take away exclusive possession. It will therefore be necessary to closely examine the surrounding circumstances) or

2.4.2.2 They are tenancies but fall within the Gladstone v Bower exception and are not therefore tenancies to which the Act applies (there will however have to be a close examination of the facts surrounding the grant to ascertain that the agreement fall within the strict requirements of the exception) or

2.4.2.3 They are licences which confer exclusive occupation on the tenants and are therefore converted into tenancies from year to year

2.5 Document numbered 39

2.5.1 This document is expressed to be a Grazing Agreement for a specified period of the year which expired on 30th November 1986. At first sight it would appear to have expired and that during its term it was an agreement which was an

exception to the Act. As before much will depend on what has happened since its expiration.

2.5.2 A further point to note is that the grazing is restricted to a pony. The grazing of horses is not usually, considered to be an agricultural use although in some instances it may be, for example, a riding school has been found to be an agricultural use in certain circumstances. Again, a careful examination of the surrounding circumstances will have to be undertaken.

2.5.3 If it is found that the land has been used for agricultural purposes continuously with no further agreement it is possible that the grazier may argue that the agreement has become a tenancy from year to year and therefore a tenancy to which the Act applies.

2.5.4 If it's found that the land has not been used for agricultural purposes and the grazier has had exclusive possession of the land it may be that the grazier has a tenancy of the land, not protected by the Act, rather than a licence.

2.6 Document number 41

2.6.1 This is a Lease for one year certain of a cottage, réaring field, shooting and rights of privileges of sport (excluding fishing) over 835 acres expiring on 1st November 1988 but reserves to the Landlord the right of hunting foxes and other beasts of chase and the right to enter the woodland to carry out normal forestry operations.

2.6.2 Whilst the keeping of pheasants for sport is a usual country pursuit it is not generally accepted to be an agricultural purpose. This agreement may not therefore be one to which the Act applies.

2.6.3 If the Tenant has continued in occupation and has used the land and exercised the rights for the purposes of the business the Lease consideration will have to be given as to whether the provisions of the Landlord and Tenant Act 1954 apply.

3. Possession. Notice to Quit under the Act

3.1 Documents 12, 24, 29, 33, 35, 36, 37, 38 and 40 - Notice to Quit the whole

3.1.1 Notice to Quit in the prescribed form, preferably specifying the reasons must be served on the tenant giving at least 12 months notice from the date on which the tenancy would next expire eg those which commenced on a 2nd February, the earliest date that possession could be sought if Notice to Quit were served now would be 2nd February 1991

3.1.2 For the purposes of this Report, assuming the reason to be given for the notice to be Case B (as mentioned earlier) if the Tenant chooses to challenge the notice by way of arbitration it will be necessary for the Landlord to prove that:-

- (a) planning permission has been obtained
- (b) planning permission has been obtained for the each and every part of the land referred to in the notice
- (c) he genuinely intends to implement the planning permission and that it is not a ploy merely to obtain vacant possession.

3.2 Documents 12, 24, 29, 33, 35, 36, 37, 38 and 40 - Notice to Quit part

3.2.1 As previously mentioned, it will only be possible to serve a Notice to Quit part if the Tenancy Agreement contains such a provision or the reason for the Notice to Quit is as specified in Section 31 of the Act.

3.2.2 Each of these documents contains a provision for resumption of part. Each one varies. The periods range from 6 weeks to 3 months notice provided that the purpose is for a use other than agriculture. As the clauses for early resumption of part of the holding are not in exactly the same form, careful consideration will therefore have to be given to the terms of the planning permission granted.

3.3 Again it is not sufficient to have an intention to use the land for such a purpose at some future date. The Landlord will need to have the necessary planning permission for the area referred to in the Notice and be able to prove a genuine intention to implement the planning permission.

3.4 Again as for a Notice to Quit the whole, depending on the reasons given in the notice, the Tenant could serve either

(a) a counter notice to require the consent of the Agricultural Land Tribunal to the operation of the Notice or

(b) a Notice requiring the reasons specified in the Notice to Quit to be arbitrated

3.5 Documents 33, 34, 39, 41 and 44

All these documents appear to have expired. Further information is required to ascertain on what terms the land is currently occupied to determine how the rights of occupation may be terminated.

4. Comparison of terms

For these purposes the documents can be divided into 5 different groups

4.1 Documents 12, 24 and 29

4.1.1 These are all on, what appears to be on a standard printed form although document number 24 has some extra

clauses and is slightly more detail. There is no indication of the publisher of the document. They contain clauses dealing with all the aspects covered by the present Estates Gazette form of tenancy but not all and not in such great detail. Herewith a copy of the Estates Gazette Tenancy for information purposes.

4.1.2 Documents 12 and 44 deal with land only and document 29 deals with land and buildings.

4.1.3 Where the documents are silent as to the rights and obligations of the Landlord and Tenant for fixed equipment The Agriculture (Maintenance of Fixed Equipment etc) Regulations 1973 apply.

4.2 Documents numbered 32, 35, 36, 37, 38 and 40

4.2.1 These are in a different form to documents numbered 12, 24 and 29. They do however deal with very similar points but in much greater detail.

4.2.2 With the exception of document 35 they also entitle the Landlord to be reimbursed for the cost expended on insurance unlike documents 12, 24 and 29.

4.2.3 They also specifically deal with the Tenant's right to compensation at the end of the tenancy.

4.2.4 The exceptions and reservations in favour of the Landlord are very general and do not reserve specific rights of way. Document 32 however grants a right of way to the Tenant over "Georges Lane Pace".

4.2.5 Again where the documents are silent as to the obligations of the Landlord and Tenant The Agricultural (Maintenance of Fixed Equipment etc) Regulations 1973 will apply.

4.3 Documents numbered 33, 34 and 40

4.3.1 These are in exactly the same form as one

another except that number 44 reserves to the lessor the mines and minerals.

4.3.2 They do not follow the precedents contained in either the 4th or 5th edition of the Encyclopaedia of Forms and Precedents. They do however deal with a number of the matters covered in those precedents.

4.4 Document numbered 39

Again this is not in a precisely similar form to that set out in either of the 4th or 5th editions of the Encyclopaedia of forms and precedents but nevertheless is very similar.

4.5 Document numbered 41

I have not been able to find a precedent upon which this is based save that it follows the usual form of a lease. It contains a provision for the Landlord to determine the grant of the sporting rights upon 3 months previous notice which, if it is a business tenancy, may be void.

4.6 Conclusion

Documents 12, 24, 29, 32, 35, 36, 37, 38 and 40 appear to deal with the minimum requirements of a written tenancy agreement as specified in Schedule 1 of the Act subject to the following provisos:-

(a) Generally the agreements do not follow the precise wording in paragraphs 6 and 7 but the clauses dealing with insurance and farming in accordance with the rules of good husbandry are probably sufficient.

(b) Whilst there are provisions against assigning and sub-letting there are different provisions in each agreement relating to, inter alia, residing in farmhouses, letting of cottages and grass keep agreements.

(c) It is a question of fact whether the descriptions are sufficient.

APPENDIX B

Tenancies Protected by Agricultural Holdings Act 1986

<u>Tenant</u>	<u>Holding</u>	<u>Area/Acres</u>	<u>Date of Agreement</u>
R. Ball	Land at Banks Marsh	52.245	2 Feb. 1973
D. Baxter	High Brow Farm	102.63	2 Feb. 1983
	Part of Bartons Farm	62.9 71.22	2 Feb. 1985
R. Brade	Land at Banks Marsh	9.85	2 Feb. 1978
P/Reps.of P. Bond	Goose Dub Farm	182	2 Feb. 1985
A. Counce	Holly Farm	95.58	2 Feb. 1985
E. Gregson	Neales Farm	147.09	2 Feb. 1985
N. Fiddler	Poultry Farm 43 New Lane	9.981	2 Feb. 1972
J. Rimmer	Land at Vicarage Lane	13.514	2 Feb. 1958
Total		747.01 acres	

APPENDIX 'B'

Agreements outside the Agricultural Holdings Act

<u>Name</u>	<u>Holding</u>	<u>Area/Acres</u>	<u>Type of Agreement</u>
J.Rimmer	Land at Cabin Lane	30.14	Gladstone v Bower
A.Caunce	Land at Cabin Lane	20.02	Gladstone v Bower
E.Crowhurst	Land at Station Road	4.13	Grazing Licence
Total		54.29 acres	
Land in hand		27.51 acres	

SCARISBRICK BANKS ESTATE

		<u>Rent Due</u>	<u>Date</u>	<u>Vat</u>	<u>Rent Paid</u>	<u>Arrears</u>
B. GALL	- HUNDRED END	1,900.00	1.12	142.50	1,900.00	142
D. J. BAXTER	HIGH BROW AND BARTONS	5,094.00	1.8		5,094.00	
"	" " "	5,094.00	11.11	764.10	5,094.00	764.10
P. BOND	- GOOSE DUB AND BRAGGS	7,625.00	1.12	431.25	-	8,056.25
R. BRADY	- BANKS MARSH	700.00	1.6	58.50	-	-
S. CAUNCE	- HOLLY FARM, CABIN LANE	4,065.00	2.8	211.12	4,065.00	211.12
"	" " "	550.00	31.12	63.75	-	613.75
N. FIDLER	POULTRY FARM	1,500.00	1.5	37.50	-	-
GREGSON	NEALES FARM	4,593.00	1.12	344.47	-	4,937.47
S. R. BYRNER	VICARAGE FARM, CABIN LANE	1,435.00	31.12	107.63	-	1,542.63
N. FLEETWOOD	- HESKETH SHOOTING	300.00	2.2	-	-	-

16,567.02

Reminders for rent arrears have been forwarded where appropriate

SMITH HOOBKINSON MCGINTY
SCARISBRICK - BANKS ESTATE

MANAGEMENT STATEMENT

NAME	PROPERTY	DATE DUE	RENT DUE	DATE PAID	RENT PAID	MGMT CHARGES	VAT ON CHRG	BANK CREDIT	ARREARS	REMARKS
<u>31.10.89</u>										
extar	High Brow & Bartons Fm	1 Aug	5094.00	29 Aug	5094.00				-	
rance	Holly Farm	2 Aug	4065.00	11 Sep	4065.00				-	
					9159.00	832.91	109.91	By cheque 8316.32		
<u>30.11.89</u>										
extar	High Brow & Bartons Fm	11 Nov	5094.00	28 Nov	5094.00	487.52	61.13	U/credit 27.11.89 4625.35	-	
<u>31.12.69</u>										
all	Banks Marsh	1 Dec	1900.00							
rugson	Neales Farm	1 Dec	5843.00							

21

Banks Enclosed Marsh

R. BALL

BAXTER 3

BRADY

BOND

22

5

6

GREGSON

RIMMER

Banks

BAXTER 6

Crossens

LAND HOUSES

CAUNCE

SMITH HODGKINSON MCINTY
 ESTATE AGENTS & SURVEYORS
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NORTH

