

AGRICULTURAL LAND TRIBUNAL - WALES

CERTIFICATE OF BAD HUSBANDRY

HOLDING: *Rock Cottage Land
Cymau
Flintshire*

BETWEEN: Mrs Francis Edwards Applicant
*Barnstone
Yellow Hill
Wrexham*

AND

Mr Gwilym Idris Mault Respondent
*Llwynonn
Bryneglwys
Corwen*

WHEREAS *an application dated 29 January 2002, has been made to the Tribunal by the Applicant under Section 23(3) of the Agricultural Holdings Act 1986, for consent to the operation of a Certificate of Bad Husbandry in respect of a holding known as Rock Cottage Land, Cymau and comprising some 10 hectares in the County of Flintshire.*

AND WHEREAS *Mr W J Owen (Chairman), Mr W L Corbett-Winder and Mr J C Jones have been appointed to the Agricultural Land Tribunal for the hearing of the said application.*

AND WHEREAS *the Tribunal heard the application at the Beaufort Park Hotel, Mold on 18 and 19 June 2002.*

Now the Tribunal, *having considered the evidence, and the documents presented, unanimously find for the reasons set out in the Schedule hereto, that the Respondent tenant is not fulfilling his responsibilities to farm the holding in accordance with the rules of good husbandry and hereby grants a certificate of Bad Husbandry.*

Finally, the Tribunal *having considered the landlord's application pursuant to Section 25(4) of the Agricultural Holdings Act 1986 have directed that in this case the minimum period of notice for termination of the tenancy should be three months.*

Signed this *19th* day of July 2002

W J Owen
Chairman of the Tribunal

I hereby certify that the above is a true record of the decision of the Tribunal

C A Davies
Secretary to the Tribunal

BETWEEN:

MRS FRANCES EDWARDS

Applicant

and

MR GWILYM IDRIS MAULT

Respondent**REASONS FOR THE DECISION**Re: The holding known as Rock Cottage land, Cymau, Flintshire ("the Holding")**1. Introduction**

This is an application dated 29th January 2002 to the Tribunal for a Certificate of Bad Husbandry under section 26(3) of the Agricultural Holdings Act 1986 ("the Act"). This section replaced section 2(4) of the Agricultural Holdings (Notices to Quit) Act 1977. The hearing of the application was at the Beaufort Park Hotel Mold on the 18th and 19th of June 2002 when the Applicant landlord was represented by Mr Phillip Meade Chartered Surveyor and the Respondent tenant was represented by Mr J H Jones Chartered Surveyor.

2. The law

2.1 Section 26 of the Act must be read with schedule 3 part II paragraph 9 of the Act which reads as follows:-

"9.-(1) For the purposes of Case C the landlord of an agricultural holding may apply to the Tribunal for a certificate that the tenant is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry; and the Tribunal, if satisfied that the tenant is not fulfilling his said responsibilities, shall grant such a certificate"

Sub-paragraphs (2) and (3) of paragraph 9 refer to matters to be disregarded by the Tribunal but none of these disregards has any relevance to this application.

2.2 Under the Act a tenant in receipt of a notice to quit alleging that it is founded upon such a certificate granted by the Tribunal is not entitled to demand arbitration as to the reasons stated and the tenant's right to serve a counter-notice and thereby render the notice to quit given to him ineffective unless the consent of the Tribunal is first obtained is excluded provided that the landlord follows the procedural requirements and serves a valid notice to quit. In that sense such a notice to quit is sometimes stated to be "incontestible".

2.3 Good husbandry. This term is defined in section 11 of the Agriculture Act 1947 ("the 1947 Act"). Some of the provisions of section 11 of the 1947 Act relate to crops and cropping. It was common ground between the parties that those provisions are not applicable to this holding. The relevant parts of section 11 read as follows:-

"(1) For the purposes of this Act the occupier of an agricultural unit shall be deemed to fulfil his responsibilities to farm it in accordance with the rules of good husbandry in so far as the extent to which and the manner in which the unit is being farmed (as respects both the kind of operations carried out and the ways in which they are carried out) is such that, having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, the occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality and quantity thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future.

(2) In determining whether the manner in which a unit is being farmed is such as aforesaid, regard shall be had, but without prejudice to the generality of the provisions of the last foregoing subsection, to the extent to which -

(a) permanent pasture is being properly mown or grazed and maintained in a good state of cultivation and fertility and in good condition;

(b) [relates to arable land and is consequently not applicable];

(c) the unit is properly stocked where the system of farming practised requires the keeping of livestock, and an efficient standard of management of livestock is

maintained where livestock are kept and of breeding where the breeding of livestock is carried out;

(d) the necessary steps are being taken to secure and maintain crops and livestock free from disease and from infestation by insects and other pests;

(e) the necessary steps are being taken for the protection and preservation of crops harvested or lifted, or in course of being harvested or lifted;

(f) the necessary work of maintenance and repair is being carried out.”

3. The facts.

3.1 Agreed facts.

3.1.1 The Holding comprises about 10 hectares of land. There are no buildings on the land.

3.2 It was agreed between the parties in writing at the hearing that:

3.2.1 The Holding is not being farmed,

3.2.2 That there are three padlocks on the gate leading to the Holding,

3.2.3 That a statement in writing dated the 16th of May 2001 addressed by the landlord to Mr J H Jones, the Tenant's representative, is an agreed document. This statement (or the relevant part of it) reads as follows:-

“With regard to the locked gate. My gate is locked for security reasons. As far as my tenant, Mr Mault, is concerned this should not present a problem as the Consent Order clearly states that specific notice for access has to be given in writing”.

3.2.4 That the landlord fractured the water pipe (this water pipe will be referred to later) and that the Consent Order (also referred to later) authorises a supply of water from the Applicant's property to the Respondent's agricultural holding.

4. The evidence.

4.1 Mr James Fletcher, a farm management consultant, gave evidence under oath that he had an extensive background and considerable experience in both farm management and farm business advice, and told us that he had been asked by the landlord to comment on the farming practices of the tenant of the land constituting the Holding. He went through the criteria laid down in section 11 of the 1947 Act and told us that when he inspected the Holding on the 7th of June 2002:

(a) None of the Holding had been either mown or grazed for some time and that the three different areas which should be in permanent pasture he found to be as follows:

- (i) On the slopes the land had reverted to bracken, thorn and shrubs. He said that these would not be encroaching to the extent that they were if the land was grazed or mown properly. In his view these areas had become totally neglected.
- (ii) Two other areas were clear from bracken, gorse etc, but were heavily infested by grassland weeds. There was clearly a heavy infestation of rabbits and it was only their (that is the rabbits) grazing that was keeping the grass and weeds down to the level that could be seen.
- (iii) The third area was covered by woodland and more advanced shrubs and saplings and those areas had clearly undergone even longer periods of neglect.

He concluded that the tenant was not fulfilling his responsibilities to keep permanent pasture properly mown or grazed, or maintained in a good state of cultivation and fertility and in good condition.

Under rule (c) he stated that it was apparent to him that the Holding was not being properly stocked and had not been for some time. Pausing here for a moment it is an agreed fact that the Holding is not being farmed. When he gave his evidence the tenant accepted that he had had no livestock on the Holding since 1994.

Returning to Mr Fletcher's evidence, he stated that in his view the system of farming practised did require the keeping of livestock and there was no immediate evidence of any stock having been grazed in the land this year, and he suspected that it had not been grazed for many years. This was entirely borne out by the tenant's own evidence and we find as a fact that the tenant had had no livestock on the land since 1994.

(b) Under rule (d) as to necessary steps being taken to secure and maintain crops and livestock free from disease, as there were no livestock this could only apply to the grass crop and that was infested with weeds.

(c) As to (f) Mr Fletcher said that the two most important items of maintenance and repair related to the boundaries of the Holding and access to the Holding. He found that internal boundaries were virtually non-existent with the exception of some extremely overgrown hedges and in many places there was no external boundary, and those that did exist were not stockproof except that boundaries adjoining neighbouring land had been secured by fences erected by neighbours. He said that the route leading to the Holding was so overgrown that it was impossible to gain access even on foot by that route.

In general he characterised the land as probably the worst he had come across in his experience and had never seen an area so totally neglected as this one. The land was totally unfarmed, unstocked and unmanaged.

2. None of Mr Fletcher's evidence as above was challenged. It is an agreed fact that the Holding is not being farmed and that it has not been stocked since 1994.
5. The Tribunal inspected the Holding before hearing the evidence. Having inspected it they have concluded that its state is as described by Mr Fletcher in his evidence. This was never seriously disputed and when the tenant and his son both gave evidence there was no attempt to establish that the tenant is fulfilling his responsibilities to farm the Holding in accordance with the rules of good husbandry.
6. We find as clearly established and undisputed facts that the tenant is not farming the Holding at all, has had no livestock on it since 1994, and that our inspection of the Holding fully justified the conclusions reached by Mr Fletcher and given in his evidence.
7. This would appear to be an end of the matter, but the way in which the tenant's case was put was not to justify the way in which he had farmed and is farming the Holding (having admitted that he is not farming it this would not be possible anyway) but to put forward what Mr Meade, the tenant's representative, described as mitigation to explain this state of affairs. The landlord's representative Mr J H Jones did not use the expression "mitigation" but rather put the matter on the basis that the tenant has successfully rebutted the landlord's evidence with regard to what Mr Meade called matters of mitigation. These matters related to:
 - (1) The lack of a water supply at the Holding.

(2) The access to the Holding.

8. At this point we must refer to the outcome of litigation between the parties in the Wrexham County Court (Case No. 95WX501766) in which the tenant was the plaintiff and the landlord the defendant. We were handed a copy of a Consent Order signed by Counsel for both parties stated to be in full and final settlement of all issues arising in the proceedings which declared that the present Respondent was entitled to an agricultural tenancy as mentioned in section 1(2) of the Act from year to year of the Holding and that all further proceedings were to be stayed upon the terms set out in the schedule save for the purpose of enforcing the terms with liberty to apply. The terms set out in the schedule led to a deed of grant by the Applicant to the Respondent dated the 28th of April 1998 which recited the order of the court dated the 16th of January 1998 and which regulated some of the relationships between the Applicant as landlord and the Respondent as tenant. Broadly these granted the Respondent a right to a supply of water on the terms contained in paragraph 1 of schedule 1 to the deed and rights of access to the Holding for various purposes at various times as set out in paragraphs 2, 3, 4, 5 and 6 of the same schedule.
9. The Tribunal find (and there is no dispute about this) that the Respondent tenant has not exercised his rights in respect of a water supply granted by the deed and that the tenant Respondent has on only one occasion exercised his rights of access to the Holding as granted by the deed. This occasion was in 1998 when the tenant attended on the 8th of October to carry out works to the access (which is also a public right of way) following a complaint by the footpaths officer of the local authority. We are satisfied and find that this was the only effort or attempt made to exercise the rights of access granted by the deed. Despite the fact that the tenant and his son both gave evidence that they were in some way adversely affected by the attentions of the landlord who was present and took photographs when those rights were exercised and that this was off-putting, they did attend and they did carry out the work. We find that the access rights granted are unusual and restrictive but apart from that one occasion in 1998 we find that no effort has been made to exercise them. The order of the county court was by consent. The provisions for access were accepted by the tenant who settled the case on those terms. There is no written tenancy agreement other than a note in a "rent book" which related

to the original grant of the tenancy by the landlord's predecessor to the tenant dated 31st March 1954. The terms of the tenancy are supplemented by the court order and the subsequent deed of grant. The Respondent may well have been put off by the landlord's actions in October 1998. However, the rights granted both as to the water supply and to access are clear. He has made no effort to put in the water supply which he was authorised by the deed to do or, other than on that isolated occasion in 1998, to exercise the rights of access granted to him.

10. We find that the Respondent has not farmed the Holding since 1994. His only work of maintenance was the isolated visit in 1998 which we have referred to above and the Respondent has neither exercised nor attempted to exercise his rights of access since 1998.
11. Mr Jones the Respondent's Representative put it to us why should the tenant go to the expense of putting in the new water supply when the landlord had damaged the old one. The Tribunal find that having accepted the deed of grant following the consent order it was within the tenant's power to provide himself with an adequate water supply and he has not availed himself of the opportunity to do it. We do not find that the actions of the landlord in 1998 amount to intimidation although they were obviously disagreeable to the tenant and his son and their employees and we do not find that they constitute any sort of justification for the Respondent's failure to farm the Holding.
12. We accordingly unanimously find that the Respondent tenant is not fulfilling his responsibilities to farm the Holding in accordance with the rules of good husbandry and we grant a certificate accordingly.
13. Mr Meade for the Applicant asked us to include a certificate under section 25(4) of the Act specifying short notice. As the Respondent is not farming and has not since 1994 farmed the Holding we direct that the minimum period of notice for termination of the tenancy pursuant to our certificate shall be a period of three months which may terminate at a date other than the end of a year of the tenancy.
14. We make no order as to costs.

15. The decision of the Tribunal is unanimous.

Dated this 19th day of July 2002

(Signed) _____

(W J Owen - Chairman)