

AGRICULTURAL LAND TRIBUNAL - WALES

APPLICATION FOR CONSENT TO OPERATION OF A NOTICE TO QUIT

HOLDING: *Leeswood Old Hall Farm
Mold
Flintshire*

BETWEEN:

Charles Wynne-Eyton **Applicants**
Richard Patrick Benjamin Duncan and
Peter Collins
(The trustees of the Leeswood Tower Maintenance Fund)

AND

Terence Leslie Evans **Respondent**

WHEREAS an application dated 21st March 2003 has been made to the Tribunal by the Applicants under Section 26(1) of the Agricultural Holdings Act 1986 for consent to the operation of a Notice to Quit served on 24 March 2003 in respect of Leeswood Old Hall Farm, Mold, and comprising 46.5 hectares situate in the county of Flintshire.

AND WHEREAS Mr W J Owen (Chairman), Mr W Corbett-Winder (Landowners' Panel) and Mr I Lewis (Farmers' Panel) have been appointed to be 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 8th July 2003.

NOW THE TRIBUNAL, having considered the Application, the documents presented and the evidence given, for the Reasons annexed to this Decision do hereby refuse consent to the operation of the said Notice to Quit.

THE TRIBUNAL order the Applicants to pay the sum of £1,625 towards the costs of the Respondent payable within 28 days of the service of the decision of the Tribunal upon the Applicants.

Signed this 28th day of November 2003

Chairman

I hereby certify that this is a true record of the Order made by the Tribunal

Dated

Secretary to the Tribunal

BETWEEN:

CHARLES WYNNE-EYTON
RICHARD PATRICK BENJAMIN DUNCAN
and
PETER COLLINS
(the Trustees of the Leeswood Tower Maintenance Fund)

Applicants

and

TERENCE LESLIE EVANS

Respondent

REASONS FOR THE DECISION OF THE TRIBUNAL

1. The Application. This was made by the Applicants to the Tribunal and was dated 21st March 2003.
- 1.1 The Application is made under section 26 (1) of the Agricultural Holdings Act 1986 ("the Act").
- 1.2 That section of the Act provides as follows:-

"(1) Where -

- (a) notice to quit an agricultural holding or part of an agricultural holding is given to the tenant, and
- (b) not later than one month from the giving of the notice to quit the tenant serves on the landlord a counter-notice in writing requiring that this sub-section shall apply to the notice to quit,

then, subject to sub-section (2) below the notice to quit shall not have effect unless, on an application by the landlord, the Tribunal consent to its operation."

Sub-section (2) has no bearing upon this Application.

1.3 The other relevant section of the Act is section 27. the relevant part of which reads as follows:-

“(1) Subject to sub-section (2) below, the Tribunal shall consent under section 26 above to the operation of a notice to quit an agricultural holding or part of an agricultural holding if, but only if, they are satisfied as to one or more of the matters mentioned in sub-section (3) below, being a matter or matters specified by the landlord in his application for their consent.

(2) Even if they are satisfied as mentioned in sub-section (1) above, the Tribunal shall withhold consent under section 26 above to the operation of the notice to quit if in all the circumstances it appears to them that a fair and reasonable landlord would not insist on possession.

(3) The matters referred to in sub-section (1) above are -

[amongst others]

(b) That the carrying out of the purpose is desirable in the interests of sound management of the estate of which the land to which the notice relates forms part or which that land constitutes.”

1.4 “the Holding” in respect of which this Application is made by the landlords is Leeswood Old Hall Farm Mold Flintshire comprising 44 hectares of permanent pasture, 2.5 hectares of other land and the rent is £6,000 per annum. The buildings comprise a detached farmhouse plus a pair of separately let cottages and other buildings as described in the Application except that the cubicles are for 70 and not 20.

1.5 In their Application to the Tribunal based on section 27 (3) (b) the Applicants gave in paragraph 6 the main facts on which they would base their case and stated that if they obtained possession of the land they intended to let it to another tenant or tenants and had not finally at that stage decided to whom to offer it.

1.6 The notice to quit was dated 24th March 2003.

2. The Reply

In his Reply the Respondent stated that he did not farm any other land and that his main reasons for resisting the Application were set out in the rider attached to his Reply which also contained his contentions as to fairness and reasonableness.

3. The Tenancy Agreement was entered into on the 10th October 1960 between the then landlord Mrs Violet Hope Fairbairn Wynne-Eyton as landlord and the Respondent as the tenant.

4. The hearing - took place at the Beaufort Park Hotel Mold on the 8th and 9th of July 2003.

5. Representation. The Applicants were represented by Mr Peter Collins, Solicitor of Messrs Walker Smith & Way and the Respondent was represented by Mr David Young, Solicitor of Messrs Hibbert Durrad Moxom.

6. The issues.

The Tribunal have to decide -

6.1 Whether they are satisfied as to the matters mentioned in sub-section (3) (b) of section 27 of the Act, namely that the carrying out of the purpose is desirable in the interests of sound management of the estate of which the land to which the notice relates forms part or which that land constitutes.

6.2 The standard of proof is the civil standard of proof that is on the balance of probabilities or what is more likely than not to be the case and the burden of proof lies upon the Applicants (as Mr Collins stated in opening).

6.3 If the Tribunal find for the Applicants under section 27 (3) (b) then before consenting to the operation of the notice to quit the Tribunal must as a separate exercise consider the fair and reasonable landlord requirement and if in all the circumstances it appears to them that such a landlord would not insist upon possession then they are to withhold their consent.

7. The criteria

Sound estate management. We quote from Scammell & Densham's Law of Agricultural Holdings (8th edition) as follows:-

“This ground [sound management of the estate] involves a comparison between the existing system of farming carried on by the tenant and the proposed new system, but subject to the proviso that the Tribunal must consider not merely the land the subject of the notice to quit but also the remainder of the landlord's estate.

Further on:-

“The definition in section 10 of the Agriculture Act 1947 is of “good” estate management and not “sound” management of the estate which is the expression which appears in section 27(3)(b) of the Act. It may be that there is more than a semantic difference between the two words in their respective contexts. The definition of “good” estate management seems to be directed to the farming of the land in question. On the other hand “sound” estate management in the present context seems to embrace a wider conception and the possible use of the land for other purposes altogether. Sound estate management envisages looking at the whole estate in the physical sense and looking at the purpose to consider what effect it would have on the management of the estate. The mere personal financial interest of the landlord in isolation is not sufficient, for example, where he merely wishes to alter financial terms of the tenancy.”

8. Evidence

The Tribunal heard evidence upon oath from the following witnesses:-

- 8.1 For the Applicants -
Mr Charles Wynne-Eyton (one of the landlords)
Mr Michael William Verity (Chartered Surveyor)

- 8.2 For the Respondent -
Mr Terence Leslie Evans (the Respondent)
Mr Peter Donald Lewis (Chartered Surveyor)

9. Findings

When Mr Collins opened the case for the Applicants he accepted that for the purposes of this Application "the estate" consists of Leeswood Old Hall Farm and Hill Farm. Mr Wynne-Eyton also accepted that this was so when examined by Mr Young.

It was clear on the evidence given that if the landlords obtain possession of the Holding they have no firm intention as to what to do with it. In the Application the Applicants say that they intend to let it to another tenant or tenants.

When he gave his evidence Mr Wynne-Eyton stated that he was one of the trustees of the Leeswood Tower Maintenance Fund. The Tower Maintenance Fund, he told us, was established in 1984 in order to provide for the long term maintenance needs of the "Tower" at Nercwys. He told us that the Tower is a Grade 1 Listed Building with historical associations. He said that in order to establish the Fund he put Leeswood Old Hall Farm and Hill Farm into the Fund and agreed with the Capital Taxes Office that all net rental income should be used solely for the maintenance of the Tower; every penny has to be accounted for and not one penny goes into his pocket.

He gave detailed evidence of the finances of the Fund.

We adopt Scammell and Densham's proposition that sound estate management envisages looking at the whole estate in the physical sense and looking at the purpose to consider what effect it would have on the management of the estate. Furthermore, we agree with the learned authors that the mere personal financial interest of the landlord in isolation is not sufficient.

This is not an application on the grounds of hardship.

Mr Wynne-Eyton said that the Respondent has held his tenancy of the Holding for more than 43 years and acknowledged that the farm has been modernised by the Respondent who has erected a new milking parlour and a cubicle shed for 70 cows. He stated that the original buildings were basic and would now be regarded as old fashioned. The original traditional buildings provided loose boxes and cow stalls for 32 animals.

He said that if consent were given to the operation of the notice to quit it is not his intention or that of the other landlords to sell the land and buildings, but on the contrary to amalgamate the Holding with another holding or holdings and thereby achieve a more efficient use of the land.

When he was cross examined by Mr Young, Mr Wynne-Eyton accepted that the Fund was set up consisting of two farms with the possibility of two successions on death or retirement. He accepted that the Tower was not part of "the estate".

He was asked whether if a fair and reasonable landlord was one who had in the past ignored the tenant's request for repairs with expenditure of less than £1,000 per annum on the two farms.

In reply he said that reasonable amounts had been spent in the last two years.

In his submissions for the Respondent Mr Young said that the first intimation of the intention to serve a notice to quit was in the landlord's reply to the Application ALT6165 (for an Order under section 11 of the Act) when the landlords stated that they were preparing an application to the Tribunal for consent to the operation of the notice to quit on the sound estate management ground and those papers would be lodged with the Tribunal shortly. The date of the reply was the 29th January 2003.

The landlords' Application in these present proceedings was dated 21st March 2003 and indicated an intention to serve the notice to quit before the 1st of April 2003.

The notice to quit was dated the 24th March 2003. It was served shortly afterwards and the tenant served a counter-notice under section 26 (1) (b) of the Act within the one month time limit with the result that the notice to quit "shall not have effect, unless the Tribunal consent to its operation".

Apparently there had not long before been an application for succession to tenancy in respect of Hill Farm which was not met by an application for consent to the operation of a notice to quit.

Mr Young submitted that the landlords were looking for a scheme to maximise income rather than to secure the sound management of "the estate" (which all parties accept consists of the two farms, Hill Farm and Leeswood Old Hall Farm).

Mr Young characterised Mr Verity's evidence as consisting of all supposition with nothing concrete.

He criticised the fact that in Mr Verity's scheme there was no indication of how much would have to be paid to the outgoing tenant and how much it would cost to "do up" the farm house.

Mr Verity had stated in his evidence that it seemed unlikely that the Holding would remain viable or that it would be a separate agricultural holding for many more years.

He said that if dairying activities on the Holding came to an end the true value of the asset could be exploited and if this could occur in the short term it would enable the landlords to invest at Hill Farm so as to allow dairying to continue and secure Hill Farm in the long term.

He said that it was only through positive estate management that the Maintenance Fund would be able to continue and achieve its objective which was to provide income to maintain the heritage property.

The members of the Tribunal have considered that evidence in the light of the meaning of "sound management of the estate of which the land to which the notice relates forms part".

We have already seen that "sound" estate management in the present context envisages looking at the whole estate in the physical sense and looking at the purpose for which the Applicants propose to terminate the tenancy to consider what effect it would have on the management of the estate.

Mr Verity's evidence is directed as to what effect the proposed estate management would have "to achieve its objective which is to provide income to maintain the heritage property".

When he was cross-examined by Mr Young Mr Wynne-Eyton accepted that the whole scheme had been set up in the context of the tax advantages which it produced. Mr Wynne-Eyton said that the notice to quit went against his inclination.

Mr Young put it to him that the costs of the applications to the Tribunal were estimated at about £15,000 plus VAT and would that not make the situation worse.

In answer Mr Wynne-Eyton said that his reaction was that it was total madness "for us all to be sitting here".

One of Mr Verity's proposals was that the estate needed to be reduced to one farming unit and he (Mr Verity) was of the opinion that the retained unit should be Hill Farm for the reasons that he gave with a combination of dairying, arable and beef enterprises at Hill Farm, leaving Hill Farm less exposed to a down-turn in profitability.

He said that the value in the let cottages at Old Hall Farm could be unlocked as a result of agricultural activities ceasing which would enable funds to be raised and invested into a new dirty water facility at Hill Farm. He said that the value in the separately tenanted cottages could not be unlocked whilst Old Hall Farm was a dairy unit.

He said that Old Hall Farm House would be available for re-letting on an assured shorthold tenancy and the 115 acres could be attached to Hill Farm as necessary or re-let on the open market in order to generate additional income.

Mr Young asked Mr Wynne-Eyton whether any approach had been made to the tenant of Hill Farm to implement these proposals. Mr Wynne-Eyton said that he had not discussed it with him personally and did not know if Strutt & Parker had.

Negotiations had taken place in 2001 and Messrs Strutt & Parker for the landlords wrote to the tenant on the 16th January 2001 canvassing two options:-

- (1) The sale of Leeswood Old Hall Farm to the tenant at an asking price of £400,000, or
- (2) A payment of £150,000 to Mr Evans, the Respondent, (plus compensation for tenant right matters and less dilapidations) for a surrender of the tenancy.

One of the members of the Tribunal asked Mr Wynne-Eyton how that would have been funded. In response Mr Wynne-Eyton said that he had never addressed that question but said that he was sure the money could have been found. He did go on to say that at that time he was better off before divorce proceedings had taken place.

The Tribunal found it surprising that such an offer should have been made without Mr Wynne-Eyton ever having addressed the question of the source of the funds.

The question of what the landlords would have done with the Holding had the tenant accepted the offer of £150,000 in 2001 has never been revealed and was not pursued.

Mr Verity also said in answer to Mr Young that the question of amalgamation of the 115 acres of the Holding with Hill Farm had not been discussed with the tenant of Hill Farm.

The scheme was to re-let the farmhouse at Leeswood Old Hall Farm on a shorthold tenancy, to let the "bare land" either with Hill Farm or otherwise, and the separately tenanted cottages could then be sold when dairying was no longer being carried on at the Holding.

When Mr Young asked Mr Verity how he would obtain possession of the cottages to sell them Mr Verity said that the market value of such let properties was close to the vacant possession value.

He said that it would not be possible to deal with the cottages while dairying continued at the Holding, and the proposed amalgamation would benefit sound estate management and produce financial benefits.

Mr Verity referred to section 9.4 of his proof containing a budget which would produce a surplus income of £10,000 which could fund at least £45,000 of tax allowable borrowing over a 5 year period which together with the net sale proceeds from the sale of the cottages (once dairy farming had ceased) "would be more than adequate to fund the works at Hill Farm".

When cross-examined by Mr Young Mr Verity said that he did not have figures with him as to what the expenditure on Old Hall Farm House would be to enable it to be let, or what the compensation payable to the tenant would be.

Mr Young asked Mr Verity whether a fair and reasonable landlord who had in the past ignored tenants' requests for repairs and had spent less than £1,000 a year on the two farms was acting fairly and reasonably.

Mr Verity said that a reasonable amount had been spent in the last 2 years.

10. The Respondent's evidence

The Respondent's evidence was given in his proof of evidence which he read out and supplemented. He was born on the 19th September 1931 and became the tenant of Leeswood Old Hall Farm in 1959.

He described the work undertaken by him over the years to improve the Holding including the construction of the cubicle shed, the building to house the parlour, an implement shed and alterations to the dairy and the construction of a new drive when an inadequate bridge over the river collapsed under a lorry, and the installation of two cattle grids. He said that the landlord made no contribution to the cost of any of these improvements.

He gave evidence of re-seeding, draining, keeping hedges and ditches

maintained, improvement of the gardens and the interior of the house, painting and decoration, none of which was contributed to by the landlord.

He said that the landlord had spent very little on the Holding in all the years that he had been the tenant and was slow to do any essential repair work, sometimes taking months to remedy potentially lethal situations. He gave such examples as collapsing garden walls, a collapsing lintel over a loose box door and precarious slates. He said that the house roof urgently needed work following a storm in October 2002 which was not repaired until January 2003.

He said that two acres of land had been polluted by the discharge from the existing inefficient and inadequate septic tank including slurry and domestic waste and the affected land was a health hazard to livestock.

None of the above evidence was challenged in cross-examination and we accept it.

Furthermore it became clear that instead of addressing requests for repairs at one stage Mr Wynne-Eyton had offered the tenants of the two farms £1,000 per annum each to allot as they liked for maintenance rather than to be involved in managing the farms and addressing what might be actually needed. Mr Wynne-Eyton in his evidence agreed that he had made such a suggestion.

The Respondent said that he still enjoys working with the cows and that his son Charles would continue the family tradition of dairy farming and that he had every confidence in his ability to run a successful dairy business with his son's support.

Once the Tribunal was over he said that he intended to take a back seat although he would be involved with the farm on a day to day basis.

He supplemented the evidence in his written proof by giving some information regarding the cottages on the farm which were already in tenanted occupation when he took over in 1959.

He said how shocked he was when he received a notice to quit, the possibility of which had never entered his head after 43 years as the tenant and that he had expected to continue as tenant.

When cross-examined by Mr Collins he agreed that he had made it clear that he was not prepared to fund any of the cost of the work needed to be done to provide a dirty water and slurry storage system which he contended was the landlord's responsibility although he offered during the hearing to increase the rent by 8% of the cost of the necessary work.

The financial accounts for the Leeswood Estate Tower Maintenance Fund are in the bundle provided to us for the years ended the 31st of March 1998 to 2002.

The income and expenditure accounts for each of the years show the following significant matters.

Year	Income	Expenditure	Profit (Loss)	Heritage Fund
1. 1997	19963	5122	14841	4753
2. 1998	22112	6311	15801	39183
3. 1999	21756	9698	12058	8818
4. 2000	21851	8697	13154	(77)
5. 2001	22034	9497	12537	9892
6. 2002	<u>21823</u>	<u>14095</u>	<u>7728</u>	<u>6037</u>
	<u>129539</u>	<u>53420</u>	<u>76119</u>	<u>68606</u>

Of the expenditure management and agents commission was in the above years:-

Year

1. 2815

2. 3515

3. 2155

4. 2739

5. 2616

6. 2504

16344 or 30.59% of total expenditure and 12.61% of gross income .

And accountancy and taxation fees were:-

Year

1. 752
2. 1495
3. 2432
4. 1419
5. 1720
6. 1768
9586 or 17.94% of total expenditure and 7.40% of gross income

And farm maintenance came to:-

Year

1. 108
2. 795
3. 2567
4. 953
5. 705
6. 8070
13198 or 24.70% of the total expenditure and 10.18 of gross income

However, the total of farm maintenance expenditure for years 1 to 5 comes to £5128 or 13.04% of the total expenditure for those years (£39325).

The farm maintenance in year 6 of 8070 appears to be largely accounted for by the cost of re-roofing Leeswood Old Farm which the Respondent tenant Mr Evans dealt with in his evidence "..... The house roof urgently needs work. After a storm last October [2002] the wind tore a hole in the roof measuring 6 feet square. I reported this to Strutt & Parker the next day. It was eventually repaired in January 2003 after numerous telephone calls. Fortunately I was able to go on the roof and replace some of the slates but water still came through to the house".

There is no mention of an insurance claim in the accounts despite the appearance of premiums paid in the Profit and Loss accounts.

We found it significant that in the 6 years for which we have been shown accounts expenditure on the Heritage property totals £68606 (or 52.96% of gross income) compared with £13198 spent on farm maintenance, i.e. 10.18% of gross income for those 6 years. For years 1 to 5 the expenditure on the Heritage property totals £62569 (48.30% of total gross income) and expenditure on farm maintenance came to £5128 (4% of total gross income for those 5 years).

It is clear to us from the figures that Mr Verity's evidence to the effect that the object of the proposed estate management is to provide income to maintain the heritage property is amply borne out by the accounts.

It is common ground that the heritage property is not part of "the estate". The objective of the management of the estate as proposed by the Applicants is to provide income to maintain the Heritage property is not, in fact, "sound estate management of the estate of which the land to which the notice relates forms part". That "estate" consists of Hill Farm and Leeswood Hall Farm and does not include the Heritage property.

It is clear to the Tribunal that in the years for which accounts have been supplied far greater amounts have been spent each year on administration (including management and agents commission and accountancy and taxation fees) than on farm maintenance, and considerably more has been spent on Heritage maintenance than on farm maintenance (see the figures set out above).

In his evidence Mr Peter Donald Lewis Chartered Surveyor observed that estate accounts indicate that 32% of the income generated over a five year period has been spent on administration costs (including insurance) which exceeds the amount spent on the repair and maintenance of the holdings which constitute the estate.

We find that there has been little or no evidence of planned maintenance in the past and that it is probable that the projected future annual maintenance costs postulated by Mr Verity would include an element of repairing and maintenance costs which have been foregone in previous years and are now, in Mr Lewis's words, compounded. Mr Lewis characterised the Applicants' proposals as vague and not supported by concrete plans or proposals in relation to future management. The Tribunal agrees with this conclusion. It was clear that there had been no discussions either by Mr Wynne-Eyton or by the agents with the tenant of Hill Farm as to whether he wished to take over additional land part of Leeswood Hall Farm, or with any other potential tenant. It is accordingly difficult or practically impossible to make an effective comparison between past and present management and what future management would be if the Tribunal granted its consent.

Mr Lewis submitted that there was no evidence that the farm would be better farmed by the tenant of Hill Farm or that that tenant possesses the ability and/or the means to farm it.

The Applicants in order to succeed must show a well thought out scheme in detail to enable the Tribunal to make a comparison between the existing system of farming and the proposed new system considering not merely the land the subject of the notice to quit but also the remainder of the landlord's estate.

We find that the landlord is in the position of having in past years singularly failed to carry out sound estate management on a regular basis, leaving the Respondent to do practically everything needed himself until the situation regarding the roof of the farmhouse became so bad that in year 6 substantial expenditure was made.

The Tribunal accept the defects have accumulated. The tenant has carried out considerable works of improvement. When we inspected the Holding we were impressed by the way in which it appeared to be managed by the tenant.

The Tribunal have concluded that rather than being in the interests of sound estate management of "the estate" the landlords' proposals are directed to the financial interest of the Fund in support of the Heritage property.

The Tribunal are satisfied that the tenant is farming the Holding reasonably in the interests of good husbandry and they do not conclude that giving consent to the operation of the notice to quit will be in the interests of the sound estate management of the estate in question.

Accordingly we find that the Application fails and we withhold our consent under section 27 (3) (b).

The tenant has been farming the Holding in what appears to be a satisfactory manner (without any criticism of his regime from the landlords) for 43 years. Evidence to that effect was borne out by our inspection of the Holding.

We would have withheld our consent under section 27 (2) even if we had been satisfied that the carrying out of the purpose was desirable in the interests of sound management of the estate of which the land to which the notice relates forms part because in all the circumstances (summarised as above) it appears to us that a fair and reasonable landlord would not insist on possession.

Costs. Mr Young applied to the Tribunal for an award of a contribution towards the Respondent's costs. Section 27 (7) of the Act provides that the Tribunal may, in proceedings under that section, by order provide for the payment by any party of such sum as the Tribunal consider a reasonable contribution towards costs.

Mr Young gave the Tribunal estimates of costs and having considered the matter carefully the Tribunal order that the Applicants shall pay the sum of £1.625 towards the costs of the Respondent payable within 28 days of the service of the decision of the Tribunal upon the Applicants.

Dated this 28th day of November 2003

(Signed)

(Chairman)