

AGRICULTURAL LAND TRIBUNAL – WALES

AGRICULTURAL HOLDINGS ACT 1986

APPLICATION FOR A CERTIFICATE OF BAD HUSBANDRY

HOLDING: *LAND AT PLAS, DOLBENMAEN
GARNDOLBENMAEN.
GWYNEDD*

BETWEEN: *PENNANT THOMAS CYF*

APPLICANT

AND

JOHN ALAN PUGH

RESPONDENT

WHEREAS the Tribunal sat at the Tyddyn Llwyn Country Hotel, Porthmadog, Gwynedd on 12th and 13th May 2005 to consider an application dated 8th November 2004 made under section 2(4) of the Agricultural Holdings (Notices to Quit) Act 1977 for a Certificate of Bad Husbandry in relation to land at Plas, Dolbenmaen, Garndolbenmaen, amounting to 26.15 hectares or thereabouts and situated in the County of Gwynedd.

AND WHEREAS Mr. S J Duffy (Deputy Chairman), Mr. E S Bailey (Farmers Panel) and Sir R Williams-Bulkeley Bt (Landowners Panel) have been appointed to the Agricultural Land Tribunal for the hearing of the said Application.

NOW THE TRIBUNAL, having considered the Application and the documents presented, the evidence given by and on behalf of the Applicant and the evidence given on behalf of the Respondent, and for the Reasons attached makes the following Order:

ORDER

- (i) *That the Applicant's application for a Certificate of Bad Husbandry is refused.*
- (ii) *No order as to costs.*

Signed this^{JR}.....day of July 2005

**S J Duffy
Deputy Chairman**



BETWEEN:

PENNANT THOMAS CYF

Applicant

and

JOHN ALUN PUGH

Respondent

REASONS FOR THE DECISION OF THE TRIBUNAL

1. This is an application dated 8 November 2004 ("the Application") by Pennant Thomas Cyf ("the Applicant") for a Certificate of Bad Husbandry in relation to land at Plas, Dolbenmaen, Garndolbenmaen amounting to 26.15 hectares or thereabouts and situated in the County of Gwynedd ("the Holding").
2. The Respondent succeeded his late father as tenant of the Holding in 1981 with the original tenancy having commenced in 1971. The Respondent now occupies the land by virtue of an agreement ("the Agreement") dated 19 June 2003 on a tenancy from year to year from 21 October 1990 at a rental of £1,350 per annum. A copy of the Agreement and its annexed plan ("the Plan") was lodged with the Application.
3. The appropriate legislation is to be found in Paragraph 9 to Part 2 of Schedule 3 to Agricultural Holdings Act 1986 ("the Act"), and s 11 to Part 2 of the Agriculture Act 1947.

4. There is no dispute between the parties that the Applicant is the landlord of the land and that the tenancy in question is a tenancy of "an agricultural holding".
5. There is no dispute between the parties that the Application is properly made under s 26(3) and paragraph 9(1) to part 2 of Schedule 3 to the Act and in the prescribed form (being Form 3 in the Appendix to the Agricultural Land Tribunals Rules 1978 as contained in the Agricultural Land Tribunals (Rules) Order 1978/259 r2, Sch1).
6. There is also no dispute between the parties that the Reply dated 30 November 2004 from the Respondent ("the Reply") is properly made and in the prescribed form (being Form 3R in the Appendix to the Agricultural Land Tribunals Rules 1978 as contained in the Agricultural Land Tribunals (Rules) Order 1978/259 r2, Sch1).
7. The main grounds on which the Applicant alleges bad husbandry are cited at paragraph 5 of the Application:

"The holding has deteriorated for many years largely due to under grazing and the tenants failure to keep the ditches and drains properly maintained.

As a result we believe that the tenant is not maintaining a reasonable standard of efficient production on the land as respects kind of produce (grass and livestock) and the quality and quantity thereof.

By failing to maintain proper drainage he is also failing to keep the holding in a condition to enable such a standard to be maintained in the future.

The tenant is also failing to properly manage the pasture and the boundaries (internal and external) which again means he is not able to maintain a reasonable standard to efficient production."

8. The Reply gives 2 reasons for resisting the Application which are:
 - (a) There has been no under grazing of the holding
 - (b) I have maintained drainage ditches and both internal and external boundaries to a satisfactory standard."

9. Prior to the hearing the Tribunal had received copies of the Agreement, the Plan, an expert's report from Mr. McCombe, a Statement of Case prepared by Mr. Lloyd Williams and miscellaneous correspondence. For convenience only, the Tribunal in its decision adopts the referencing in Mr. Lloyd Williams Statement of Case; Block A comprising fields with the following Ordnance Survey numbers 7421, 6933 and 7746; Block B comprising fields with the following Ordnance Survey numbers 1724, 8394pt, 2686, 2729 and 2730; Block C comprising fields with the following Ordnance Survey numbers 2657, 2575, 8714, 2576 and 2583.

10. The Tribunal carried out an inspection of the Holding on the morning of the hearing 12 May 2005 accompanied by the parties and their representatives Mr. P. Meade of Davis Meade, Chartered Surveyors for the Applicant and Mr. H. Roberts of Counsel for the Respondent. The parties' expert witnesses Mr. E. McCombe for the Applicant and Mr. J. Lloyd Williams for the Respondent also attended the inspection together with Mrs. C. Davies Secretary to the Agricultural Land Tribunal (Wales).

11. In the Application it states that it is the Applicant's intention to serve a notice to quit if the Tribunal grants a Certificate of Bad Husbandry. Paragraph 9 to Schedule 3 of the Act provides that:

"9.-(1) For the purposes of Case C [to Part 1 of the Act] 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.

(2) In determining whether to grant a certificate under this paragraph the Tribunal shall disregard any practice adopted by the tenant in pursuance of any provision of the contract of tenancy, or of any other agreement with the landlord, which indicates (in whatever terms) that its object is the furtherance of one or more of the following purposes, namely –

- (a) the conservation of flora or fauna or of geological or physiographical features of special interest;
- (b) the protection of buildings or other objects of archeological, architectural or historic interest;
- (c) the conservation or enhancement of the natural beauty or amenity of the countryside or the promotion of its enjoyment by the public.”

12. The definition of good husbandry is to be found in s. 11 of the Agricultural Act 1947 which provides 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 way 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) the manner in which arable land is being cropped is such as to maintain that land clean and in a good state of cultivation and fertility and in good condition;

- (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 responsibilities under the rules of good husbandry of an occupier of an agricultural unit which is not owned by him shall not include an obligation to carry out any work of maintenance or repair which the owner of the unit or any part thereof is under an obligation to carry out in order to fulfil his responsibilities to manage in accordance with the rules of good estate management.”

The Application

13. Mr. Meade raises a point of law in respect of Without Prejudice correspondence. The Deputy Chairman of the Tribunal having previously informed the parties that it was not prepared to consider Without Prejudice correspondence which had been submitted to the Tribunal in evidence. Mr. Meade respectfully requests that this correspondence is considered by the Tribunal and in support of his submission refers to Rule 28 of the Agricultural Land Tribunals (Rules) Order 1978. Which states: -

“(1) The tribunal may admit evidence notwithstanding that it would not have been admissible in a court of law”

The Tribunal refuses Mr. Meade’s request. The Rules were made and laid when the Rules of evidence were more complex than they are today and at a time where Civil Evidence Act Notices had to be given. The Rules were drafted to ensure that parties before the Agricultural Land Tribunals

would not be required to serve such notices. Rule 28 was not intended to allow parties to submit Without Prejudice documentation that is clearly intended to be outside court or tribunal proceedings. Mr. Meade asks the tribunal that although the correspondence is marked "Without Prejudice" it is "without prejudice to what?" as the Application had not been served on the parties on 22 June 2004. However, earlier correspondence had referred to an intention by the landlord to make an application for a Certificate of Bad Husbandry. Accordingly, the letter dated 22 June 2004 is without prejudice to these proceedings.

14. The Tribunal heard evidence from Mr. Emlyn Thomas the proprietor of Thomas Pennant Cyf a shelf company made up of members of his family. Mr. Thomas told the Tribunal the company had owned the Holding since 1986. His uncle Mr. Hugh Williams previously owned it. Mr. Thomas admitted that he does not live locally, and lives in Menai Bridge but said that a member of his family passes the Holding daily. Mr. Thomas told the Tribunal that he visits the Holding personally once or twice a month. Mr. Thomas said in evidence that during the period of ownership by Mr. Hugh Williams in the late 1950's he had spent 3 summer holidays on the Holding and it had since changed significantly. Mr. Thomas told the Tribunal that he had spent time scything bracken and making hay on the land in particular on the fields with Ordnance Survey Nos. 6739, 7421, parts of 2575 and parts of 2657. In his evidence Mr. Thomas conceded that the hay produced was of poor quality but that while the land was in his occupation he had taken a tractor onto those fields. Mr. Thomas told the Tribunal that he also spent a lot of time digging a large ditch and 2 small ditches, by hand, in field 8714. Mr. Thomas told the tribunal that the land floods four times per year. The Land had flooded once in August but mainly flooded in the winter with the water lying on the land for about 2 days after each flood.

15. Mr Thomas first admitted that he did not know who was responsible for the maintenance of trees and timber on the Holding since the commencement of the tenancy date June 2003. He later admitted that the responsibility was his and that he had insisted on the clause in the agreement making the management of trees on the Holding his responsibility and that criticism of him of his failure to clear trees was indeed just.

16. Mr. Thomas said that he is not trying to remove Mr. Pugh from the Holding; he is merely trying to protect its value, as it is his pension. Mr. Thomas said that he had not complained directly to the Respondent about the state of the Holding, rather he had done so through his solicitor and agent. Mr. Thomas said that he has no intention of farming the land himself and that if the Holding is vacated he will re-let it. Although he admitted that he had removed the roof from the building in the field Ordnance Survey No. 2680 and that he had applied for planning permission to convert the building into a café and car park. During cross-examination Mr. Roberts put it to Mr. Thomas that it was this proposed development that formed the motive for wanting the Respondent to vacate the Holding. In response Mr. Thomas said that his motive was the deterioration of the Holding and he confirmed in cross-examination that there was no issue as to the payment of rent by the Respondent.
17. During cross-examination Mr. Thomas said that it would no longer be possible to make hay in field 8714 but that there were still field drains and ditches in the field and these were marked on the plan. During re-examination, Mr. Thomas confirmed his contention that it would be possible to take a machine onto the fields [2756, 8714, 2575 and 2656]. He said that if his motive in applying for a Certificate of Bad Husbandry had been solely to regain the land for development he could have done so under Case B of the Act.
18. The Tribunal heard evidence from Mr. Ewan McCombe. Mr. McCombe is a partner in Kite Consulting. His business is based in Stafford and he works in England and Wales. His current role involves him in business analysis and strategic planning to agriculture and allied businesses. Mr. McCombe is a Member of the Institute of Agricultural Management (MiAgriM) and the British Grassland Society. He is a FACT approved consultant. Mr. McCombe had prepared an expert's report on the Holding. In Mr. McCombe's report he concludes that the land has degraded due to neglect, the pH and nutrient status of the fields is poor and he indicates that the ground has been farmed out over a sustained period of time. According to Mr. McCombe it would take considerable investment in lime and fertilizer to restore the nutrients in the field to a satisfactory level. Mr. McCombe also concludes that the drains and ditches on the river meadow had been neglected, with rushes and tussock grass predominating. Mr. McCombe suggests that this points to a low stocking rate as a result of the poor nutrient status and water logging of

the fields which has produced poor quality grass which could not support high stock numbers. Mr. McCombe supposes that the low stocking rates are causing bracken to encroach. Mr. McCombe adds that the fallen trees would result in a measurable loss of production over the ground they cover.

19. In his oral evidence Mr. McCombe told the Tribunal that he had undertaken soil analysis of all of the fields apart from the fields near the farm building which he could not undertake because at the time of his inspection darkness was about to fall. Mr. McCombe told the Tribunal that 25 samples per field were taken using a pot corer in order to avoid testing uncharacteristic parts of the field. The Tribunal heard evidence from Mr. McCombe that the optimum pH for a field of grass is 6. Mr. McCombe gave evidence that pH value for field 1724 (located in Block B) was 5.7. Mr. McCombe explained that soils become acidic due to leaching through rainfall and flooding and that it would be prudent to take soil samples from fields every four years and to apply lime to the fields if appropriate. Mr. McCombe made reference to the Code of Good Agricultural Conduct ("the Code") annexed to his Report at page 18(f). In referring to the Code Mr. McCombe gave evidence that, while there was no crop yield reduction between pH6 and pH5.5, there was a significant reduction if soil has a pH value of less than 5.5. In Mr. McCombe's view the land in general ought to have 38 units per acre of P & K applied to it annually rather than the 20 units applied by the Respondent. According to Mr. McCombe fields 2729, 2686 and 1724 comprise grazing land for which the optimum pH is between 5.7 and 5.5, he did not accept that fields comprise grazing [which according to the Code has a much lower optimum pH], neither did he accept that grassland is not an agricultural crop, he made it quite clear that he thought it was. In Mr. McCombe's view, the soil on the Holding comprises "silty, clay, loam" and has the potential to be fertile. According to Mr. McCombe he was not setting too high a standard, even for "Severely Disadvantaged land", as the Code is a minimum requirement.

20. Mr. McCombe made reference to Mr. Lloyd Williams "Statement of Case" and that much has been made by the Respondent of the flooding of fields 1724 and 2729. Mr. McCombe said that the fields would need to flood frequently for significant leaching to take place and that, in any event, fields 1724 and 2729 were river meadows and they readily drained

away if flooded. According to Mr. McCombe there was no underlying water to cause rushes or tussocks in these fields yet the fields had low P & K indices. Mr. McCombe told the tribunal that the object of field management was to keep P & K indices at 2. Indices of 0.1 is evidence that insufficient P & K was being applied to the fields over a prolonged period of time and that it took a relatively long period [of application or non-application] to get P & K levels to alter to another level.

21. Mr. McCombe made reference to the thistles in field 2729 which could be problematic if they were allowed to seed and were an indication of poor fertility.

22. Mr. McCombe told the tribunal that he had walked all the ditches and that some, including those in field 8714, would benefit from being cleaned out and the land would be a lot drier. He added that in certain areas the ditches had become choked with fallen, mature trees but stated that even if the ditches had been cleared of trees in areas there would still be ingress of tussock grass and rushes.

23. Mr. McCombe commented that the soil in field 2657 was not "peaty" and that a pH level of 4.9 is very low. In Mr. McCombe's view it could, with effort, be brought up to the standard of the adjacent field [2810] that was not occupied by the Respondent. During cross-examination Mr. McCombe added that field 2657 had a higher organic content to field 2729 and was substantially Tussock grass (although he could not say how long it had been like that). It was put to Mr. McCombe that field 2657 was different because it had no drains, but later in his evidence Mr. McCombe confirmed that drains were indeed present in that field [2657]. In Mr. McCombe's view the current field drainage in 2657 could now do little to lower the water table in the field but that if the drainage system had been maintained by spending a reasonable amount then it could have drained the water away quickly. Mr. McCombe commented that although the adjacent fields [6933 and 7421] are in better condition, they still contain some areas of reeds. Mr. McCombe also commented that the river did not flood in summer and so it would be possible to lime the fields and reduce the acidity and, despite any leaching caused by flooding, to also increase fertility by adding P & K. Even considering that this was a Severely Disadvantaged Area and prone to flooding this remained his view and that if fields 2575 and 2657 were correctly drained P & K levels of 0 and 1 could be maintained.

24. As to the presence of bracken, Mr. McCombe believed that this was evidence of under stocking and that the land could hold more stock if the fertility of the land is improved.

25. Mr. John Lloyd Williams of Lloyd Williams and Hughes, Land Agents and Auctioneers of Bryncir, Gwynedd gave expert evidence. Mr Lloyd Williams told the Tribunal he has 15 years experience as a Land Agent and that he knows "a fair bit about farming". Mr Lloyd Williams told the Tribunal he had prepared a "Statement of Case" in order to answer the Schedule D Part 1 Notice and this Application. Both Mr Lloyd Williams' expertise to counter the evidence of Mr. McCombe and his expertise on the matters in issues in the Notice to Remedy were contested by Mr Meade. Mr Meade supposed that the "Statement of Case" was prepared solely for the purposes of the Notice to Remedy. This is not correct as the "Statement of Case" at pages 4, 5 & 6 states that the document was actually prepared in:

"Response to Dilapidation Notice to Remedy and Subsequent Application for Certificate of Bad Husbandry"

26. Mr. Lloyd Williams gave evidence that the boundaries and fences were on the whole adequate. Mr. Lloyd Williams believes that in some places the boundaries are in excellent order such as fields 5926 and 2810. Others boundaries, such as the boundary with Cwm Pennant Road, are approaching the end of their economic life. Mr. Lloyd Williams also pointed out that the Best Practice in respect of Cross Compliance did not necessitate river banks to be fenced, there was, he said, no wording in the regulations saying "you must fence". In Mr. Lloyd Williams' opinion the lack of riverside boundaries would not effect any entitlement to subsidies. In any event, he was of the view that riverside boundaries would be washed away in the floods and that although the fencing was dated it was functional and would prevent stock escaping.

27. Mr. Lloyd Williams also gave evidence that he had been working (stock rearing) in the area of Block C. He said it comprised a cross section of land, part of which was "Severely Disadvantaged" which limited production. However, the first part of Block C was good meadow although the middle part would carry more subsidies than stock. Mr. Lloyd Williams made the point that the Plan, which comprised two plans

old and new stuck together, showed the land in field 2657 to be rough grazing. In Mr. Lloyd Williams' view the grass in 2657 could be topped but it would not be economical to do so.

28. In response to the allegation that the Respondent is under stocking field 2575 Mr. Lloyd Williams said that while the stocking in that field was perhaps not economic, the field was not simply used as a "dumping ground" for ewes. He added that the Respondent does not over graze and that his grazing management had actually improved the land in field 2575.

29. Mr. Lloyd Williams was of the view that as the land in Block C flooded quite severely and no amount of ditches will prevent this from happening, all that ditches will do is take away the water quickly. He said that the ditches in Block C are working towards that purpose other than that, only drains would improve the land but that open drains are very high maintenance and need to be fenced. Mr. Lloyd Williams confirmed that, in his view, it would not be possible to drain fields 2656 and 2657 further as the drain had a limited flow and the ditches were "doing their job".

30. Mr. Lloyd Williams said that Mr. McCombe had compared Block C to field 2810 which was not let to the Respondent nor owned by the Applicant. He commented that field 2810 was owner occupied, it had been drained, cultivated and improved although still he had noted that rushes were re-appearing in 2810. There were open ditches in field 2810 and that they had caused the rushes to return. However, 2810 is, he believed, basically better land and that the Respondent could not improve his land in Block C to a similar standard as it would cost approximately £600 per acre and this would not be economic. Mr. Lloyd Williams believed the owner had received grant aid to carry out the improvements but that grant aid is not and will not be available in the future for drainage.

31. In Mr. Lloyd Williams' view, it would not be feasible or economically viable to drain fields 2675 and 2657, then apply P & K and lime as suggested by Mr. McCombe. The fields comprise Severely Disadvantaged land that floods 14 times per year, leaching is a great problem and that farmyard manure could not be applied to the fields.

32. Mr. Lloyd Williams said that the Respondent's status in the agricultural community is second to none and that the lambs the Respondent brings to market are of a high quality. He added that the Respondent's method of farming of the Holding was neither intensive nor extensive when compared to neighbouring farms.

33. Mr. Lloyd Williams was unable to offer any direct evidence on pH values but he had noticed clover growing in the field [4721] near to the cemetery in Block A and said that clover does not grow in land with a pH value of 5.3. Mr. Lloyd Williams added that the land in Block A is very sheltered and comprises two good pieces of land, with some rough land that works well as a watering area.

34. Mr. Lloyd Williams said that an application of 200 cwt per hectare of fertiliser on the holding would be ample, any more may cause cows to be lost. As to liming the land, Mr. Lloyd Williams said that farmers now rarely apply lime to their land, only if re-seeding, and that lime is not applied to pasture in Gwynedd.

35. Mr. Lloyd Williams said that the bracken in the fields in Block A was merely at the edges, he did not consider it to be problematic as it could be removed easily. The thistles in Block B were, he said, present at the commencement of the tenancy and when Mr. Pugh first took over the land they were "as high as tractors". He said that the thistles are cut every year before seeding [in July] and that Mr. Pugh is conscious of their spreading to neighbouring land.

36. As to the presence of Yorkshire Fogg in Block B, Mr. Lloyd Williams said that this plant grows only in acidic soil at a pH of 5.5-5.7. However, under cross examination he conceded that if the expert [Mr. McCombe] says that the plant grows in acidic soil, that must be the case and that the soil in Block B must therefore be acidic. Mr. Lloyd Williams also agreed that clover was not present in Block B.

37. Mr. Lloyd Williams added that the fields in Block B could not be ploughed as they are rich, river meadow. He also said that there was no evidence of bad husbandry in Block B. Under cross examination on this point, he said that Block B comprised good productive land but that its potential uses are limited because of flooding.

38. Under cross examination Mr. Lloyd Williams also confirmed that he believed the Holding was being farmed to a reasonable standard and that it was still necessary for a tenant to comply with the terms and obligations of a tenancy even if to do so would be uneconomical.
39. Mr. Pugh submitted a witness statement to the tribunal immediately before the hearing. He gave evidence that he was brought up on a local farm and that he had studied for a Bsc (Hons) in Agriculture at the University of Wales. He has been farming on his own account since 1980. His father and brothers formed a farming partnership known as the Pugh brothers. In 1969 the Pugh brothers took an oral tenancy of the Holding from the then owner Hugh John Williams. In 1980 the Pugh brothers farming partnership dissolved and Mr. Pugh took an oral tenancy of the Holding. Mr. Pugh says that Mr. Williams never gave him any indication that he was dissatisfied with his mode of farming. In his oral evidence Mr. Pugh said that he used to see Mr. Williams every other day during the summer and if there had been any problems Mr. Williams would have told him.
40. Mr. Pugh said that he was never given any formal notice that the freehold ownership of the land had passed to Mr. Thomas. However, he has received letters and demands for rent from Mr. Thomas and Pennant Thomas Limited.
41. In his witness statement Mr. Pugh says that he signed a memorandum to put the terms of the letting on a more formal basis although the Tribunal notes that this memorandum has not been submitted in evidence. Mr. Pugh adds that he later signed a written agreement for the terms of the letting to be reduced to writing and that the Agreement was completed and dated 19 June 2003.
42. Mr. Pugh says that he has constantly been subject to complaints by Mr. Thomas. At paragraph 9 of the witness statement he says that Mr. Thomas wanted him to repair internal boundaries which have ceased to become stock proof since before 1980 and indeed before 1969. Mr. Thomas has also complained that some of the internal boundaries are not stock proof as they have been damaged by fallen trees. According to Mr. Pugh it has always been understood that Mr. Thomas took all responsibility for trees and that the wood belonged to him.

43. In his witness statement Mr. Pugh also says that he applies fertiliser to the Holding every spring and that once every ten years or so he applies lime to the Holding. Mr. Pugh did not know whether his father and uncles limed the land during their occupancy but confirmed that he applied more or less the same amount of fertiliser as they had and up until Mr. McCombe's report no one had suggested that he should apply any more fertiliser. The pH value of the land he said would have been about the same as when his father and uncle farmed the land in 1980.
44. In cross examination he informed the Tribunal that liming is not prevalent in the area and that he could not remember the last time he had seen anyone locally liming their land. Mr. Pugh also said that he did not concentrate on the pH values of soil rather he concentrated on animal production, he admitted he knew little about grasses. He added that he had only received half of Mr. McCombe's report one or two days before the hearing and until that stage he had not considered the issue of soil nutrients. Although he also added that he was disappointed that a broader sample had not been used by Mr. McCombe.
45. In respect of the flooding on the Holding, Mr. Pugh said that the land in Block B flooded 4 times per year and that it was too much of a risk to re-seed in July or August as the land sometimes floods in September which and could wash away the top soil and the seeds.
46. In oral evidence Mr. Pugh said that he must justify all of his expenditure and that while it would be possible to keep more stock on the Holding he was only paid a subsidy to keep up to quota. He said that his farm comprised 320 acres mainly stock rearing, beef and sheep and that he would describe himself as an average farmer but that the quality of livestock he sold at market was in the top one third of the produce sold. In relation to stocking levels he said that he kept 65 Mule Ewes on the land in Block B in the winter and that his yield was 175% per ewe, which he believed to be very good.
47. On the other field in Block B Mr. Pugh said that he kept cattle from January to the end of September with each cow producing one calf per year and that the calves are over wintered at home. In the summer he estimated that there would also normally be 8 or 9 calves on the field. Mr. Pugh said that he realised that some may consider this as a low level of stocking but that he liked his stock to have grass in front of them.

48. Mr. Pugh confirmed that he cut the thistles in Block B in July and that he tops the fields once every year. In cross examination Mr. Meade suggested that as the thistles had been in the fields for 30 – 35 years and that it was time to get to grip with them. While Mr. Pugh said that he manages a similar piece of his own land which had thistles on it but that in any event the thistles in Block B were not as bad as 30 years ago.

49. In respect of Block A Mr. Pugh said that he believes it to comprise the best fields in the Holding because it does not flood, is sheltered and has clover in it. The fields in Block A are, he said, in the same condition as they were in 1990. The position regarding liming and fertilising of Block A was the same as in Block B. He said that the bracken around the edges was cut once per year. Stocking levels, he said, were dependent upon how many sheep he can graze on the bottom land but he kept 75 Welsh Mountain Ewes on the land with a yield of about 140%. When Ewes are lambing they are kept on the bottom field. Mr. Pugh was dismayed at the allegations of under stocking. He said the top fields were used for 8-10 weeks during the winter but that there was not much point in using the top field when such good grazing is available in the bottom field.

50. Mr. Pugh said that during the summer he keeps ewes and lambs on the bottom field but that in June and July they will flood so the only option available to them was to graze the top fields on the low side. Between 8 and 10 Cows are also kept on Block A. The cows were in good condition and that this is indicated by their tight udders which also suggested that the land was in good condition.

51. During cross-examination Mr. Pugh said that he did not cultivate Block B because of flooding and the risk of seed and top soil being washed away. Mr Pugh confirmed that he did not use direct drilling to re-seed as he was not familiar with this technique although, he confirmed that he re-seeds every 9 or 10 years and cleans the ditches out annually.

52. In his oral evidence Mr. Pugh said that Block C was in worse condition than it is now when he took over farming it and said that the land in Block C had been improved by him keeping sheep on it. Mr. Pugh said that the tussock grass was still there in 1970's and he could remember Mr. Williams setting fire to it in the 1950's. Mr. Pugh submitted that he doubted whether the law would now permit him to do the same.

53. Mr. Pugh said that field 2810 was not comparable to the adjoining fields within the Holding as field 2810 did not have a river frontage and the only time that field 2810 floods is when the river bursts its banks. Mr. Pugh understood that field 2810 had been drained at a cost which he estimated to be £6-7,000. In order to embark upon a similar project Mr. Pugh said that he would need long term security in order to contemplate doing this and that field 2810 is owner occupied and therefore the occupier is more secure. Mr. Pugh confirmed Mr. Lloyd Williams' assertion that grants would not be available for drainage of the fields in Block C.

54. In his oral evidence Mr. Pugh said that the land in Block C flooded about 12-14 times per year and there is a constant risk of flooding throughout the year. Mr. Pugh referred to the land across the river from Block C owned by Greaves Esq. and said that the land had once flooded in the summer and that the occupier had lost a full field of hay as a consequence. Mr. Pugh said that the main source of flooding was the bridge, not on his land, which caused water to back up.

55. Mr. Pugh referred to invoices from J.G. Thomas dated 4 October 1994 and 22 June 1999 for work to Block C. Mr. Pugh said that the main ditch was opened up across the land and a bridge was built as a stock crossing but within 2 years the bridge had sunk into the land and the ditch had filled up.

56. During cross examination it was put to Mr. Pugh that the bridge was inadequately built and that was why it sunk. Mr. Pugh denied this and said that the bridge was the same quality as the other bridges on the land in Block C. It was also put to Mr. Pugh that, in the Application for Arbitration in the response to the Notice of Remedy, it had been admitted by him that the ditch in field 8714 needed to be cleaned out. Mr. Pugh had no comment to make on this. Neither was Mr. Pugh able to comment on allegations that he had problems with cross-compliance in Block C.

57. Mr. Pugh said that the ditches in this area were ineffective, the ditch going down to the boundary just takes the water when it rains and the other ditch has a low gradient. In support of his evidence of flooding, Mr. Pugh referred to the photographs in Mr. Lloyd Williams' Statement of Case which were taken in January 2004.

58. Mr. Pugh said that the remaining land in Block C was not bad land and that he made some use of it, by trying to raise lambs upon it. He commented that other farmers would probably just put barren ewes on the land and that he did not use it as a "dumping ground".

59. In respect of Mr. Thomas' management function in respect of the whole of the land the only time he saw Mr. Thomas dealing with fallen trees was in the 1970's when a large tree fell in Block A and he came to saw it up and remove it. Mr. Pugh said that before the Agreement was entered into it was not clear as to with whom the responsibility to clear trees lay with. But in the Agreement Mr. Thomas insisted in being responsible for the trees on the Holding.

60. Mr. Pugh said that Mr. Thomas had written to him after a storm about 2-3 years ago about clearing the trees but that the first time he had seen Mr. Thomas since 1986 was on the morning of the hearing of the Application.

61. On behalf of the Respondent Mr. Roberts submits that the Applicant was applying too high a standard of husbandry than that required by s. 11 of the Agriculture Act 1947. He says the Holding is in reasonable condition for the area which is a substantially disadvantaged area and that the Applicant is not paying sufficient regard to the character and situation of the Holding. Mr. Roberts adds that the low standard of management of the owner was also to be taken into account along with other relevant circumstances. Mr. Roberts refers the Tribunal to the Applicant's standard of management which he says is unreasonably low. He says that the Applicant has failed to remove fallen trees and has failed to undertake any improvements to the land and has failed entirely in his duty to communicate with the Respondent. In saying this he also makes the point that the only time the Respondent has heard from the Applicant in the last 20 years was from Mr. Thomas seeking vacant possession.

62. He says that other relevant circumstances include the historic condition of the land, the cost of improvements, local customs, economic circumstances and he adds that the test is whether there has been a reasonable standard of efficient production of livestock and not grass.

63. In submitting that the threshold which has to be reached before a Tribunal issues a Certificate of Bad Husbandry, Mr. Roberts refers the

Tribunal to Muir Watt and Moss, Agricultural Holdings at paragraph 12.51 which says:

“The only comment which requires to be made, as a practical matter, is that Tribunals appear willing to tolerate extraordinary low levels of farming without issuing a Certificate of bad husbandry. Perhaps the explanation is the machinery of Case D and notices to do work which, in the long run, ought to give the tenant considerable opportunity to mend his ways before he is required to leave the holding”

64. Mr. Roberts says that the Notice of Remedy is not persuasive, it includes no mention of soil quality, under grazing or the need for extra fertiliser and that the content of Mr. McCombe's report was not specifically addressed in the Application. He says the Applicant has led no evidence that the soil was any better at the commencement of the tenancy as it is today and that large amounts of lime and fertiliser would be required to bring the soil quality up to the optimum standard suggested by the Applicant. He also says the Respondent has applied fertiliser annually and maintained nutrients to a reasonable and acceptable level.

65. Mr. Roberts says that the Respondent is under no duty under s.11 to improve the land, the only obligation under 11 (2) (c) and (f) is to maintain. He says that there is a distinction between Block C and field 2810 which is owner occupied. He says that Mr. Pugh gave evidence that Block C is in the same and no worse condition than when Mr. Pugh's father and uncle occupied the land and that the Respondent disputes the purported obligation under the Agreement to carry out the sort of works undertaken in Field 2810. Mr. Roberts submits that a Landlord can only expect a tenant to maintain the land and that it would be unfair windfall for the landlord if the tenant were to improve the Holding as a whole in the way suggested by Mr. McCombe. He says that to do so would be uneconomic in that reclaiming land would cause difficulty because of the current grant situation and that applying lime and fertiliser as suggested would be disproportionate to the value received, given the fact that the land was subject to flooding and consequential leaching.

66. Mr. Roberts adds that there was evidence in fields in Blocks A and C that Mr. Pugh had carried out improvements and also evidence in Block B that the thistles have been brought under control, drainage work carried out and the land improved by grazing sheep.

67. Mr. Roberts concludes that the fields in Blocks A and B, and to some extent in Block C, were being properly mown and that they were being maintained to a reasonable standard. He submits that the Respondent has maintained a good standard of fertility throughout the Holding. He adds that the Holding is properly stocked and that, although others may stock to a higher level, the level of stocking is reasonable. Finally, he submits that the fences and boundaries to the Holding are stock proof and are being maintained and fulfilling their essential functions.

68. Mr. Meade refers the Tribunal to the relevant legislation at paragraph 9(1) of the Act and to an extract from Scammell & Densham's Law of Agricultural Holdings at page 187. He said that an Application for a Certificate of Bad Husbandry could be more effective than Notice of Remedy for ensuring compliance with repairing covenants. He said that the landlord had been concerned about the condition of the Holding for a number of years. He referred the Tribunal to potential breaches of the covenant to repair and in particular to Clause 2.13 to the Agreement under which it is incumbent upon the tenant to clear drains. Mr. Meade refers the Tribunal to the Notice of Remedy and the Application for Arbitration made by the Tenant in response by the Respondent.

69. Mr. Meade said that under Section 11 to the Agriculture Act the occupier must be maintaining a reasonable standard of efficient production and that the tenant considered the quality and quantity of the Respondent's production to be unreasonably low as regards 11(a), (c) and (f). He says that Mr. McCombe has shown that there was a failure to mow the Holding, cultivate, fertilise and stock the land and that the level of production is unreasonably low. He says that the Respondent produced no stocking records, stock books or any documentary evidence at all to show that stocking was at a reasonable level. He also says that the Respondent offered no evidence as to what a reasonable standard of efficient production would be.

70. Mr. Meade says that the Respondent uses flooding as an excuse in order to explain the alleged failure to maintain ditches and that non-flooding fields within the Holding have very low pH indices.

71. Mr. Meade refers the Tribunal to Scammell and Densham's law of Agricultural Holdings at page 201 and *Ladds Radio and Television v*

Docker 226 (1973) 226 EG 1565. According to Mr Meade if the tenant challenges on some of the items of work on the schedule to the Notice of Remedy and not other items then time runs in respect of the unchallenged items. In the circumstances, Mr. Meade sees the Respondent's failure to respond to particulars in respect of ditches in 8714 as an admission that the ditches are in disrepair. He also alleges that Mr. Lloyd Williams failure to address the issue of thistles in Block B in the Statement of Case is an admission of their existence and a failure by the Respondent to manage them.

72. Mr. Meade says that Mr. Lloyd Williams was unaware that his duty to the Tribunal came before his duty to his client although he does not doubt his integrity in any way. He refers the Respondent and the Tribunal to *Ikarian Reefer* the leading case on the duty that an expert holds to Courts and Tribunals. Mr. Meade also made reference to the guidance notes published from time to time by the Royal Institution of Chartered Surveyors outlining the duty a Chartered Surveyor owes to the Tribunal.

73. Mr. Meade says that Mr. Pugh, although highly qualified, had not paid sufficient attention to the Holding because he is not an owner-occupier. He says that Mr. Pugh admitted that if there had been blocked ditches on his own land he would have cleansed them but that security was an issue. He also says that Mr. Pugh does not take soil samples on the Holding, yet the soil indices are low and there is no specific target for stock production on the Holding.

74. Mr. Meade submits that given that the Respondent and his father had farmed the land for some thirty years, there was prima facie evidence that security of tenure was not an issue and thus he has had ample opportunity to repair or for that matter improve the Holding. He submitted that the current Agreement still gave the Respondent substantial security.

75. Mr. Meade says that the standard applied by the Applicant for the application of lime and fertiliser was not too high and he refers to the Code which Mr. McCombe believes is a minimum standard. He also says that, while the Applicant has concentrated in his case on grass rather than stock production, there is a specific and inextricable link between the two.

76. Mr. Meade also refers the Tribunal to *Proudfoot v Hart* (1890) 25 QBD 42, Scammell and Densham's Law of Agricultural holdings at paragraph 64 and paragraph 5(1) of the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973. Mr. Meade contends that when a property is in disrepair at the commencement of a tenancy and the tenant covenants to keep the property in repair, he cannot perform his covenant unless he first puts the property into repair. Mr. Meade submits that the level of disrepair and the onerous nature of the covenant are reflected in the rental.

Conclusion

77. Mr. Thomas began by giving evidence to the Tribunal that he was concerned with the possible diminution in value of the Holding, which is his pension, due to what he alleges is the bad husbandry of the Respondent. However, any potential diminution in value is not relevant to the Tribunal's determination. Although the motive for an application for a Certificate of Bad Husbandry, or any defence to such an application, may be a factor to be taken into account when considering whether to award costs. In addition, in reaching its determination, the Tribunal takes no account of the Applicant's proposals for developing part of the Holding or the submissions by the Respondent which relate to how the Applicant manages property he owns outside the Holding. Equally, in reaching its determination the Tribunal takes no account of the Respondent's possible motives for defending the Application.

78. In determining whether or not to grant a Certificate of Bad Husbandry the Tribunal must decide whether an occupier is farming in accordance with the rules of good husbandry and is maintaining a reasonable standard of efficient production. However, good husbandry and a reasonable standard of efficient production are to be taken in context and regard is to be had to the character and situation of the unit, the standard of management thereof by the owner (not the occupier) and other relevant circumstances (see paragraph 12 above).

79. The basic character and geographical situation of the Holding is a matter of fact. The Holding currently comprises a mix of permanent pasture, river meadow, poor quality grassland and marshland. The geographical location of much of the Holding, bounded in areas by the river Dwyfor (which causes persistent flooding to areas of the Holding) and the cliffs

of Craig y Llan, has a profound influence on its character. The Tribunal accepts that the status of the Holding's current geophysical character is in dispute.

80. According to Mr. Thomas, he visits the Holding a couple of times per month. However, this conflicts with the evidence of the Respondent who told the Tribunal that he had not seen Mr. Thomas for many years. Importantly, Mr. Thomas admitted that he had not been aware of his responsibilities for maintenance of trees and timber on the Holding since the commencement of the Agreement. He later admitted that the responsibility was his and that he had insisted on the clause in the Agreement making the management of trees on the Holding his responsibility and that criticism of him of his failure to clear trees was indeed just.

81. Mr. Thomas also gave evidence that he had worked on the land some years ago and that fields 2575 and 2657 were accessible by tractor at that time. He said that hay, of poor quality, used to be made on those fields. He added that the fields in Block C flooded 4 times per year but that the drains had the effect of drying out the land within 2 days.

82. In the Tribunal's opinion, at the commencement of the Agreement in October 1990, it would neither be possible to make hay in these fields nor to gain access to them by tractor. The symbols on the plan show the presence of rough grazing or similar immediately to the North of fields 2575 and 2657, in field 8714 and also in part of field 2657. The Plan is old and almost certainly pre-dates the commencement of the term of the Agreement and it has been altered, although not mischievously, to show fields 2575 and 2657 as being clear of drains.

83. In Mr. McCombe's evidence (at paragraph 25 above) he said that there were drains in field 2657. However, even if there are drains in fields 2657 and for that matter in 8714, rough grazing was present in these fields when the Plan was drawn up. Thus suggesting to the Tribunal that the condition of fields 8714, 2657 and 2575 and the overall character of the Holding has changed little over the years.

84. Mr. Thomas is the owner of the Holding to which he makes at best infrequent visits. He been a party to a complete breakdown of landlord and tenant relations and he has failed to remove fallen timber that has

contributed to a reduction in production and choked ditches. In the circumstances, the Tribunal is of the view that the standard of management exhibited by Mr. Thomas is deficient.

85. Mr. McCombe gave oral evidence based upon his report. In his oral evidence Mr. McCombe says that he took 10 soil samples from each field. However, the Tribunal notes that in his report, at page 18, the soil analysis (undertaken by Direct Labs on Mr. McCombe's behalf) refers only to seven samples. In his report Mr. McCombe states that he viewed the Holding in March 2005, although the Tribunal notes that the samples analysed by Direct Labs appear to have been taken on 1 April 2005 and received by Direct Labs on 4 April 2005 (see Page 18a of Mr. McCombe's report). There has been no explanation for either of these inconsistencies.

86. In deciding whether there has been good husbandry, regard must be had to the "character and situation of the unit" (see s. 11(1) Agriculture Act 1947). The burden of proof as to bad husbandry is on the Applicant. For the Applicant to discharge this burden the Tribunal would expect the Applicant to lead evidence on soil conditions in the locality with a view to proving that the soil conditions on the Holding were worse than those on other farms of a similar character and situation. The Tribunal notes that the Applicant offered no evidence of soil sample analysis other than for the Holding itself.

87. In his closing submissions Mr. Meade referred the Respondent and the Tribunal to *Ikarian Reefer* and to the guidance notes published from time to time by the Royal Institution of Chartered Surveyors outlining the duty a Chartered Surveyor owes to the Tribunal. Mr. Meade is correct in his interpretation of both *Ikarian Reefer* and the R.I.C.S. guidance notes; an expert's first duty is to the Tribunal and then to his client and this issue in respect of Mr. Lloyd Williams' evidence, is considered below.

88. However, it is also an inherent duty of those conducting litigation before courts and tribunals to ensure that complete copies of relevant documents (including expert's reports) are provided in sufficient time for the opposing party to prepare an expert's report. Amongst other matters, the Tribunal expects an expert's report to give details of any literature or other material relied upon; to say who carried out any test or experiment used for the report; to give the qualifications of that person; and to say whether

or not the test or experiment has been carried out under the expert's supervision.

89. The Tribunal notes that when lodged Mr. McCombe's report lacked the appendices (the Code and the sample analysis by "Direct Labs") upon which the Applicant would later place great weight. The report did not say who carried out the tests on the soil or give their qualifications or explain whether or not the tests were carried out under Mr. McCombe's supervision. The report when served and lodged was incomplete and, despite several reminders, it was only on 5 May 2005 that the Tribunal received the appendices.

90. Mr. McCombe gave evidence in his report that when he visited the Holding there was no stock on the fields in Block B. There is no mention in his report of the presence of stock elsewhere on the Holding. There may be several reasons for this but it appears to the Tribunal that, as the whole of the Holding comprises only 20% of the area farmed by the Respondent, it is more than likely that the stock were to be found elsewhere on his farm. The Tribunal infers that to form an expert view on productivity and level of stocking it would be necessary to visit the Holding on several occasions and not to simply rely on the condition of the Holding and soil nutrients to support that view.

91. Mr. Meade raises two issues of law in his closing submissions. In ruling on these issues the Tribunal infers that it may, reluctantly, create issue estoppel which may prevent these issues being ventilated before the Arbitrator.

92. The first issue relates to the Respondent's reference to Arbitration in response to the notice to remedy, the second relates to repair and the tenant's obligations to keep the premises in repair as specified in Clause 2.3 of the Agreement. Mr. Meade refers the Tribunal to Scammell and Densham's law of Agricultural Holdings at page 201 and *Ladds Radio and Television Ltd v Docker* (1973) 226 EG 1565. According to Mr. Meade if the tenant challenges some of the items of work on the schedule to the Notice of Remedy and not other items then time runs in respect of the unchallenged items. Mr. Meade sees the Respondent's failure to respond to particulars in respect of ditches in 8714 as an admission that the ditches are in disrepair. However, the Application to Arbitration contains a general traverse which reads

"I give you notice under Article 3 of the Agricultural Holdings (Arbitration Notices) Order 1987 that I require the following question namely

(a) my liability under the terms or conditions of my tenancy to do any of the work specified in your notice dated 30 March 2004

(b)

to be determined by Arbitration under the Agricultural Holdings Act 1986."

Given the existence of this traverse the Tribunal finds that, for the purpose of these proceedings, the Respondent has not admitted any breaches of covenant [in respect of ditch 8714] in its Application to Arbitration.

93. Mr. Meade also refers the Tribunal to *Proudfoot v Hart* (1890) 25 QBD 42, Scammell and Densham's Law of Agricultural holdings at paragraph 64 and paragraph 5(1) of the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973. His contention is that when a property is in disrepair at the commencement of a tenancy and the tenant covenants to keep the property in repair, the tenant is unable to perform this covenant unless he first puts the property into repair. Mr. Meade submits that the level of disrepair and the onerous nature of the covenant are reflected in the rent for the property. The Tribunal agrees with this proposition and that when a tenant agrees to keep a property in repair he is not excused from doing so even if the property was in disrepair at the commencement date of the term of the Agreement. If that is the situation the tenant must put the property back into repair. The result of this would be to put the property into better condition than when it was first let to the tenant. However, if on the evidence the property is in no worse condition than when it was constructed no disrepair will be established *See Post Office v Aquarius Properties* [1987] 1 All ER 1055, C.A.

94. The Tribunal also considers the possibility that the flooding is actually an inherent defect in the land. Where there is such a defect and the defect damages the land then a repairing covenant will bite. However, there are

limits to the type of remedial work which fall within a covenant to repair. Sometimes repair works, when properly viewed in relation to the type and character of the demised premises and the terms of the lease actually go beyond repair and may amount to improving or rebuilding the premises (see Woodfall at paragraph 13.032). Different phrases have been used to differentiate between the words "repair" and "improvement" but the Tribunal favours the approach in *Plough Investments v Manchester City Council* [1989] 1 E.G.L.R. 244 which is:

"to look at the state the building is in at the date of the lease, to look at the precise terms of the lease, and then to come to a conclusion as to whether on a fair interpretation of these terms in relation to the state, the requisite work can fairly be termed repair. However large the covenant is, it must not be looked at in vacuo"

Accordingly, the test is one of fact and degree.

95. The geographical location of the Holding suggests that the land has always comprised the same mix of permanent pasture, that the river Dwyfor has always flooded Blocks B and C and the soil condition of the land has been very much the same since time immemorial. Accordingly, the Tribunal finds that the Holding is in no worse condition than when it was first let as agricultural land and no disrepair can be established in relation to the Land in Blocks B and C. If the Respondent were to reclaim the land in Block C and prevent further flooding it would be delivering something wholly different in character and state than that which was let to him in 1990 and this would amount to an improvement and not a repair.

96. The Tribunal is content that Mr. Lloyd Williams is sufficiently qualified to give evidence on those matters in issue that lie within his expertise as a land agent (CAAV), a Chartered Surveyor and an auctioneer of livestock. The "Statement of Case" is clearly not an expert's report and was not introduced as such by the Respondent's Solicitor in their letter of 29 April 2005. The Tribunal is not surprised that the Respondent did not call an expert or experts in some or all of the same fields as Mr. McCombe. This is because on 26 April 2005 (only 2 weeks before the hearing) Mr. Meade sent an unsigned, incomplete expert's report from Mr. McCombe to the Respondent and the Tribunal. Accordingly, at that late stage it would clearly have been impossible for the Respondent to marshal cogent

expert evidence in all of the areas covered by Mr. McCombe. While Mr. Lloyd gave oral evidence comprising of mixed expert opinion and fact and while he occasionally strayed out of his area of expert knowledge, it is to his credit that he was prepared to give such evidence at all. The Tribunal has no doubt that Mr. Lloyd Williams was complying fully with the RICS guidance on the duty of experts, more importantly he was complying with his duty to assist the Tribunal. In any event, Mr. Meade coped comfortably with the range of evidence and conducted a well-organized and detailed cross-examination of Mr. Lloyd Williams.

97. Mr. Lloyd Williams gave credible evidence as to the character, situation and condition of the land; the farming practices in surrounding areas; the condition of boundaries and fences; and the level and type of productivity on the Holding. When Mr. Lloyd Williams' evidence is considered as a whole, it is clear that it was his opinion that there was no evidence of bad husbandry on the Holding.

98. Mr. Pugh gave credible evidence on his own behalf as the occupier as to the situation and condition of the land; the farming practices in surrounding areas and the farming practices he employs; the condition of boundaries and fences; and the level and type of productivity. When Mr. Pugh's evidence is considered as a whole, it is also clear that it was his opinion that there was no evidence of bad husbandry on the Holding.

99. The burden of proof as to Bad Husbandry lies with the Applicant and on the evidence and from submissions made the Applicant has failed to discharge that burden. The evidence put forward by Mr. McCombe did not include a sufficiently wide range of samples and adopted a standard of husbandry that was far too high, having regard to the character and situation of the Holding.

100. The Tribunal simply adopts Mr. Thomas' admission and self-criticisms in its finding that any loss of production resultant from, the failure to remove fallen trees, or for that matter, the choking of ditches on the Holding with fallen trees, is the Applicant's responsibility and not that of the Respondent.

101. The Tribunal inspected the land on the morning of the hearing (12th May 2005) and makes the following observations:

- (1) Block A mostly comprises permanent pasture. There is an internal wall between field Nos. 7421 and 6933, which appears not to be used as boundary. There is no gate between 7421 and 6933. Fields 7421 and 6933 comprise poor quality rough grassland, rock face, trees and some gorse and bracken.
- (2) Block B comprises permanent pasture throughout and amounts to a long narrow sliver of flood meadow adjacent to the river Dwyfor forming the western boundary and Bryn Brain woodland forming the eastern boundary.
- (3) Block C comprises several parcels of land of widely varying quality. The best quality pasture is to be found in the fields 2576, 8714 and 2583. Poorer quality pasture is to be found in field No. 2575. Field No. 2657 comprises virtually all marshland with a river running along the majority of its southern boundary.
- (4) Overall the condition of the fencing and walls throughout the Holding is variable but in all cases it appears stock proof. In certain areas the fencing has reached the end of its economic life and will shortly need replacing. Internal and external walls and fences are generally in a good or acceptable condition. In Block A an internal wall has deteriorated in sections but remains stock proof although the Tribunal notes that this wall appears not to function as a boundary wall as there is no gate to the opening between field Nos. 7421 and 6933. In Block B what appears to be a party wall with fields 2710a and 2685 has partially collapsed in certain areas, but not to an extent that it is not stock proof. The fence comprising continuous bar railings which is adjacent to the river on the eastern side has deteriorated and while stock proof is at the end of its economic life. In particular, in Block C the fencing along the boundary of the land with Cwm Pennant Road has deteriorated to the extent that it is only just stock proof. However, in areas within Block C the Applicant had provided new fencing. Gates throughout the Holding are hung and swing well.
- (5) For the most part, Block A comprises good quality pasture and the Tribunal has noted the presence of clover in this field. The

Applicant accepts that part of field Nos. 8934 and 7746 are not suitable for agricultural use.

- (6) For the most part, Block B consists of good quality permanent pasture. The block is bounded to the West by the river Dwyfor and subject to flooding between 3 and 4 times per year. The soil to Block B comprises with alluvial soil with a peat base. Some creeping thistles are evident in parts of Block B, particularly along the western boundary of fields 2729 and 2686. The Tribunal also noted the presence of Yorkshire Fogg in Block B.
- (7) In Block C the general condition of the permanent pasture is good or reasonable taking into account the fact that the land is classified as "Severely Disadvantaged". The soil is peaty and its quality improves as distance from the river increases. Field Nos. 2576, 8714, 2575 and 2657 suffer greatly from water logging and flooding. There was evidence of recent flooding with detritus caught on the upper parts of the fence close to the riverbank. These fields are bounded to the south by the river Dwyfor and are dissected by several open drains. Large areas of these fields are covered with tussock grass and rushes. Some of these open drains have become blocked with vegetation.
- (8) In Blocks B and C fallen trees have not been cleared away. In Block B a fence at the river boundary has been constructed over a tree indicating that it fell sometime ago. In Block C, field No. 2575 a tree has fallen and has not been removed.
- (9) The quality of the stock on the land is good. Cattle are turned out and clean, Mule Ewes and lambs are in good condition. There is no evidence of supplementary feeding.
102. The Tribunal refers to its inspection and observations at paragraph 101 above, the evidence and submissions and finds that given the character and situation of the holding and the standard of management by the Applicant, a reasonable standard of efficient production is being maintained by the Respondent and that

- (a) the permanent pasture is being properly mown or grazed and maintained in a reasonable state of cultivation and fertility and in a reasonable condition;
- (b) the holding is properly stocked and an efficient standard of management of livestock is being maintained; and
- (c) the necessary work of maintenance and repair is being carried out.

Accordingly, the Applicant has failed to prove to the standard required that there has been a failure to maintain a reasonable standard of efficient production and the Application for a Certificate of Bad Husbandry is dismissed.

103. Section 5 of the Agriculture (Miscellaneous Provisions) Act 1954 gives the Tribunal the power to award costs. Costs may be awarded against a party that has acted frivolously, vexatiously or oppressively. However, while the Tribunal considers the Application to be misconceived the Tribunal also considers that the Applicant has not acted vexatiously or oppressively and thus makes no order as to costs.

Dated this 7^h day of July 2005

Deputy Chairman