

Y TRIBIWNLYS TIR AMAETHYDDOL CYMRU
AGRICULTURAL LANDS TRIBUNAL WALES

- REFERENCES:** ALT 6281 & ALT 6290
- TRIBUNAL:** Dr Christopher McNall (Deputy Chairman)
Dr Russell Young MBE JP (Drainage Member)
The. Hon. Robin Gibson-Watt (Landowner Member)
- APPLICANTS:** Mr David Metcalfe-Holland and Mrs Christine Hemming
- RESPONDENTS:** Mr Frazer Digby-Roberts & Mrs Suzanne Digby-Roberts
Mr J H Vaughan
- PROPERTY:** Fields in Clydey, Llanfyrnach, Pembrokeshire SA35 0AH

DECISION

On 20 January 2016, the above Panel, having considered correspondence from the parties, together with supporting documentation, **DISMISSED** the Applicants' Application of 20 September 2014, made pursuant to Recital (f) of the Consent Order dated 28 December 2012.

REASONS FOR THE DECISION

1. The two underlying Applications - ALT 6281 and ALT 6290 - were each issued in 2011. In due course, each Application was made subject to a Condition Report of Drainage made on behalf of the Tribunal by an independent expert, Mr S J Bell of ADAS, pursuant to Rule 45 of The Agricultural Land Tribunals (Rules) Order 2007: SI 2007/3105.
2. Those reports are dated 24 August 2011 (ALT 6281) and 18 April 2012 (ALT 6290). In summary, those reports carefully considered the drainage situation in Clydey, and in particular:
 - (i) The movement of water from Mr Metcalfe-Holland's land (Pen-y-Bryn) towards Mr Vaughan's land (Ty Newydd), along to Point E at the corner of field 1764L, where it was collecting. (This was, in broad terms, the subject matter of an Application by Mr Metcalfe-Holland and Mrs Hemming against Mr Vaughan: ALT 6281); and
 - (ii) The discharge of water through a pipe laid in a clawdd at Point G of Mr Metcalfe-Holland's land, onto a track leading down to the property occupied by the Digby-Roberts (Llain). (This was, in broad terms, the

subject matter of an Application by Mr and Mrs Digby-Roberts against Mr Metcalfe-Holland and Mrs Hemming: ALT 6290).

3. As he was both entitled and empowered to do, Mr Bell made certain factual observations, arrived at certain conclusions, and made certain recommendations. In substance, these were for removal of the pipe at Point G, and the improvement of drainage at Point E. There was a considerable volume of documentary material available to Mr Bell to assist him in his deliberations, and he considered it.
4. The two Applications were joined. That was entirely sensible given the proximity of the land in question in each Application, and the fact that there was (arguably) a single scheme or system of drainage in that immediate locality.
5. However, the Applications did not proceed to determination by the Tribunal following a full contested Hearing. Instead, they were compromised by way of a Consent Order endorsed by the Tribunal Chairman on 28 December 2012: **'the Consent Order'**
6. As it records, the Consent Order was made having heard from or on behalf of all the parties to the two Applications, including Mr Metcalfe-Holland and Mrs Hemming. It is obvious, from its terms, that the parties had engaged in a process of careful and detailed negotiation so as to seek to resolve their disputes. Moreover, the very fact of the Consent Order demonstrates that the parties chose to resolve their disputes by way of negotiation rather than submit those disputes for Decision by the Tribunal.
7. Therefore, to all intents and purposes, the disputes were compromised at the end of 2012.
8. It is also obvious, not least from the terms of the first recording to the Order, that there was a continuing dispute as to the ownership of a triangular area of land coloured blue on the plan, and that, although agreeing to the Order by Consent, no party was making any concession or admission as to ownership of the same.
9. On 20 September 2014, Mr Metcalfe-Holland contacted the Tribunal seeking to invoke the liberty to apply provision contained in Recital (f) of the Consent Order. That recital reads, in full:

"(f) *There be liberty to apply, in favour of any party, to the Tribunal in respect of a variation of the time limits specified herein and in relation to the implementation of the terms of the order*".

10. Although Mr Metcalfe-Holland characterised that as 'an appeal', it cannot be any such thing. This Tribunal has no jurisdiction to sit in appeal on its own decisions.
11. At the same time, and judging from a letter to Mr Metcalfe-Holland from the Welsh Government dated 6 October 2014, copied to the Tribunal, Mr Metcalfe-Holland appears to have contacted the Welsh Government by phone and email outlining '*certain waterlogging problems which he had encountered*'. It is obvious that matters had been ongoing for some months since Mr Metcalfe-Holland referred to a letter (which we have not seen) from the Welsh Government dated 9 January 2014 which stated as follows: "*The Welsh Government has considered the matter further in relation to comments from Mr Metcalfe-Holland. It is clear that the land drainage aspects of the Order by Consent dated 28/12/2012 have now been fulfilled*".
12. The Tribunal treated Mr Metcalfe-Holland's letter of 20 September 2014 as an Application to implement the terms of the Consent Order, and sought comments from the other parties.
13. A Mr Hooper, acting on behalf of Mr and Mrs Digby-Roberts, responded on 3 November 2014. The substance of that response was that Mr Metcalfe-Holland himself had failed properly to carry out works which he had undertaken to do. It was not said precisely what he had failed to do, but that can only refer to some or all of the works set out in recital (e) of the Consent Order, in which Mr Metcalfe-Holland and Mrs Hemming agreed (i) to close off an opening at Point E; (ii) to replace a section of clawdd previously removed at that point; (iii) to remove a pipe at Point G; and (iv) to reinstate the clawdd at that point. However, there was no Application, either then or now, by on behalf of Mr and Mrs Digby Roberts, to seek to enforce the terms of the Order against Mr Metcalfe-Holland and Mrs Hemming.
14. On 1 November 2014, Mr J H Vaughan wrote that, as far as he was concerned, he had completed the ditching which he had agreed to do as part of the Consent Order. That refers to recital (a) of the Consent Order, and the construction of a ditch to a certain profile and specification between points E1 and F.
15. On 3 November 2014, Mr Metcalfe-Holland and Mrs Hemming wrote again to the Tribunal making further representations. Following lengthy criticism of Mr Bell and his reports, the letter concluded that Mr Metcalfe-Holland and Mrs Hemming did not agree with Mr Bell's recommendations '*as it has already been proved from the works carried out on his previous recommendation, they have not worked*'. It was proposed that the pipe at Point G be reinstated.

16. In our view, having had the opportunity to fully consider the matter, the approach adopted by Mr Metcalfe-Holland and Mrs Hemming, which has given rise to this Hearing, is badly misconceived, for the following reasons.
17. In substance, the Applicants now effectively seek to re-open the entire Consent Order on the basis (amongst other matters) that there should be a pipe at Point G. But that is simply not a route of challenge now open to them. They negotiated, and subscribed to, a Consent Order, which compromised the Applications, and in which they agreed to remove the pipe at Point G.
18. There was no compulsion to enter into a Consent Order. If the Applicants had indeed considered that Mr Bell was wrong to recommend that the pipe at Point G be removed, then it was entirely open to the Applicants to challenge Mr Bell's evidence at the time, and to invite the Tribunal to make such findings of fact (including, for example, the age of the pipe) as it considered appropriate. But the Applicants, for reasons which we do not know, and which we cannot now inquire into, chose not to do that. All the parties are presumed to have known what they were agreeing to do, and to have negotiated so as to protect and preserve what they considered to be their best interests. In short, they were and are bound by the terms of the Consent Order.
19. As to the situation at Point E, the parties expressly acknowledged that there was a dispute as to the ownership of what was referred to as the blue triangle. That was not a dispute upon which this Tribunal was empowered to adjudicate. The matter of the ownership of the blue triangle is outside the jurisdiction of this Tribunal. There is a suggestion that dispute has still not been resolved, with the consequence that no works have been done at Point E and/or between Point E and E1. But a dispute as to ownership of the blue triangle - if that is indeed what is now standing in the way of satisfactory completion of works (if uncompleted) - is a matter which, if it cannot be agreed between the respective parties, will have to be determined elsewhere.
20. We have no hesitation in rejecting the contention that it is now open to Mr Metcalfe-Holland and Mrs Hemming to seek to attack the recommendations which were made by Mr Bell. Nor do we think that it is now open to them to seek to attack the wording of the Consent Order. Nor can an Application to reinstate a pipe at Point G be described, in any ordinary sense of the word, as an Application to 'implement' the terms of an order which (by agreement) provided for its removal. Finally, the Tribunal cannot re-write the terms of the Consent Order. To do so would be to interfere, impermissibly, in the terms of the agreement which the parties themselves had arrived at.
21. But, and even if the whole of the foregoing were mistaken, we are obliged to note that we are still unable to readily identify the precise manner in which Mr

Metcalfe-Holland and Mrs Hemming are seeking to invoke 'the implementation of the Order'. In our view, the Consent Order, and what was to be done under it, is clear. On the other hand, it is wholly unclear, other than a pervasive unhappiness with the agreement which they themselves made over three years ago, what Mr Metcalfe-Holland and Mrs Hemming now say should have been done by others which has not been done.

22. Indeed, on the basis of the information before us, the only complaint (such as it is) about non-implementation is that made by Mr and Mrs Digby-Roberts about Mr Metcalfe-Holland, contained in their letter of 3 November 2014. But they have not sought to pursue that point by way of an Application of their own to the Tribunal.
23. Similarly, the gist of Mr Vaughan's letter of 1 November 2014 is that Mr Metcalfe-Holland had not done what he said he was going to do, or has done it wrongly, or has done it badly. But, again, Mr Vaughan has not sought to pursue any of those points by way of an Application of his own to the Tribunal.
24. Recognising that the Applicants are acting as litigants in person, and without wishing to adopt any undue formality, we are not persuaded, even if this were in substance an Application to vary an Order (and we are not convinced that it is), that our jurisdiction would extend to varying a Consent Order. The Consent Order, for all practical purposes, was an agreement which brought the Applications to an end.
25. Therefore, and for the above reasons, we Dismiss the Application.

ORDER

- (1) The Applicants' Application made by way of letter dated 20 September 2014 and under Recital (f) of the Consent Order dated 28 December 2012 is Dismissed.

Dated 23 February 2016



Christopher McNall
Chairman