

AGRICULTURAL LAND TRIBUNAL WALES

TRIBIWNLYS TIR AMAETHYDDOL CYMRU

Application Nr: ALT 12/2020

Applicant: Debbie Silverthorne (represented by Mr Robert Stone MRICS FAAV of Greenslade Taylor Hunt, Burnham-on-Sea)

Respondents: The executors of Mr A Bowen (deceased) (represented by Mr William Batstone of Counsel, instructed by Jacklyn Dawson Solicitors, Newport)

Property: Greenmeadow Farm, Mamhilad, Pontypool NP4 8RN

Hearing Date: 23 May 2025, by CVP.

Application: An application to succeed on the tenant's death

Decision-maker: Judge Christopher McNall, Chairperson

Decision: 27 May 2025

DIRECTIONS

- (1) By no later than **4pm Tuesday 24 June 2025**, the Applicant shall file with the Tribunal and serve on the Respondent a written statement, supported with a Statement of Truth, which shall set out her position as to:
 - i. Her sources of livelihood (including her income from all sources) in the relevant period, broken down by source and by year (with each year beginning 2 November);
 - ii. The nature and value in cash terms of each of the benefits-in-kind being received by her and her husband in the relevant period, broken down by year.
- (2) By that same time and date, the Applicant shall file and serve the documents which underpin her statement above.
- (3) Insofar as she has not already done so, by that same time and date, the Applicant shall file and serve:
 - i. The accounts of the deceased's tenant's business from 2013-2020;
 - ii. The accounts for the Applicant's business spanning the same period;
 - iii. The accounts for the Applicant's husband's business for the same period;
 - iv. If any accounts have never existed, the Applicant shall say so.

- (4) By no later than **4pm 4 August 2025**, the parties shall liaise and shall provide the Tribunal with directions, agreed if possible, as to the further case-management of this application. In the event of disagreement as to directions, each party shall file their own directions and a short note (no more than 4 sides of A4, 1.5 spaced, no less than 12 point) setting out why they seek their directions and why the other side's proposed directions are not appropriate.
- (5) The costs of and incidental to the hearing on 23 May 2025 are reserved.

REASONS

1. This is an application to succeed to the tenancy of an agricultural holding subject to the Agricultural Holdings Act 1986. It is agreed that the Applicant's immediate predecessor (her father, Richard Dereck Roberts) was himself a first successor tenant (holding the tenancy on an agreed succession, granted in 1985, from his father, the Applicant's grandfather, under a first grant in or about 1947). Hence, it is agreed that this succession, if consented to by the Tribunal, will be a second succession.
2. Mr R D Roberts died on 2 November 2020 aged 81. This application was made, in-time, in December 2020, but thereafter has been afflicted with delay. Some of this was attributable to Covid; some of it was attributable to the Tribunal (in relation to which I have apologised to the parties and their representatives) and some of it was attributable to the parties themselves in not contacting the Tribunal to inquire as to the progress of this application. Nonetheless, and regardless of reasons, the effect of this delay is now to add importance to the need to have this application resolved as briskly as the circumstances will reasonably allow.
3. Having considered the papers, I convened a case management hearing to determine what issues were in dispute, and what case management directions were required in order to move this dispute forward. At that hearing, I was assisted with oral submissions on behalf of both parties; and by a detailed note with draft directions from Mr Batstone.
4. In response to the application to succeed, the landlords gave a Case G Notice to Quit; which is stayed pending determination of this application on the grounds of 'greater hardship' (the landlords, who are the trustees of a trust, say that they wish to sell the holding on the open market with vacant possession for a sum of £1.6m, but, if the holding had a second succession tenancy estimate that they will be able to sell for only about £460,000 - £490,000 - ie, a loss of about £1.1m). The landlords no longer seek to rely on allegations of husbandry in relation to their Case G Notice to Quit.

5. Whether the applicant is ineligible because she is in commercial occupation of other land (namely, the 100 acres referred to in the HRT report) does not presently call for directions (eg, the making of a "net annual income assessment"). I limit myself to noting that, in other cases, I have invited the parties to consider whether occupation of (say) 100 acres is, on the face of it, likely to disqualify an applicant given the terms of the present agricultural Wages Order, or those for the past few years, which call for the other land to be capable of producing "an amount not less than the aggregate of the average annual earnings of two full-time male agricultural workers aged twenty or over" which (on my rough and ready calculations) is about £34,000.
6. The present crux of this dispute is whether the Applicant is statutorily eligible under the so-called livelihood condition; that is to say, whether she derived her livelihood, or the principal part of it, from agricultural work on the holding or a holding of which it is part, in at least five of the 7 years preceding her father's death. In this case, that means the period from 3 November 2013 to 2 November 2020. 'Principal' means more than 50%. On her application form, the Applicant indicated that she did not consider that she met that test, because she has other sources of livelihood.
7. However, section 41 of the 1986 Act allows the Tribunal, at its discretion, and where it considers it fair and reasonable to do so, and where requested (as it has been here), to make an order in favour of an applicant who does not meet this threshold, but who does so 'to a material extent'. What is a 'material extent' is a matter ultimately for the sense and expertise of the Tribunal.
8. In February 2021, the landlords responded, opposing the application. A point originally taken about service of the requisite written notice of the tenant's death was pursued, but then withdrawn on consideration of the Upper Tribunal's decision (dismissing an appeal from one of this Tribunal's decisions) in Adams v Jones, Re: Cyffionos [2021] UKUT 9 (LC) (Judge Martin Rodger QC).
9. The landlords continued to dispute that the Applicant satisfied the livelihood condition. One of the points made in their response was that 'none of the prescribed documents to support the Applicant's livelihood contentions had been served'. It was accurate that no documents had been served; but the reference to 'prescribed documents' is not accurate. There is no list with the force of law which sets out what documents an applicant should provide if their satisfaction of the livelihood condition is challenged.
10. In a document entitled "Supporting Information to respond to the Landlord's Notice to Quit", dated 22 March 2021, the Applicant said (inconsistently with her application form) that she had in fact "derived [my] principal source of livelihood from the farm". She said that she and her family had rent-free occupation of the

farmhouse; and her husband operated a contracting business and parked his tractor and equipment on the farm. She provided some letters of support, including a very short letter from her accountant which said that her father had also paid 'all the housing costs'.

11. Pausing there, it was, in my view, tolerably clear that the Applicant had not provided, at that point, sufficient evidence to allow the landlords to assess for themselves whether the Applicant satisfied the livelihood condition, even to a material extent. Looked at objectively, all the Applicant had done was to make some bare assertions on her form and in her statement. Those are a kind of evidence, and have weight; but, without being supported by documents in circumstances where documents must exist, the evidential weight of bare assertions is limited. Given that the Applicant's satisfaction of the livelihood condition was not clear-cut (as she recognised on her application form), and was in dispute, then neither the landlord nor the Tribunal should have had to take it on the Applicant's word alone.
12. It is common ground that this Tribunal - a judge-led judicial body entrusted by Parliament with adjudicating on contested applications to succeed to tenancies of this kind - is an adversarial jurisdiction. This means that the Applicant bears the burden of proving (albeit only to the civil standard - namely, the balance of probabilities, or, put differently, whether something is likelier than not) that she is eligible to succeed to her father's tenancy. This task is ordinarily gone about by putting forward a sufficient body of evidence which can be assessed and, if necessary, tested.
13. The landlord's representatives identified this inadequacy, and, by way of a letter dated 12 May 2021, asked for (amongst other things):
 - 13.1 The accounts of the deceased's tenant's business from 2013-2020;
 - 13.2 The accounts for the Applicant's business spanning the same period;
 - 13.3 The accounts for the Applicant's husband's business for the same period.
14. Alongside that letter, the landlords provided a typed but unpopulated 'Schedule' requiring the identification of:
 - 14.1 'Livelihood: expenditure derived from Applicant's agricultural work on the holding;
 - 14.2 'Livelihood: expenditure not derived from Applicant's agricultural work on the holding;
 - 14.3 Total of 14.1 and 14.2;

- 14.4 %age of 'Livelihood: expenditure derived from Applicant's agricultural work on the holding.
15. The landlords also wanted a statement of capital, and 'income that is not apparent from the accounts'; and a report 'that the business of the Applicant will run from the holding if she succeeds, explaining how it will be sustainable and will enable the Applicant to pay the expected rent and meet the other tenant's covenants and how the business would be funding [sic] having regard, in particular, as to the phasing out of BPS payments'. I add that the present annual rent is said to be £2300, in relation to about 123 acres. It has not increased much since 1985.
16. In terms of the Schedule, the Applicant's representatives did what was asked for, and populated the Schedule with figures. In column 2 was inserted £14,000 for each year, being said in correspondence to come from 3 things:
- (i) Rent-free occupation of the farmhouse, put at £750/mth (= £9000 pa)
 - (ii) Use of the land for running the applicant's own stock, put at £2000 pa;
 - (iii) Storage of equipment by the Applicant's husband, put at £250 pm (= £3000 pa).
17. On 15 November 2022 - that is to say, about 18 months later, and after some unsuccessful discussions - the landlord's representatives wrote complaining about this schedule, and in particular that it gave 'no explanation whatsoever of how the figures were arrived at, and in particular which items of livelihood expenditure were met from which of the various sources of livelihood during the seven year period'.
18. The applicant's representative responded, on 19 November 2022, but in essence only to the extent that their feeling was that the requirement that the livelihood condition was met to a material extent. The obvious problem with that is that it is yet another bare assertion (and moreover, coming from the representative, is not of any evidential value at all). The applicant's representatives asked the Tribunal, in effect, to explain what the landlords wanted. The difficulty with that approach is that explaining the Respondents' position to the Applicant was not part of the Tribunal's role. As already said, this is an adversarial jurisdiction, where the Applicant bears the burden.
19. By way of inclusion in their written submissions filed on the day before the hearing, the landlords sought orders that the Applicant provide:
- 19.1 "A written report that complies with rule 29 of the Agricultural Land Tribunals (Rules) Order 2007 ('the 2007 Order') of an independent chartered surveyor who is a member or fellow of the RICS providing his or

her expert opinion upon: (1) the nature of the benefits in kind derived by the Applicant from her agricultural work on Greenmeadow Farm, Mahmilad, Pontypool, Gwent ('the Holding') for each of the 7 years from 3 November 2013 to 2 November 2020; and (2) the value each of the said benefits in kind in each of those 7 years" (**'the Surveyor's Report'**); and

- 19.2 "A written report that complies with rule 29 of the 2007 Order of an independent chartered accountant with experience of preparing cases on satisfaction of the livelihood condition for the purposes of section 36(3)(a) of the Agricultural Holdings Act 1986 (**'the Accountant's Report'**). Such a report must include comparative schedules of relevantly derived and non-relevantly derived livelihood for each of the 7 years from 3 November 2013 to 2 November 2020 in which the items comprising the Applicant's livelihood in each of those years are listed and valued. Relevantly derived livelihood is that which is derived from the Applicant's agricultural work on the Holding and will include the value of the Applicant's accommodation and any other benefits in kind, as identified in the Surveyor's Report. Non-relevantly derived livelihood is that which is not derived from the Applicant's agricultural work on the Holding but from her own agricultural contracting business; her own livestock business on the Holding; her husband's agricultural contracting business; income earned by her and her husband letting out their property in Pontypool; and any other income not derived from the Applicant's agricultural work on the Holding. The schedules must be supported, so far as is reasonably possible, by bank statements, credit card statements, invoices and other documents that provide evidence for the figures in the schedules. The information provided by the comparative schedules must be collected in an over-arching schedule in the form of the blank pro-forma schedule attached to this Order."
20. The Respondents have pointed out - fairly - that, in an adversarial system, the Respondents were not obliged to propose any directions designed to assist the Applicant to prove (or improve) her case. The Respondents also pointed out that they could have kept silent on the matter of livelihood, left the Applicant to it, waited until the final hearing of the Application, and then submitted that the application would have to be dismissed on the basis of eligibility alone because the applicant had failed to discharge the burden on her. In that sense, the application is in real jeopardy. It has to be said that there was some force in those submissions.
21. Perhaps surprisingly, there were no counter-proposals, even in barest outline, for directions from the Applicant nor indeed any real engagement with the issue. Her representative's submissions were, in essence, that the orders sought were 'a bit

much', and he wanted more time - up to three months - in which to deal with any further order.

22. As correctly pointed out, the Tribunal has fairly wide-ranging powers when it comes to the management of the application. It is not limited to choosing between the parties' respective positions but may adopt some different course.
23. On one level, this application engages the classic question as to what the livelihood condition means.
24. In Caswell v Welby (1997) 71 P & CR 97, the Court of Appeal was faced with this question. Stuart-Smith LJ remarked that the requirement:

"should be construed in a purposive manner and very much in the way that a jury would do, and without adopting too legalistic an approach. Livelihood can be defined as "means of living" (see *Shorter Oxford Dictionary*), that is to say what is spent or consumed for the purpose of living. The source of one's livelihood in so far as it is money, is income; in so far as it is the use or consumption of goods, it is benefits in kind. An applicant may have income derived from one or more sources."
25. That guidance binds me. The issue of livelihood is to be approached in a common-sense way, and without adopting too legalistic an approach. But this is not to ignore that meaningful assessment can only be done with adequate evidence. As matters stand, absent adequate evidence, the Applicant will struggle to succeed in meeting her burden on eligibility. The consequence of such a failure would inevitably be that her application would be dismissed.
26. Hence, more information is needed from or on behalf of the Applicant.
27. I agree with the Applicant's representative to the extent that the directions sought seem to me to be 'a bit much'; namely, and at this stage, an unduly onerous and interventionist exercise of the Tribunal's powers under Rule 11.
28. I am not persuaded - at least, as matters stand - that the landlords genuinely need expert reports of the kinds requested to give meaningful consideration to the livelihood position. The landlords did not ask for reports of that kind when they sent the Applicant the schedule to be completed; nor when they complained that the schedule could not be tested.
29. The heart of the problem is that the landlords cannot test or interrogate the figures in the Schedule. That is the situation which needs to be addressed.
30. Whilst the learned editors of *Muir Watt Moss*, in passages to which I have been referred by Mr Batstone, do express the view that Applicants often establish the livelihood position 'with the assistance of expert accountants', that is - even as

put - not a universal rule. There is nothing in the Tribunal's rules which compels such a step; and it is not obviously consistent with the Court of Appeal's view in Caswell. There may well be cases in which such evidence is appropriate and proportionate; but I am not presently persuaded that this is one of them.

31. Nor am I persuaded that the provision of underlying information (for example, a swathe of bank statements) brings about a situation which inevitably requires expert intervention and interpretation. This is a civil jurisdiction, and in civil jurisdictions (for example, in many matrimonial finance disputes) parties are routinely asked to deal with 'raw' financial information.
32. Other factors which militate against the making of directions as sought by the landlords, at this point, is that reports of the kind which the landlords invite me to order would doubtless be expensive - and all of that expense would have to be borne by the Applicant. Moreover, there is nothing before me to suggest the timescale within which such reports would actually be produced (the landlord is inviting me to order a fairly tight timescale, over the summer - but it is not the landlord commissioning, or writing, these reports). As far as I can tell (and unsurprisingly because it is the landlord suggesting that expert reports be obtained by the applicant, rather than this being suggested by the applicant herself) no-one has been instructed, or even approached.
33. I also note that the terms of the accountant's report proposed by the landlords seek to exclude, from the category of 'agricultural work on the holding' (which is the expression used in section 36(3)(a)) what is said to be 'non-relevantly derived livelihood', described (amongst other things) as livelihood derived from (i) the Applicant's own agricultural contracting business; (ii) her own livestock business on the Holding; and (iii) her husband's agricultural contracting business. For present purposes, it seems to me that this formulation, in effect, pre-judges whether these items kind are within or outside section 36(3)(a). The views of leading commentators on this differ; but ultimately, the question of how a source of livelihood answers to the eligibility criteria is one for the Tribunal at the hearing; and not for an expert.
34. But this is not to give the Applicant a bye. In my view, the Tribunal does have to now step in and use its powers to direct further information or supplementary statements or copies of any documents which may reasonably be required. The directions which I have made above seek to advance that power; but to steer what I consider to be a fair and proportionate middle course. The landlords need to be able to form an evidence-led view as to where they stand on livelihood. But, in the first instance, it does not seem to me that, in a 'material extent' case, the landlords must necessarily form a view as to percentage of livelihood derived

from relevant sources down to two decimal points. Tolerably clear answers might emerge from the provision of information.

35. I have decided to order disclosure of the accounts, as previously sought, insofar as the same have not already been provided, but, in doing so, I am expressly not deciding or expressing any view, implied or otherwise, as to whether the livelihood of the applicant's husband is to be treated as hers. That will be a matter in due course for the Tribunal.
36. The landlords also invited me to make the directions subject to some unless order or peremptory sanction - that is to say, if the Applicant were to fail to comply with the Tribunal's orders, that her application should be struck-out (meaning that it would come to an end, meaning that it would fail). It seemed to me that was not warranted at this stage:
 - 36.1 There has been no previous failure to comply with the Tribunal's orders;
 - 36.3 It seemed to me that the Applicant's position, in not having provided documents and information, was actuated more by a failure to properly realise the evidential task which faced her, rather than from any tactical desire to frustrate the landlords' ability to look too closely into her finances.
37. For the same reasons, it also seemed to me that, at this stage, even a lesser sanction (such as debarring the Applicant from reliance on any document not disclosed in accordance with a direction) is going too far.
38. I have decided to reserve the costs of the hearing.
39. I have also made a direction which gives the landlords about 6 weeks in which to consider the Applicant's statement, documents and information, and for the parties to liaise as to what directions are required for the further management of this application.