AGRICULTURAL LAND TRIBUNAL WALES
TRIBIWNLYS TIR AMAETHYDDOL CYMRU

Application Nr: ALT 19/2021

Applicants: John Arthur Jones (1) and Miriam Violet Jean Jones
(represented by Mr William Batsone of Counsel, instructed by HCR Law

Respondents: Laura Margaret Steyer (represented by Mr Peter Williams Solicitor, instructed by Davis Meade Surveyors)

Property: Aberduhonw Farm, Builth Wells

Inspection Date: 22nd October 2024
Hearing Dates: 23 and 24th October 2024 in person at the Government Building, Builth Wells Show Ground in relation to the substantive hearing and 6th March 2025 in relation to the costs application (the latter determined on the papers) with the outcome of the application handed down on the 18th of March 2025 with reasons for the decision to follow by way of this Judgment.

Applications: An application for a Certificate of Bad Husbandry which when part heard was withdrawn by the Applicants and an application by the Respondent for costs following on the application being withdrawn.

Panel: Judge Trefor Lloyd, Chairperson, Gareth Wall FRICS, Surveyor Member and Evan Roberts, Lay Member.

Decision: 29th August 2025

IN THE AGRICULTURAL LAND TRIBUNAL WALES

Reasons of the Tribunal in respect of the Respondent's application for costs.

Background

1. The Applicants initially sought a Certificate of Bad Husbandry against the Respondent dated the 11th of November 2021. The Applicants are the freehold owners of Aberduhonw Farm, Builth Wells and the Respondent is the tenant.

2. The Tribunal attended a site inspection on the 22nd of October 2024 and an oral hearing commenced on the 23rd of October 2024 at the Royal Welsh Show, Welsh Government Building. That hearing was concluded part heard on the afternoon of the 24th of October 2024 with the Tribunal having heard evidence from the Applicants' Expert Ieuan Williams and the Respondent's Expert Mr Michael Taylor and the Applicants themselves. At the conclusion of the hearing, it was proposed to reconvene at a later date(s) to conclude matters. Prior to the hearing being

recommenced, solicitors for the Applicants sought consent to withdraw their application.

3. The Respondent applied for an Order under Section 5 of the Agriculture (Miscellaneous Provisions) Act 1954 that the Applicants pay the Respondent's costs of the proceedings and that the costs be assessed on an indemnity basis if not agreed.

4. The Tribunal initially convened virtually on the 6th of March 2025 to deliberate the issue of the cost application. As a consequence, the Tribunal has found in favour of the Respondent's application for costs and the outcome of that decision was conveyed to the parties on the 18th of March 2025 with detailed reasons to follow.

5. Prior to the Tribunal handing down its detailed reasons, the Applicants sought leave to appeal. By way of an order dated the 22nd of April 2025, Martin Rodger K.C. sitting in the Upper Tribunal stayed the appeal application pending this Tribunal handing down its reasons for the decision.

6. By way of this Decision Notice the Tribunal hands down its reasons for finding in favour of the Respondent as regards the cost application.

7. It is also worthy of note that despite Directions dated the 18th of March 2025 the Applicants have not fully addressed the Tribunal in relation to the issue of the basis of a costs award. However, the Tribunal considers that the Applicants have had ample opportunity to address the Tribunal on the issue of the basis of costs and therefore will also determine that aspect of this application at the same time.

THE LEGAL BASIS UPON WHICH A COSTS AWARD CAN BE MADE

8. Where it appears to the Tribunal that any person concerned in a reference or an application has acted frivolously, vexatiously or oppressively in applying for an order or in connection with an application, the Tribunal may order that party to pay the other parties' costs, pursuant to Section 5 of the Agriculture (Miscellaneous Provisions) Act 1954.

APPLICANT'S SUBMISSIONS

9. On behalf of the Applicants, Mr Batstone submits that no costs award should be made by way of his written submission dated the 20th of January 2025. At paragraph 7 Mr Batstone invites us to hand down further directions if we declined to make an Order that no costs should be awarded.

10. Having considered the extensive material to date, we decided as detailed above to proceed to make an order in any event. We feel both parties have had an extensive

opportunity to present their respective cases as to the issue of costs and such further material would only increase the costs incurred on both sides which to date are significant in any event. We come to that conclusion bearing in mind at the end of Mr Batstone's submissions in January 2025 he concludes that total cost to the date of that document being created was £176,757.25. In addition, we have been provided with a form N260 as to legal costs incurred together with supporting invoices relating to the costs of the Expert, appointed Agents (Davis Meade) and accountancy advice that all amount to in total to £131,699.01 (Net of Vat) as at the 1st of April 2025.

11. Whilst Mr Batstone does helpfully set out a chronology as to this Tribunal's cost jurisdiction we are approaching this matter afresh.

RESPONDENT'S SUBMISSIONS

12. Part of the Respondent's submissions in connection with costs relies upon the Respondent's case that the Application had no merit from the outset. In this regard they rely on the fact that the Applicants acquired the farm which was not on the open market with the express intention of seeking to gain vacant possession, something which was echoed by both the Applicants during cross-examination.

13. The Respondent asserts that the Applicants' case commenced with concerns about ditching, with the issue of bad husbandry being raised in the context of an offer to at that stage to make a financial payment if the Respondent and her husband vacated the property. The Applicants then changed solicitors and independently engaged the services of their Expert Witness, Mr Ieuan Williams.

14. The Respondent makes the point that this has to be considered in the context of her and her by now late husband's rejection of the offers made to vacate the premises and this gave rise to the Applicants' case of an allegation of neglect to the part of the farm known as Garth Hill and costings for scrub removal.

15. The solicitor for the Respondent also makes the point that the Applicants' expert, Mr Ieuan Williams, was not retained by HER Law but was part of the landlord's team whereas the surveyor initially appointed by the Respondent (Mr Phillip Meade) declined to act as Expert Witness as well as being part of the Respondent's team.

16. In addition to the respective submissions made by the parties, we as a Tribunal benefited from hearing evidence from Mr Ieuan Williams both in examination in chief and during lengthy cross-examination. We, as a consequence find as a fact that it was clear he formed a number of his conclusions from direct evidence supplied by the Applicants rather than from his own research. The reports provided changed tack

mid-stream ultimately attending to the Applicants' needs rather than discharging his duties to the Tribunal.

CONDUCT PRIOR TO THE HEARING

17. It is very clear from the trial bundles that amount to some 897 pages in total that this matter has been long outstanding and vigorously pursued and equally vigorously defended. In tandem with the application for a Certificate of Bad Husbandry there was evidence of offers being made to the Respondent tenant to surrender her tenancy. That matter was confirmed and touched upon in the Applicants' oral evidence at the Hearing.

REASONS FOR THE DECISION OF THE 17TH of DECEMBER 2024

18. Counsel for the Applicants and Solicitor for the Respondent have provided detailed written submissions together with authorities in respect of which we are grateful. Although we are not bound by the Upper Tribunal decision in ***Willow Court Management Co (1985) Ltd -v- Alexander [2016][UKUT290](lc)*** at paragraph 43 we find the approach taken therein of assistance and have accordingly approached the question of a cost award by adopting the three stage test ("the Three Stage Test in Willow Court") set out in that decision, being as follows:-

    (i) Firstly, consideration of whether there has been any frivolous, vexatious or oppressive conduct;

    (ii) Secondly, if the first hurdle has been passed then and only then should the Tribunal determine whether or not to make a cost order and;

    (iii) Thirdly, if and only when the Tribunal considers it appropriate to make a cost order should it decide either to make a fixed sum cost order ruling on the basis or alternatively rule on the basis of assessment and remit the matter to the County Court for assessment.

19. Whilst the representatives for the parties have provided authorities there is a dearth of similarity between this instant case and others where cost determinations have been dismissed or awarded.

20. The most striking difference is the simple fact that this matter having been commenced and a site inspection plus two days of hearings having been undertaken prior to any decisions being capable of being made, the Applicant landlords sought permission to withdraw their Application.

21. Whilst it is trite law that as opposed to the civil jurisdiction there is no automatic right for the Tribunal to award a cost order against a discontinuing party we find that the simple fact that the Applicants sought to withdraw their application at the close of their evidence and that of their expert also having heard the Respondent's expert in examination in chief and cross-examination are relevant factors to our deliberations. We also take on board the simple fact that as per the decision in ***British Sugar -v- Clay Lake Farm Ltd [2006]*** there is not a significant body of case law defining the meaning of frivolous, vexatious or oppressive.

22. However, following the decision in ***British Sugar(Supra)*** we must adopt a narrow interpretation to frivolous conduct as per the decision in ***E T Marler Ltd -v- Robinson [1974] 1ICR72*** at 76 and also the meaning of vexatious being "to bring or conduct proceedings for spiteful or improper motive". ***British Sugar (supra)*** also defined the meaning of vexatious as "the bringing or conducting of proceedings for spiteful or improper motive".

23. We have also considered the other decisions referred to us that have been determined by both the First Tier and Upper Tribunal.

24. We agree with Mr Batstone that the Applicants were at liberty to apply for a certificate of bad husbandry and were not duty bound to firstly seek a Case D Notice to remedy under the Agricultural Holdings Act 1986 despite the latter being a more practical course of action to follow in the first instance. This decision in turn again demonstrates the Applicants' desire to bring the Respondent's tenancy to an end rather than seek rectification of the alleged failings.

25. In this case we had the benefit of hearing evidence from the Applicant. What was clear was that they seemed to wish to regain possession of the whole they had purchased subject to the Respondent's tenancy, come what may. Telling in this regard was the answer by the First Applicant Mr. Jones when asked if he was a person who always got his own way. His answer during cross examination was "yes most of the time".

26. Although we are not governed by the Civil Procedure rules we can certainly take cognizance of the same. In that jurisdiction a party that discontinues Proceedings would without good reason to the contrary will be required to pay the other party's costs. Here we have a situation where the Respondent had no choice but to either defend the bad husbandry application or concede the same and vacate her longstanding family home. A robust defence was advanced in relation to the application and as referred to above for whatever reason at the culmination of the second day of the hearing the respondents took the decision to simply discontinue.

27. As a consequence of all of the above we as a Tribunal find as a fact that the Applicants acted in an oppressive manner in relation to this application. It was clear

not only from the pre-application paperwork but also the evidence of the Applicants during cross-examination that they were determined at all material times to simply obtain vacant possession of the holding having acquired the same subject to the Respondent's tenancy.

28. The case advanced on their behalf by their expert was; to say the least undermined in cross-examination and we find the evidence advanced far from satisfactory. It was clear the Applicants' Expert tailored his evidence to meet his clients' needs as opposed to providing independent expert evidence to assist the Tribunal. Conversely, we were impressed by the evidence presented by the expert on behalf of the Respondent. He answered all questions carefully and when he was unable to answer conceded the same, always recognizing his duty to the Tribunal rather than in progressing his client's case.

29. For all these reasons we find that the Applicants' conduct has been oppressive. Having made that finding of fact, we need not consider the other limbs of either being vexatious or frivolous. Having said that it was equally clear from the limited evidence we heard that the case did not seem to have any merit in terms of the latter limbs and had been progressed to attempt to secure vacant possession come what may following the Respondent declining the Applicants' offer of a lump sum payment in lieu of surrendering her tenancy, For that reason we also consider the application to have been frivolous and vexatious.

30. Having found that the Applicants acted in an oppressive manner, again for the reasons as set out above, we find that this case crosses the threshold and entitles the Respondent to benefit from a costs order.

BASIS OF ASSESSMENT

31. Understandably the Applicants would seek to persuade the Tribunal, if making a costs order to award the same on the standard basis. Conversely the Respondent seeks costs to be assessed on the indemnity basis. We are directed to the authority of ***Burgess -v- Lejonvarn 2019 [EWHC369](TCC)*** which provided a number of points of guidance being in summary:

i. The discretion to award indemnity costs is wide and has to be exercised taking into account all of the relevant circumstances and within the context of the overall litigation.
ii. Conduct must be unreasonable to a high degree.
iii. The conduct of experts can justify an order for indemnity costs.
iv. Conduct should be taken into account both before and during any hearing.
v. Person who pursue opportunistic and weak claims are taking a high risk and can expect to pay indemnity costs if those fail.

32. For all the reasons as set out above we find as a fact that at best the Applicants' case in this matter was speculative as was evidenced by their Expert's failure to justify his position when cross examined in that regard. The evidence clearly indicates the application was coupled with an attempt to negotiate securing vacant possession of the farm. When those negotiations broke down the Applicants proceeded with their application changing the basis of the evidence relied upon as the matter progressed.

33. As a consequence, we unilaterally find that the costs order in this matter should be assessed upon the indemnity basis.

ASSESSMENT OF COSTS

34. The Applicants have provided, despite not seeking their own costs (for obvious reasons) a cost schedule, that schedule, in total comes to £176,757.25.

35. The Solicitor for the Respondent has confirmed that the Respondent is Vat registered and has provided form N260 as to legal costs incurred together with supporting invoices relating to the costs of the Expert, appointed Agents (Davis Meade) and accountancy advice that all amount to in total £131,699.01 (Net of Vat) as at the 1st of April 2025.

36. We have concluded that the matter based upon our findings as to in summary being;

    i. The Applicants' conduct was oppressive and / or frivolous and / or vexatious resulting in the grant of a costs order in favour of the Respondent on an indemnity basis;

    ii. Having come to the above conclusion we make an interim costs order in favour of the Respondent in the sum of £100,000 (One Hundred Thousand Pounds) payable within 14 days of the date of this Decision.

    iii. If the parties given the above findings cannot agree quantum the matter be sent to the County Court for assessment upon an indemnity basis.

Tribunal Judge T Lloyd.