

**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(AGRICULTURAL LAND & DRAINAGE)**

Case reference : ALT/M/S/2013/016

Holding : 67.02 hectares,
Stonehouse Farm, Stockwood Lane, Inkberrow,
Worcestershire, WR7 4JG

Applicant : William John Jordan

Represented by : Arnold Thomson Solicitors

Respondent 1 : Cathrine Susan Jordan

Represented by : Shakespeare Martineau Solicitors

Respondent 2 : Mary Evelyn Hughes

Represented by : Wright Hassall Solicitors

Type of application : Section 39 — Succession on death

Panel : Regional Judge Thomas
Mr Paul Cherry (Landowner)
Mr M Seals (Farmer)

Date of Hearing : 1 &. 2 June 2016

Date of Decision : 13 June 2016

**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(AGRICULTURAL LAND & DRAINAGE)
Midland Region**

B E T W E E N :

WILLIAM JOHN JORDAN Applicant

- and -

MARY EVELYN HUGHES Respondent

REASON FOR DECISION

1. This is an application made under section 39 of the Agricultural Holdings Act 1986 (“the 1986 Act”) by William John Jordan (“the Applicant”), for a tenancy entitling him to the tenancy of an agricultural holding Stonehouse Farm, Storkwood Lane, Inkberrow, Worcestershire WR7 4JG (“the Holding”) by way of succession to his father Christopher William Jordan (“Christopher”) who died on 14 August 2013. The holding consists of 67.02 hectares, or thereabouts, of arable and grassland. The application is dated 7 November 2013 and the response to the Application by the Respondent is dated 5 December 2013. On 26 September 2013 the second Respondent served Notice to Quit upon the personal representatives of Christopher pursuant to Case G Part I of Schedule 3 to the 1986 Act to take effect on 29 September 2014. The First Respondent took no part in the proceedings and all references to the Respondent are to the Second Respondent.
2. The Respondent has the legal estate of the freehold of the Holding vested in her but she holds it as to half for herself and half for Cathrine Jordan (“Cathrine”) who is the Applicant’s mother. The Respondent was able to serve the Notice to Quit without Cathrine’s co-operation because the tenancy of the Holding is a yearly tenancy and endures only so long as all the parties are content and thus one of several landlords or tenants may give notice to quit.
3. The application was heard on 1st and 2nd June 2016 at Kidderminster before the Tribunal comprising Regional Judge Nigel Thomas, Mr P. Cherry (Landowner) and Mr M. Seals (Farmer). The Applicant was represented by Mr M Thomson solicitor of Arnold Thomson and the Respondent by Mr W. Batstone, Counsel instructed by Wright Hassall. For the Applicant evidence was given by himself, his uncle Brian Jordan his mother Cathrine, who provided a written statement, and his expert Mr Geoffrey Brookes of Laurence Gould Partnership Ltd a farm management consultant. The Respondent’s witnesses of fact were besides herself, her son Mr Nick Hughes, Mr Richard Jordan (the Applicant’s uncle) and Mr Robert Gregory. The Applicant’s representative did not require to cross examine any of these witnesses so their evidence was read as unchallenged. His expert was Mr Gareth Wall of McCartneys LLP who practises as a Rural Practice Chartered Surveyor. Both sides obtained expert medical reports from Dr Alison Lowe and Dr Lisa Brownwell respectively which were agreed.
4. The Tribunal carried out a .site; visit on the first morning of the hearing, when we visited the 1 folding and viewed the buildings and the land. We were impressed by what we saw in that the growing crops namely winter wheat and barmy, oil seed rape and beans were flourishing and the pasture and grassland in good heart. There was some new fencing and the buildings were well kept and tidy. Our impression was of a traditional holding which was well farmed but in need of further investment in the short to medium term.

5. The Holding comprises a substantial listed period farmhouse with 4/5 bedrooms, 2 semi-detached 3 bedroom cottages, a range of traditional and modern farm buildings. Cathrine and her younger son Tim occupy the farmhouse; and the Applicant and his wife and two children occupy one cottage. The other cottage is occupied by a retired farm worker.
6. The land is within a ring fence and is generally level with some gently sloping fields and is laid down predominantly to arable cropping some permanent pasture and temporary grass. The land is registered with the Rural Payments Agency for the Basic Payment Scheme. The entitlements are in the Applicant's name and the Holding was entered into Natural England's Entry Level Stewardship Scheme.

The issues

7. The Respondent accepts that the Applicant was and is eligible to succeed to the tenancy the question is therefore one of suitability. The Respondent contests the Applicant's case that he is suitable to succeed to the tenancy of his father because (a) he lacks the ability to farm the Holding and thus comply with the relevant covenants in the tenancy agreement (b) that he has health issues namely bipolar affective disorder albeit which is in remission and although she accepts that his condition does not prevent the Applicant from managing a farm, the Respondent points out it is necessary for him to take medication to minimise the chance of a relapse and (c) he has insufficient financial standing to carry on the farming of the Holding.

Background

8. Whilst the Applicant's father Christopher was alive the Holding together with other land totalling by the time of Christopher's death about 700 acres was owned or tenanted by a partnership known as WB Jordan and Sons. From the family tree contained in the bundle it can be seen WB Jordan was Christopher's grandfather and thus the Applicant's great grandfather. He was also the Respondent's father so she is the Applicant's great aunt. The freehold of the Holding was left by WB Jordan to his two children namely Arthur Jordan, the father of Christopher, and the Respondent, but subject to a life interest in favour of his widow.
9. Arthur had an Agricultural Holdings Act tenancy of the Holding and upon his death on 21 April 1991 Christopher applied for a succession tenancy and a direction by consent by the ALT dated 5 February 1993 was made granting him a tenancy on 2 June 1993, the landlords being the Respondent and Arthur's widow Margaret. After Arthur's death his share of the Holding passed to Margaret who in turn transferred her half share of the freehold of the Holding to Christopher. Christopher and the Respondent were registered as proprietors of the Holding on 15 May 2003 under title number WR76989.
10. Apart from Christopher, Arthur and Margaret had three other sons, namely Richard, Stephen and Brian. Christopher and Cathrine have three children namely the Applicant, Sarah and Tim.
11. WB Jordan died on 5 March 1967 and Arthur took on the business being eventually joined in the partnership by three of his sons Christopher, Stephen and Brian. It is unclear whether Richard was ever a partner.
12. When Arthur died on 21 April 1991 his widow Margaret succeeded to his share of the partnership so that there were four partners namely Margaret and three of her sons Christopher, Stephen and Brian. Margaret has recently died. Richard the fourth son farms elsewhere and is not a partner.
13. Stephen has no children but Brian has two sons.
14. The Applicant has been employed by the partnership since 1998 (when he was 16) although he did subsequently attend agricultural college so it may be the case that his full time employment

with the partnership dates from 2003 when he had turned 21. As mentioned the Applicant is married and has two children; he lives at No 1 Stonehouse Farm cottages.

15. Tragically Christopher committed suicide in 2013. He left a Will dated 8 March 2010 designating his brother Brian as successor to the tenancy to the Holding. By his Will and in the events which have happened Cathrine inherited Christopher's entire estate, which for probate purposes was valued at £1,597,000 net, on which no IHT was payable as his estate passed to his widow. Probate was obtained on 10 August 2013. The Will and probate are contained in the hearing bundles.
16. Brian told us in evidence that he had agreed a sum with Cathrine in settlement of Christopher's share of the partnership. It is apparent from the partnership accounts which are to be found in Bundle 1 that the partnership has substantial assets and capital and the partners' current accounts were healthy. We find that Cathrine therefore has substantial assets at her disposal namely her half share of the freehold of the Holding, 37 acres of land at Nobury and her share of the partnership assets.
17. Christopher's suicide set off a train of events which resulted in the Applicant suffering a period of mental deterioration. He was assessed under the Mental Health Act and received intensive treatment. On 5 September 2013, shortly after his father's death, he arrived unannounced at the home of the Respondent. Fortunately she was away on holiday in France as the Applicant was in a disturbed and agitated state. He was seen there by a Robert Gregory the Respondent's handyman and he was sufficiently concerned to contact the Respondent's son who was holidaying with his mother in France. On 9 September 2013 the Applicant returned to the house and although the Respondent was again not at home, on this occasion she was out shopping, he left on her doorstep a plastic bag containing 32 pages of vitriolic and accusatory statements. This must have been very distressing and frightening for the Respondent who was then in her late 80s.
18. We have the benefit of two long detailed and helpful medical reports which indicate that the Applicant's mental health problems are now in remission and controlled by drugs which he takes on a regular basis. The Applicant has close support from his wife, his family and his medical team. The medical experts are agreed in the words of Dr Brownell, the psychiatrist instructed on behalf of the Respondent that running the farm is unlikely to have any substantial negative impact on the Applicant's mental health. And she adds

"If Mr Jordan were to be my patient and were to ask my advice, then I would support his decision to become the tenant of the farm."

19. We find as a fact that the Applicant's mental health is now stable and that there is no reason on this account why he should not run a farm such as the Holding.
20. The Applicant has in fact farmed the Holding since October 2014 and as noted at paragraph 4 we were impressed by the look of the Holding, and the way it was being farmed. We find as a fact that the Applicant is a good farmer who has the necessary competencies to run successfully a farm such as the Holding. His presentation of the Holding and its crops together with his plans for the future all indicated to us that he has and is giving appropriate thought to maintaining a successful farming business.

Suitability

21. By s. 39(2) of the 1986 Act the Tribunal is required to decide whether a person is and continues to be an eligible person (about which there is no issue in this matter) and whether he is a "suitable person to become the tenant of the holding." By s. 39(8) in deciding upon suitability the Tribunal

"shall have regard to all relevant matters including

- a. the extent to which the applicant... has been trained in or has had practical experience of agriculture
 - b. the age, physical health and financial standing of the applicant
 - c. the views (if any) stated by the landlord on the suitability of the applicant..."
22. As noted above the arguments about suitability concentrated on (a) the Applicant's mental health (b) inadequate abilities to farm the holding and (c) his financial standing.
23. With regard to the mental health issue we have very largely dealt with these above. There is concern on the part of the Respondent that should there be any relapse then this could jeopardise the farming of the Holding in accordance with the covenants in the tenancy agreement. That, of course, is a legitimate concern: however set against that we have the very clear opinion of two medical experts that the Applicant's health should not per se prevent his farming the Holding (assuming of course that technically he is a good farmer) and that running the business will not have a deleterious impact upon his health, again assuming he continues to take his medication and respond to any early warning signs of stress. The reports make it clear that there is an effective early warning system in place to deal with his condition. It would in the Tribunal's view be unjust and wrong to find him unsuitable on this basis.
24. The Tribunal was impressed by the way in which William gave his evidence which was calm, helpful and lucid.
25. As to his farming abilities we have as noted above found the Applicant to be a good farmer. The Respondent however raised concern in this regard on the basis that he had, despite his age, not been made a partner of WB Jordan and Son and was not named as the designated successor to the tenancy in Christopher's Will. Brian in giving his unchallenged evidence said the issue of making the Applicant a partner prior to Christopher's death had simply not arisen as 4 partners was quite enough, he did not think the Applicant at 31 (in 2013) was particularly old and therefore nothing could be read into his not being made a partner at the time. Again Brian said nothing was to be read into the fact that the Holding was to be farmed by the Applicant on his own account, rather than as part of the partnership. The family situation was changing in that he had two sons who were looking to farm so that now was as good a time as any to let the Applicant farm the Holding outside the partnership. Brian said he and Stephen would support the Applicant in whatever way they reasonably could and had employed him already to do work for them, such as harrowing.
26. The fact that Christopher had not named the Applicant in his Will as the designated successor to the tenancy was as evidence of anything, neutral. There was no will file or any other evidence as to what Christopher's thinking was when he made his will and a number of alternative explanations suggest themselves as to why Brian was nominated as successor. We decline to draw any inferences to the effect that Christopher thought the Applicant was unsuitable to be the tenant of the Holding. But in any event having seen what the Applicant was capable of on the site view, we consider that as to his farming capabilities he is clearly suitable to be the tenant of the Holding.
27. Finally there is the question of financial standing. In his Skeleton Argument Mr Batstone for the Respondent indicated that this aspect of suitability would be the most likely to take up time in cross examination and in closing submissions, and indeed that is what proved to be the case.
28. Earlier in this decision we noted the fact that the Applicant attended agricultural college and has throughout his working life worked for the partnership of WB Jordan & Son. From October 2014 he has farmed the Holding which activity he combined with some continuing employment by the partnership and contracting work for it.

29. The Applicant has produced accounts for his farming business at the Holding for the period from 1 October 2014 to 1 April 2016. The accounts are professionally produced from information supplied by the Applicant's wife, who does, it seems, have a background in accounts. Mr Batstone with some force points out that these accounts even if accurate, so far as they go, do not present a realistic picture so far as the application is concerned. Should the Applicant become the tenant then the costs he would have to face would be far greater than shown in them so for instance his rent bill would rise, he would become liable to meet higher council tax and water bills, household insurance, office costs and so on. We accept that this would be the case.
30. The experts Mr Brooke on behalf of the Applicant and Mr Wall on behalf of the Respondent both produced budgets which took into account these cost increases. The budgets produced by both experts were broadly equivalent. Indeed Mr Wall told us that the methodology behind the budgets was very similar except that his estimate for crop prices was lower (Mr Bookes used normalised prices) and Mr Wall omitted from his budgets any rent from the farm cottages and off farm work. These omissions made all the difference to the outcome of the respective budgets, that is to say the budget produced by Mr Brookes' showed a profit of about £12,000 to £15,000 that of Mr Wall showed a loss. It is clear that on either budget a farming enterprise based on the Holding alone is marginal.
31. Mr Wall explained his budget was produced on what the Holding would yield, not taking into account off farm work. He had not factored in such earnings as he was not told about any plans for agricultural contracting by the Applicant. Mr Brookes on the other hand calculated that farming the Holding in the manner envisaged by his budget would allow the Applicant to carry on an agricultural contracting business off the Holding at £25 per hour to include– the use of his tractor that would yield an income of about £14,000 per annum.
32. In giving oral evidence Mr Wall calculated on the basis of the Nix table that that would mean the Applicant would have little or no spare time to see his family and for recreation. He accepted in cross-examination that the Nix table was a guide only and that farmers are used to working long hours. Mr Wall did not go as far as to suggest that earnings of £14,000 per annum were not attainable just that to do so would require a great deal of hours spent at work.
33. Both experts were agreed that to achieve this level of off farm contracting would require effort on the Applicant's part to go out into the market place and to obtain this work.
34. Having observed what the Applicant is capable of in farming the Holding and having seen him giving evidence supported as he was by his wife and family we find that the Applicant is capable of generating an income of approximately £14,000 from this source.
35. The position with regard to the cottages on the Holding is less clear. Mr Brookes' budget assumes an income stream from at least one cottage. Mr Batstone pointed out that the cottages could not be let without the consent of the landlord. Mr Brookes stated that in his experience the question of surplus cottages would be established upon a rent review and that in effect one or both cottages could be surrendered in exchange for a reduced rent which Mr Wall said would amount to about £1,000 to £1,250 per annum per cottage. Clearly the landlords upon a rent review would be unable to agree a rent based upon one cottage being let and then refuse to consent to a letting. Moreover it seems that the retired farmworker who occupies the other cottage on the Holding does or may be required to pay some rent.
36. The most therefore that we are prepared to find is that the cottages will continue to provide some financial benefit to the Applicant, should he become tenant, either by way of a reduced rent or by an income stream. The amount will be modest but nevertheless a positive contributor to the income to be derived from the Holding.

37. On this basis we find that the budget of Mr Brookes which takes into account these two factors does demonstrate that the Applicant can run the Holding in a profitable manner. The margins however will be very tight and as both experts agree success or failure will depend upon the Applicant showing the ability to obtain contracting work.
38. The Applicant told us when giving oral evidence that his wife should it be necessary could return to work as a credit controller. Mr Batstone made the point quite correctly that the Applicant's two children are very young being less than 3 years old and so need constant care, set against that is the fact that there is clearly a great deal of family support for the Applicant which would no doubt extend to child care. However we have no idea what job Mrs Jordan could obtain or where and what sum Mrs Jordan could contribute (if anything) and so we shall do no more than note this possibility and bear it in mind in considering the Applicant's suitability.
39. The Applicant has very limited cash reserves of less than £20,000 and RBS has offered an overdraft facility of £36,000 should he obtain the tenancy. Most significantly however is the fact that Cathrine has shown her support for the Applicant by gifts and loans (to enable him to buy his tractor). The Applicant said in oral evidence, and we accept, that his mother has indicated continuing support and we also find for the reasons given that she has at her disposal substantial assets.
40. We find therefore that the Applicant's financial standing is sufficient to qualify him as a person suitable as a successor tenant to the Holding and we make a direction accordingly.

The Tribunal directs in pursuance of the said Decision as follows:

The Tribunal directs under section 39 that the Applicant is entitled to a tenancy of the Holding described above

This section 39 direction is made after the original relevant time and the Tribunal acting under section 46(2) extends the relevant time to 21 June 2016.

No order is made as to the costs of the proceedings.

(Signed) Judge Nigel Thomas