

AGRICULTURAL LAND TRIBUNAL (WALES)

ALT 6209

BETWEEN

MR. ROBERT WINSTON PHILIPPS

and

MRS. ISOBEL SHIRLEY PHILIPPS

Applicants

AND

MR. WILLIAM ROBERT DAVIES

Respondent

REASONS FOR THE DECISION

re. the Holding known as

LAND AT NEW INN, AMROTH, PEMBROKESHIRE

1. This is an Application dated the 17th day of March, 2006 to the Tribunal for a Certificate of Bad Husbandry under Section 26(3) of the Agricultural Holdings Act 1986 ("the Act"). This section replaced section 2(4) of the Agricultural Holdings (Notices to Quit) Act, 1977.

2. The hearing of the application was at The Gower Hotel, Milford Terrace, Saundersfoot, Pembrokeshire on the 2nd and 3rd November, 2006 and at Cothi Bridge Hotel, Pontargothi, Carmarthen, Carmarthenshire on the 7th and 8th December, 2006. The Applicants were represented by Mr. William Batstone of Counsel instructed by Messrs. John Collins and Partners, Solicitors, Swansea and the Respondent by Mr. Simon Leach of Messrs. Burges Salmon, Solicitors, Bristol.

3.1 Section 26 of the Act must be read with Schedule 3 Part II Paragraph 9 of the Act which reads as follows:

"9 (1) For the purposes of Case C 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"

3.2 Under the Act a Tenant in receipt of a Notice to Quit alleging that it is founded upon such a Certificate granted by the Tribunal is not entitled to demand arbitration as to the reasons stated and the Tenant's right to serve a counter-notice and thereby render the Notice to Quit given to him ineffective unless the consent of the Tribunal is first obtained is excluded provided that the Landlord follows the procedural requirements and serves a valid Notice to Quit. In that sense such a Notice to Quit is sometimes stated to be "incontestable".

3.3 Good Husbandry. This term is defined in Section 11 of the Agricultural Act 1947 (“the 1947 Act”) 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 insofar 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 ways 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
- “(f) the necessary work of maintenance and repair is being carried out”

4. The holding comprises 15.31 hectares (37.87 acres):

- a. 10.59 hectares (26.16 acres) O.S. Field Numbers 5333 and 7638 as grass ley;
- b. permanent pasture;
- c. 3.95 hectares (9.76 acres) as rough grazing – O.S. Field Numbers 0052 and 0062 (part); and
- d. 0.78 hectares (1.94 acres) as woodland and scrub woodland – O.S. Nos. 8657 and 2456.

There are no dwellings or other buildings on the Holding.

5. On the 29th September, 1989 a Tenancy Agreement was entered into between Mrs. Ena Bodimeade (the Landlord) and the Respondent.

6. The Tribunal carried out a site visit to the land on the morning of the 2nd November, 2006.

7. The Applicant, Mr. Robert Winston Philipps, of Telpin Farm, Amroth gave evidence under Oath regarding his purchase of the Holding. Before he became the owner the Respondent had brought a considerable quantity of rubbish onto Enclosure 0052 part of the Holding. He was informed that there was a very toxic smell in the area. On the 23rd September, 2004 he wrote to the Environmental Health Department at Haverfordwest and complained that the Tenant “has deemed for reasons only known to him, to use part of this land as a tip. This includes, asbestos, chemicals, batteries, plastic, tyres, rotting bales, silage and other household and farm waste... “. He did not discuss the matter with the Respondent because he was not yet the owner.

A letter from his Solicitors dated the 21st October, 2004 required the Respondent to remove all items deposited on the land within one month but there is no response in the correspondence.

The grazing fields 0052 and 0062 did get wet in winter but they were not very wet. They were good quality rough grazing fields. They were not difficult to spray or top. They were used for grazing in the past and had been topped off. The photographs taken in June 2006 showed a severe problem of dock infestation in Field 2062.

In cross-examination, he confirmed his Report to the Environmental Department in September, 2004. He would have complained to the Tenant if he had been the Landlord at the time. He had suffered a major heart attack two years ago and matters had been put on hold. He also agreed that the Respondent had removed a lot of scrap metal from the Holding in 2004. He did not know what was buried in the pit on the field and he did not carry out any tests for contamination. There was more than one pit. He did not accept that Fields 0052 and 0062 were very wet fields. The Respondent's father had topped those fields and grazed stock there but the Respondent had not grazed stock in those fields since the 1980's. He agreed that there were several disputes between himself and the Respondent. In re-examination the Applicant told the Tribunal that Long Lane, Amroth was owned by the Respondent. It was only a mile from Amroth Farm formerly rented by the Respondent. Yet the rubbish from Amroth Farm was all taken two or three miles and dumped on the tenanted land.

8. Mr. P. Anthony Owen, Chartered Surveyor gave evidence on Oath. He had carried out his main inspection of the Holding on the 29th September, 2006.

He found Enclosures 5333, 7688, 1271 and 0043 in a reasonable standard of efficient production.

He saw dock, creeping thistle and other weeds in Enclosure 2062. In places willow, bramble and bracken had encroached into the field. There was a general lack of fences and gates on the Holding. Fields 0052 and part 0062 had become overgrown with large areas of bramble, gorse, willow and ash. He saw no evidence of management of these fields on his inspection, just abandonment. The hedge between Fields 0052 and 7638 had not been cut, trimmed nor laid for a number of years.

On his inspection of Field 0062 the ground was very overgrown and he noted partially buried tyres, plastic, rusting metal and parts of machinery together with burnt remains of plastic as shown in Photographs 51-76. Part of the Holding had been used to bury waste. Such practice constituted extremely bad husbandry in his opinion.

In cross-examination, Mr. Owen took the view that the dumping and burial of materials were contrary to Rule Sub Section 1 and 2A and 2D. It was very hard to carry out agricultural activities in that area of dumping even though it was not now stocked. The land would benefit from grazing. His Report did not contain any soil samples and he agreed the land was Grade IV coming up into Grade III. He denied that the fences, in general, had been maintained. The tipping had not taken place in the corner of unproductive land

and the area involved in the tipping was not de minimis. He reiterated what he considered to be active management for Nature Conservation and in his opinion non-management or abandonment amounted to bad husbandry.

9. The Respondent, Mr. William Robert Davies, of Hagloe House, Awre Road, Blakeney, Gloucestershire confirmed his signature on his Statements dated 22nd October, 2006 and 20th November, 2006.

In 2003 he purchased the farm known as Hagloe in Gloucestershire. He was previously a Tenant of Amroth Farm, Amroth and currently a Tenant of Long Furze, Amroth. He had also owned land at Long Lane, Amroth which was sold in September, 2004.

He farmed the Holding on his own following the death of his father in 1982. He was informed in March, 2003 that the Holding was being sold to the Applicants. He had passed the complaints to Amroth Community Council by the Applicant on to his Solicitors who replied to the Applicant rejecting the complaints. He entered a Tir Cynnal Agreement on the 3rd May, 2006. He did not keep cropping records for the Holding other than the Welsh Assembly Annual IACS documents and he did not have historic spraying records. Enclosures 7638 and 5333 were the best fields on the Holding and he generally got a good crop off these fields. Enclosures 0052 and part 0062 were the most difficult fields and were very wet. He tried to grow barley in 1991/1992 but apart from this the fields were not used in arable production. Enclosure 1271 was a wet field but it did yield a crop in a good year.

Following his move to Gloucestershire in 2003 he visited the Holding at least twice a month and travelled down to Amroth by tractor – four hours down and four hours back. At around September, 2003 he did start to move equipment and belongings from his farm at Amroth to Gloucestershire and some of the material was taken to the Holding for temporary storage. The metalwork was to be scrapped or sold. He denied bringing asbestos onto the Holding or dumping chemicals. In view of the fact that the Holding carried no livestock, he had not replaced any gates. He denied removing fences or that the land had become dirty and weed infested. Furthermore, he had not allowed the rutting or erosion on the fields. The hedgerows in Enclosure 2062 were to be cut that week and the field had been sprayed to deal with the dock infestation. He proposed re-seeding the next year. There was not a severe dock and nettle infestation problem in Enclosure 0043 and the bales previously stored there had been removed. There was not a severe dock and nettle infestation in Field 1271. As far as the materials dumped on Field 0052 were concerned, he agreed that some material had been buried in that field. Silage bales had been removed and he had not brought any chemicals onto the land. He did not accept that the field was completely overgrown and impenetrable. He could not recall any gates 011 the farm boundaries for Enclosures 7638 and 5333. The hedgerows were being cut that week. He disputed that he had failed to observe the rules of good husbandry.

In a supplementary Statement, he denied sub-letting the fields to Mr. David Tremellen. It was simply the sale of grass crops for which he received £45.00 per acre. He had spread fertiliser on Fields 0043, 1271, 7638 and 5333 the previous April. He had lightly topped the scrub areas in Enclosures 0052 and 0062 before 2003. Enclosure 2062 was re-seeded in 2003 and he did not have a problem with dock then and he sold the grass from that field. Later on, noticing a problem with dock he made arrangements for the field to be sprayed but the Contractor did not carry out the work. The dock had emerged that year and had been sprayed but the spraying had killed off much of the sward. He would re-seed the field after taking the crop. The hedge following the boundary between Enclosures 1271 and 0062 was made of willow which had been allowed to grow to form a hedge. Part of it had been left for the 25% of the hedges to be left uncut for Tir Cynnal and he would cut the field side of the hedge next year and in the ditch.

In cross-examination the Respondent denied that he dumped rubbish on the Holding for ‘spite’ or to prevent the purchase of the land by the Applicants. The scrap metal on the land had been cut up and taken away. He could have put all the waste on his other property but there was an easier access to the Holding

land. All the items deposited were to do with farming such as tyres and drums. He denied abandoning Fields 0052 and 0062.

10. Mr. David Anthony Tremellen, Tremolet, Pendine confirmed his signature on his Statement dated 20th November, 2006 and upon a letter to the Applicants in June, 2006.

He regretted if there had been confusion in his letter to the Applicants. The land had not been let to him. The agreement was that he would be able to cut the grass crop. Although he did not have control or possession of the land he fertilised it and he knew that Mr. Davies went on and sprayed dock in some of the fields before he had taken one of the cuts. He had no maps and did not even know the field numbers. All he agreed was the sale of the grass crop and none of the land had been entered on his SFP Form.

11. Mr. Mark Andrew Sanders, Chartered Surveyor, gave evidence on Oath. He had inspected the Holding on the 2nd and 31st May, 2006 and on the 19th September, 2006. He had prepared a cropping history of the Holding and the farming system now involving permanent and temporary pasture managed by mowing the silage was consistent with his inspection. The application was based on the condition of Fields 0052, 0062 and 8657. These fields were not being actively farmed. He noted that the IACS Returns indicated that the land use on these fields on the 31st December, 1991 was barley stubble and in the absence of grazing livestock the fields had not been actively farmed since the early 1990's. The Holding was subject to Tir Cynnal management enquiries and Fields 0052, 0062 and 8657 were designated as "habitat areas" for the purposes of the Scheme. Out of a total holding of 37.87 acres the areas which were not being actively farmed, Enclosures 8657, 0052, 0062 and 2456 amounted to 11.57 acres and represented 31% of the total acreage. The Tenancy Agreement imposed no restriction or obligations on the Tenant to farm the Holding in any particular manner.

The land was predominantly either Grade IV or at the low end of Grade III and there had been no management of the Holding by the current owners. Applying the tests set out in Section 2 of Section 11 of the Act it was his opinion that the Respondent was complying with the rules of good husbandry in respect of the actively farmed land. The Tir Cynnal Scheme provided financial incentives for maintaining areas of natural habitat for nature conservation purposes. There were breaches of the Tenant's responsibilities for maintenance and repair which related primarily to the absence of stock-proof boundaries and gates, which were not necessary in view of the system not involving livestock.

At the time of his inspection, there was evidence of encroachment of primary bracken around the Field margins but not sufficient to impact on the maintenance of the Holding to a reasonable standard of efficient production.

In his opinion, the Landlord should have made use of Notice to Remedy in order to identify breaches of repairing and maintenance obligations. In his view, 69% of the total area was being actively farmed and supporting a reasonable standard of efficient production. The remaining area comprising woodland and rough grazing was not being actively farmed. The soil analysis and analytical reports demonstrated that the Holding was being maintained in a good state of cultivation and fertility with the exception of Field 1271.

In cross-examination, he maintained that there was nothing unusual in the arrangement the Respondent had with Mr. Tremellen and this would not contradict the rules of good husbandry. There would be a concern if the material buried by the Respondent included asbestos and chemicals but it was de minimis in the productive capacity of the land and as it was self-evident it was not mentioned in his Report. He could find no evidence of contamination on his inspection. The peril of asbestos was an issue. It was legal to bury chemical containers but there was a potential contamination. If contamination had not taken place there would be little impact on the productive capacity.

He did not show a lack of independence by not dealing with the burial of materials. A lot of work had recently been carried out and he had inspected before this work had been done. The Respondent did not deal with the Tir Cynnal habitat until the rules had been made clear to him because he did not wish to be taken out of the Scheme. When the rules were clarified he got on with the work. The Respondent understood that he could not abandon the land. If there was no contractual term, the Landlord's consent was not required for the Scheme. The correspondence produced did show management to a degree. He was not an expert on contaminated land. Everything had been taken away or buried. A farm tip was for farm waste and there was no standard practice to import waste and dump it.

Taking the Holding as a whole, the burial site was less than one quarter of an acre and had no effect on the productive capacity. Any plastic sticking out of the ground would be a danger to livestock.

As far as the neglect of hedges were concerned, the road hedges were maintained but he did not know by whom. The dumping of rubbish could not be dealt with by Notice to Remedy. Other defects could be dealt with by such a Notice. The Respondent had the option to put right the matters set out in the correspondence.

12. In the final submissions by the representatives for the parties, the evidence was reconsidered and the Tribunal was inter alia referred to the decisions in *Cambusmore Estate Trustees -v- Little* (1991 SLT (Land Ct.33)) and *Hale -v- Stone* (South West ALT 27/71 on 20th March, 1998) and *Goldsmid -v- Hicks* (SE1547) – 25th February, 2002.

13. The application before the Tribunal is that the Respondent is not fulfilling his responsibilities to farm in accordance with the rules of good husbandry. In answer to the question “when the state of husbandry on the holding is to be assessed”, the Tribunal has taken into account what was said in the decision in *Hale -v- Stone* and followed in *Goldsmid -v- Hicks* ‘that the state of husbandry is a “state of affairs” existing at the time, not merely a matter of “instant” physical condition at the time of the hearing’.

14. On the inspection of the site the Tribunal found:

- (1) O.S. No. 2062 – evidence of long time poor management shown by the low quality work on the ditches and hedges and the long time dock problem. This will affect the production for several years. The hedges were allowed to become overgrown. The Tribunal find that the Respondent has not maintained a reasonable standard of efficient production as respects both the kind of produce or its quality in this field.
- (2) O.S. 0052 and 0062 and 8657 – part of the Tir Cynnal Scheme. This Scheme requires active management but the Tribunal found that the fields had been abandoned.
- (3) Enclosure 0052 had been used for dumping rubbish, scrap metal, tyres, plastic and silage bales some of which had been brought onto the Holding by the Respondent from his other properties. The photographs submitted to the Tribunal also showed corrugated asbestos sheeting, organic material, timber, metal oil cans, glass and alkathene piping. The Tribunal find that these activities constitute extremely bad husbandry.
- (4) In general the Tribunal found on inspection that other than on the road sides there was no evidence that the hedges on significant parts of the Holding had been maintained. In particular, the large butts of plants and aprons indicated that no trimming had been carried out for some years. There was low quality work on the ditches. The gates and gateposts had been removed or become dilapidated. Part of the sward had a severe dock and weed infestation problem.

- (5) The Tribunal found that the recent work carried out by the Respondent was a belated effort to catch up. The Tribunal found the evidence of the Respondent unreliable in his contention that there had been annual topping because much of the growth was of a substantial proportion.
- (6) The Tribunal was impressed by the evidence of the expert for the Applicant, Mr. Anthony Owen. His evidence was corroborated by what the Tribunal found on their inspection.

15 The Tribunal having considered the application and other documents submitted unanimously find that the Respondent is not fulfilling his responsibilities to farm the holding in accordance with the rules of good husbandry and grant a Certificate accordingly.

16. The Tribunal were asked to include a Certificate under Section 25(4) of the Act specifying short Notice. We direct that the minimum period of Notice for Termination of the Tenancy pursuant to our Certificate should be a period of three months which may terminate on a date other than at the end of a year of the Tenancy.

17. Mr. Batstone on behalf of the Applicant reserved the right to address the Tribunal as to an Order for Costs. If there is such an application, the Tribunal are prepared to reconvene, but the present view of the Tribunal is that the Respondent has not acted frivolously, vexatiously or oppressively in connection with the application.

DATED this 7th day of February, 2007

(Signed) B.L.V. Richards

B.L.V. Richards

Chairman

NOTE: Mr. J.H.W. Reeves, a newly appointed lay member of the ALT was present as an observer throughout the hearing and deliberations of the Tribunal. Sir Geoffrey Inkin, a Judicial Commissioner, was present as an observer on 2nd November, 2006. They took no part in the discussions and made no observations to the members of the Tribunal about the matters in issue.