

AGRICULTURAL LAND TRIBUNAL – WALES

CERTIFICATE OF BAD HUSBANDRY

HOLDING: Hendre Farm
Hendre
Near Mold
Flintshire

BETWEEN: Tarmac UK Ltd Applicant
Millfields Road
Ettingshall
Wolverhampton
West Midlands

AND

Colin Hughes Respondent
Hendre Farm
Hendre
Near Mold
Flintshire

WHEREAS an application dated 27 November 2007 was made to the Agricultural Land Tribunal (Wales) under Section 9 (1) of Part II of Schedule 3 of the Agricultural Holdings Act 1986 for a Certificate of Bad Husbandry in respect of the holding known as Hendre Farm comprising 0.692 hectare.

AND WHEREAS a Tribunal comprising Mr J A F Buxton (Chairman), Mr J H W Reeves (Landowners panel) and Mr I Lewis (Farmers panel), having been duly appointed in accordance with the provisions of the Agriculture Act 1947 (as amended), sat at the Beaufort Park Hotel, Mold on 10 April 2008, 15 July 2008 and 14 January 2009 to hear and determine the said application.

NOW THE TRIBUNAL, having considered the application, the documents presented, the evidence given by the Applicant and the Respondent and having inspected the land, do hereby grant a Certificate of Bad Husbandry for the reasons given in the Schedule annexed hereto. In exercise of its powers under Section 25 (4) of the Agricultural Holdings Act 1986 the Tribunal directs that the minimum period of notice for termination of the tenancy shall be 12 months ended on 25 March 2010.

The Tribunal makes no Order for costs.

Dated this 3rd day of March 2009.

Signed. J A F Buxton – Chairman

I hereby certify that this is a true copy of the decision of the Tribunal.

Signed
Tribunal Secretary

IN THE AGRICULTURAL LAND TRIBUNAL

WALES AREA

BETWEEN:

TARMAC UK LIMITED

Applicant

-and-

COLIN HUGHES

Respondent

DECISION OF THE TRIBUNAL

- 1 By Application dated 21 November 2007 Tarmac UK Limited, the Registered Office of which is situated at Millfields Road, Ettingshall, Wolverhampton, West Midlands WV4 6JP (“the Applicant”) applied to the Tribunal under Section 2 (4) of the Agricultural Holdings (Notices to Quit) Act 1977 (now replaced by paragraph 9 (1) of Schedule 3 Part 2 of the Agricultural Holdings Act 1986) for a Certificate that Colin Hughes (“the Respondent”) of Hendre Farm, Hendre, Near Mold, Flintshire (“the Farm”) is not fulfilling his responsibility to farm the Farm in accordance with the rules of good husbandry.
- 2 The Farm now extends in total to approximately 0.692 hectares (approximately 1.71 acres) and includes a 2-storey stone Farmhouse, a small range of farm buildings and approximately 0.453 hectares (1.12 acres) of permanent pasture. The Farm forms the residue of the land comprised in a written Tenancy Agreement dated 12 December 1930 granted by the North Hendre Lead Mining Company Limited to Mr Edward Jones which had commenced on 30 November 1930 and then extended to slightly over 15.78 hectares (approximately 39 acres). Edward Jones died in or about 1978 following which his daughter Berys Jones succeeded to the tenancy and at a later date married the Respondent. He duly informed the representative of Alfred McAlpine Plc, the Company then holding the freehold reversion, of his wife’s death by formal notification dated 22 September 1986. Alfred McAlpine Plc thereafter wrote to the Respondent by letter dated 8 October 1986 in which he was informed that he would be advised in due course of the Company’s decision in respect of the tenancy. At that time the Respondent was living in the Farmhouse at the Farm, as he now does, and carrying on the farming. Following the letter dated 8 October 1986 there is no evidence that Alfred McAlpine Plc, or its agents, in fact communicated with the Respondent for the purpose of formalising the tenancy that had been indicated might be granted to him or indeed for any purpose, other than that of recovering possession of parts of the Farm. By Notice to Quit dated 18 July 1989 the Respondent was required to give up possession of a substantial part of the Farm on 31 August 1989, the Notice being given on the ground that possession was required for a non-agricultural purpose, namely the extraction of minerals, planning permission having been granted on 14 June 1989. The letter under cover of which the Notice was enclosed was (in part) headed “Tenancy Agreement dated 12 December 1930” and the third paragraph of the letter stated that the Company Estates Manager would like to meet the Respondent “to discuss formalising [the Respondent’s] occupation of Hendre Farm under a fresh arrangement”. Thereafter, under cover of a letter dated 29 March 1990, again headed “Tenancy Agreement dated 12 December 1930” a further Notice to Quit of the same date, in respect of a smaller area of land originally comprised in the 1930 Tenancy Agreement, was served on the Respondent requiring possession on 1 May 1990. However, the proposal was put to the Respondent in the letter that he could continue to occupy the area of land to which the earlier

Notice related under a temporary grazing licence. The Respondent accepted this proposal and continued until 1994 to occupy part of the land to which the earlier Notice to Quit related on a series of grazing licences. Each of the Notices to Quit which were unchallenged by the Respondent were given pursuant to Clause 9 of the 1930 Tenancy Agreement which was in the following terms:

- “9. The Landlords may at any time retake possession of any portion of the Farm (except the house buildings and garden at the Gwrachen) for building quarrying mining or for any other purpose connected with the working development or exploration of the Landlords’ adjoining or any other property belonging to them or for any purpose other than agricultural on giving to the Tenant one calendar month’s notice in writing at any time and allowing the Tenant a reduction in rent at the rate of Thirty shillings per acre for the land so taken and also making full compensation for every crop or preparation for a crop on the land of which the Landlords resume possession but such notice shall not terminate or entitle the Tenant to terminate the tenancy hereby created except in regard to the land so taken.”

The effect of the Notices was to extinguish the entirety of the land from the 1930 Tenancy Agreement, apart from the Farmhouse buildings and the small area of land which now comprise the Farm.

- 3 The freehold reversion of the Farm was registered in the name of the Applicant on 10 November 1992. Preceding the present Application the Applicant’s management of the Farm had been limited to attempts over a period of about 5 years to secure the rewiring of the Farmhouse, albeit in the absence of any co-operation from the Respondent. The Tribunal accepts the evidence given by Mr Andrew Kent on behalf of the Applicant that an initial inspection of the Farm was undertaken in 2002, or about 10 years after the Applicant had acquired its interest in the Farm, when the need for the rewiring of the Farmhouse was identified. No contractor to undertake this work was instructed until February 2004. Thereafter attempts were made to obtain the co-operation of the Respondent in relation to the proposed electrical work in July 2004, February 2005 and February 2007. None of these attempts were successful and the work was never carried out. More recently Mr Kent attended the Farm in 2006, 2007 and finally in February 2008 for the purpose of taking photographs of the state and condition of the agricultural land and buildings but not the Farmhouse. Apart from the attempts to carry out electrical work to the Farmhouse, as already referred to, no other steps were taken by the Applicant, in advance of the issue of the Application, for the purpose of enforcing compliance by the Respondent of the maintenance and repairing obligations under the Tenancy Agreement, or collecting rent.
- 4 The Application first came before the Tribunal on 10 April 2008 when the Respondent initially failed to attend. By that date the Application had been duly served on him but he had failed or neglected to co-operate in the proceedings in any way whatsoever, despite the proceedings having been duly served on him and letters having been sent by the Tribunal advising him to co-operate. However, the Tribunal undertook a site inspection of the Farm on 10 April 2008, in advance of the formal Hearing. At the site inspection contact was made with the Respondent at the Farmhouse and he then agreed to attend the formal Hearing. At the site visit the Respondent explained that he had taken no part in the proceedings since he had been suffering from acute stress and other mental health problems, in particular during the period from January to June 2007, for which he had received treatment at Deeside Community Hospital. In these circumstances the Tribunal decided to adjourn the Hearing having carefully explained to the Respondent the nature of the Application and that it was in his interests to take part in the proceedings at the adjourned Hearing and to co-operate with the Tribunal. The only Direction made by the Tribunal at the first Hearing was that the Applicant adduce evidence which by then had not been disclosed, in order to explain how the 1930 Tenancy Agreement applied to the Farm; to explain how it was alleged that the Respondent had succeeded to the 1930 Tenancy Agreement; and to explain the position relating to the payment of rent. The Tribunal also directed

that the Respondent was to lodge his evidence by 29 May 2008 with the Applicant being required to lodge any response by 19 June 2008.

- 5 The adjourned Hearing of the Application was thereafter fixed to commence on 15 July 2008. On 15 April 2008 the Tribunal Secretary wrote to the Respondent in the following terms:

“I am writing to confirm that the Hearing of the above application was adjourned on 10 April 2008 in order to give you the opportunity to submit evidence in response to the Applicant’s case with or without the assistance of a professional adviser. It is, of course, for you to decide whether or not to instruct such an adviser although the Chairman of the Tribunal at the recent Hearing suggested that it would be sensible for you to consider doing so. If you do decide to instruct an adviser, please ensure that this letter (or a copy) is handed to him.

“It will be necessary for any evidence on which you intend to rely, including any witness statements of fact, to be sent to me by 29 May 2008. Your evidence will be copied to the Applicant’s representative, Mr Nigel Davis, who will be required to submit any response by 19 June 2008. Any response will be copied to you.

“It is likely that the Hearing will be reconvened on 15 and 16 July 2008. Please let me know whether these dates are convenient.

“I must emphasise that it is important for you to look through your post to ensure that you have read all the evidence lodged by the Applicant’s representative.”

Both parties were subsequently informed of the adjourned date of the Hearing (15 and 16 July 2008) by letter dated 28 April 2008. Subsequently the Third Witness Statement of Mr Kent was served on the Respondent on 14 May 2008 and both parties were formally notified of the adjourned Hearing by letter from the Tribunal Secretary dated 24 June 2008. Additionally a telephone message was left on the Respondent’s mobile telephone reminding him of the date of the adjourned Hearing.

- 6 The Respondent again did not appear at the adjourned Hearing and did not provide any explanation for his non-appearance. The Tribunal therefore took the decision to proceed in his absence and to hear the Applicant’s case. The evidence adduced by the Applicant in support of its case consisted of Mr Kent’s Witness Statements dated 27 November 2007, 2 April 2008 and 12 May 2008, to which documentation was annexed, together with his oral evidence which expanded his written evidence in certain respects. In support of the Application the Applicant relied upon the provisions of the 1930 Tenancy Agreement, on the basis that it applied to the Respondent’s occupation of the Farm, in particular the following paragraphs:

- (a) Clause 4 (2) which required the Tenant to keep and leave the inside of the messuage and buildings including all drains in good tenable repair (damage by fire not caused by the misconduct of the Tenant his servants or agents excepted).
- (b) Clause 4 (9) which required the Tenant at the proper time of the year to cut and trim the hedges and at all times during the tenancy to keep the same and all gates gate posts posts fences drains and cesspools in good order and tenable condition. This sub-clause also imposed the obligation to fill up gaps in the hedges; obligations relating to the maintenance of ditches and under-drainage; and obligations relating to the cleansing and maintenance of brooks and watercourses.
- (c) Clause 4 (10) which required the Tenant generally to use and manage the land in a good husbandlike manner; to keep the same in good heart and condition and in a perfectly clean state. The Clause also imposed the obligation to mow or destroy in each year all docks and thistles and any such like weeds before the same seeded.

- (d) Clause 4(11) which required the Tenant to manage the premises in accordance with the rules of good husbandry prescribed by the Agriculture Act 1923, Section 57.

The Tribunal noted that Clause 12 of the 1930 Tenancy Agreement required the Applicant to maintain the roofs and main walls of the Farmhouse and buildings in good tenantable order and condition (damage by fire excepted).

- 7 The Applicant contended that the Respondent was in serious breach of the 1930 Tenancy Agreement in the following principal respects:

- (a) The land was badly poached and now incorporated stone derived from the walling surrounding part of the Farm. Additionally, redundant sheep fencing had been puddled into the land.
- (b) The fencing had been seriously (and continuously) neglected and had not been attended to over a long period.
- (c) Parts of the boundary wall were crumbling.
- (d) Gates had not been properly hung.
- (e) Hedging had not been attended to.
- (f) Weeds including ragwort and docks existed on the land.
- (g) Redundant machinery and other items existed on the Farm including an old muck spreader; a rusty tank; a redundant tractor; and sacks containing concrete.
- (h) Items such as metal sheets and ironwork were present in the boundary hedge or the ditch to which it related.
- (i) The land was no longer being farmed.

These allegations of neglect of the land were supported by the photographs taken by Mr Kent over the period of about 2 years ended in March 2008. It was asserted that these clearly evidenced breaches of the relevant paragraphs of the 1930 Tenancy Agreement. Mr Kent also stated that in his view between November 2007 and February 2008 the Farm had deteriorated further, in particular because the land had become increasingly poached; the hedging remained largely neglected; and the fencing continued unrepaired as previously.

- 8 It emerged during the course of Mr Kent's evidence that he had become responsible for the management of the Farm only in 2006 and had no information as to the background to the Respondent's occupation of the Farm. In the course of his oral evidence he was unable to explain why the Applicant or its' Agents had not sought to enforce the discharge of the Respondent's obligations under the Tenancy Agreement, or why there had been virtually no management of the tenancy by the Applicant. Equally, he was unable to explain the basis on which the Applicant occupied the Farm as tenant protected under the Agricultural Holdings Act 1986 and why, if a tenancy existed, no rent had been demanded from the Applicant or paid. However, as subsequent events showed, the question of the basis on which the Respondent occupied the Farm could have been answered if a proper investigation of the Applicant's files had been undertaken in advance of the Application being made to the Tribunal.
- 9 Prior to the Tribunal reaching a decision on the Application, by letter dated 29 July 2008 the Respondent wrote to the Tribunal apologising for his failure to appear at the Hearing held on 15 July 2008 and stating that he had understood that the Hearing was to take place on 29 July 2008. The Respondent also stated that he wished to give evidence. He attributed his confusion as

to the correct date to the extreme stress that he had been suffering. In the letter dated 29 July 2008 which formed the basis of his subsequent oral evidence, the Respondent invited the Tribunal to consider a series of points, as follows:

- (a) That he had never had any rental agreement.
- (b) At the first meeting with the then quarry owners he was told that they would not spend any money on the farm.
- (c) He had invested a considerable amount of time and money in trying to improve the house and buildings.
- (d) While holding a grazing licence for land, which was now part of the Applicant's quarry, he had erected a fence approx 400 yards in length which he paid for and this fence was removed when the quarry was later extended and his materials vanished without any consultation or recompense.
- (e) He subsequently withdrew from the licence.
- (f) There were various attempts to "downgrade" him including renaming the Farm "Hendre Ffarm House". He had also received a letter threatening eviction within 30 days.
- (g) All of the above had culminated in the Tribunal proceedings, the Applicant's motivation for the proceedings being that it realised that it could lose possession of the Farm as the Respondent might claim adverse possession.
- (h) Additionally, all of the above had greatly contributed to his present mental condition.

Enclosed with the letter was a document headed "Evidence by C.Hughes" which listed various improvements and repairs that the Respondent said he had undertaken to the Farmhouse, the yard and the buildings.

10. Following receipt of the letter dated 29 July 2008 from the Respondent, the Tribunal took the decision that it would not reach a decision on the Application without giving the Respondent a final opportunity to give evidence, having regard to the fact that it had not by then reached a decision following the Hearing on 15 July 2008 and the evidence heard by the Tribunal had been only that of the Applicant. In the view of the Tribunal it would have been wholly unjust to have proceeded to a Decision without having first given the Respondent the opportunity giving evidence in response to the Applicant's case. Furthermore, the issues raised in the letter dated 29 July 2008, particularly as to the basis on which the Respondent occupied the Farm, had not been satisfactorily resolved by the evidence given on behalf of the Applicant at the earlier Hearing. In these circumstances the parties were informed of the Tribunal's decision to hear the Respondent's case by letter dated 8 August 2008.
11. The Respondent did not respond to the Tribunal's letter dated 8 August 2008. However, the Applicant's Solicitors indicated their objection to the Tribunal's decision to reconvene the proceedings and subsequently by letter dated 29 September 2008 proposed that the Applicant be given the opportunity to make a formal Application to the Tribunal that the Respondent be given no further opportunity to adduce evidence or make representations in response to the Application. In the alternative the Applicant's Solicitors proposed that the Respondent should be entitled to adduce evidence only on the basis of having paid costs already incurred by the Applicant and annexed to the letter written submissions in support of the contentions put forward. By letter dated 14 October 2008 the Applicant's Solicitors were informed that the Tribunal's earlier decision to reconvene the proceedings would not be changed and that Directions would be issued in advance of the resumed Hearing. The Tribunal's Directions dated 5 November 2008 provided by paragraph 1 that the Respondent's Representations (being those contained in the letter dated

29 July 2008) were to stand as the Respondent's Reply to the Application; and that the Applicant was at liberty to respond in writing to the Respondent's Representations within 21 days, if so advised, with any such response being served on the Respondent and a copy simultaneously lodged with the Tribunal.

- 12 By letter from the Applicant's Solicitors dated 20 November 2008 request was made for the 21 day period provided by paragraph 2 of the Directions to be extended and ultimately the Tribunal agreed to such an extension until Friday 12 December 2008. Subsequently at the request of the Applicant's Solicitors this date was extended until 19 December 2008 although this extended date was not complied with by the Applicant and additional documents located by the Applicant were not disclosed to the Tribunal, or to the Respondent, until the morning of the final Hearing on 14 January 2009. The documents in the bundle then produced by the Applicant included copies of the Notices to Quit dated 18 July 1989 and 29 March 1990, and the accompanying letters, to which reference has been made earlier in this Decision. No explanation was provided to the Tribunal as to why the serious delay had occurred in the provision of the documents disclosed by the Applicant pursuant to the Direction dated 5 November 2008. The Tribunal considers these documents to be of fundamental importance to the proceedings and that they could and should have been located and disclosed as part of the Application in advance of the first Hearing.
- 13 At the Hearing on 14 January 2009 the Respondent once again did not initially attend. However, the Tribunal decided having regard to the time interval that had occurred since the previous Hearing that a further site inspection of the Farm should be undertaken. At the site inspection it was clear that the state and condition of the Farm was largely unchanged from its state and condition when the Tribunal had first inspected on 10 April 2008. However, contact was made with the Respondent at the Farmhouse and he was persuaded to attend the formal Hearing having been reminded that it was about to take place and that it was in his interests to do so.
- 14 At the Hearing, by agreement with the Applicant's Solicitors, the Respondent gave evidence initially by reference to the letter that he had written to the Tribunal dated 29 July 2008. He agreed that he occupied the Farm in accordance with the 1930 Tenancy Agreement and that he was aware of the Notices to Quit served under cover of the letters dated 18 July 1989 and 29 March 1990 served on him by the former reversionary owners. He stated that the Farm had been registered for LACS purposes and that it was a business enterprise run in conjunction with an area of agricultural land extending to about 3 acres that he occupied nearby. The Respondent also referred to a meeting at which he was told that he could have the tenancy in succession to his late wife. Subsequently no proposed tenancy agreement was ever forthcoming or discussed, a matter that was not in dispute.
- 15 The evidence given by the Respondent was as follows:
 - (a) He accepted that he occupied the Farm subject to the 1930 Agreement although he had never personally signed an Agreement despite being told that one would be sent to him at the meeting with the representatives of Alfred McAlpine Plc that took place in 1986. He was also informed by Aidan Mason, one of the representatives of Alfred McAlpine Plc present at the meeting, that the reversionary owners would not be spending money on the Farm.
 - (b) Repair work to the Farm was done on an annual basis.
 - (c) No ragwort was present on the Farm which the Respondent took particular care to pull out each year and sometimes to spray.
 - (d) The buildings on the Farm were used by the animals kept by the Respondent on the land mainly when they required treatment. The cattle in question were breeding cattle which could be kept either inside or outside. In the summer the cattle were grazed elsewhere.

- (e) The photograph on page 6 of Mr Kent's First Witness Statement (taken on 16 March 2007) was not a hedge for which the Respondent was responsible.
- (f) The items of equipment lying around the Farm, for example the tractor, was irrelevant to the question of maintenance and simply an issue of storage or disposal.
- (g) In cross-examination the Respondent agreed that the state and condition of the Farm had not changed since April 2008 when the Tribunal had made its first inspection. He also stated that the various matters about which the Applicant complained could be reversed. Finally, in response from questions from the Tribunal, the Respondent stated that in 1986 he had asked if the reversionary owner would assist with loose housing for calves and the provision of a Dutch Barn, on the basis of it providing materials and the Respondent providing the labour, but this was refused.

In the Respondent's closing address to the Tribunal he accepted that the discharge of his husbandry obligations had been defective and that probably by reason of his mental state he had not had the will to undertake them. On specific points that had arisen during the course of the Hearing he stated that the land was not heavily poached; that the hedging had been attended to on an annual basis although part of it had been allowed to grow up in order to be laid where there were gaps; and generally that there was some cleaning up on the Farm to be undertaken.

- 16 Apart from the evidence given by the Respondent at the Hearing, further evidence was given by Mr Kent on behalf of the Applicant, principally relating to the further documents that had been produced on the morning of the Hearing. Mr Kent was unable to expand on his earlier evidence to any meaningful extent although he did point out that the state and condition of the Farm had remained the same in 2006, 2007 and 2008 and that his various photographs evidenced no improvement during the period in which he had been responsible for the Farm on behalf of the Applicant, since 1986.
- 17 It is necessary for the Tribunal to be satisfied that the Respondent occupies the Farm as tenant protected under the Agricultural Holdings Act 1986 in advance of considering the merits of the Application. If the Tribunal was to conclude that the Respondent did not occupy the farm as a protected tenant under the 1986 Act there would be no basis on which the Application would fall to be considered. However, the Tribunal's decision on this point is that the evidence shows quite clearly that the Respondent's occupation of the Farm is as tenant protected under the 1986 Act. The reasons for this are as follows. First, the Respondent himself agreed in the course of his oral evidence that he occupied the Farm in accordance with the 1930 Agreement. Secondly, even in the absence of that evidence, the Notices to Quit and accompanying letters served on the Respondent dated 18 July 1989 and 29 March 1990 in themselves demonstrate quite clearly that occupation of the Farm was regarded by the Applicant's predecessors as being on the terms of the 1930 Tenancy Agreement. There was no evidence to suggest that the Respondent disagreed with this and indeed his compliance with the Notices to Quit is evidence that he regarded himself as subject to the 1930 Tenancy Agreement. The fact that during the currency of the Respondent's occupation of the Farm no rent has been demanded by the Applicant does not in the view of the Tribunal affect the position.
- 18 In respect of the Application, paragraph 9 in Part II of Schedule 3 to the 1986 Act enables the landlord of an agricultural holding to apply:

“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.”

Good husbandry is defined in Section 11 of the Agriculture Act 1947 (applied by Section 96 (3) of the 1986 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 in so far 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, or in course of being harvested or lifted;
 - “(f) the necessary work of maintenance or repair is being carried out.”

- 19 In determining the Application the Tribunal adopts the principle stated by Sullivan J. (as he then was) in *Davies v Philipps & Philipps* [2007] EWHC 1395 (Admin) that the Tribunal when considering whether the Respondent has been farming in accordance with the rules of good husbandry must have regard to the whole of the unit. A certificate will not necessarily be justified merely because there has been poor husbandry on part only of the holding. Equally, it is not necessary for the Applicant to demonstrate the rules of good husbandry having been breached over every part of the holding. The test is a pragmatic one. To satisfy Section 11 (1) the breaches must “significantly affect the holding so that it can broadly be said that a reasonable standard of efficient production has not been maintained nor the unit kept in such a condition to maintain such a standard in the future.” The cases to which Sullivan J referred in support of this proposition were *Ross v Donaldson* [1983] SLT26 at p.27 (a Decision of the Scottish Land Court) and *Maggs v Worsley* (SW Agricultural Land Tribunal 11 May 1982). The Tribunal also applies the principle set out in *Goldsmid v Hick* (SE Agricultural Land Tribunal dated 15 February 2002), to the effect that the state of husbandry in a particular case is a “state of affairs” existing at the time of the Hearing and view, and not merely a matter of instant physical condition at that time; and the decision in *Cambusmore Estate Trustees v Little* 1991 STLT (Land Ct) 33 to the effect that the Tenant’s personal circumstances, unrelated to any lapses by the Landlord from good estate management, are not to be taken into account.
- 20 In the view of the Tribunal it is entirely clear that the permanent pasture has not been properly grazed over a lengthy period and is heavily poached, as is apparent from the photographs put before the Tribunal by the Applicant and indeed by the Tribunal’s own inspection. Additionally, the fencing and walling around the land has been badly maintained, or not maintained at all;

rubbish and redundant equipment has not been removed; hedging has been neglected; and generally the land is in a totally dilapidated and neglected state. These features apply to the entirety of the land comprised in the Farm and plainly operate in breach of the Respondent's obligations relating to husbandry under the 1930 Tenancy Agreement, to which the Tribunal has already referred. The Tribunal therefore accepts the evidence as to the overall neglect of the land put forward by the Applicant.

- 21 The land extends to only 1.12 acres and the balance of the Farm consists of the Farmhouse and buildings. As to the Farmhouse, the Respondent's evidence as to the improvements that he had made were not challenged by the Applicant and indeed no criticism was made of the discharge of the Respondent's repairing obligations relating to the Farmhouse whatsoever. As to the buildings it appeared to the Tribunal that these were generally in reasonable condition, apart from two buildings near the entrance to the Farm which were plainly dilapidated. The inside of certain of the buildings was untidy and they gave the impression of minimal use.
- 22 The Tribunal concludes that the Applicant's management of the tenancy has been wholly inadequate, no steps having been taken by it at any time since 1992 to secure compliance with the Respondent's husbandry obligations. However, the Tribunal does not consider that this had any adverse impact on the Respondent's ability to discharge the husbandry obligations imposed on him under the 1930 Tenancy Agreement. In these circumstances the Tribunal is of the unanimous view that a Certificate of Bad Husbandry should be granted having regard to the state and condition of the entirety of the agricultural land that had subsisted over a substantial period. In reaching the decision to grant the Certificate the Tribunal therefore takes into account the total neglect of the agricultural land by the Respondent and his apparent refusal to take any steps whatsoever to remedy the situation. Furthermore, since at latest 10 April 2008 the Respondent has been aware of the proceedings but since then has taken no steps whatsoever to undertake any remedial work to the land which continues to be neglected to a serious extent and is likely to remain as such whilst the Respondent remains in occupation.
- 23 The Applicant at the end of the final Hearing made an application for costs. However, The Tribunal does not consider that the Respondent can be said to have acted frivolously, vexatiously or oppressively in connection with the Application and for the reasons already stated we consider that the Applicant's late disclosure of documents, as referred to earlier in this Decision, is open to serious criticism. Accordingly, there will be no Order as to costs.
- 24 The Tribunal was also asked to consider exercising its powers under Section 25 (4) of the Agricultural Holdings Act 1986. Having regard to all the circumstances of the case, including the Applicant's almost complete failure to take any action over a substantial period, until making the present Application, by which to secure any improvement in the state and condition of the Farm, the Tribunal directs in accordance with Section 25 (4) of the 1986 Act that the minimum period of notice for termination of the tenancy shall be 12 months ended on 25 March 2010.

Certificate of Bad Husbandry granted.

Direction that minimum period of Notice to be 12 months ended on 25 March 2010.

No Order as to costs.

Signed
J A F Buxton – Chairman

Dated 3 March 2009