



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

Case References : **ALD/W/CBH/2020/001**

Property : **Lands Farm, Hindley Road, Westhoughton,
Lancashire, BL5 2DU**

Applicant : **Timetoken Limited**

Respondent 1 : **Mrs Christine Elphick**

Type of Application : **Certificate of Bad Husbandry**

Tribunal Members : **Regional Judge Katherine Southby
Mr Gordon Meek (Landowner's Panel)
Mr David Lewis (Farmer's Panel)**

**Date and venue of
Hearing** : **Inspection 29 June 2021
Video Hearing 30 June 2021**

Date of Decision : **17 August 2021**

Decision and Reasons

Introduction

1. By notice dated 4 May 2020 in form TAHB511, the Applicants apply for a certificate of bad husbandry under Schedule 3, Part 2 Paragraph 9 of the Agricultural Holdings Act 1986 in respect of Lands Farm, Hindley Road, Westhoughton, Bolton, BL5 2DU of which the Respondent is the tenant under a tenancy dated 29 May 1986 [page 211].
2. The grounds of the application are set out in the notice and state that in the view of the Applicant the Holding has no grassland management and is overstocked and ranched and has been for many years. The Applicant alleges bad husbandry of the Property by the Respondent though:
 - a. over stocking of horses at turnout and exercise,
 - b. Unkept field boundaries preventing fields from being 'rested' from grazing/poaching
 - c. No seasonal cultivations of grass sward to encourage new shoots in the spring
 - d. No control of weed infestations nor preventing natural regeneration of tree saplings
 - e. No programme of soil testing/analysis and appropriate fertiliser/lime application to improve soil and pasture health
 - f. No hedgerow management
 - g. Allowing inert debris and old tyres to become embedded into topsoil creating a danger to grazing horses and encouraging weed and creeper growth and debris
 - h. No attention to land drainage (repair, maintenance or improvement) nor to open ditches
 - i. Heaped mounds of soil and FYM (Farm Yard Manure) left unspread
3. By notice in response dated 18 May 2020 the Respondent opposed the application, refuting the allegations above, and stating that in order to judge the husbandry as a whole, regard must be had to the available buildings as well as the land, the majority of the buildings having been provided by the Tenant. The Respondent also refers to footpaths crossing the Holding and problems with trespass resulting in the current choice of fencing using scaffolding poles, that trees and saplings enhance the holding and have been left to encourage birds and wildlife. It is stated by the Respondent that the livery business does not require the same standards of productive pasture which might be required on a livestock or dairy unit and that there is no evidence of neglect to the horses kept at Lands Farm.

4. Directions were made by the Tribunal for the preparation of this matter for hearing and the matter came before the Tribunal for a contested hearing listed for 1 day on 30 June 2021. As there was insufficient time to hear oral submissions on 30 June 2021, both parties agreed to provide written submissions which have been received and considered in advance of preparation of this decision.
5. Mr McNall of Counsel represented the Applicant together with Ms Fairclough, Solicitor for the Applicant and Sally Whitter on behalf of the Applicant. The witnesses were Mr Petitt, Mr Andrews and Mr Nixon.
6. Mr Wilson of P Wilson and Co Land Agents represented the Respondent. The witnesses were Mrs Mather and Mr Winthrop.
7. This has been a remote hearing which has been consented to by the parties. The form of remote hearing was FVH – a full video hearing. A face to face hearing was not held because it was not practicable, and all issues could be determined in a remote video hearing. The documents that are referred to are in a bundle of 717 pages together with skeleton arguments provided by both parties. The order made is described at the end of these reasons. The parties confirmed that they were happy to proceed by way of a video hearing/ telephone link and confirmed that they could see and/or hear the proceedings and fully participate. This is the decision of the Tribunal based upon its own extensive inspection on 29 June 2021, the evidence served, and further evidence and submissions provided at the hearing and in subsequent written submissions invited by the Tribunal's directions following the hearing.

The Law

8. For the purposes of a claim for possession under Case C of the Agricultural Holdings Act 1986, the landlord of any land may apply to this 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 (see AHA 1986, Sch 3 Pt II para 9(1) and (2)).
9. The Rules of Good Husbandry ('the Rules') comprising the test to be applied for the purposes of the present application are contained in the Agriculture Act 1947 at Part II, section 11, which provides 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 way 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 and repair is being carried out.

(3) The responsibilities under the rules of good husbandry of an occupier of an agricultural unit which is not owned by him shall not include an obligation to carry out any work of maintenance or repair which the owner of the unit or any part thereof is under an obligation to carry out in order to fulfil his responsibilities to manage in accordance with the rules of good estate management.

10. It was common ground that the burden is upon the Applicants to establish their case that the Respondent is failing to fulfil his responsibilities under the Rules. Further, the interpretation of this section was also largely uncontroversial between the parties at the hearing. The Tribunal was referred to the judgement of Sullivan J (as he then was) in *R (Davies) v Philipps & Philipps* [2007] EWHC 1395 (Admin), in which he stated at paragraph 5: “It is common ground between the parties that when considering whether an occupier of an agricultural unit has been farming it in accordance with the rules of good husbandry, the Agricultural Land Tribunal must have regard to the whole of the unit. A certificate will not necessarily be justified merely because there has been poor husbandry on a part of the holding. Equally, it is not necessary for the landlord to demonstrate that the rules of good husbandry have 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.’ See *Ross v Donaldson* [1983] SLT 26 at

page 27, a decision of the Scottish Land Board. See also *Maggs v Worsley*, a decision of the south-western area ALT dated 11 May 1982.”

11. Further, the Tribunal is mindful of the decision in *Goldsmid v Hicks* (SE/AT/1547) which helpfully explains the test to be applied as follows (at paragraph 12): “It is important to remember that this is an application by the landlord that the tenant ‘is’ not fulfilling his responsibilities to farm in accordance with the rules of good husbandry. See paragraph 9 Part II Schedule 3, section 11 of the 1947 Act where the phrase appears ‘the unit is being farmed’ sub-section 2 thereof refers to permanent pasture ‘is’ being properly mowed, sub-paragraph 2(b) the manner in which arable land ‘is being cropped is such,’ sub-paragraph (c) the unit is properly stocked, sub-paragraph (d) the necessary steps ‘are being taken’ so too in respect of harvesting. We observe however in sub-paragraph (f) when dealing with necessary ‘work maintenance and repair’ the past tense is used ‘has been carried out,’ In our judgement it is clear that what the Tribunal is required to consider is what ‘is’ being done not has been done in the past nor what could be done in the future save to the extent that it throws light on what ‘is’ being done at the time that the Tribunal comes to consider the evidence. We are of the view that the state of husbandry is a ‘state of affairs’ existing at the time of the hearing and view, not merely a matter of ‘instant’ physical condition at that time, as was said in *Hale v Stone* (SW/ALT/27/71”).
12. Whilst there was some consensus as to the legal tests for the Tribunal to apply, there was some difference between the parties as to how the test is to be applied temporally, and the Tribunal considers this below.

The Inspection

13. The Tribunal was able to inspect the holding on 29 June 2021. The Inspection began at 10am and concluded around 2pm. The weather was fine and the Tribunal was able to walk the entirety of the farm so as to view the entire holding and examine closely the condition of the land and the farm buildings, with the exception of the interior of the house, which form part of the issues for the Tribunal to determine. Consent was obtained from both parties for the Tribunal to take photographs to assist them.
14. The Tribunal commenced its inspection at the Northern end of the holding and proceeded in an anti-clockwise direction around the entirety of the holding, finishing at the arena, indoor stabling and other farm buildings.
15. The Tribunal made the following observations – letter references being to the map at page 80, annotated by the Applicant:
 - a. Areas A, B and C the Tribunal observed a traditional pasture with a reasonable ley, and upon testing, a good depth of topsoil being a heavyish clay loam. There was a very occasional ragwort and a small number of docks were

- observed, but these were not significant, particularly in comparison to land next door adjacent to area C which was observed to be in a poor state with significant numbers of these injurious weeds on the other side of the boundary near the footpath entry. 2 donkeys and 1 horse were grazing. There was a mound which appeared to be of topsoil and rubble.
- b. The ditch to the side of A was fenced off with barbed wire fencing and appeared to run in a southerly direction, entering a pipe or culvert at the boundary between A and D
 - c. Area B had plastic mesh fencing, a good covering of meadow grasses and virtually no weeds in the pasture.
 - d. Area C had fencing made from scaffolding poles with no serious weed infestation.
 - e. Area D had 2 horses grazing with longer grass and the occasional dock but no significant weed infestation. It was a traditional ley like the preceding fields.
 - f. The Tribunal crossed the car park areas used for shows en route to area J, passing a mound of what appeared to be top soil and horse manure.
 - g. In areas J there was around a dozen horses and ponies grazing. A soil sample taken in this area indicated the ground was stonier than the previous areas, with a lighter soil and a more traditional hay meadow which was notably free from docks in general. This field was observed to be closely grazed except for an area of 'tussocky' grass near the southwestern boundary
 - h. The Tribunal moved from area J to area K crossing a ditch, which was unfenced and had areas which were muddy and lacking grass.
 - i. Area K was a similar medium clay loam with some self-sown hawthorn bushes in the field. The Tribunal observed the fencing between area K and area N to be constructed from scaffolding poles.
 - j. Area N had one patch in which there were more docks, but these appeared to have been sprayed, together with some regrowth of brambles that had been topped, some self-seeded hawthorns and young oak trees. It was observed there were small areas where the stream meandered which had been fenced off and left to grow wild.
 - k. Area M contains an enlarged pond from the size indicated on the plan and pasture containing some oak trees and good quality soil.
 - l. A mound of what appeared to be top soil was observed along the hedge line between area M and area L
 - m. Area L was observed to be a relatively weed-free rye-grass mix which showed some black patches indicative of a manure heap that had since been spread. Mayweed was observed in a small part of area L. The pond in this field appeared to be spring fed as a substantial flow of water was seen exiting and running down a shallow ditch towards Marsh Brook. Young Lapwing chicks were seen alongside the ditch.
 - n. The Tribunal inspected area I which contained another pond and had more grass than neighbouring area J
 - o. Areas H and G showed a similar range of relatively weed-free grassland with a higher proportion of ryegrass species being more or less closely grazed.

- p. The Tribunal inspected the hardstanding areas and also the arena area. The surface of the arena was observed to be coarse-chopped wire-free shredded tyres, with the arena itself being on an in-filled area built-up to a higher level from the neighbouring land to the south.
- q. The indoor arena, a steel framed, fibre cement clad building was also inspected and was clean, well-maintained with a floor surface of wood-chippings. The stables and tack rooms were seen by the Tribunal to be clean and well-maintained with a number of horses and ponies stabled indoors. There was no evidence that any of the animals on site were in poor condition.
- r. The Tribunal inspected the other small stable block named 'Cairn Cottage' which was also seen to be clean and in good condition. The Tribunal was shown the office area, personal stabling, storerooms and workshops.
- s. Drainage –
The tribunal observed what could be seen of the existing ditches on the holding during the inspection. These were labelled Systems 1 to 3 on the plan at Appendix C page 203 provided by the Applicant.

System 1 is a ditch running North to South on the Eastern boundary of the holding next to the sewage treatment works. We observed a deep ditch with several mature trees lining its route and hawthorn and blackthorn obscuring visibility somewhat. Nevertheless, the ditch appeared on visual inspection to be doing its job. It was pointed out that the last section of the ditch to Marsh Brook was not in the Holding and was partially silted up reducing the water flow.

System 2 begins at the pond referred to at m (above). The Tribunal noted that the length of ditch from the pond towards the SW corner of field L had recently been cleaned out and the water was flowing unhindered at the time of the inspection.

System 3 This ditch runs North – South parallel to the Western boundary of the holding eventually emptying into Marsh Brook. The first section in field A was observed as described at (b) above. Whilst water was flowing, the ditch would benefit from the weeds being cleared next Winter. Water then enters a pipe and crosses field D underground through a concrete inspection chamber and via the pond in field J to its outfall. The Tribunal noticed an unfenced muddy section described at (h) above.

Whilst the Tribunal could see no evidence of an underground tile drainage system, by virtue of the heavy nature of the soil, it would not be unexpected if an old system existed on some parts of the holding.

- t. At the point in time at which the Tribunal inspected the holding we found a well-managed livery which appeared to be properly stocked and appropriately grazed for the chosen use.

16. At the commencement of the oral hearing the Tribunal gave an initial non-binding interlocutory indication to the parties of their overall finding as set out at paragraph (t) above. The Applicant confirmed that they wished to pursue the application and to make representations to the Tribunal regarding matters to which the Tribunal should have regard in addition to the state of the holding at the time of inspection including the photos included within the bundle recording the state of the holding over the course of the year from 4 May 2020, being those photos taken to accompany the application [pages 16 to 30] to March 2021 [from page 108].
17. The Applicant argues that the state of husbandry in a particular case is a 'state of affairs' existing at the time of the hearing, and not merely a matter of instant physical condition at that time (bearing in mind that many tenants have a good tidy-up before the site visit). Nor is it a matter of trying to guess what the tenant might do in the future, if given more time;
18. The Applicant refers the Tribunal to Williams Scammell and Densham on Agricultural Holdings §38.21 which states that the starting point is for the Tribunal to consider the evidence as to the state of the holding at the date on which the application was made.

The Expert Evidence

19. Mr Jon Petitt MSc PIEMA gave expert evidence in support of the Applicant's case. His written evidence comprised his report dated March 2021 [page 490]. His report is based upon a walkover survey conducted on 24 February 2021 and included sampling taken in 4 areas labelled 1A, 1B, 2 and 3 as identified at page 15 of his report [page 508].
20. The results [page 510] state that there is no exceedance of any of the published Soil Guidance Values for metals or phenols except for sample ref 3.1 (taken in area 1A) which indicated an exceedance of the SGV value for Cadmium.
21. The report [page 511] also carries out a Source-Pathway-Receptor (SPR) analysis to identify potential sources of contamination on site, the pathways that those sources of contamination might follow and the receptors, both human and environmental that might be affected. In order to show a linkage there must be positive confirmation of each of these three elements. The report identifies potential sources of contamination including surfacing material and storage of military aircraft and possible contamination from paint or surface treatments on the aircraft or fuel spillage. The report states '*The results do not show any*

particular ‘spike’ in the presence of contaminants associated with aviation fuel which may be expected in the area of the site used for the storage of the military aircraft. However, the results of the laboratory indicate consistently higher levels of contaminants across the surface of the areas 1A, 1B and 3. The levels of contamination across the site are sufficient to indicate contamination which could be hazardous, though this would need to be verified by an assessment against the hazardous waste thresholds in WM3.

22. Mr Petitt’s conclusions [page 515] states ‘Visual evidence collected during the walkover survey indicates a large amount of rubble material (brick, tile and concrete) has been mixed with soil and used to create areas of made ground in the area for storage and parking with areas identified as Areas 1A, 1B and 3. The origin and date of deposit of the material is unknown. The potential presence of contaminative sources on the site is identified, largely resulting from the deposit of material in Areas 1A, 1B and 3. These remain potentially contaminative to the underlying soils in these areas, though no testing from below these soils was undertaken...the depth of the made ground was not established as part of the limited investigation undertaken. Therefore, the risk of exposure to the future agricultural usage has not been quantified as part of this assessment. However, it is recommended that to ensure the safe reinstatement of the land following the removal of the deposited hardcore, additional analysis of the underlying soils is undertaken to ensure that values do not exceed those specifiedThe results of the samples obtained as part of this investigation will need to be compared following the Contaminated Land Exposure Assessment methodology (CLEA) and the exposure thresholds associated with the planned use of the land, which in this case will be crops or grazing.’
23. Mr Petitt gave oral evidence to the Tribunal that Cadmium is found naturally in the environment and that he did not know where the Cadmium found in sample 3.1 had arisen from. He stated that the Cadmium results were against a comparator of an allotment as that was a comparator for food production.
24. Mr Petitt stated that the contaminants found in low levels in Area 2 and higher levels in 1A, 1B and 3 were extractable petroleum hydrocarbons (EPH) which he stated represented gasoline, diesel and can be an indication of leaks and spills and can be considered an eco toxin in water and hazardous to human health if ingested. He was asked if there were risks arising from the levels of contamination found at Lands Farm. Mr Petitt stated that the scope of his assessment was to establish presence or absence, not to establish risk to human health. He stated that there was asphalt in the hardstanding materials which could contribute to the presence of the hydrocarbons, but he has not drawn any further conclusions about the reasons for the presence of the contamination.
25. Mr David Andrews, Director of Andrews Bowen Ltd, Equine Surface Technologists gave expert evidence in support of the Applicant’s case. His report

at page 568 dated 15 March 2021 records that on observation of the outdoor arena the surface of chopped tyres included pieces of debris, broken concrete and evidence of waste materials and the chopped rubber surface had vegetation growing through to a substantial extent. He states *'The outdoor area identified has no drainage, the sub base is clay of varying depth over filled waste material. Random waste fill material is an unstable base which is evidenced by the rising to the surface of this fill material and clay caused by vibration from worked horses exercising which in turn causes contamination of the chopped rubber surface with this waste material fill and clay. Waste fill material mixed into the rubber surface will go unseen and will cause injury to horses. In my opinion the recycled chopped rubber spread over the filled outdoor areas is not a horse riding surface. It is absolutely unfit for exercising horses and should never have been used for any horse related activities.'*

26. Mr Andrews also refers to the indoor arena stating that *'when used as a riding surface wood chip can cause injury by wood splinters. This surface could only be used for very basic low impact horse riding activities.'*
27. Mr Andrews gave oral evidence confirming that his experience included the design and construction of the Greenwich Park Olympic Arena. He expressed concern about the suitability of the outdoor arena and stated that contaminants such as wire glass and concrete can puncture horses hooves and fetlocks and cause injury to horses, or to riders in the event of a fall. The Tribunal were referred to photographs at page 574 and Mr Andrews stated that at the time of his inspection there was no evidence of exercise and no tracking on the arena for sometime. He gave evidence that in his view the surface needed to be removed and replaced, as did the base to make it secure and safe. Whilst it did not need to be produced to Olympic standard nevertheless it needs to conform to standards suitable for horse riding.
28. Mr Andrews stated that the indoor arena was a nice building with approximately 3 inches of loose material as the riding surface. He would normally expect to see hard wood chippings rather than conifers, but it was an appropriate surface to low level riding such as walking or trotting. In his view higher speeds or jumping would be inappropriate as it would not offer a secure footing.
29. Mr Simon Nixon MRICS FAAV FNAEA gave expert evidence in support of the Applicant's case. His written report [page 81] is based upon an inspection dated 5 March 2021. He states that the weather at the time of inspection was dry and that there had been no significant rain for over 10 days.
30. His summary of findings states [page 95] that in his view the tenant appears to have carried out a grazing system which has damaged the soil structure through poaching, and that the soil structure has not been reinstated, fences not properly maintained to allow for all stock classifications, drains hedges and ditches not

properly maintained *‘preventing the ability to economically farm it for other than horses’*. He refers to the digging of lakes without consent, leaving unsightly and unproductive heaps of spoil, and suggests that the level of weed and poor quality of grass types indicates a probable low input, if any of fertilisers or farmyard manure.

31. Mr Nixon also states that he *‘did not observe that any action had been taken to reduce compaction in many of the fields, and that this coupled with the weed burden and lack of sward management/replacement is in his view a key area as to whether the Farm has or has not been farmed in accordance with the Rules of Good Husbandry. The lack of regular maintenance to the fixed equipment of fences, hedges and ditches, the lack of care to ensure that watercourses are protected and kept free of stock engenders the opinion that the Farm management has been one of intensive horse grazing without any other meaningful management input.’*
32. In his conclusion he states *‘As a consequence of my findings outlined above, I am of the opinion that the farming practices upon Lands Farm do not reasonably comply with the Rules of Good Husbandry within Section 11 of the Agricultural Act 1947 specifically in respect of:*
 - a. *Section 11(2)(A) The permanent pasture has not been managed efficiently by either grazing or possibly mowing and has therefore not been maintained in a good state of cultivation fertility nor has it been kept weed free*
 - b. *Section 11(2)(C) The Holding has not been stocked in a manner consistent with efficient use of the grassland being primarily stocked by equine livestock as opposed to mixed grazing of stock types to reduce the competition from weeds and coarser grasses over more productive grasses. The stocking of the Farm has included grazing in periods of inclement weather, which has caused much damage to the surface of the various grass fields to the detriment of the holding generally and the soil structure where winter grazing has occurred.*
 - c. *Section 11(2)(F) Throughout the holding the fences, hedges and ditches have not been maintained or repaired on a regular or consistent basis. The lack of repair and maintenance has been to the detriment of the Holding and the future of the Holding to maintain a reasonable standard of efficient production. There is no evidence from my inspection which gave me any confidence that current practices would enable such a standard of efficient production to be maintained in the future to meet the requirements of the Rules of Good husbandry.’*
33. Mr Nixon gave oral evidence that the efficiency of the holding was difficult to assess with horses, because it might vary according to whether they were horses or ponies. He stated that he was told that there were 60 animals on the holding which in his view seemed a lot. He stated that there was no spare grass, which was expected but that fields were badly poached due to the horses being out in wet

weather causing damage. He stated that weed growth had rendered significant part so the farm inefficient and in Fields 8, 10 and 11 woodland growth had stopped the efficient use of the ground. These 3 fields represent 19.26 acres.

34. Mr Nixon also stated that photo 42 [page 149] shows an area just north of the boundary between fields 6631 and 6054 shows a lighter coloured area which is still part of the holding but has been fenced off for expediency and has been left to grow rough with trees for approximately 10 to 20 years.
35. Mr Nixon was asked about what he had described as the lack of tenant management. He stated that he would expect the less damaging poaching to be harrowed, rolled and aerated in order to allow the grass to recover. He stated that it did not look as if the area behind the pond in Field 11 Photo 21 [page 385] had ever been rolled or harrowed. He also stated that in Field 7552 (#9/letter L on the plan on page 80) the poaching was significant and had gone deep into the ground and if that was done year in year out there was a chance of compaction, and the structure would need to be broken up with the direct reseeding of that area of pasture with an appropriate equine mix.
36. Mr Nixon stated that as horses are selective feeders this reduces the presence of certain grasses and makes the presence of other weeds correspondingly more likely. He suggested that it would have been better to have agisted sheep to complement the horse grazing and remove the ragwort as sheep do less damage to the ground. He stated that he would have expected the fences to be stockproof for sheep in any event.
37. Mr Nixon confirmed that very productive grass leys are not suitable for horses and can cause bloat and laminitis but there are some which are less productive and have less of a seasonal peak which therefore give a flattened more consistent level of production. He stated that the current pasture is annual meadow grasses with some rye grasses and some weeds such as buttercups, nettles and thistles. He described there being significant depreciation of the fields in several ways, in that the poaching had not been properly restored, the weed growth was widespread when he inspected, and the fields were encroached by several metres around their circumference by unkempt hedgerows. He referred to photo 12 [page 376] in Field 11 taken in July 2020 which he stated shows a luxuriant growth of weeds and annual meadow grass with possibly some rye grass. He also estimated that encroaching hedgerows could represent 0.5 to 1 acre in total of unproductive land area.
38. Mr Nixon was asked whether there might be any other method of farming the Holding which could be efficient given its size and location and he stated that an intensive holding for pigs or poultry might be possible in addition to grazing grounds.

39. Ms Dawn Mather provided a witness statement [page 613] and oral evidence to the Tribunal. She stated that 1 or two people had exercised their horses on the outdoor arena before the Tribunal inspected. A horse was being exercised during the Tribunal inspection and two more exercised after the Tribunal had left. She stated that this was a typical day. She stated that there had never been any injuries from the outdoor or indoor arenas or any referrals to the vet as a consequence of the use of these areas.
40. The investment in the buildings had impacted stocking levels as there was significant indoor space available for the horses. Not all horses are out at the same time. She gave evidence that all ditches and pipes on the holding had been cleared out systematically. She stated that a lot of time had been spent in every field flailing, mowing and weeding and that the holding was well managed and neither over nor understocked. There is stabling for 60, and they have had up to 52 horses on the holding at any one time.
41. She stated that in her view the outdoor arena was suitable for the girls who ride there. She stated that it had not been used over the winter months and so the grass had grown through, but this has been addressed since. She gave evidence that the arena is treated monthly with weedkiller although she was not aware when it was treated before March 2021. She stated that there had been spending of £1000-£1500 per year on weedkiller although did not have receipts to correspond to this.
42. She confirmed that her mother is the tenant and that she does not live on the farm. She stated that Basic Farm Payment was claimed last year from the Rural Payments Agency (RPA) through agents P Wilson & Co but she did not know how much. She was unaware when it was first claimed or whether there had been a cross compliance visit by the RPA. Tribunal Member Meek stated that he was able to see that the publicly available information on the internet indicated that the RPA for Lands Farm was paid last year and the year before.
43. She gave evidence that the holding is mown using quad bike and a pull along mower and that a neighbouring farmer comes in to do the rolling. She stated that mowing rolling and weed spraying took place in May 2020 and March 2021. She stated that there was waterlogging over the past winter and so areas were reseeded in March 2021, but they had not needed to previously as the grass generally grows well.
44. She accepted that prior to the application being brought the position was different. Ms Mather stated that her father, Mr Elphick had died in May 2017 and that things had been difficult on the holding. There had been a lot of time spent dealing with Mr Elphick's business affairs and not enough time had been spent on the farm but she described the holding as being 'back on track now'.

45. Ms Mather stated that all drains were working in March 2021 when Mr Nixon inspected and that there had been additional clearing work done since then once it was drier and easier to get machines on to the farm, but water was flowing properly throughout. She confirmed that there was an annual maintenance programme with work on ditches in the summer so as not to do more damage.
46. She was asked why there were stones in the field in May 2020 [page 16]. Ms Mather stated that member of the public walk through the farm and sometime throw bricks and stones. At page 17 the concrete block was part of a roadway which had become dislodged and had now been removed. Photos at page 18, 19 and 20 and 21 show debris and tyres which Ms Mather states has since been removed.
47. She accepted that Mr Nixon's estimate that some of the trees had been growing for over 10 years and stated that they have previously been reported to the Forestry Commission for removing trees, and that her father had not removed trees for wildlife reasons. She stated that her father had given permission for somebody to store the fighter jet on the property but that the fuel tank had been removed and it was just there as storage. She did not accept that the clean up of the holding was purely in response to the application.
48. Mr Adam Winthrop MRICS FAAV gave expert evidence to the Tribunal in support of the Respondent's case. His report at page 653 is based on inspections of the holding on 2 March 2021, 27 March 2021 and 12 April 2021 and interviews with the Respondent and family.
49. Mr Winthrop's observations [page 660 and 661] include '*The outdoor menage surfaced in de-wired rubber and enclosed by steel piping is homespun in nature and, at the time of my first inspection appeared to be lacking in maintenance.*' He reports that storage facilities, workshops and other buildings were well-maintained, the fields to the north were in generally good condition, with paddocks to the south and west in reasonable condition although there was evidence of weed infestation that had been treated giving rise to bare patches. He identifies evidence of poaching, volunteer trees, bushes and thorns, encroachment of brambles and some grassland weeds.
50. He states '*The optimum situation for a holding run as a livery unit is to maintain an old sward producing moderate quality forage, clean of weeds, lightly grazed and preferably with some 'thatch' to keep it as clean as possible for turnout in inclement conditions...Typically the bigger problem on livery units is too much food rather than too little. The last thing one would want in this situation is the application of fertiliser or new grass seeds, as it would have a deleterious effect on the health of the horses, particularly the incidence Laminitis. This is in stark contrast to the majority of livestock systems where the objective is for growth and/or finishing of livestock as quickly and efficiently as possible – thus making*

production from grassland paramount to the success of the business. For Lands Farm exactly the opposite is true. The Tribunal will see from the evidence of Richard Paul that the soil samples taken by the Applicant do indicate that the majority of the farm is in a very good state of fertility. The areas which are in need of lime and/or phosphate can easily and readily be attended to by the Respondent and she has indicated her willingness to do so...It is evidence that Lands Farm is suffering from a burden of grassland and other weeds, particularly around the field margins. Despite the evidence of efforts made by the Respondent to date, there is further work to be done in this respect. However, this aside the land is being maintained in good fertility and in a condition entirely consistent with the Respondent maintaining an efficient standard of production.'

51. Mr Winthrop also states that in his view the main production facilities at Lands Farm are kept in a good condition, and the fields are securely fenced in a variety of ways and provide safe turnout for the horses. With the exception of field number 2, the vast majority of the farm appears well-drained and Mr Winthrop is of the opinion that the necessary work of repair and/or maintenance is being carried out. He states *'What I am not saying however is that I believe the Respondent's recent repair and maintenance of the land element of the farm constitutes best practice. There is significant encroachment of brambles at the field margins and a significant weed burden in some of the pastures. The hedges have generally been allowed to grow out – making their ongoing management difficult – and their bases have become a haven for brambles and weed. There also appears to have been a proliferation of volunteer trees shrub and bushes in recent years (simply noting their state of maturity) that appear to have gone unchecked...my overall impression of the operation at Lands Farm is one of a well-managed and capitalised family business with good facilities, customer care and attention to detail...there are well documented deficiencies in the tenant's repair and maintenance programme as regards the encroachment of brambles, principally along the boundary edges...But there is no doubt that the weed burden at Lands Farm is significantly influenced by its location. On approximately half of its perimeter it is bounded by land that has been long since abandoned and thus provide a continuous source of weed seed to the holding...in the context of Lands Farm, it is my opinion that the deficiencies in management practice do not have any material effect on the Tenant's ability to run a successful operation and as such are not material considerations here...I am firmly of the opinion that the occupier of Lands Farm is maintaining a reasonable standard of efficient production...'*
52. Mr McNall on behalf of the Applicant put to Mr Winthrop that there was a conflict of interest due to his extended professional involvement with P Wilson and Co and suggested that his interviews with family members which were not attached to his report and the witness statements which were attached were

inappropriately influential and rendered his views no longer impartial. Mr Winthrop stated that his report was his own professional view.

53. Mr Winthrop was questioned as to whether he was suggesting that Mr Nixon's photographs were unrepresentative. Mr Winthrop stated that in his view they were taken to show the condition of the less edifying aspects of the holding at that time. Mr Winthrop stated that the holding was in generally good condition and that he had regard to all things, good, bad or otherwise, but that he disagrees with the conclusions of Mr Nixon regarding the impact on efficient production.
54. Mr Winthrop stated that he agreed that the concrete and tyres, and the mature trees identified by Mr Nixon were present when he inspected but that he disagreed with the aspect of Mr Nixon's report regarding the drainage system. Mr Winthrop stated that when he inspected the drains were overgrown in places but were not blocked and were functioning even if not in optimal condition and were not having an adverse affect on the land.

The Parties' Submissions

55. The Tribunal received some oral submissions during the course of the hearing, and written submissions from both parties, including supplementary submissions from the Applicant responding to the Respondent's submissions which made a number of allegations.
56. For the avoidance of doubt, the Tribunal accepts the Applicant's proposition in its case outline that there are a large number of issues referred to in statement and submissions on behalf of the Respondent which whilst of personal significance to the Respondent are not relevant to the decision before the Tribunal. These include:
 - a. The condition of the tenant's house;
 - b. The age of the tenant, or the length of her tenancy, the history of the tenancy, or the circumstances in which she entered into that tenancy;
 - c. Any hardship which she or her family might suffer if a certificate is given, and a Notice to Quit follows;
 - d. The fact that this landlord bought from the previous landlord;
 - e. Any indulgence as to husbandry extended by the previous landlord;
 - f. The knowledge of the present landlord of the state of the holding when it bought the holding, any other land held by the landlord, the negotiations which preceded the purchase, the terms of the sale, or the landlord's motive in seeking a certificate.
 - g. Anything to do with any other proceedings of any kind between the landlord and tenant which are not before the Tribunal today, or other notices to quit which has been given.

57. The Applicant submits that the Tribunal must decide on the balance of probabilities whether:
- 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 land is being properly stocked;
 - c. The necessary work of maintenance and repair is being carried out
58. The Applicant submits that the Tribunal should consider the state of the holding at the time of the application and consider the appropriate weight to give to its own inspection as a snapshot, as compared to the previous snapshots over the preceding months.
59. The Applicant accepts that livery is an acceptable means by which the land in question could be husbanded. They do not seek to suggest that even well-manged livery would amount to Bad Husbandry. They suggest that the holding in question could be husbanded through pigs or poultry as per the evidence of Mr Nixon or livery with all the grassland being properly cultivated managed and maintained.
60. Mr Wilson on behalf of the Respondent submits that throughout the tenancy Mrs Elphick has maintained a reasonable standard of efficient production whilst keeping the unit in a condition to enable such a standard to be maintained in the future. She has also paid a very high rent. 1.10 The pastures at Lands Farm are not perfect and there are some weeds but not enough to warrant an application for a Certificate of Bad Husbandry. Weeds are temporary and do not permanently depreciate the value of the asset. 1.11 There is occasional poaching because this happens on livestock farms whether the system is dairy beef sheep or horses. Damage is limited by proper management of the pastures such as that undertaken by Mrs Elphick and her family.
61. Mr Wilson also asserted a number of points in written submissions including arguments about agreement by the previous landlord. We do not pursue these arguments any further here as in our view any previous agreement by the landlord is not binding upon the current one, who is entitled to exercise their contractual and statutory rights from the point when they acquired the lease.

Analysis

62. In reviewing the evidence and analysing the issues it is worth restating here that the issue for the Tribunal is whether or not the Respondent is fulfilling her responsibilities to farm in accordance with the rules of good husbandry; and if the Tribunal is satisfied that the tenant is not fulfilling those responsibilities it is bound to grant such a certificate (see AHA 1986, Sch 3 Pt II para 9(1) and (2)). The Rules of Good Husbandry (Rule 1 and 2) comprising the test to be applied for the purposes of the present application are set out above at paragraphs 8 and 9. As already noted it was common ground that the burden is upon the Applicant to

establish the case that the Respondent is failing to fulfil her responsibilities under these Rules.

63. Both parties referred the Tribunal to the case of *R(Davies) v Philipps & Philipps* [2007] EWHC 1395 (Admin) and directed us to the principle that the test of any breach of the rules of Good Husbandry is a pragmatic one.
64. We were also referred to the First Tier Tribunal cases of *Yorke v Barron* ALD/Y/CBH/2016/001 and *Chapman and Shackleton v Lumb* ALD/Y/CBH/2014/001 by both parties who each seek to rely on these cases for different purposes. We note that the Tribunal is not bound by another First Tier decision, although we are mindful of the principles to which the parties refer.
65. The Tribunal is mindful that the information gathered from our inspection is one data point. We accept the approach from *Goldsmid v Hicks* that what the Tribunal is required to consider is what 'is' being done not what has been done in the past nor what could be done in the future save to the extent that it throws light on what 'is' being done at the time that the Tribunal comes to consider the evidence. That is to say, that the state of husbandry is a 'state of affairs' existing at the time of the hearing and view, not merely a matter of 'instant' physical condition at that time. Our observation at the inspection was of a holding which at that 'instant' was in a generally well-managed physical condition. However, notwithstanding this, we carefully considered whether this was, as the Applicant suggests in their written submissions, a superficial 'clean up' operation, and our starting point was the evidence as to state of the holding at the date on which the application was made.
66. In doing so, we considered the photographic evidence of Mr Pickervance attached to the original application, in May 2020 and the photographs provided by Mr Nixon in March 2021, which were taken at the same point in time as the inspection of Mr Winthrop.
67. Turning to the test as set out above and explained in the authorities cited. The Tribunal accepts the point made by Mr McNall that one should look at the factors under s.11(2) and then bring those into an overall consideration of the manner in which the unit is being farmed under section 11(1). Thus considering the s.11(2) factors relied upon by the Applicants:
 - (1) *The extent to which permanent pasture is being properly mown or grazed and maintained in a good state of cultivation and fertility and in good condition;*
68. It is clear that at the date of the application there were shortcomings in the state of the holding, in particular with regards to debris in the fields, and the quality of the grass as recorded in Mr Pickervance's photographs. We do not conclude that because there were shortcomings at this point in time this necessarily means that the Tribunal should grant a certificate of bad husbandry, but we are mindful of this point in time when considering the overall 'state of affairs'.

69. We were not persuaded by the submissions of the Applicant that the Tribunal should disregard the evidence of Mr Winthrop on the basis that his evidence had been compromised and rendered impartial. We found his evidence to be balanced and carefully considered, reflecting both good and bad aspects of the farm at the point where he inspected it. We carefully considered whether his conversations with family members and the preparation of witness statements compromised his evidence in respect of the state of the pasture land and management of the holding. We concluded that whilst the information regarding the background to the purchase of the property and the views of family members were not directly relevant to the expert evidence from Mr Winthrop, we were not persuaded that it tainted it in the manner suggested by Mr McNall on behalf of the Applicant.
70. The Tribunal is of the view that whilst the photographic evidence of Mr Nixon in March 2021 and Mr Pickervance in May 2020 are not disputed to have been taken at the dates and times stated, the fact that there are aspects of the farm which have been in poor condition does not necessarily indicate that the Applicant has discharged its burden of proof. We remind ourselves that the test for the Tribunal is a pragmatic one, and one which is a 'state of affairs' at the time of the hearing. This is not to over-emphasise the 'instant' condition. But nor, as the Applicant seems to suggest should the Tribunal disregard the 'instant' condition either. It is for the Tribunal to weigh all of the various 'snapshots' and using its knowledge and expertise, together with the expert evidence to reach that pragmatic conclusion.
71. We considered the aspects referred to in the Applicant's submissions in respect of the condition of the farm and considered whether they either individually or in combination discharge the Applicant's burden of proof in respect of the maintenance of permanent pasture.
72. We considered the presence of self-sown bushes, saplings and some more mature trees in the bottom fields, which the Applicant suggests indicate that the fields have not been properly tended for years. We find the presence of some of these trees to be compatible with the manner in which the holding is currently being farmed and not compromise its efficiency as a livery business. However, removal of some of the hawthorn bushes (in the Autumn) would make pasture maintenance easier.
73. It is not disputed by Mr Winthrop that the tyres and concrete blocks photographed by Mr Pickervance and Mr Nixon were present in March 2021, and we conclude that at least some of them had been present from May 2020 until at least March 2021. We agree that this does not indicate that the holding was being managed in a manner to which one would aspire, but the question for us is both whether permanent pasture is being properly managed and necessary

maintenance and repair is being carried out, but also whether the occupier is maintaining a reasonable standard of efficient production.

74. We are asked to conclude that the photographs provided to us [385, 394] are indicative that the fields have not been mown, rolled or attended to for years. We do not doubt that the photos provided to us by Mr Nixon and Mr Pickervance were taken when they state, but the Tribunal can draw only limited conclusions from photographs reproduced with colours that are not wholly reliable due to printing limitations. We did not find the evidence of our inspection to be consistent with fields which had only recently been properly managed.
75. We are also not persuaded that the poaching referred to by Mr Nixon was a severe as suggested, as this would have been incompatible with the level of recovery observed at the time of inspection. We note that the suggestion from the Applicant is that the land had 'already gone to pot' in May 2020 and was still in a mess in March 2021.
76. We find that the pasture across the holding has been maintained in a good state of cultivation and fertility and in good condition appropriate to its use for the grazing of horses. The quality of the grass was broadly acceptable across the holding, with the northernmost fields of particularly good. We found the grass species appropriate for the purpose to which the land was being put. The level of poaching observed by the Tribunal was very low, and the level of weed encroachment was also very low. This was despite the neighbouring land being heavily infested with ragwort and docks such as to make weed infestation a highly likely event. We also note from our inspection that the level of weed infestation was significantly lower and better managed than one would expect from a recent 'clear up'. We did not, for example, see evidence of a significant weed burden which had been recently sprayed or topped, with the exception of one patch of docks in the southerly end of the holding which had been sprayed relatively recently. The soil quality appeared good on informal inspection by the Tribunal and this is supported by the evidence of Mr Richard Paul as referred to by Mr Winthrop. We note the evidence of Mr Nixon is that horses are selective feeders which therefore makes the presence of invasive weeds more likely. We find the absence of these weeds on a holding used for horses, with a significant weed burden on neighbouring land to be indicative of an active weed management programme over and above a 'snapshot' one-off tidy-up, and we were persuaded that there was evidence of an ongoing state of affairs to manage the weed burden effectively.
77. We are persuaded by the evidence of Mr Winthrop that Mr Nixon's photographs were selected to show the 'less edifying' aspects of the holding and we are persuaded by his findings that the vast majority of the pasture on the holding was adequately managed and maintained, and of an appropriate type and quality for the efficient management of a livery business. We found him to be a balanced and

persuasive witness whose report was measured and whose conclusions were more easily reconcilable with the evidence available to the Tribunal at the inspection. In contrast the report of Mr Nixon set out a state of affairs on Lands Farm which was so far below what would be expected, that the Tribunal would have expected to have seen evidence of that persisting at the point of inspection. For example, on our inspection we did not see ‘significant broad leaf weed burdens’(3.1.10) ‘several areas of bare ground (3.1.11) ‘most of the watercourses were working inefficiently’ (3.1.14) ‘Field OS7552 had been particularly heavily poached causing much surface damage’ (3.1.126)’ as referred to by Mr Nixon. We note that Mr Nixon was not in attendance at the inspection and therefore the Tribunal was not able to ask him specifically to comment on whether or not the condition of the farm had changed from his previous inspection and if so, in what way. Nor, therefore was he able to offer any updated view, if any, on the way in which the farm is currently being managed.

78. We similarly accept the evidence of Mr Winthrop that the drainage system was working at the time that he inspected, albeit not in its optimal state as we find this to be in accordance with our own observations, both in terms of the state of the system itself, and also the state of the land which did not show signs of prolonged waterlogging, or other problems associated with defective drainage.

(2) The extent to which 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;

79. It is suggested by the Applicant that even if horses were livestock the holding would be extremely overstocked having potentially had up to 60 horses where the ABC suggests no more than 32. We find the Applicant’s calculations to be somewhat overstated, as the evidence from the Respondent is that whilst they can house up to 60 horses, they have only ever had up to 52 on site. These would have been a mixture of horses, ponies and donkeys housed in part in the indoor stabling as well as turned out for grazing. Accordingly we are not persuaded that the calculation put forward by the Applicant leads inevitably to the conclusion which they suggest. We find the more persuasive evidence to be whether or not the level of stocking has led to over-grazing or inappropriate grassland management. As set out above we did not observe poaching to the degree which would lead us to conclude either that there was inappropriate over-stocking and/or over-wintering, or that this has been a significant prolonged problem in the past. If had it been so, in our view, this would have been apparent to a greater extent than was visible at the time of inspection.

(5) The extent to which the necessary work of maintenance and repair is being carried out.

80. We carefully considered the issue of maintenance and repair and the extent to which it ‘is being carried out’. We note that the evidence from the previous photographs is

that there are elements of maintenance which had not been carried out at the time those photographs were taken in May 2020 and March 2021, and we accept that some of those elements such as the presence of tyres and debris had subsisted for an extended period of time. The test is not whether maintenance and repair was carried out at a particular point in the past. Nor is it as simple as the fact that it had been done at the instant when the Tribunal inspected. We considered the evidence in relation to the farm as a whole, and we noted that our inspection did not show evidence of recent fence repairs, or recent repairs to the well-maintained buildings. This leads us to conclude that fence maintenance has been ongoing for a sustained period of time.

81. We observed a holding which was in generally good repair and of which large parts of it had clearly been well maintained for a long period. We are mindful that there had been encroachment by hedges, although again this was no longer an issue by the time of the inspection. We also considered the presence of volunteer trees which whilst not in our view having a negative effect on the holding in the use for which it is currently being put, nevertheless could be indicative of the absence of a level of maintenance. In our view, on balance, necessary maintenance work is being carried out. We certainly do not find that over time any more than the bare minimum necessary has been achieved, although that level has been significantly increased and improved over the last 12 months. In our view, the pragmatic approach is akin to that expressed by Mr Winthrop, namely that the Tribunal does not suggest that the Respondent's recent repair and maintenance of the land element of the farm constitutes best practice, but this is not the test. We conclude that on the balance of probabilities the necessary work of maintenance and repair is being carried out when considering the 'state of affairs' of the holding at the time of the hearing, including the information available about the shortcomings in parts of the holding at the time of the application.
82. As set out above, in addition to considering the tests under s11 (2) we also need to be mindful to refer back to the overarching test under s11(1) as to whether or not the occupier is maintaining a reasonable standard of efficient production as respects both the kind of produce and the quantity and quality thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future.
83. We considered the suggestion by the Applicant that parts of the farm are not used for agriculture at all, having been variously laid to hard-standing, used for storage or had material tipped on it such as the outdoor arena with chopped rubber surface. The suggestion by the Applicant is that none of this land is being 'husbanded' and does not comply and cannot comply with the rules of good husbandry because it is not being used for purposes ancillary to agriculture as horses are not livestock and livery is not agriculture. The Applicant's starting point is that a significant proportion of the holding is not agricultural, and yet

when questioned on this point the Applicant accepts that a well managed livery is an appropriate way for the holding to be efficiently managed.

84. The Applicant's closing submissions set out what they consider would constitute 'efficient' use of this pastureland for the purpose of a livery. Whilst the Applicant's list does not constitute the test which the Tribunal needs to apply, we nevertheless considered the points which they raise:
- a. The Tribunal found the grass on the holding to be suitable for the use to which it was being put, and the combination of relatively low productivity meadow grasses to be suitable for grazing of horses
 - b. There is no suggestion that the fields or paddocks have altered significantly between the time of the application, the expert inspections and the Tribunal inspection and we found them to be suitable in size and degree of maintenance
 - c. The Tribunal heard no evidence to suggest that the slope of the fields were such that they were unsuitable for horses, and our own observations at inspection did not suggest this. We accept the evidence of Mrs Mather that the livery business has run successfully for some considerable period of time on this land.
 - d. It is suggested that the holding is not properly fenced. We found the fencing to be in parts constructed from scaffolding poles, which whilst not of particular aesthetic merit were nevertheless of solid construction, and effective. There were also parts of the holding which were fenced with barbed wire which did not have electric tape. It is suggested that this type of fencing is inappropriate for the keeping of horses, however in our view, whilst it is less than ideal, there is no evidence to suggest it should not be used though probably unwise if larger numbers of horses are running together.
 - e. We agree that the holding should be free from hazards, and we note that whilst these have clearly been more prevalent in the past they are not currently present to any significant degree at Lands Farm
 - f. The drainage appears to be adequately functioning
 - g. Clean water and shelter were provided
85. On balance therefore we find that these elements of efficient livery are in place and taking an overall pragmatic view of the condition of the farm over time we find this to be consistent with the evidence provided by Mrs Mather, which is of a holding which deteriorated following the death of Mr Elphick, but which has improved and is maintaining a reasonable standard of efficient production.
86. We note that Applicant's submissions that by their calculation 1/8th of the holding is not being farmed or husbanded at all, due to parts being built on or laid to hardstanding, covered with chopped rubber to form the outdoor arena area, fenced off, or flooded and turned into ponds/fishery areas.

87. We found the buildings to be well-maintained structures entirely consistent with the provision of a well-run livery and indeed necessary for the safe stabling of horses and ponies and also necessary to offer flexibility to prevent over-grazing. Similarly, the hard-standing areas offer easier access to parts of the farm, but are also consistent with the livery business which also offers shows and gymkhanas with larger numbers of visitors. We did not find this to be evidence of the occupier failing to maintain a reasonable standard of efficient production. The fencing off of part of fields 1 and 8 was, in the view of the Tribunal a pragmatic and proportionate decision to straighten up a boundary to enable efficient management of a more regular area and create an undisturbed, waterside habitat for animals and insects.
88. Whilst we were not persuaded that the rubber exercise area was of a high quality, even were the Tribunal to accept that this area and the ponds were not being actively husbanded this would represent only 3% of the overall holding which, taking a pragmatic view, is not in the opinion of the Tribunal, sufficient to lead the Tribunal to conclude that the occupier is not maintaining a reasonable standard of efficient production.
89. We accept the evidence of Mr Andrews that the construction of the outdoor arena was not ideal, and would clearly be unsuitable for high value animals, we were not persuaded that it offered no amenity value, and appeared to provide a space to lunge lower value animals.
90. The Applicant raises a number of issues around the absence of documentation provided by the Respondent in terms of the farm accounts, and other evidence around payments received or applied for. We note that it is uncontroversial that the burden of proof in this application rests with the Applicant. We note that the Applicant raises some concerns in their final written submissions about the information raised by Tribunal Member Meek in respect of Rural Payments suggesting that the Tribunal should not rely on evidence that the parties do not have sight of. For the avoidance of doubt, in our view the presence or absence of such payments is not a determinative factor in our decision making, and in any event, the information which was drawn to the attention of the parties in the course of the hearing was openly available public information, not that which required any membership or subscription. It was brought to the attention of the parties by the Tribunal member as the Applicant was seeking to suggest that the Tribunal should draw an inference of poor management or administrative failure due to the absence of evidence to prove that payments had been applied for or received.
91. The Tribunal also considered the evidence of Mr Petitt concerning possible pollutants on the holding. We note that the Applicant submits that there is contamination on the land which has occurred during the time which the Respondent has been in occupation. We accept Mr Petitt's evidence, which was

unchallenged, but note that the scope of his assessment was to establish presence or absence of contaminants, not to establish risk to human health. He stated that there was asphalt in the hardstanding materials which could contribute to the presence of the hydrocarbons, but he has not drawn any further conclusions about the reasons for the presence of the contamination. We were also not persuaded that the comparator of an allotment for the Cadmium figure was a wholly appropriate one, as the holding is not used for food production and in the absence of any other comparators, we were not persuaded that it was possible to draw any negative conclusion from the data provided. Therefore, whilst we are mindful of Mr Pettitt's evidence, in the absence of any conclusions about the reasons for the contamination or the consequences of it, we do not find that it leads us to draw any firm, conclusions about the standard of management of the Respondent.

92. We note that the rules of Good Husbandry are a product of policy immediately after the Second World War and are aimed at increasing output and efficiency. Inevitably since then the means by which a holding can be efficiently managed and can maintain a reasonable standard of production has changed. In the view of the Tribunal this current farming context is captured in the wording above which refers to the character and situation of the unit. This is a small unit on the edge of an urban area. It has neighbouring land around part of the holding which is neglected and carries a significant weed burden. We are mindful that the evidence of Mr Nixon is that the conduct of the tenant has prevented the ability to economically farm the holding other than for horses. However, we note that it is not disputed that livery is an appropriate use of this holding, and we agree with this. We have not speculated as to whether or not pigs or poultry would or could be appropriate, instead we have focused on whether in our view, on the basis of the totality of the evidence including both our own inspection and the information from the witnesses about the state of the holding in the past, the Respondent is complying with the Rules of Good Husbandry or not. For the combination of reasons set out above, the Tribunal is on balance satisfied that the Respondent is complying with the Rules of Good Husbandry.

Conclusion

93. Looking at the manner in which the Respondent is farming Lands Farm overall, having regard to the character and situation of the unit, the standard of management and the other relevant circumstances including those highlighted under s11(2), for the reasons set out above, the Tribunal is satisfied that the Respondent is complying with the Rules of Good Husbandry.
94. The Tribunal holds that the Applicants have not discharged the evidential burden upon them and that accordingly a certificate under Case C is not to be granted.

Notification of the Right to Appeal

The parties each have a right of appeal against this decision in accordance with Part 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Tribunal's Rules'). An application for permission to appeal must be made in writing to the Tribunal within 28 days after the latest of the dates that the Tribunal sends to the person making the application (a) these written reasons for the decision (b) notification of amended reasons for, or correction of, the decision following a review; or (c) notification that an application for the decision to be set aside has been unsuccessful, subject that is to any extension of time if granted by the Tribunal.

Regional Judge Katherine Southby
17 August 2021