

**AGRICULTURAL LAND TRIBUNAL
YORKSHIRE AND HUMBERSIDE AREA**

REF: ALT/Y/NQ/1

THE AGRICULTURAL HOLDINGS ACT 1986

LAND AT: White House Farm, Staintondale,
Scarborough, North Yorkshire

BETWEEN: William Smith (Wakefield) Limited Applicant
Red House Farm Staintondale
Scarborough
North Yorkshire YO13 OHA

AND

Parisride Limited Respondent
Kirkless Lodge
Harwood Dale
Scarborough
North Yorkshire YO13 ODN

The Tribunal sat at the Palm Court Hotel, St Nicholas Cliff, Scarborough, North Yorkshire YO11 2ES at 10.00am on 19th January 2004 to consider an application dated 2nd May 2003 made under Agricultural Holdings Act 1986 for consent to the operation of the Notice to Quit dated 2nd April 2003 in respect of the holding known as White House Farm, Staintondale, Scarborough, North Yorkshire.

HAVING considered the application and other documents relating to it, the evidence given by and on behalf of the Applicant, the evidence given by and on behalf of the Respondent and having inspected the subject holding, by a majority decision the Tribunal do hereby refuse to give their consent to the Operation of the Notice to Quit for the reasons set out in the Schedule below.

Signed this day of April 2004.

HIS HONOUR ROBERT TAYLOR
Chairman

The members of the Tribunal were His Honour Robert Taylor (Chairman), Mr D R Brotherton (Landowners Panel) and Mr J R Smith (Farmers Panel).

I hereby confirm that this is a true record of the decision of the Tribunal.

MRS. P.A. DONN
Tribunal Secretary

THE SCHEDULE

1. This is an application by William Smith (Wakefield) Limited (“the Landlord”) for the consent of the Tribunal to the operation of a notice to quit (“the Notice to Quit”) an agricultural holding known as White House Farm, Staintondale, Scarborough, North Yorkshire (“the Holding”) given to its tenant, Parisride Limited (“the Tenant”).
2. The Notice to Quit was given under Schedule 3, Case D of the Agricultural Holdings Act 1986 (“the Act”) and was served on 4 April 2003. A counter-notice under section 28 of the Act (“the Counter-Notice”) was served by the Tenant on 9 April 2003.
3. The hearing took place at Scarborough on 19 January 2004. On the same date the members of the Tribunal carried out an inspection of the Holding.
4. At the hearing, Mr Simon Leach, of Messrs Burges Salmon of Bristol, appeared for the Landlord. Mr John Collins, instructed by Messrs Longstaff and Midgley of Scarborough, appeared for the Tenant.
5. On behalf of the Landlord, evidence was given by Mr William David Smith, a Director of the Landlord company; and by Mr Nigel Christopher Lindley, a Chartered Building Surveyor. On behalf of the Tenant, evidence was given by Mr Geoffrey Alec Longstaff Dent, a Director and principal shareholder of the Tenant company. Various documents were put before the Tribunal in an Agreed Bundle which consisted of four volumes: Volume 1 [“Evidence”]; Volume 2 [“Expert’s Reports”]; Volume 3 [“Witness Statements”]; and Volume 4 [“Authorities”].

The facts: Part 1 – History and Background

6. To a large extent, the facts of this case were not significantly in dispute. The material facts, as we find them, are set out below.
7. The Holding comprises about 30.50 hectares (or 75.30 acres), principally of permanent pasture. There are also various buildings consisting of loose boxes, cart sheds (with hayloft above) and a pole barn. The Holding is shown coloured red on the map at page 6 of Volume 1 of the Bundle.
8. The freehold of the Holding was acquired by Mr William David Smith and his wife on 7 August 1998 and subsequently transferred by them to the Landlord company. At this time the Holding was occupied by the Tenant company, of whom the directors were then a Mr and Mrs Stenton.
9. Mr and Mrs Stenton claimed that they had had an agricultural tenancy of the Holding for over 20 years under an oral agreement with the previous freehold owner, a Mrs Atkinson; and that they had assigned this tenancy to the Tenant company on 29 September 1997.
10. The Landlord disputed the existence of such a tenancy, contending that the Tenant had no more than a grazing licence. As a result, there were proceedings in the Scarborough County Court. On 23 July 1999 a final order was made in these proceedings, whereby the Court declared that the Tenant had an agricultural tenancy of the Holding; and ordered that the Landlord do enter into a written tenancy agreement pursuant to section 6(1) of the Act, the terms whereof were to be referred to an arbitrator in default of agreement between the parties.
11. The arbitrator to whom the terms of the tenancy were referred was Mr A R Pardoe (“the Arbitrator”). His award dated 7 January 2002 appears at Volume 1 of the Bundle, pages 66-81. This award records that the parties had themselves agreed all but two of the clauses of their tenancy agreement; and that amongst the main terms they had agreed were:

- (1) That the tenancy should be a tenancy from year to year running from 1 October 30 September;
- (2) That with effect from 6 April 2001 the rent should be £3,000 a year;
- (3) That the Tenant's obligations included "To cultivate and manage the whole farm according to the rules of good husbandry as defined in Section 11 of the Agriculture Act 1947, so as not to impoverish or deteriorate the land and to keep and leave the same clean and in good heart and condition".

It appears that, subsequent to the award, a written agreement embodying these and other material terms was drawn up, but was not signed or dated. A copy of this agreement is to be found at Volume 1 of the Bundle, pages 34-43. It is common ground that by implication the tenancy agreement incorporated the model clauses relating to maintenance and repair set out in the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973. Accordingly, by virtue of paragraph 5(1) of the Schedule to these regulations, the Tenant was liable to "repair and to keep and leave clean and in good tenantable repair, order and condition...fences, hedges, field walls, stiles, gates and posts.. .in and upon the holding, or which during the tenancy may be erected or provided thereon."

12. At the same time the Arbitrator was also concerned in another dispute between the parties, relating to repairs to the Holding. On 11 July 2000 the Landlord served on the Tenant a notice under Schedule 3, Part 1, Case D of the Act, requiring the Tenant to remedy a number of alleged breaches of its obligation to repair the Holding by carrying out certain specified works of repair within a reasonable time. On 4 August 2000 the Tenant served a counter-notice disputing its liability to carry out most of these works, and the matter was referred to arbitration. On 2 January 2002 the Arbitrator made his final award in this dispute. A copy of his award appears at Volume 1 of the Bundle, pages 82-85. Two paragraphs of the award are of particular relevance to the present proceedings, namely.

"1.2 In field No. 4728 – I find that the remainder of the gorse on the western boundary should be removed within 12 months from the date of this award";

and

"1.4 In field No. 7290 – I find that the tenant should repair the walls on the North and East boundary within 12 months of this award."

13. On 13 December 2002 Mr Geoffrey Alec Long staff Dent acquired a majority shareholding in the Tenant company, and thereafter was the person effectively carrying out the management of the Holding.
14. On 4 April 2003 the Landlord served on the Tenant the Notice to Quit the Holding on 6 April 2004. A copy of this notice, dated 2 April 2003, appears at Volume 1 of the Bundle, page 86. It was given under Schedule 3, Part 1, Case D of the Act on the following ground:

"At the date of the giving of this notice you have failed to comply with a written notice dated the 11 day of July 2000 served on you by your landlord which required you within the reasonable period specified in the notice to remedy the breaches by you capable of being remedied of the terms and conditions of your tenancy not inconsistent with your responsibilities to farm in accordance with the rules of good husbandry."

15. On about 9 April 2003 the Tenant responded to the Notice to Quit in two ways:

- (1) By serving on the Landlord a counter-notice under Section 28(2) of the Act (copied at Volume 1 of the Bundle, page 88);
- (2) By serving on the Landlord a notice requiring the validity of the reason stated in the notice to quit to be determined by arbitration under the Act (copied at Volume 1 of the Bundle, page 89).

Both these notices were enclosed in the same envelope, which also contained a letter from the Tenant's solicitors dated 8 April 2003 (copied at Volume 3 of the Bundle, pages 37-38). In this letter the Landlord's solicitors were requested to "provide full details of any works which it is alleged have not been done." In their reply dated 22 April 2003 (copied at Volume 3 of the Bundle, page 13), the Landlord's solicitors replied that a schedule of the work which the Tenant had failed to complete would follow with then- statement of case.

16. In respect of the *first* of the Tenant's notices, the Landlord duly made application to the Tribunal for its consent to the operation of the Notice to Quit. This Application (copied at Volume 1 of the Bundle, pages 3-7), was sent to the Tenant by the Tribunal by letter dated 9 May 2003 (copied at Volume 3 of the Bundle, page 16). In paragraph 5 of its application the Landlord stated that it based its case on two specific failures by the Tenant to complete works directed by the Arbitrator in his award, namely: **(1) the repair of Walls on the north and eastern boundaries of field No 7290; and (2) the removal of the remainder of the gorse from the western boundary of field No 4728.** The Tenant duly delivered a Reply to this Application, dated 4 June 2003 (copied at Volume 1 of the Bundle, pages 8-30). The necessary steps were then taken to bring the Landlord's application for consent to a hearing by the Tribunal on 19 January 2004. However, no further action was ever taken by either party in respect of the *second* of the Tenant's notices. In particular, the Tenant neither applied for nor agreed to the appointment of an arbitrator and no referral to arbitration ever took place.

The Landlord's preliminary point of law

17. It is convenient at this stage to interrupt our summary of the facts in order to deal with a preliminary point of law raised by the Landlord.
18. At the outset of the hearing, Mr Leach for the Landlord submitted that the Tenant had not served an effective counter-notice under Section 26 of the Act; and that, accordingly, the Tribunal had no jurisdiction to determine the Landlord's application. If this submission was correct, then the Notice to Quit would necessarily take effect on 6 April 2004.
19. Mr Leach's submissions were helpfully set out in a written skeleton argument dated 16 January 2004, which he expanded with oral submissions. Essentially his argument was as follows:

- (1) Section 28(4) of the Act provides that:

"Where the tenant not later than one month from the giving of the notice to quit serves on the landlord an effective notice requiring the validity of the reason stated in the notice to quit to be determined by arbitration under this Act-

- (a) any counter-notice already served under subsection (2) above shall be of no effect, but
- (b) if the notice to quit would, apart from this subsection have effect in consequence of the arbitration, the tenant may serve a counter-notice under subsection (2) not later than one month from the date on which the arbitrator's award is delivered to him."

- (2) The effect of Section 28 is to regulate what might otherwise be competing jurisdictions. The scheme of the legislation is that, while the tenant is given two possible ways of contesting a notice to quit, he cannot pursue both at the same time. Nor can he have the matter referred first to the Tribunal and then, if that fails, have the matter referred to arbitration. If he wishes to pursue both, he must first follow the necessary procedure for a referral to arbitration set out in Part III of the Agricultural Holdings (Arbitration on Notices) Order 1987 ("the 1987 Order"). If, but only if, this procedure results in an award by the arbitrator, the tenant may then have the matter referred to the Tribunal, by serving a counter-notice under Section 28(2) of the Act within one month of the arbitrator's award being delivered to him. He cannot do things the other way round, because service of a notice requiring arbitration renders any existing counter-notice under Section 28(2) ineffective, by reason of the provisions of Section 28(4).
 - (3) In the present matter, when the Tenant served its notice requiring arbitration on the Landlord on 9 April 2003, it rendered the Tenant's counter-notice under Section 28(2) served on the same date ineffective. Since the necessary procedural steps for the appointment of an arbitrator had never been taken within the mandatory time limit of three months laid down by Article 10 of the 1987 Order, the notice requiring arbitration had also become ineffective; and the Tenant was now precluded from disputing the validity of the notice to quit (*Magdalen College, Oxford v Heritage* [1974] 1 WLR 441).
 - (4) The only counter-notice served by the Tenant had been rendered ineffective by the operation of Section 28(4). The Tenant had served no further counter-notice; nor could it have done so, because there never had been – and now could never be – an arbitrator's award. Accordingly it was not necessary for the Landlord to obtain the consent of the Tribunal to the operation of the notice to quit.
20. On behalf of the Tenant, Mr Collins submitted that the arguments for the Landlord were misconceived for the following principal reasons:
- (1) The Landlord had adopted an extraordinary and inconsistent position. Having made its application to the Tribunal, and thereby invoked its jurisdiction, the Landlord was now at a very late stage seeking to assert that the Tribunal had no jurisdiction. It should not, and could not, be allowed to do so.
 - (2) The Tenant had served its notice requiring arbitration, because it was not clear from the wording of the Notice to Quit whether the Landlord was complaining of matters which had not already been the subject of arbitration. It was not until the Tenant had received the Landlord's Application for the Tribunal's consent, more than one month after the giving of the Notice to Quit, that it became known to the Tenant that the Landlord was seeking to rely solely upon matters which had already been the subject of arbitration. Thereafter both parties treated the notice requiring arbitration as of no effect, and relied on counter-notice to the Notice to Quit as raising the issue between them which needed to be determined.
 - (3) The provisions of Section 28(4) of the Act had not rendered the Tenant's counter-notice of no effect. The subsection only rendered ineffective a counter-notice which had been "already served" at the time of service of the notice requiring arbitration. In the present instance, both notices had been served at exactly the same time, in the same envelope.

Our decision (1)

21. In our unanimous view, the submissions made by Mr Collins were correct and we accepted them in preference to those made by Mr Leach. The crux of the argument for the Landlord was that the Tenant's counter notice was of no effect because of the provisions of Section 28(4) of the Act. However, all that this subsection says is that, where a tenant serves on a landlord a notice

requiring arbitration, any counter-notice *already* served under Section 28(2) shall be of no effect. We cannot see how this could possibly render ineffective a counter-notice served concurrently with the notice requiring arbitration, not only at the same time but in the same envelope. Furthermore, no question of competing jurisdictions has arisen, since neither party sought to take the referral to arbitration any further. We are therefore satisfied that the Tenant's counter notice under Section 28 (2) is still effective and we have jurisdiction to hear the Landlord's application for our consent to the operation of the Notice to Quit.

The facts: Part 2 – Issues raised by the notice to quit

22. As already indicated, the notice to quit related to two specific areas:

- (1) Removal of the remainder of the gorse on the western boundary of field No 4728 within 12 months of the date of the Arbitrator's award (ie by 6 January 2003);
- (2) Repair of the walls on the north and east boundaries of field No 7290 within the same period.

We shall take each of these areas in turn.

Gorse in 4728

23. It is common ground that:

- (1) The Tenant had not removed all the gorse from the western boundary of this field by 6 January 2003; but
- (2) Any remaining gorse had been removed by the date of our inspection on 19 January 2004.

24. Mr Dent says that, by 4 June 2003, he had removed about 75% of the remaining gorse. However, he was delayed in completing the removal of the rest of the gorse until the beginning of December 2003 for the following reasons (which we accept as being factually correct):

- (1) Some of this gorse was close to a badgers' sett, so that before completing its removal he had to obtain the necessary licence under the Protection of Badgers Act 1992 to disturb badger setts. He originally applied for such a licence to DEFRA on 13 February 2003 (copied at Volume 3 of the Bundle, pages 27-30). He received no response (DEFRA subsequently claimed that his application had never been received). By letter dated 1 August 2003 (copied at Volume 3, pages 41-42) his solicitors made a further application on his behalf. The licence itself (copied at Volume 3, pages 51-56) was not issued until 13 September 2003:
- (2) Within days of receiving this licence, he resumed work on removing the gorse. Unfortunately, the brush cutter he was using then broke down and had to be repaired by an agricultural contractor. The repairs took some time, and the machine was not ready to work again until late November 2003.

25. Mr Smith says that, since the removal of the gorse, stock can escape across the western boundary of this field onto an adjacent track, because there is no stock proof fence along this boundary.

Walls in 7290

26. Both the walls in question are boundary walls of the Holding. They are described in some detail in Mr Lindley's two reports, and illustrated by his accompanying photographs (which together comprise the contents of Volume 2 of the Bundle).

THE NORTHERN WALL:

27. In his first report dated 14 May 2003, based on an inspection on 30 April 2003, Mr Lindley divided this wall into four sections, working westwards from the north eastern corner of the field:
- (i) An 8-metre length, illustrated in photograph N1 (Volume 2, page 20). He said that this length “has been partially reconstructed to almost half complete height but is unfinished.”
 - (ii) A length from the 8-metre point to the 3 5-metre point, illustrated in photograph N2 (page). He described this length as being “generally in a state of collapse”.
 - (iii) Virtually the whole of the rest of the wall from the 3 5-metre point, illustrated in photographs N3-N6 (pages 21-23). He described this length as “entirely collapsed and [comprising] a ridge of stonework generally overgrown with grass, Blackthorn and Gorse.
 - (iv) At the far western end of the northern boundary a “mostly collapsed section of dry-stone wall... terminating in a former stone gatepost”, illustrated in photograph N6.

As can be seen from some of his photographs (eg N3, N4, N7 and N8) there is a stock- proof fence running closely parallel to this wall along the whole length of the boundary with the neighbouring property, albeit on the neighbour’s side of the property.

28. In cross-examination, Mr Smith accepted that the northern wall had been in disrepair “for quite a long time”; and that no work had been done on this wall for at least 24 years. It was apparent to us on our inspection that, along Mr Lindley’s section (iii), there cannot have been anything which could possibly be described as a “wall” in any meaningful sense of the word for many decades. Any wall which may once have been there has long been demolished, or almost entirely collapsed, down to its foundations, leaving virtually nothing but a series of footing stones overgrown with grass, bushes and trees.
29. In his first report, Mr Lindley recommended that the whole of the northern wall be repaired and, where necessary, reconstructed so as to put it throughout in the same condition as the best sections of the eastern wall (see paragraphs 33 and 34 below).. As he confirmed in his evidence, this included the rebuilding of section (iii) as he considered that this was the effect of the Arbitrator’s award.
30. The Tenant carried out repairs to sections (i) and (ii) of the northern wall, which Mr Dent says were completed by mid-July 2003. No work was done to rebuild section (iii) because the Tenant does not accept that it was under any obligation to do so under the Arbitrator’s award.
31. Mr Lindley carried out a further inspection on 5 December 2003. In his further report dated 5 January 2004 he stated that he found that the repairs to sections (i) and (ii) had been carried out to “a generally satisfactory standard and height.” No work had been undertaken to section (iii), except that some sections of blackthorn and gorse had been trimmed. There had been no change to section (iv). He estimated that the repair and rebuilding of sections (iii) and (iv) would represent some 80% of the work which should have been done to this wall.
32. At our inspection we found the condition of the northern wall to be as described by Mr Lindley in his further report.

THE EASTERN WALL:

33. In his first report Mr Lindley divided this wall into eight sections, working southwards from the north eastern corner of the field:

- (i) The first 5 metres, illustrated in photograph E1 (page 27). He described this section as “totally collapsed”, although he accepted that the length between 3 and 5 metres was possibly a gate opening;
 - (ii) From 5 metres to 11 metres, illustrated in photographs E2 and E3 (pages 27-28). He described this section as being in “a partially collapsed state with stones haphazardly placed on the wall to a height of approximately 800mm maximum.”
 - (iii) From 11 metres to 20 metres, illustrated in photograph E4 (page 28). He described this section as being “in a generally poor state without any level of the surface or stone capping and to a maximum height of approximately 1.3 metres”.
 - (iv) From 20 metres to approximately 28 metres, illustrated in photograph E5 (page 29). He described this section as being “in a state of collapse”.
 - (v) From approximately 28 metres to approximately 62 metres, illustrated in photograph E6 (page 29). He described this section as being “in poor condition with some length standing to approximately 1.3 metres, but a majority of area is collapsed to leave a maximum height of stones on the wall at 700mm”.
 - (vi) From approximately 84 metres to approximately 92 metres, illustrated in photographs E7 and E8 (page 30). He described this section as having been “inexpertly reconstructed where the walling stones are clearly not walled levelled and true. . [with] a haphazar . appearance.”
 - (vii) The remainder of the wall, apart from the last 7 metres, as illustrated in photographs E9 to E14 (pages 31 - 34). He described this section as being “in a reasonable condition” and for approximately 85% of its length “in a satisfactory condition with stones relatively true and coursed to a height of approximately 1.4 metres, capped with large flat capping stones, which are generally level and true”. However, there were five areas which required reconstruction from approximately 800/900mm where sections of wall had been disturbed or were missing.
 - (viii) The last 7 metres, illustrated in photograph E15 (page 35). He described this section as being “in a state of collapse”, but accepted that there had probably been an old field gate within this section.
34. In his first report Mr Lindley recommended that the eastern wall should be partially reconstructed and improved to put it throughout in the same condition as its best sections (such as shown in photograph E9).
35. Mr Dent says that the Tenant carried out further work to this wall, concluding in mid-July 2003. He had arranged for a contractor (John Tyson) to complete a large section of the wall, for which had paid £1,586.25. However, the Tenant could not afford to pay any more work, and so Mr Dent had carried out the rest of the work himself
36. In his further report, Mr Lindley expressed the following views about the state of the eastern wall at his inspection on 5 December 2003:

Section (i) showed no change.

Sections (ii) and (iii) had been reconstructed to a satisfactory height and in a generally acceptable manner.

Section (iv) had been reconstructed to a generally satisfactory height in a generally acceptable manner. However there were short areas of haphazard construction and a substantial length of capping stones were inappropriately placed and/or carelessly placed.

In section (v) the collapsed sections of walls had been reconstructed, but some of this had been done haphazardly and to a less than satisfactory standard. Although the wall was to an approximately satisfactory height, many lengths of capping stone had been poorly selected and/or haphazardly placed. Section (vi) showed no change.

In section (vii) the five areas which had required reconstruction had been infilled with sandstone pieces to a generally satisfactory height. However, these sections had been inexpertly reassembled and did not reflect the average standard of the better sections of this wall. Section (viii) showed no change.

In summary, some 25% of the work needed to this wall had been completed satisfactorily, some 25% remained to be undertaken and 50% had been undertaken unsatisfactorily.

37. At our inspection, we noted that at sections (i) and (viii) of this wall there was wire and post fencing which made these sections stock-proof. The rest of the wall was also stock-proof.. In our view, in those sections where the standard of repair work was criticised by Mr Lindley, the condition of the wall was very comparable to – and certainly no worse than – the condition of most of the walls on neighbouring farms.

GENERALLY:

38. Mr Smith alleged that on about three occasions sheep had escaped from the Holding. However, he was unable to give any reliable evidence as to how this had happened. Mr Dent said that, on two occasions, this had happened because others had left open the gate on the entrance shared by the Holding with another farm. On the third occasion the sheep had escaped from another farm. We accepted these explanations. We heard no evidence to suggest that any stock had escaped from the Holding because of the state of the boundary walls.
39. On our inspection we noted that the Holding was being well farmed, with both stock (sheep) and the land in good condition.

The law

40. By Section 28(5) of the Act:

“The Tribunal shall consent under subsection (2) above to the operation of the notice to quit, unless it appears to them, having regard -

- (a) to the extent to which the tenant has failed to comply with the notice to do work;
- (b) to the consequences of his failure to comply with it in any respect; and
- (c) to the circumstances surrounding any such failure, that a fair and reasonable landlord would not insist on possession.

41. It was common ground between the advocates that the onus was on the Tenant to persuade us, on the balance of probabilities, that a fair and reasonable landlord would not insist on possession in this case.

The arguments

42. For the Tenant, Mr Collins submitted that a fair and reasonable landlord would not insist on possession for a number of reasons, which included:
- (1) By December 2003 the Tenant had very substantially complied with the notice to do work. It had removed all the gorse; and it had effectively repaired all the walls it was required to repair to an acceptable standard. To have done any more would have amounted to reconstructing and improving the walls in question, which would have been beyond the Tenant's obligation to repair. In particular the Tenant cannot have been under any obligation to do anything to section (iii) of the northern boundary, since any wall which may once have been there had ceased to exist at least 20-25 years ago.
 - (2) In no respect had any failure by the Tenant to comply with the notice to do work had any significant consequences.
 - (3) Any such failure by the Tenant had to be considered in the light of such circumstances as the marginal nature of the Holding and his limited financial resources.
43. For the Landlord, Mr Leach submitted that a fair and reasonable landlord would insist on possession for a number of reasons, which included:
- (1) The Tenant had significantly failed to comply with the notice to do work. It had not completed the work specified in the Arbitrator's award within the stipulated period of twelve months. Furthermore, in relation to the boundary walls, a substantial amount of the work remained undone (in particular, section (iii) of the northern boundary); or had not been carried out to an acceptable standard, according to the expert evidence of Mr Lindley.
 - (2) Although there might have been no clear evidence about sheep escaping, there remained a risk that stock might escape from the Holding. One consequence of the Tenant's failures was the present proceedings.
 - (3) In looking at the circumstances surrounding the Tenant's failures, it was important to bear in mind its failure to give sufficient priority to completing the requisite works within the specified period.

Our decision (2)

44. By a majority of two to one the members of the Tribunal were satisfied, on the balance of probabilities, that in this case a fair and reasonable landlord would not insist on possession.

The minority view

45. One member, Mr D R Brotherton, was of the view that a fair and reasonable landlord *would* insist on possession. His principal reasons were as follows:
- (1) He preferred the arguments for the Landlord to those for the Tenant.
 - (2) The Tenant had been given ample opportunity to comply with the notice to do work, but had significantly failed to do so within the stipulated time or at all. In particular the Tenant had failed to do any work to section (iii) of the northern boundary; nor had it repaired the whole of the eastern boundary wall to an acceptable standard. The Tenant should not be given any further indulgence.
 - (3) He was not satisfied that the Tenant's failures might not have had adverse consequences for the Landlord.

- (4) There was nothing in the surrounding circumstances which mitigated or excused the Tenant's failures

The majority view

46. Two members, the Chairman and Mr J R Smith, were satisfied that a fair and reasonable landlord would not insist on possession, for these reasons:

- (1) Although the Tenant had initially been somewhat dilatory in seeking to comply with the notice to do work, it had eventually complied to a very substantial extent with its obligations. The gorse had now been completely cleared. The boundary walls in question had to a very large extent been repaired to an acceptable standard. On the northern boundary –
- (a) sections (i) and (ii) had been repaired to Mr Lindley's satisfaction;
 - (b) in the majority view, the Tenant was under no obligation to reconstruct a wall on section (iii). Any wall which may once have been there had effectively ceased to exist many years ago. The Arbitrator's award could not sensibly be interpreted as requiring the Tenant to carry out the extensive and expensive works of removing all the natural growth from this section and effectively building a new wall there: such works would have gone far beyond any proper definition of repair;
 - (c) any failure to repair section (iv) was of no practical importance.

On the eastern boundary –

- (d) in the majority view, all but sections (i) and (viii) had been repaired to a reasonably acceptable standard. The standard of repair required by Mr Lindley was too high for this particular holding in this particular area. The work carried out by the Tenant was as good as that carried out on most of the walls on surrounding farms;
 - (e) the failure to repair sections (i) and (viii) was of no practical importance, because both were effectively gateways which had been closed by fencing which (although it could perhaps have been somewhat tidier in appearance) was fully effective in preventing escape or ingress of stock.
- (2) Any failure by the Tenant to comply with the notice to do work had had no adverse consequences for the Landlord. The failure to remove all the gorse before December 2003 had not caused any problems for the Landlord: on the contrary, Mr Smith's only complaint appeared to be that the *removal* of the gorse could facilitate the escape of stock – which is clearly not something for which the Tenant can be blamed. The northern and eastern boundaries of field No 7290 were both now completely stock-proof (albeit, on the northern boundary, partly in conjunction with the neighbour's fence); and there was no evidence that in the past any stock had escaped over these boundaries. The Holding had not been damaged or deteriorated in any way. It was the Landlord's voluntary decision to serve the Notice to Quit and bring these proceedings.
- (3) In looking at the circumstances surrounding any failure by the Tenant to comply with the notice to do work, account needed to be taken of the size and nature of the Holding. Bearing in mind that it was a small sheep farm, for which the agreed rent was £3,000 a year, it was unlikely that – even if farmed extremely well – it would produce sufficient income for the Tenant to enable it to carry out expensive works of repair within a twelve-months period.

47. Accordingly the Tribunal refuses its consent to the operation of the Landlord's Notice to Quit.