

AGRICULTURAL LAND TRIBUNAL (WALES)
TRIBIWNLYS TIR AMAETHYDDOL (YNG NGHYMRU)

SUCCESSION TO A TENANCY

DECISION OF THE TRIBUNAL IN THE MATTER OF

An Application under Section 39 of the Agricultural Holdings Act 1986

Application: ALT 06/2017

Holding: Land and outbuildings at Treiddon & Fishing Lodge Land, Bodorgan, Anglesey, LL62 5BT

Applicant: Mr John Elwyn Evans of Treiddon, Bodorgan.

Respondent: Bodorgan Properties (C.I.) Limited

WHEREAS on Friday 15 November 2019 the Tribunal sat at Tre Ysgawen Hall Hotel, Capel Coch, Llangefni, Anglesey, LL77 7UR, to consider an Application made by the Applicant received on 17 July 2017 and made under Section 39 of the Agricultural Holdings Act 1986, for a direction giving the Applicant entitlement to a tenancy of land and buildings extending to 172 acres or thereabouts at Treiddon & Fishing Lodge Land (**‘the Holding’**), being comprised in a tenancy agreement dated 25 March 1959, made between Lt Col George Meyrick MC as Landlord and Mr William John Evans as Tenant, in succession to his father, the said William John Evans, who died on 18 April 2017;

AND WHEREAS a Panel of the Tribunal comprising Ms Claire Jones (Chairperson), Mr Richard Francis (Landowner Member) and Mr Evan Roberts (Farmer Member), was duly appointed in accordance with the provisions of the Agriculture Act 1947 (as amended) to hear and determine the said Application;

AND WHEREAS Dr N Llewelyn Jones appeared on behalf of the Tenant and there being no attendance on behalf of the Landlord (apart from in an observational capacity);

AND NOW THE TRIBUNAL; having considered the Application, the oral evidence of the Applicant and of Mrs Ilona Evans (the Applicant’s wife), the witness statements and documents presented on behalf of the Applicant and the witness statement submitted by the Landlord;

THE TRIBUNAL HEREBY DETERMINES THAT:

1. The Applicant is an eligible person to become the Tenant of the Holding within the meaning of the Agricultural Holdings Act 1986.
2. The Applicant is a suitable person to become the Tenant of the Holding.

3. The Applicant is entitled to a tenancy of the Holding pursuant to Section 39 of the Agricultural Holdings Act 1986.
4. The relevant time is 25 December 2019.
5. The Landlord's Notice to Quit, given under Schedule 3 Part 1 Case G of the Agricultural Holdings Act 1986, dated 15 June 2017 is dismissed.
6. Any application for costs must be filed and served within 14 days of the date of this Order and any response thereto shall be filed and served within a further 14 days, any such application being determined by the Tribunal on the papers.

Dated: 22 November 2019

Ms Claire Jones, Tribunal Chairperson

Certified as a true copy of the Tribunal's decision

Mr Adrian Evans, Tribunal Secretary

STATEMENT OF REASONS

1. ELIGIBLE PERSON (Section 36)

The Tribunal is satisfied that Mr J. Elwyn Evans is an eligible person for the following reasons:-

1.1 Surviving close relative

Mr Evans is the son of the deceased Tenant as evidenced by the Tenant's death certificate, the Applicant's birth certificate, the Tenant's will and the Tenant's death certificate (Tabs 7, 8 and 12 respectively of the hearing bundle).

1.2 Livelihood condition

Throughout each of the seven years ending with the date of the Tenant's death, the Applicant's principal source of livelihood was derived from his agricultural work on the Holding, being not less than 81% in each year (JEE/2 of the Applicant's second witness statement).

1.3 Occupancy condition

The Tribunal viewed the 20 acres and shed owned by the Applicant, near Crud y Wennol, Trefdraeth. The Tribunal noted that the largest field, field number 6341 was wet (evidenced by reeds), that two other fields were in good heart and condition and that the shed was also in reasonable condition. The Applicant also occupies an additional 10 acres of land nearby under an informal, undocumented arrangement. The Tribunal accepts the oral evidence of Mr Evans and the evidence provided in his second witness statement that, even if the 10 acres of bare pasture land were to be included in an assessment, the 30 acres of land in total occupied by the Applicant and now let and sub-let by the Applicant, is not a commercial unit of agricultural land which is capable, when farmed under competent management, of sustaining an income equivalent to that of the average annual earnings of two full-time agricultural workers.

2. SUITABLE PERSON (Section 39)

The Tribunal finds that Mr J. Elwyn Evans is also a suitable person for the following reasons:-

2.1 Training or Experience

The Applicant's first witness statement evidences his extensive agricultural training and the Applicant also demonstrated through oral evidence his considerable, life-long practical experience in and knowledge of agriculture.

2.2 Age

The Applicant is, in the experience of the Tribunal, of average age in terms of farming and the Landlord has accepted this aspect of his suitability.

2.3 Physical Health

The Applicant produced evidence from his Doctor (Tab 11) to show that she had no medical issues to bring to the Tribunal's attention with regard to the Applicant's health, albeit the Applicant stated in his oral evidence that he has suffered from back problems in the past and this was duly treated by means of physiotherapy. Again the Landlord does not have any concern with regard to this.

2.4 Financial Standing

The Tribunal found both the Applicant and his wife to be credible witnesses who gave straight-forward responses to the Tribunal's questions. The Applicant gave a frank account of the setting up and ultimate failure of Gwasanaethau Wennol Services Cyf.

The Applicant was also frank about the difficulties he has experienced in achieving profitability. He has sought draft business planning advice from Berry's who advise that the business is not generating sufficient profit and cash to cover all its commitments and to avoid further erosion of equity, however the Applicant is actively seeking realistic options to achieve profitability. The low levels of borrowing make this a relatively low risk operation and the Applicant has ensured that previous levels of debt have been reduced through sale of an inherited property known as Rhosyr, Soar, Bodorgan. Through oral evidence, the Applicant also showed that he was willing to embark upon new initiatives and to take difficult decisions in order to ensure viability.

The Tribunal is satisfied that the Applicant has fairly significant assets at his disposal as evidenced in his second witness statement, including Crud y Wennol, together with 20 acres of land and that all the live and deadstock and machinery has been gifted to him by his mother.

The Tribunal also accepts the evidence of Mrs Ilona Evans that, if needed, she would sell her rental property in Llangefni and use the proceeds to shore up the business if the circumstances so demanded. This is evidenced by Mrs Evans' previous financial support at the Holding including personal expenditure and borrowing to finance windows and central heating at Treiddon farmhouse. The Tribunal accepts the legal arguments on behalf of the Applicant as set out in the skeleton argument that a spouse's contributions are indeed relevant.

In conclusion, the Tribunal is satisfied that the Applicant will continue to be able to pay the rent and to comply with the Tenant covenants.

2.5 “Landlord’s views”

The Respondent originally indicated that it may wish to provide its views as to suitability and the Tribunal provided the opportunity to produce a witness statement, give oral evidence as to suitability and to make closing submissions. In the event, the Respondent did not apply to file the witness statement of its general manager out of time and did not choose to participate in the proceedings.

The Tribunal nevertheless admitted the witness statement of Mr Dodd, the general manager under Rule 46 of the Agricultural Land Tribunals (Rules) Order 2007. The witness statement does not however provide any view on the suitability of the Applicant and in a letter dated 14 November 2019 copied to the Tribunal, the Respondent’s representative offers no view as to suitability on behalf of the Respondent, save as to invite the Tribunal to focus upon the aspects of financial standing.

2.6 “Other relevant matters”

The Applicant (and his wife) have demonstrated considerable commitment to the Holding. Over the years, the Applicant injected significant capital into the Holding including construction of eight buildings and a slurry store. In exchange for consent to construct certain buildings, the Applicant had agreed to accept compensation of £10 for such buildings at the end of the tenancy.

The Applicant demonstrated knowledge of and willingness to embark upon new projects and schemes and to innovate in order to benefit the Holding for the future. The Applicant’s additional representational roles within the farming community were also noted by the Tribunal.

During inspection of the Holding, the Tribunal noted that some of the buildings on the Holding were in poor condition, partly due to storm damage, and that the original stone buildings were in a particularly dilapidated condition.

Despite the wet conditions underfoot on the date of the Tribunal’s site inspection due to the recent inclement weather and despite no fertilisers having been introduced in recent years, the Tribunal found the land at the Holding to be in good heart and condition with the hedges and gates in reasonable condition. The Tribunal considered that the Applicant had continued to invest time, energy and money into the Holding despite being unsure of the future of the tenancy for over two-and-a-half years and that this also demonstrated his commitment to the Holding.

The stock viewed by the Tribunal, including 58 head of cattle were all in commendable condition and although the stocking rates were relatively low, it was evident that the Applicant took great pride in his animals.

Finally, the Tribunal took into consideration the case-law cited on behalf of the Applicant in relation to suitability within the skeleton argument. It noted

the reference in *Scammell, Denham & Williams* at 42.98 to a decision of West Midlands ALT in 1978 which supports the Applicant's position as follows:

In Jackson v Barlow, the ALT held that:

"We approach our task in an objective way, aware of the importance of the landlord of seeing that his rent is paid, the performance of his covenants is reasonably assured and his farm is kept in good heart, well stocked and farmed efficiently. We are aware too that fair and reasonable landlords set some store by the standing of a tenant amongst his neighbouring farmers by family connections which may be a source of strength in a difficult agricultural or climatic situation and in continuity of policy is contrasted with farming for quick or excessive returns by pressing stock or land too hard but at the end of the day we have to ask the simple question – Is he suitable to be a tenant of this holding?"

3. COSTS (Agriculture (Miscellaneous Provisions) Act 1954

The Landlord was not represented at the hearing and the Tribunal did not provide the parties with an informal indication of the decision that the Tribunal was minded to make at or following the hearing in accordance with Rule 30(2) of the Agricultural Land Tribunals (Rules) Order 2007. The Tribunal did not therefore hear submissions (if any) in relation to costs at the hearing, any such application to be made to the Tribunal in accordance with Paragraph 6 of the Order.

NOTE: The Tribunal has limited jurisdiction in relation to costs.
