

Y TRIBIWNLYS TIR AMAETHYDDOL CYMRU

THE AGRICULTURAL LAND TRIBUNAL FOR WALES

REFERENCE: ALT 6321

APPLICATION:

An Application by the Respondents dated 6 November 2019 to vary the Tribunal's order dated 10 October 2019 so as to provide more time for compliance.

TRIBUNAL: Dr Christopher McNall (Chairperson)
Eur Ing Dr Phebe Mann CEng MICE FRICS (Drainage Member)
Mr Evan Roberts (Farmer Member)

APPLICANT: Mr John Stephen Wrench

RESPONDENTS: Network Rail Infrastructure Limited

PROPERTY: Beeches Farm, Flint Road, Saltney Ferry, Chester CH4 0BW

HEARING: Decision made on the papers on 23 December 2019, and without a hearing.

ORDER IN RELATION TO THE RESPONDENT'S APPLICATION TO VARY TIME

1. Network Rail's time in which to complete the works set out in Paragraphs 1.3, 1.10, and 1.12 of the Tribunal's order dated 10 October 2019 is extended to **10 October 2020**.
2. The other provisions of the Tribunal's order dated 10 October 2019 remain in force.

REASONS FOR THE ORDER

1. These are the reasons for the panel's decision. We apologise to the parties that this decision is released quite near to the date otherwise set for compliance (7 January 2020).
2. On 6 November 2019, Network Rail applied to the Tribunal to vary the time for compliance with Paragraphs 1.3, 1.10 and 1.12 of the Tribunal's order dated 10 October 2019.
3. Those Paragraphs provided that Network Rail was to perform and complete, within three months, the following works:

"1.3 The length of ditch to the south side of the railway, from Sandycroft Bridge through points T, U, V on the Location Plan, and from points B-D-E-F on the Location Plan (as shown in bold on Beeches Farm Drainage Plans 1 2 and 3 dated 16 June 2016) and including the cross-culverts at C-L and F-G shall (in the case of the ditch) be cleared to the original bed or level of the invert and (in the case of cross-culverts) shall be cleansed (and, once cleared and/or cleansed, as the case may be, shall be kept clear and cleansed by some appropriate programme of inspection and maintenance) and, in any event, this ditch shall be profiled at a suitable gradient or gradients to ensure water flow along its entire length."

[...]

1.10 The pipe at Point L heading towards Point C shall be replaced with a pipe of at least 600mm diameter which shall be securely fixed (i) so that it does not move; and (ii) so that it has an appropriate gradient to move water from Point C to point L."

[...]

1.12 A new outfall be provided at location R, to replace or to add to the present small metal grillage on the railway side, with a tidal flap valve to link with the tidal outfall to the River Dee or the railway ditch upstream of the Factory Bridge culvert. "

4. There was liberty to apply.

5. On 13 December 2019, Mr Wrench's representatives wrote to the Tribunal (although not apparently copied to Network Rail) confirming that they did not wish to make any further comments in relation to Network Rail's application.
6. We have now been provided with a copy of a badger survey dated 24 August 2015. We were not provided with that in advance of the hearing, although it would have been helpful to have seen it to establish the extent of badger setts (not all of which are readily visible, especially in the summer months). We were only aware that there were badger setts in one particular area (which is not any of the setts identified in August 2015).
7. We have also been provided with a further badger survey, obtained after the hearing, dated 1 November 2019. That identifies five setts - identified as A to E - along the length of ditch where works are to be done. Sett A (which we were aware of) is particularly big. The setts are active, and there is a lot of badger activity.
8. Our attention is also drawn to the provisions of the Protection of Badgers Act 1992 ('**the 1992 Act**') and especially the statutory protection of badgers and their setts, the prohibition on disturbance of setts (especially during the breeding season) and the need to obtain a licence (Natural England is referred to; but, since the ditches in question are all in Wales, the appropriate body would be Natural Resources Wales / Cyfoeth Naturiol Cymru). The terms of any such licence are a matter between Network Rail and the authorising national body.
9. In the circumstances, given the absence of objection from Mr Wrench, and the overriding need to comply with the 1992 Act so as to protect badgers and their setts, especially during breeding season, we are content to vary the order in the way requested, although it does mean that Mr Wrench's land is exposed to a risk of flooding from the condition of Network Rail's drainage for somewhat longer than might otherwise have been the case.
10. Nonetheless, we do wish to commend Network Rail for identifying this risk, and promptly taking specialist advice on how best it can be ameliorated. We are encouraged that this is a sign of a more positive engagement by Network Rail with this admittedly complex and challenging drainage system.