



BETWEEN:

ANTHONY MEREDITH JAMES

and

ALEC CHRISTOPHER JAMES

Applicants

and

BRYAN JOHN JENKINS

Respondent

**REASONS FOR THE DECISION**

1. This is an application for the consent of the Tribunal under section 27 of the Agricultural Holdings Act 1986 ("the Act").
2. Section 26 of the Act states that where notice to quit an agricultural holding is given to the tenant and not later than one month from the giving of the notice to quit the tenant serves on the landlord a counter-notice in writing requiring that this sub-section shall apply to the notice to quit then (subject to exceptions which do not apply here) the notice to quit shall not have effect unless, on an application by the landlord, the Tribunal consent to its operation.
3. Under section 27 of the Act the Tribunal shall consent under section 26 to the operation of a notice to quit an agricultural holding if, but only if, they are satisfied as to one or more of the matters mentioned in sub-section (3) being a matter or matters specified by the landlord in his application for their consent, but even if they are so satisfied the

- Tribunal shall withhold consent under section 26 if in all the circumstances it appears to them that a fair and reasonable landlord would not insist on possession.
4. The matters referred to in sub-section (1) of the section 27 of the Act include the following:-
    - (d) That the carrying out of the purpose is desirable for the purposes of the enactments relating to allotments;
    - (e) That greater hardship will be caused by withholding than by giving consent to the operation of the notice.
  5. In their application to the Tribunal the Applicants state that the notice to quit was served on the 28<sup>th</sup> of September 2001 and that a counter-notice was served by the tenant on the 9<sup>th</sup> of October 2001.
  6. As a result the notice to quit which was expressed to take effect on the 29<sup>th</sup> of September 2002 or at the expiry of 12 months from the end of the then current year of the tenancy does not take effect unless the Tribunal grant their consent pursuant to sections 26 and 27 of the Act.
  7. The holding the subject matter of the application consists of about 16 3/4 acres of land at Park Lodge Farm Llangattock Crickhowell Powys and the current rent is £768 per annum. There are no buildings on the holding and at the hearing the parties agreed that the holding was the land edged in red on the plan attached to the application.
  8. The hearing took place on Friday the 23<sup>rd</sup> of August 2002 at the Gliffaes Country House Hotel Crickhowell Powys.
  9. At the hearing the Applicants represented themselves and the Respondent was represented by Mr R.L Marshall, Chartered Surveyor.
  10. At the commencement of the hearing the Applicants withdrew their application under section 27 (3) (d) and the application proceeded under paragraph (e) only.
  - 11.1 Both Applicants gave evidence on oath.

Mr Anthony Meredith James told the Tribunal that the owner of the holding had been Gladys May Jones, his aunt, who died in 1984. He told us that she had left the holding to his father Charles James who died in about 1995. On the death of Charles James we were told that ownership of the property passed to the two Applicants, their brother Glyn James, their brother Clive James and their sister Maureen James equally and that the two Applicants hold the property as trustees for all five of them. The initial rent at the time the tenancy was granted in 1979 was £200 per annum which increased to £500 per annum by agreement in 1983 and £768 by agreement in 1995. Mr James said that he thought that the rent was far too low and that it should be at least £85 per acre or even £100 per acre but the Applicants have not served a Rent Arbitration notice because, he said, they could not afford arbitration proceedings. He said that if they get possession the market garden enterprise growing vegetables, soft fruits etc as set out in the application to the Tribunal would be run by his brother Alec Christopher James as a sole trader.

He told us that he was in business as a builder but would be giving this up in due course and would join his brother in the enterprise in question.

He told us that he had no experience of such an enterprise and that the business plan which had been drawn up was for his brother. He told us that the hardship relied on was that of his brother Alec Christopher James and not his own. He told us that he had no hardship but his brother had a knee injury and could not continue in his business as a builder. He said that his brother does not work at the moment.

He went on to criticise the way in which the tenant is farming the holding but this did not appear to have any relevance to the application on the grounds of hardship.

When cross examined by Mr Marshall he did not accept that being grade 4 land the rent for it was already more than that generally obtainable for grade 4 land and said, that if the land was that poor why does the tenant want to go on renting it. He said that there

would be ample demand for the land if it were let at a rent greater than the rent currently payable. He told us that since he and his brother had taken over as trustees they had received only two rent cheques which had not been distributed but had been put as a reserve fund to reclaim possession of the land.

In response to the Tribunal Mr James said that he thought that the land was suitable for the proposed purpose if well tended and fed with organic fertilisers. He said that all five beneficiaries were in agreement that their brother Alec James should have possession if it was obtained.

Although he gave some evidence as to his means that he had a building business turning over about £22,000 a year and a taxable profit of about £12,000 a year with about £5,000 in the bank used in his business and owned a terraced house free of mortgage and was not registered for VAT, it does not appear that his means are relevant to the application because the application is made on the grounds of hardship to his brother Alec Christopher James.

11.2 The second Applicant Mr Alec Christopher James then gave his evidence. He told us that he was 59 years of age and lived at Glasbury Herefordshire. He confirmed his brother's evidence of the position regarding ownership of the holding.

He told us that he is unemployed and before that he was a self employed builder. He became unemployed over the last 3 or 4 years as a result of arthritis having set in to a leg injury he suffered in a road accident when he was in his 20s. For the last 18 months he has been able to work as a builder only for 3 months.

He told us that he owned the house in which he lives and has no mortgage on it and that about a year ago it was valued at £60,000.

He is not married but is divorced and has no dependents but has two grown up sons who might help him in his venture.

He has no money and is just about overdrawn at the bank.

When he has sold some surplus tools he will have some money available but at the moment is living on benefits of about £53 per week. He does not do odd jobs and does not own any other property.

If the application succeeded he would start a market garden growing organic vegetables, herbs and possibly soft fruit.

He told us that he has always grown vegetables in his garden and that he worked on a farm for 10 years in his 30s 25 years ago.

He said that he had had the business plan which he produced prepared for which he did the research. He went to the business centre in Brecon and they drew up the plan for him.

He said that if he obtained possession of the holding he would start growing on it in February, March or April 2003, harvesting in July, August, September and October. He said that he had estimated that in the first year he would sell £5,300 worth of produce consisting of cabbages, runner beans and broad beans. He told us that this was not a guess but he was unable to explain how the figure of £5,300 had been arrived at save that he had worked it out on a square metre basis and that in the first year only a couple of acres would be employed. He said that he did not have the calculations with him and they are not in the business plan.

The Tribunal asked him how the figure of £1,200 for materials, stock and purchases had been arrived at. He told us that this was a mistake. It was not, in fact, in the correct column. The sum of £1,200 should have been shown as the cost of casual labour for 3 months at £400 a month. He conceded that the business plan does not show any figure for the cost of materials such as seeds, fertilisers etc.

In section 6B of the plan investment sources include £3,000 from his own resources which would come from the sale of his builders equipment and a vehicle, and the rest would come from a grant which the business centre had told him that he might get. He

was not sure where this grant would come from. He thought that he would be able to get a further grant of £60 per week, such a grant being available to get him off dependence on benefits.

He accepted that if the business went badly he would be worse off.

He accepted that the outcome of his application would depend upon what income could be made out of the enterprise.

He said that he thought that the enterprise could be successful but it would take 3, 4 or 5 years to become established and once it became established he would pay rent to his brothers and sister when he was successful.

At his age and with his injury there were no good prospects of his getting a job.

He said that he could do quite a bit of the physical work himself with machinery to lighten the load and his two sons would help him, and his brother would help him in the future.

When asked if the land was suitable he said that he had been to an organic garden at Velindre at Glasbury which has similar land.

There was some dispute as to how far Glasbury is from the holding. The witness said that it was about 14 miles but Mr Marshall put it to him in cross examination that it was nearer 24 miles. According to a motoring map it appears to be 17 miles.

Mr Marshall suggested to Mr James that the object of the exercise was to get the land back to sell it and that it would be worth at least £2,500 per acre if it was sold with vacant possession. He denied that that was the intention and said that possession of the land was required so that he could run his enterprise on it.

When cross examined by Mr Marshall he said that the only advice he had obtained was from a Paul Benham whom he described as "the right hand man" of the owner of the organic vegetable enterprise at Glasbury. The witness said that he had books on organic production and there is a help line run by the Organic Centre in Wales. He has

not attended any courses yet or spoken to the Soil Association. He accepted that Mr Benham had not seen the land the subject of this application and no tests have been carried out as to its suitability.

Mr Marshall cross examined him at some length as to what the cost of materials, seeds, fertilisers etc would be on the basis of which he put it to Mr James that the projected taxable profit of £1,536 would turn into a loss of at least £3,000.

Mr James was not able to assist regarding the cost of materials etc and accepted that the figures in the business plan were estimates only.

Mr Marshall also cross examined Mr James to the effect that the cost of a business telephone had been under-estimated, the cost of insurance had been under-estimated (including employers liability) and the cost of running his vehicle, particularly back and fore between Glasbury and Crickhowell, had been grossly under-estimated.

Mr Marshall cross examined suggesting that the cost of advertising had been also grossly under-estimated.

It became quite clear to the Tribunal that Mr James had not really gone into the costings realistically, and that the figures in the business plan were estimates only and could not be relied upon as forecasts of the likely profitability (or otherwise) of the enterprise. He expressly accepted that the cash flow forecast in the business plan is inaccurate. When it was put to him that the costings on which Mr Marshall had cross examined would produce a loss he could only say that he would adjust the figures as he went along.

Mr Marshall put it to him that he might possibly suffer greater hardship by getting possession, running the enterprise at a loss and foregoing his share of the rent.

He was able in answer only to say that he would get help from a grant in the first year of £60 per week and by year two he would have a larger market, know his costings and what his profit would be, and by year three he would know more again.

He did not agree that he might lose £10,000 in year one.



In answer to Mr E M Jones, a member of the Tribunal, who asked him what he would do to rectify it if it was found that the pH of the soil was unsatisfactory and the phosphate and potash content of the soil on the holding was too low, he said that he would have to take advice.

12. The Applicants informed the Tribunal that this was their case.
13. The application was then adjourned for the luncheon interval, after which the Chairman informed the Respondent that the Tribunal did not require the Respondent to reply as the Applicants had not satisfied the Tribunal that hardship would be caused by withholding consent to the operation of the notice to quit in the circumstances relied upon by the Applicants.
14. The reasons are as follows:-
  - (1) The burden of proof is on the Applicants first of all to satisfy the Tribunal (on the balance of probabilities) that hardship would be caused by withholding consent to the operation of the notice.
  - (2) The Applicants stated in the application that the main facts on which they would base their case were that they needed the land to start a business as a market garden growing vegetables, soft fruits etc.
  - (3) Having heard the evidence of the two Applicants the Tribunal are not satisfied that any hardship in the sense claimed by the Applicants would be caused by withholding consent.
  - (4) The business plan prepared for Mr Alec James is based upon estimates only. The fact that it contains no provision for the purchase of materials and the fact that it became clear in cross examination that some of the necessary expenditure had been under-estimated mean that the Tribunal cannot conclude on the balance of probabilities that the regime proposed by the Applicant Mr Alec James on the

holding would be profitable and would provide him with a livelihood any more valuable than his share of the rent.

(5) As a result the Tribunal do not find that hardship would be caused by withholding consent to the operation of the notice. It follows that as no hardship would be caused there cannot be hardship greater than any hardship that the Respondent might be able to prove.

(6) Accordingly the consent of the Tribunal to the operation of the notice to quit is withheld.

15. When the decision of the Tribunal was announced Mr Marshall made an application for costs. The jurisdiction of the Tribunal regarding costs is contained in section 27 (7) of the Act which states:-

“The Tribunal may, in proceedings under this section, by order provide for the payment by any party of such sum as the Tribunal consider a reasonable contribution towards costs”.

16. Mr Marshall estimated that the costs to the Respondent would be in the region of £2,700 plus VAT. Mr Marshall said that the Application had been made by the Applicants in the context of other notices and was a device to secure possession. The Tribunal consider that the case of the Applicants based upon a business plan which has clearly been ill prepared and is largely based on estimates which the Applicants could not justify in evidence stood no realistic chance of success, and the Tribunal accordingly have decided to award the Respondent the sum of £1,500 (One Thousand Five Hundred Pounds) as a reasonable contribution towards his costs.

Dated this 20<sup>th</sup> day of September 2002.

(Signed) \_\_\_\_\_

W J Owen - Chairman