

AGRICULTURAL LAND TRIBUNAL - WALES

CERTIFICATE OF BAD HUSBANDRY

HOLDING: Llertai
Llangadfan
Welshpool
Powys

BETWEEN: Mr Maldwyn Thomas and Mrs Mary Jane Thomas Applicants
Cwmonnen
Llanuwchllyn
Gwynedd

AND

Mr Emyr Owen Richards Respondent
Gwyndy
Foel
Llangadfan
Welshpool
Powys

WHEREAS an application dated 11 July 2002, has been made to the Tribunal by the Applicants under paragraph 9(1) in Part 11 of Schedule 3 to the Agricultural Holdings Act 1986, for consent to the operation of a Certificate of Bad Husbandry in respect of a holding known as Llertai, Foel, Llangadfan and comprising some 115.75 hectares in the County of Powys.

AND WHEREAS Mr B L V Richards (Chairman), Mr R P Hughes and Mr D Morgan have been appointed to the Agricultural Land Tribunal for the hearing of the said application.

AND WHEREAS the Tribunal sat on 14 and 15 November 2002 at the Cann Office Hotel, Llangadfan and on 16 January 2003 at The Royal Oak Hotel to hear the said application and inspect the Holding.

Now the Tribunal, having considered the evidence and the documents presented, do not grant a Certificate of Bad Husbandry for the reasons given in the Schedule annexed hereto.

Signed this 18th day of February 2003

B L V Richards
Chairman

I HEREBY CERTIFY that this is a true record of the decision of the Tribunal

C A Davies
Tribunal Secretary

21 February 2003

AGRICULTURAL LAND TRIBUNAL (WALES)

ALT 6155

BETWEEN

MR. MALDWYN THOMAS and MRS. MARY JANE THOMAS

Applicants

AND

MR. EMYR OWEN RICHARDS

Respondent

REASONS FOR THE DECISION

re the Holding known as

LLERTAI, LLANGADFAN, NR. WELSHPOOL, POWYS

1. This is an Application dated 11th July, 2002 to the Tribunal for a Certificate of Bad Husbandry under Section 9(1) of Part II of Schedule 3 to the Agricultural Holdings Act 1986 (the Act). The Hearing of the Application was at Cann Office Hotel, Llangadfan, Near Welshpool on the 14th and 15th November, 2002 and at The Royal Oak Hotel, Welshpool on the 16th January, 2003. The Applicants were represented by Mr. Geoffrey Little of Counsel and the Respondent by Mr. Simon Booth of Counsel.
2. Under Section 9(1) of the Act for the purposes of Case C the Landlord of an Agricultural Holding may apply to the 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 Certificate.

3. Under the Act a Tenant in receipt of a Notice to Quit founded upon such a Certificate granted by the Tribunal is not entitled to demand arbitration as to the reasons stated and the Tenant's right to serve a Counter Notice and thereby render the Notice to Quit ineffective is excluded provided that the Landlord has followed the procedural requirements and served a valid Notice to Quit. In that sense, such a Notice to Quit is sometimes stated to be incontestible.

4. Good husbandry – this term is defined in Section 11 of the Agricultural Act 1947 (the 1947 Act). Some of the provisions of Section 11 of the 1947 Act relate to crops and cropping.

5. The holding comprises some 115.75 hectares as to a 26.25 hectares of permanent pasture and 89.50 of rough grazing.

6. The holding was let to the Respondent under an Agricultural Tenancy Agreement on the 21st September, 1991 made between Mr. Sidney Jones and the Respondent. Mr. Sidney Jones died on the 17th November, 1999 and the Applicants are now the registered proprietors of the holding. The letting was expressed to be from year to year at a rent of £1,000.00 per year. An increase to a rent of £3,426.00 was agreed to on the 28th August, 2001.

7. On the 14th September, 2000 the Agent acting for the Applicants served a Notice to Remedy Breach of Tenancy and on the 4th October, 2000 the Agents acting for the Respondent served a Counternotice.

8. Following the submission by the Agents for the Respondent that the Notice was not in the prescribed form the Applicants did not proceed with the Notice but proceeded with the present application.

9. Mr. Maldwyn Thomas of Cwm Onnen, Llanuwchllyn, Y Bala, Gwynedd gave evidence that he became the joint owner of the holding with his mother on the death of his uncle, Mr. Sidney Jones. His uncle had farmed Llertai all his life and Mr. Thomas assisted him in the farming of the holding following his uncle's ill-health. Mr. Thomas was farming at Cwm Onnen when his uncle let the holding to the Respondent. He used to visit Llertai on average once a year until his uncle became unwell. He then attended more frequently to look after the sheep during the last year that his uncle farmed the holding. He explained that there were sheep and cattle on the holding when his uncle farmed and that his uncle operated a stock rotation system – sheep on the mountain all the summer; making hay and using the ffrith for sheep and cattle. He had not been involved with the land since it was let. He used to take his mother there once a week to visit her sisters in the former farmhouse and he had been at the farm three or four times in the last eighteen months. He was of the opinion that the holding had

deteriorated – ditches had not been opened and the hedges had not been cut and the fences had not been maintained. Thistles were not topped until recently.

He could see that the rushes had been cut recently following the application to the Tribunal.

In cross examination Mr. Thomas said that he could see most of the farm on his visits to the house. If the ditches were open, the land would be dry for the tractor. He agreed there were steep fields but his uncle used a two wheel drive for land work. He was not in a position to say whether the Respondent had fertilised or cut thistles. He also maintained that the hedges could be cut. His uncle could not have gathered the sheep on the mountain without gates. During the last year when his uncle farmed the property the fences on the way out were stock-proof.

From his recollection his uncle used to open the ditches on a regular basis. In his view the farm track should be maintained, the ditches should be cleaned and the culvert maintained so that water should not wash off the road. The Respondent now kept 300 sheep whereas his uncle used to keep more there together with suckler cows. If the farm was properly farmed more stock could be kept. If more sheep were kept under the present conditions they would stray because the boundary fences were not maintained. Some of the boundary fences were owned by the Forestry Enterprise but he had had no complaint made to him by the Respondent as to their condition. He was of the opinion that the

Respondent should keep more sheep. Being able to move sheep from the grazing area to another means a healthy flock and less need for drenching. His uncle was born on the 27th June, 1916. In re-examination, Mr. Thomas remembered the gates in position on the way down from the mountain and the fields coming down to the farmstead were used for gathering hay. He saw his uncle use his tractor without difficulty. His uncle would rotate from the mountain to the lower fields and most of the best fields were fenced off.

10. Mr. John Henry Jones, Chartered Surveyor, Proprietor of the Firm of Messrs. J. H. Jones, Machynlleth, said in evidence that he had been in practice over 30 years and he also farmed at Machynlleth. His first visit to the holding was on the death of Mr. Sidney Jones. He had no knowledge as to the rent of £1,000.00. The Respondent is now paying a proper rent. Mr. Jones outlined the criteria laid down in Section 11 of the 1947 Act and said that in his opinion in order to fulfil the obligations imposed by that Section, the Tenant also had to fulfil many of the provisions of the 1973 Regulations. He first visited the holding on the 25th January, 2000 and made further visits there in the spring of 2000, August and September, 2001. On the visit in September, 2001 he referred to a plan and said that the boundary between the mountain, the ffrith and the lower pastures was not stock-proof and no work had been carried out during the period of the tenancy and he referred to photographs in support. Furthermore, the boundary hedges had not been cut, trimmed or laid in order to maintain them in good sound condition. He found no evidence of digging out, or cleansing of

ditches and said that the permanent pasture was not being properly mown or grazed or maintained in a good state of cultivation and fertility. He supported his evidence by the photographs taken.

In September 2001 it was clear to him that the pastures had not been topped or mown. He was of the opinion that in order to deal with the rush infestation, the ditches should be opened and cleaned and the rushes cut at least twice in the season or sprayed. He further referred to the photographs showing the rush growth in September, 2001. He found no evidence of fodder cropping in the lower pastures which had not been mown or properly grazed. Without the proper field boundaries, the sheep would concentrate their grazing on the better pastures leaving the wet areas ungrazed. This would mean that the better pastures became overgrazed which led to weed infestation and he referred to further photographs. He then gave evidence as to the value of stock rotation. The flocks were confined to manageable areas and in default of rotation the sheep would not graze on the mountain. He contended that it was not possible to rotate without proper boundaries. Topping was essential and the weed growth should be kept down to produce a nice flush of grass. He did not see 300 sheep on the property though he noted on the site visit that there were new stakes, new gate posts by the bridge and much work on the fence between the upper ffrith and the lower pasture with some stock proof fences with new pig netting in parts. A small length of the ditching had been done and some of the thistles had been cut and topped. In his view the farm is now one big field and every farmer should create a ffrith area and

the mountain would not be farmed if the land were used as one big field. He said there had been no soil tests.

Mr. Jones told the Tribunal that the quality of produce and the quantity has been limited by the standard of farming. The fields at Llertai with the benefit of rotation, could fatten store lambs. Mr. Jones was then referred to the statement filed by the Respondent and Schedule of Works at Llertai. He noted that there had been no reseeding since 1994 and the hedges were last laid in 1996. The topping was effected after the receipt of the present application.

Mr. Jones again emphasised that under the system used by the Respondent the sheep could walk at will and in his opinion the stocking level was below average. He had no knowledge of the effect of the foot and mouth restrictions on this farm but confirmed that movement could only be effected by licence. You had to view the land to see what the land required and the Schedule of Condition revealed the situation three years after the letting. The open ditches should have been cleaned and the bridge could carry the necessary machinery. There was no bracken. Where the Unimog failed, he did not accept that the overgrowth were in fact trees. He disagreed with the conclusions of the Respondent regarding the topping, the cutting of rushes and the ditches. On the diary entries produced by the Respondent, Mr. Jones told the Tribunal that many of the entries did not relate to this particular holding.

In cross-examination, Mr. Jones said that stock rotation equalled good husbandry and enabled the pasture to regenerate. The plan produced shows one way for rotation and how you farmed depended on the topography. There was some new higher fencing which had been renewed and new timber gate and netting had been put on. There were no new fences. He also commented on the number of stock when the Respondent took over the holding, there were 473 sheep. Stock rotation helped to control disease and in May, 2000 he noticed sheep scab or lice. Unsound lambs were scouring. There should be quality and quantity and you were not going to have quality because there would be fewer sheep on a ranching system. As far as hay and silage were concerned, you could take fodder and crops and have a contractor to do the work with a big baler. The hedges were overgrown but they were not trees. The land was waterlogged and the ditches should have been cleaned out. The bracken could be cleared by spraying and needed to be cut at the right time. The culverts could be replaced without eroding the surface. There was no evidence of work in 2001.

The Notice to remedy the breaches was in order to farm in accordance with the rules of good husbandry. This was not proceeded with because of a technical error. He conceded that this application left no leeway to remedy the breaches. As far as the evidence of the Respondent was concerned and his Schedule of Works, Mr. Jones could not say whether all the works had been done. He visited Llertai in January, 2000 for the first time. Under a sheep walk, the sheep can walk at will and he saw no cattle there when the Tribunal visited the

site and he did not count the sheep. The lambs and ewes were mixed and he had not seen any suckler cows there. Eighty-five per cent of a finished lamb percentage tended to be on the low side. He examined the Schedule of Condition and made the point that the external boundaries under the supervision of the Forestry Enterprise should be repaired in an ongoing process. The valuation showed 473 stock at a time when Sidney Jones was 70 years of age. Ninety per cent of farmers would propose the rotation system. The bridge should have been able to take the necessary loads of lime.

11. Mr. Emyr Owen Richards, the Respondent, confirmed his filed statement and told the Tribunal that he had helped the late Mr. Sidney Jones since 1977 mainly with sheep and cattle and also carrying hay. He worked there a few hours a week before his tenancy. He went once every two months to examine the stock. Very similar to what he does now. Mr. Jones kept 350 sheep, a higher figure than he now had but within 50 ewes. He himself kept 300 ewes and had 400 sheep in 1993, 1994 and 1995. He wished to improve the weight of the sheep. Mr. Jones kept 3 or 5 cows in 1991. 12 at the most in the early 1970's. He himself kept 14 to 15 cows now. The finished lambs were sold off as wether lambs and he also sold some of the smaller ones and trade was fairly constant. Not the whole of Llertai is a mountain but he farmed the whole area. His system meant that he did not have to move the sheep, they were able to keep moving around on their own and might be lower down in the fields during the spring and Mr. Jones farmed hill sheep in the same way. Below the cairns he carried out

repairs after reseeding the fields in 1994. He needed the stockproof fence and he did the far end a week before the site inspection and had also installed a new fence along the bottom and the small paddock by the house at the bottom end of the ffrith. There was no fence previously adjoining the river. The fence by the house paddock was to pen the sheep for sorting. He did not approve of the rotation of sheep by fencing. However, the fences adjoining the forestry land were derelict and the sheep squeezed through. From 1991 onwards he had complained to the Forestry Enterprise and it had taken three years for them to repair the top fence. Currently the fences are open at both ends and the Forestry Enterprise promised to repair but not before April, 2003.

The more intensive the farming, the more problems there are to work the land. He did get the odd sheep with fluke and some scab because when they got into the forest they did not get treated.

He had produced silage but it is not economical because it is difficult to get contractors to work a few acres producing 40 to 50 bales maybe 8 to 10 bales per acre. He maintained the track by opening the drain. He installed a culvert in 1995/6. He maintained the track coming down from the road and also the adjoining drainage. The Schedule showed the work he had done at Llertai – fencing; spraying the bracken; reseeding the top paddocks with supporting Invoices for spraying by helicopter.

He also engaged Mr. Geddis to do contracting work and referred to the entries in his diary but all did not relate to Llertai. The bridge was too weak to allow for the delivery of lime which had to be unloaded and carried. The stock was all brought down in a small trailer. His digger was 3.5 tons. All vehicles are difficult to handle on the land. He started cutting the rushes last year, but it was too wet to do the bottom field. He put in a gate at the track entrance. There were no gates between the fields previously but he had made some gates stockproof and laid some hedges which were in like condition when he took over the tenancy with 30 years' growth. He had done considerable work on the ditches.

In cross examination the Respondent conceded that there were 473 stock when he acquired the tenancy. He was keeping the stock low, although the land could carry more. Because of the difficulties with the Forestry Enterprise and because he preferred quality to numbers in his flock thus in 1991 he got £16.00 for the ewes against £30.00 at present. He admitted that he had not informed the Landlord of his continuing difficulties with the Forestry Enterprise.

He did not practice stock rotation which created work and was no better than his free range system. When the sheep went into the forest they were not dipped so he injected them himself though he had not informed the Forestry Enterprise of this. Stock rotation would have needed internal boundaries. Photograph 13 shows a gate that was not hanging properly from Mr. Jones' time, and the fences were not in good condition in September, 2001. He did not accept

that he had been negligent and had recently completed some fencing. Beside Llertai he owned other land and a number of units on two farms. He farmed altogether nearly 400 acres with 400 sheep and 23 cows on the other farms. There were 15 cattle at Llertai at the time of the site inspection and they were not seen because they were up on the mountain. He had seen them on the 13th November, 2002.

Some of the Invoices produced by him relate to other land and he accepted that there were thistles and rushes shown in the photographs produced but part of the area had been cut the previous year. Because of the stony ground machinery was easily damaged. He did some topping for this hearing and some liming in 1997 and 1998 but not since. He did not keep a daily diary and there was a lot of work done which was not entered in the diary.

He accepted that if the hedges expand you lost pasture and referring to the photographs he accepted that some hedges have become overgrown during the last 10 to 11 years. He only did parts and cleaned out the ditches. Some of the waterways are not ditches. He had carried out some ditching and made a new drain on the road. There had been a landslide in the access track to the house. He had cut the hedges back and had been in occupation three years when the Schedule was completed by Mr. Mead and himself. Mr. Sidney Jones was not involved. The Schedule was prepared to prevent snags. "Make things as safe as you can" Mr. Sidney Jones said when I told him that the family were creating

problems. Mr. Mead took the photographs. In some of them the boundaries were not stockproof and some of the fencing needed repairs. The photographs show the holding in quite good order and 80 to 85% of the lambs are sold off. He sold off wether lambs. The Llertai level was slightly lower than his other lambs - 95-100%. He had not worked out the figures. He did not keep separate records for Llertai. The census is all mixed up and he did not think that it would show the percentage for Llertai. There were now 300 ewes on Llertai and 50 other sheep. There were other sheep up on the bracken. He had no records to show the stock at Llertai. He said that Llertai is a particularly difficult holding to farm.

The original rent was fixed with Mr. Sidney Jones and there was no conversation about the work to be done. Spraying is effective if followed up. He had made some silage once. In re-examination, the Respondent confirmed 300 ewes at Llertai and the census shows the total sheep and the sheep and lambs. The sheep annual premium forms shows the total number of animals. He did inject and dip the sheep if they got into the woods

12. Mr. Anthony Geddis said he was a partner in an Agricultural Spreading Contractors firm at Chirbury. He had worked at Llertai over the last eight years. His first job was spreading lime. He worked there nearly every year, drilling some grass seed, spraying and more fertilising. Some of the ground is quite awkward. The bridge would not take over 5 tons. Some of the ground is quite steep. The Unimog rolled over three years ago whilst drilling grass seeds. In

examination, he did not have specific dates for the drilling of the grass seeds.

There was not much stock there below the house. The Invoice shows work done.

It is a genuine document. He has been over the bridge many times but not in a 20

ton vehicle. A 10 ton vehicles equals 16 ton gross. In re-examination he stated

that he was thrown out of the Unimog. He suffered a cracked pelvis in two places

and he was on the way to Welshpool Hospital when the photograph showing the

overturned Unimog was taken.

13. Mr. Phillip Mead, Chartered Surveyor, a partner in the Firm of Messrs. Davies Mead, Oswestry referred to his Report filed on behalf of the Respondent dated the 12th November, 2002 and said that he had first visited Llertai in 1994 to advise on tenancy issues arising out of the agreement and completed a Record of Condition asked for by the Respondent. It was a run down farm nearer poorer than good. A difficult farm to manage. He did not count heads in order to assess the level of stock. A scheme of stock rotation was a possibility with the farm being part lowland and part hills. It was an option but there is a problem with the forestry and if it was solved then it could be considered. A range system was satisfactory with the few lower pastures and the open mountain land. The Respondent's system was not uncommon in the area. Referring to the points made by Mr. Jones:

- (a) the lack of internal boundaries – the farm was remote with no living accommodation and very labour intensive. Wetter portions at the bottom where there was some better grass.
- (b) failure to keep ditches and watercourses – ditches on 30 acres. 10% would benefit from being drained. Some system was put in by the Landlord.
- (c) overgrown hedges – a common problem. No longer really hedges. It appears that they were in the same condition when the Respondent took the tenancy.
- (d) lower pastures not mown or grazed – a brave man to take a tractor there. The foot and mouth was a problem. It was not neighbourly to bring strangers onto the land without good reason. There was also poor access.
- (e) keep the rushes back – this was linked in with the drainage. It was dangerous on the lower fields and you had to weigh up the cost benefit and might as well cut your losses.
- (f) control of disease with possible footrot and fluke – the Respondent controlled this problem by chemicals.

(g) low stocking rate – for this type of farm, too many sheep will stray and there was a problem with the forestry. The selling of 85% lambs was a reasonable percentage for Llertai. Cattle and suckler cows could be kept there within a reasonable tolerance. Silage was not produced at one time. Farming machinery has become bigger and it is more difficult to work that type of land and not viable with a weak bridge.

In cross-examination, Mr. Mead said that good husbandry equalled a reasonable standard of production. He agreed that input in the form of good management maintenance and repairs had a beneficial effect on stock and production. He accepted that he had no expertise in farm management nor any personal experience of running a farm. He was very critical of the assessments made by Mr. Jones. A reasonable system of stock management was very relevant if the Tenant was to achieve a good level of production. He did not address the levels of production. A tenant could fall down in the six tests or fail on the six tests but still have a reasonable standard of production and nevertheless practise good husbandry. Stock rotation does not need to be divided up into small parcels. The sheep would concentrate on the better pastures which would be overgrazed. Some areas will be undergrazed. The photograph showed the situation on a particular day in August/September, 2001. The evidence of scouring seen by Mr. Jones could be caused by fresh grass. He agreed that 95% of farmers employ rotation. Sheep down and up - what does it mean? He did not agree that the farm was now under stocked. The stock level was 300 ewes and he would agree that

it is probably a little below average. He had seen a letter from the Forestry stating that they will repair. This has affected the Respondent's ability to farm. More sheep equals more annual premium if you have the quota. The 1994 photographs show the internal fencing and some of them are not stock proof. If the rushes are not cut growth will not be affected if there is good pasture underneath. There is a dispute as to whether or not you can get good machinery in. Access was difficult in the middle of the foot and mouth epidemic. The photographs did not show rushes. There is a peat bog underneath and it is possible to spray the land. The thistles are shown in photographs during September, 2001. The invoices produced for previous years show the work at Lletai. Might have been done by contractors or the Respondent himself. A three ton vehicle could have access to the bridge and topping had been done recently. If the hedges are not trimmed pastures is lost. What is the hedge, it is timber! There is no landlord and tenant relationship here. In 1991 he was asked to advise on the Tenancy Agreement and also to prepare a Record of Condition. Some of the growth has come during the Respondent's tenancy and the hedges were, in fact, already trees in 1994. The ditches were not all clear. This would lead to a loss of pasture. Some of the fields were not accessible by machinery. Some of the pasture looks a bit tired in the 1994 photographs. The farm road looks in good order for a farm track. There have been no soil tests and Mr. Jones did not allude to this in his report. Some of the photographs show a big patch of gorse. The hedges should be dragged out and replanted but we are back to the question of cost. During the foot and mouth situation the farm was not under restriction and was not a closed farm. However,

permission had to be obtained to move stock and to enter the land. Mr. Mead confirmed that the Record of Condition had not been signed and also that Mr. Anthony Geddis was an independent contractor who had been admitted to hospital after the accident at Llertai.

14. Mr. Simon Booth, for the Respondent submitted that the effect of a Certificate of Bad Husbandry was equal to a Notice to Quit and that a further Notice to Remedy should have been served in this case. Section 11.1 of the Act did not define bad husbandry and the Applicants must show that the Respondent is failing to maintain a reasonable standard of production. Section 11.2 of the Act merely assists in applying the test of good husbandry.

The Tenancy Agreement was not relevant in this case and if there was a breach of the Agreement there will be a remedy in the County Court. The duty of the Tribunal was to ascertain whether or not a reasonable standard of production is being maintained. He submitted that there was no evidence to show that the quality of stock was not being maintained and there was no significant decrease in numbers. The Respondent accepted that the maximum number had not been maintained but having regard to the circumstances namely, the lack of the maintenance of boundary fences by the Forestry Enterprise; the foot and mouth outbreak and the nature of the land, there was no evidence to suggest that the standard of production will not be maintained.

15. Mr. Geoffrey Little, for the Applicants, submitted that there was interlocking between Sections 11.1 and 11.2 of the Act and it is quite wrong to denote the factors in the Section 2. There was prima facie evidence that a reasonable standard of production was not being maintained and that the farm was not run at capacity. He compared the production in previous years to the present time and said that the quantity of produce was a relevant factor in this case. He pointed out that the Respondent had not followed up the boundary problems with the Forestry Enterprise and the difficulty of straying sheep, because he did not want to engage in paper work. There was low stocking on the holding and no communications from the Forestry Enterprise had been included in the evidence. This organisation should pay compensation if there was a cast iron case and no compensation had been obtained. It was not relevant that the stock was gaining in quality although the numbers were down. He also referred to the health problems noted by Mr. Henry Jones. It was not disputed that stock rotation was highly conducive to animal health. Poor fence management does not allow for stock rotation and internal fence management is essential. The Respondent's riposte to the allegation of poor hedges had an element of desperation. The assertion that the hedges comprised timber does not have the air of reality. There had been some significant deterioration over the ten years of the tenancy. The maintenance of ditches is important and it was essential to maintain the quality of the pasture to prevent deterioration, as shown by the photographs produced on behalf of the Applicants. There had been some belated activity by the Respondent and some recent topping. The Respondent had mentioned the difficulty with access for

vehicles but topography was not an issue because of what the Respondent had done. The Respondent had acknowledged that not all the Invoices produced by him referred to Llertai.

16. The Tribunal inspected the farm on the 14th November, 2002 and found that there was a new fence adjoining the river and some of the watercourses and ditches had been cleared out and they noticed one new gate post. The majority of field boundaries did not comprise hedges and it would appear that there were no hedges on the property when the Respondent took over the tenancy. The Tribunal found evidence that there had been some work on the watercourses and ditches and took into account that the outbreak of foot and mouth would have effected the ability of the Respondent to bring machinery onto the property. The stock on the farm appeared to be healthy and the Tribunal did not have the benefit of an analysis of the soil.

The Tribunal must decide that having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, whether 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 such a condition to enable such a standard to be maintained in the future.

The Tribunal in deciding the standard of husbandry must judge the condition of the farm and the practice of the Respondent at the time of the hearing.

Much of the evidence from 1991, 1994 and 2000 is historic but two points of contention do emerge. The Applicants assert that only a rotational system of grazing can equal good husbandry on a mountain farm whilst the Respondent maintains that his method of free range grazing was equally valid. In reaching their decision the Tribunal must be guided by the criteria set out in Section 11 of the Agriculture Act 1947.

On the farm visit there was signs of recent grazing and mowing, the animals appeared healthy without disease or infestation whilst there was evidence of maintenance and repairs to fences, ditches and hedges in progress, though it was noticeable that more work needs to be done.

Evidence at the hearing placed the stocking rate at 350 sheep and 15 cattle and a lamb sale percentage of 80 to 85%. Though these figures did not equal the total of 473 animals in 1991 when the Respondent took over the tenancy or the top rate of 90% of lamb sales reported for other farms in the area, it appears to be a reasonable standard.

The Tribunal after the site visit and assessing the evidence is satisfied that the Respondent is maintaining a reasonable standard of efficient production at the holding. The Tribunal accepts the submissions made on behalf of the Respondent and considers that the more appropriate action in this case would have been a further Notice to Remedy Breach.

The Tribunal therefore unanimously concluded that the application for a Certificate of Bad Husbandry should not be granted and that there should be no order as to costs.

Dated this

18th

day of February, 2003

B. L. V. Richards – Chairman