

AGRICULTURAL LAND TRIBUNAL - WALES

APPLICATION FOR DIRECTION TO PROVIDE FIXED EQUIPMENT

**HOLDING:** *Leeswood Old Hall Farm*  
*Mold*  
*Flintshire*

**BETWEEN:**

*Terence Leslie Evans*

**Applicant**

AND

*Charles Wynne-Eyton*  
*Richard Patrick Benjamin Duncan and*  
*Peter Collins*  
*(The trustees of the Leeswood Tower Maintenance Fund)*

**Respondents**

**WHEREAS** an application ("the Application") dated 6<sup>th</sup> January 2003 has been made to the Tribunal by the Applicant under Section 11 of the Agricultural Holdings Act 1986 ("the Act") for a Direction to Provide Fixed Equipment on Leeswood Old Hall Farm, Mold, Flintshire.

**AND WHEREAS** Mr W J Owen (Chairman), Mr W Corbett-Winder (Landowners' Panel) and Mr I Lewis (Farmers' Panel) have been appointed to be the Agricultural Land Tribunal for the hearing of the Application.

**AND WHEREAS** the Tribunal heard the Application at the Beaufort Park Hotel, Mold on 7<sup>th</sup> and 8<sup>th</sup> July 2003.

**NOW THE TRIBUNAL**, having considered the Application, the documents presented and the evidence given, for the Reasons annexed to this Decision do hereby pursuant to Section 11 of the Act hereby direct the Respondent landlords to carry out whatever work is necessary for the provision of fixed equipment on the Holding to enable the Applicant to comply with the requirements of the legislation referred to in the Application within a period of twelve months from the date of this Direction.

Signed this 28<sup>th</sup> day of November 2003

**Chairman**

*I hereby certify that this is a true record of the Order made by the Tribunal*

Dated

Secretary to the Tribunal

BETWEEN:

TERENCE EVANS

Applicant

and

CHARLES WYNNE-EYTON  
RICHARD PATRICK BENJAMIN DUNCAN

and

PETER COLLINS  
(the Trustees of the Leeswood Tower Maintenance Fund)

Respondents

REASONS FOR THE DECISION OF THE TRIBUNAL

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1. The Application. This was made to the Tribunal and was dated 6<sup>th</sup> January 2003.
- 1.1 The Application is made under section 11 of the Agricultural Holdings Act 1986 ("the Act").
- 1.2 That section of the Act provides as follows:-

"11 - (1) Where, on an application by the tenant of an agricultural holding, the Tribunal are satisfied that it is reasonable, having regard to the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry, that he should carry on on the holding an agricultural activity specified in the application to the extent and in the manner so specified and -

(a) that, unless fixed equipment is provided on the holding, the tenant, in carrying on that activity to that extent and in that manner, will contravene requirements imposed by or under any enactment ....."

1.3 The next relevant sub-section reads as follows:-

“(3) The Tribunal shall not direct the landlord to carry out work under this section unless they are satisfied -

(a) that it is reasonable to do so having regard to the landlord's responsibilities to manage the land comprised in the holding in accordance with the rules of good estate management and also to the period for which the holding may be expected to remain a separate holding and to any other material consideration, and

(b) that the landlord has refused to carry out that work on being requested in writing to do so by the tenant or has not agreed to carry it out within a reasonable time after being so requested  
.....”

1.4 In his Application the Applicant applies that the Respondents as landlords should be directed to carry out the following work on the Holding:-

“Provide dirty water and slurry storage in connection with the dairy enterprise undertaken at Leeswood Old Hall Farm”

1.5 In his Application the Applicant states that he wishes to carry on the following agricultural activity on the Holding to the extent and in the manner specified viz:-

“The continuation of the current dairy enterprise being the milking of dairy cows and keeping and rearing of dairy followers”

1.6 The Applicant alleges that if he were to do so without the said work being carried out he would contravene the following statutory requirements in the following respects:-

“In allowing polluted material to run off on to fields that are liable to winter flooding there is a potentially polluted material entering a watercourse. Under the Water Resources Act of 1991 it is an offence under section 5 to permit polluted material to enter controlled waters without the written consent of the Environment Agency. This is potentially occurring from Leeswood Old Hall Farm. The Farm also lies within a Nitrate Vulnerable Zone which will come into being on the 19<sup>th</sup> December 2002. Allowing polluted material to run off, as potentially occurs, is in breach of the requirements of the Action Programme”.

2. The Reply. In their Reply the Respondents state that their main reasons for resisting the Application are that the Direction asked for would be unreasonable having regard to:-

- (i) their responsibilities to manage the land comprised in the Holding in accordance with the rules of good estate management;
- (ii) the period for which the Holding may be expected to remain a separate holding;
- (iii) the period for which the Holding should remain, or may reasonably be expected to remain, a dairy holding.

3. The Tenancy Agreement was entered into on the 10<sup>th</sup> October 1960 between the then landlord Mrs Violet Hope Fairbairn Wynne Eyton as landlord and the Applicant as the tenant.

4. The Hearing - took place at the Beaufort Park Hotel Mold on the 7<sup>th</sup>, 8<sup>th</sup> of July 2003.

5. Representation. The Applicant was represented by Mr David Young Solicitor of Messrs Hibbert Durrad Moxom and the Respondents by Mr Peter Collins of Messrs Walker Smith & Way.

6. The issues. Mr Collins when making his submissions for the Respondents said that he was not challenging that it was reasonable to carry on dairy farming on the Holding.

7. Furthermore, he made no challenge to the Applicant's contention in his Application that as Mr Collins put it "something has to be done" and he conceded that the Tribunal has power to make the Direction. He made it clear that the Respondents' case is based on the following:-

The Tribunal has a power rather than a mandatory duty under section 11 of the Act to make the Direction sought because sub-section (3) says that the Tribunal shall not direct the landlord to carry out work under the section unless they are satisfied (a) that it is reasonable to do so taking into account the "regards" in sub-paragraph (a) of section 11 (3) of the Act.

8. The evidence. The Tribunal heard evidence upon oath from the following witnesses:-

8.1 For the Applicant -  
Mr Garry Owen  
Mr Allan David Edwards  
Mr Peter Donald Lewis (Chartered Surveyor)  
Mr Charles Terence Evans (son of the Applicant)  
Mr Terence Leslie Evans (Applicant)

8.2 For the Respondents -  
Mr Charles Wynne-Eyton (one of the landlords)  
Mr Michael William Verity (Chartered Surveyor)

9. What does the Tribunal have to decide in this case.

9.1 The burden of proof. This lies upon the Applicant.

9.2 The standard of proof is on the balance of probabilities, that is what is more likely than not to be the case.

9.3 The issues. In the light of the Respondents' Reply and the submissions made by Mr Collins on behalf of the Respondents the only live issues in this case are under section 11 (3) (a) of the Act.

9.4 The Tribunal have to decide:

(i) Is it reasonable to direct the Respondents to carry out work having regard to the landlords' responsibilities to manage the land comprised in the Holding in accordance with the rules of good estate management;

(ii) Is it reasonable for the Tribunal to direct the Respondents to carry out the work having regard to the period for which the Holding may be expected to remain a separate holding and to any other material consideration.

10. Having heard the evidence we find:-

10.1 Estate management. There has been little or no effective estate management in the past. Mr Wynne-Eyton giving evidence accepted that in the past less than £1,000 per annum had been spent on repairs at the farm until two years ago. Mr Wynne-Eyton explained the scheme under which following his inheritance of a Grade 1 Listed Building ("the Tower") two farms, the Holding and another local farm (Hill Farm) were purchased to fund maintenance of the Tower. Mr Wynne-Eyton was not clear as to the taxation implications of selling this

Holding and conceded at one stage that if one of the farms was sold the trustees would try to buy another one. He said that the trustees had been in an impossible bind and did not know which way to jump. He conceded that they had not tried to borrow and was not able to offer any estimate of what borrowing would cost. When he was asked which came first, the Tower or the farms, he said that it was a balancing act. He accepted that at one stage he had offered £1,000 each year to the Applicant and to the tenant of Hill Farm for maintenance to allot as they chose. The Tribunal are satisfied that no effective estate management of the Holding has been carried out to date.

11. What are the Respondents responsibilities to manage the Holding in accordance with the rules of good estate management?

The rules of good estate management are contained in section 10 of the Agriculture Act 1947 under which an owner of agricultural land shall be deemed to fulfil his responsibilities to manage it in accordance with the rules of good estate management insofar as his management of the land and, so far as it affects the management of that land, of other land managed by him is such as to be reasonably adequate, having regard to the character and situation of the land and other relevant circumstances, to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as respects both the kind of produce and the quality and quantity thereof.

In determining whether the management of land is such as aforesaid, regard shall be had, but without prejudice to the generality of the provisions of the last foregoing sub-section, to the extent to which the owner is providing, improving, maintaining and repairing fixed equipment on the land insofar as is necessary to enable an occupier of the land reasonably skilled in husbandry to maintain efficient production as aforesaid. The section rounds off by saying that the responsibilities under the rules of good estate management of an owner of land in the occupation of another person shall not in relation to the maintenance and repair of fixed equipment include an obligation to do anything which that other person is under an obligation to do by virtue of any agreement.

It appears to the members of the Tribunal to be clear that one of the landlords' responsibilities to manage the land comprised in the Holding in accordance with the rules of good estate management as set out in the 1947 Act involves examining the extent to which the owner is providing, improving, maintaining and repairing fixed equipment insofar as is necessary to enable the tenant to maintain efficient production.

There is no contest between the parties that as Mr Collins put it "something must be done". There was no submission that if the work sought is not carried

out the tenant would not be contravening the legislation quoted in his application.

The Tribunal are satisfied that it is reasonable to direct the landlords to carry out the work having regard to the landlords' responsibilities to manage the land comprised in the Holding in accordance with the rules of good estate management.

12. The next question is whether it is reasonable to do so having regard to the period for which the Holding may be expected to remain a separate holding.

In their Reply the Respondents state that they do not believe that in the long term the Holding can survive as a dairy unit on its own having regard to the modest size, the location of the Holding, the nature of the ground and the market conditions for dairy farming generally. They go on to say that an investment of the kind which would be necessary to achieve the work requested by the tenant is, therefore, not considered appropriate for the Holding. The Respondents say that it is not their intention to sell the land but on the contrary to amalgamate it with another holding or holdings and thereby achieve a more efficient use of the land.

Finally, they stated that they were preparing an application to this Tribunal for consent to the operation of a notice to quit on the sound estate management ground.

That application was in due course made and was heard by the Tribunal immediately following the conclusion of this Application.

The application for consent to the operation of the notice to quit, as will be seen in the Tribunal's Decision in respect of the other application, has failed.

The Applicant tenant was aged 71 at the time of the hearing. It became clear when he and his son Charles gave evidence that the tenant is now taking a back seat and most of the work is being done by his son Charles who is not a partner in the enterprise and as Mr Young put it when cross examining Mr Wynne-Eyton Mr Evans is tenant under the old tenancy regime with potential succession by an eligible and suitable person.

In the light of the fact that the landlords' application for consent for the operation to the notice to quit will not succeed the question of the period for which the Holding may be expected to remain a separate holding is to a degree problematical. The Tribunal are not able to make a finding as to the period in question because there was not sufficient evidence to determine whether

Charles would be likely to succeed his father as tenant either on retirement or death. They are satisfied that there is no short term likelihood of the Applicant losing his tenancy and there remains the possibility that in the future there could be one or two statutory successions. The Tribunal, therefore, conclude that it would not be reasonable to refuse the Application merely because the tenant is 71 years of age.

13. Any other material consideration. The only other material consideration in the view of the Tribunal is the question of the cost of carrying out the works.

There were wide variations in the evidence given to us both as to the actual scope of the work needed to be carried out to permit milk production to continue bearing in mind the legislation quoted in the Application and in the cost of carrying out the works.

Mr Verity put forward at Appendix 7 of his report which he submitted with his evidence his suggested specification for the system with costings. Inclusive of Value Added Tax and taking into account grant availability he estimated the net cost at £68,731.

When Mr Garry Owen gave his evidence his specification was quite radically different from that propounded by Mr Verity and he came up with a figure of £56,050 which would, in his contention, qualify for a 40% grant.

To our surprise neither of the experts was able to tell us for certain whether the work would qualify for the grant or not.

At the end of the day the Tribunal were not able to be satisfied either as to precisely how the works would have to be carried out to comply with the legislation, or what the cost would be, or whether a grant would be available, but they feel that the cost must lie somewhere between Mr Verity's figures and Mr Garry Owen's figures.

Accordingly the cost is likely to be on the balance of probabilities somewhere between Mr Verity's net figure of £68,731 and Mr Owen's net figure of £33,630.

The Tribunal accept that either of the two figures would be a considerable sum for the landlords to have to find.

Having heard the Applicant and his son give evidence they are satisfied that his education has been geared to working on a farm and that he is likely to continue to be involved in the enterprise which is likely to continue indefinitely.



The Tribunal do not take the view that merely because the landlords are trustees of a maintenance fund for the upkeep of a historic building that should override their responsibilities under section 11 of the Act and indeed under section 10 of the 1947 Act.

14. The requirements are neatly summarised in Scammell and Densham's Law of Agricultural Holdings (8<sup>th</sup> edition) on pages 95 and 96.

“If the tenant is successfully to obtain a direction from the Agricultural Land Tribunal under section 11 of the 1986 Act requiring the landlord to carry out ..... work ..... the following requirements are to be satisfied. The burden of proof is on the tenant.

- (i) The Tribunal must be satisfied “that it is reasonable having regard to the tenant's responsibilities to farm the holding in accordance with the rules of good husbandry, that he should carry on on the holding an agricultural activity specified in the application to the extent and in the manner specified therein” (see section 11 (1) of the 1986 Act)

Note. This Tribunal are satisfied that it is so reasonable.

- “(ii) The tenant will contravene statutory requirements unless either fixed equipment is provided on the holding, or existing fixed equipment is altered or repaired. This is the condition which until recently the tenant would rarely have satisfied, thereby rendering the remedy more notional than real.”

Note. This requirement was not in issue. There was no challenge to the Applicant's contention that he would contravene statutory requirements and this was, indeed, conceded by Mr Collins.

- “(iii) If the tenant's “agricultural activity” specified in his application had not been carried on on the holding continuously for at least three years .....

Note. This requirement was not in issue as the tenant had been carrying on the agricultural activity for many more than the three years immediately preceding his Application.

- “(iv) The Tribunal must be satisfied that it is reasonable to direct the landlord to carry out the work having regard to the landlord's responsibility to manage the land in accordance with the rules of good estate management and also having regard to the period for

which the holding may be expected to remain a separate holding, and to any other material consideration.”

Note. For the reasons already given the Tribunal are so satisfied.

“(v) The tenant must have requested the landlord in writing to carry out the work and the landlord have either refused to do so or not agreed to do so within a reasonable time of being asked.”

Note. This is not in issue. The Applicant made the request on the 5<sup>th</sup> of June 2002 and his request was refused on the 24<sup>th</sup> of July 2002.

“(vi) The Tribunal may not give a direction where the tenancy or any other agreement provides for either the landlord or the tenant to carry out the work. Nor may it make the direction if there is a statutory duty on the landlord to carry out the work in question or either the landlord or the tenant is contractually obliged to do the work.”

Note. None of these obstacles to the making of the Direction exists.

15. Accordingly the Tribunal unanimously find that they are satisfied that it is reasonable having regard to the tenant's responsibilities to farm the Holding in accordance with the rules of good husbandry that the fixed equipment which he seeks should be provided for the Holding and that it being reasonable to do so having regard to the landlords' responsibilities to manage the land comprised in the Holding in accordance with the rules of good estate management and also to the period for which the Holding may be expected to remain a separate holding and to the other material consideration mentioned above that they direct the Respondents to carry out the work sought.
16. In his submissions Mr Collins indicated that should we decide to make the order which the tenant applicant seeks we should order the Respondents to carry out whatever work is necessary to enable the tenant to comply with the legislation referred to in the Application.
17. That is the reason why we have made the order in the form that we have. We wish to make it clear that it is no part of our direction that the Respondents should be directed to deal with the domestic sewage disposal system at Leeswood Old Hall Farm.

18. We further unanimously decide that the period within which the Respondents are required to carry out the works is twelve months from the date of this order.

Dated this 28<sup>th</sup> day of November 2003

(Signed) .....

Chairman