

**AGRICULTURAL LAND TRIBUNAL WALES**

**TRIBIWNLYS TIR AMAETHYDDOL CYMRU**

Application Nr: ALT 02/2024

Applicant: Ms Andrea Mary Nezhati

Property: Llwyn yr Haf, New Inn, Pen-y-Banc, Llandeilo SA19 7LB

Respondent: Mrs Enid Justina Price (as executor of Mr Eirwyn Price)

Property: Carreg Cennen, Trapp, Llandeilo SA19 6TL

Interested Parties: Ms Catherine Boyd, Lanfawr, Pen-y-Banc, Llandeilo SA19 7LB  
Carmarthen County Council, Highways Department.

Application Date: 13 February 2024

Application: An application under the Land Drainage Act 1991

Location: As shown on the Site Plan Drawing Nr DWG001 attached to the ADAS Report dated August 2024

Decision-maker: Judge Christopher McNall, Chairperson, on the papers

Decision: 3 March 2025

**DECISION**

- (1) Insofar as the Respondent has not (by the time of this Order) already done so, that part of the ditch between point C and E on the Site Plan in the Report of August 2024, and especially by the sheep fence at Point D (shown in Photograph 15 of the Report) should be deepened by the Respondent, or the owner and occupier for the time being of the immediately adjacent land to the north, to no less than 30cm, with a minimum bed width of 30cm, and an appropriate batter, once deepened, should be maintained by the Respondent at sufficient depth width and batter to mitigate the risk of its banks breaching.
- (2) This Order is made without deciding the ownership of the ditch between Points A and D, noting that the Applicant asserts that her understanding has always been that the ditch complained of belongs to her and not to the Respondent. Even if that section of ditch belongs to the Applicant (in which case, the primary responsibility for maintaining it would be hers) it abuts land belonging to the Respondent.
- (3) Insofar as the Respondent has not (by the time of this Order) already done so, the Respondent shall deepen and maintain the ditch at Point H so as to mitigate the risk of it overflowing onto the fields to the south.

- (4) No order is made in relation to any road ditches.

### **REASONS**

1. This is an application under section 28 of the Land Drainage Act 1991.
2. Since 1998, the Applicant Ms Nezhati has owned and occupied a house known as 'Llwyn y Haf'. She applied concerning "land above causing flooding, extensive damage to banks (retaining), recent excavations on land/field (262699.59 224242.68), open agricultural drains, soil erosion, as seen in the pictures enclosed'. She alleged that her property and land 'below open agri-drains and groundworks' was being injured. She also identified a groundworks contractor whose activities she said had contributed to the situation.
3. In her application, she says that she had never had any problems with flooding until recently (ie, before the application) when open ditches and open land drains had caused silt and debris to build up. She also says that 'in the last few winters', 'the ferocity of water from the drains' had broken the banks and caused considerable damage to her property. She says that this comes from 'an overflow tank pipe' which is 'directly below the exposed drains'. She says that this is not a problem caused by heavy rainfall or any climate issue. She says that she believes that the problems have been caused by 'deliberate redirecting of water, rainfall, from the side and back of the property, the water gushing out of the exposed pipes'. Her application is accompanied by three photographs of what is described as an 'open agri drain pipe' leading into a shallow depression or gully. There is also a picture of the interior of a flooded garage or utility space.
4. She was advised to apply to this Tribunal by the CAB, and points out that the form is aimed at farmers and land agents, not residential occupants that have been flooded.
5. A Reply was received from Mrs Enid Price, who is the widow of Mr Eirwyn Price. It was accompanied by a long letter from JCP Solicitors, dated 27 March 2024. An extensive series of points were made, including that drainage problems were the responsibility of the local highways authority and/or the owners of a nearby property called Bron Heulwen, and that the garage which was prone to flooding was built in the 1970s/80s by excavating into the rock, but is lower than the surrounding land and buildings, in a sort of 'bowl' (which is shown tolerably well on the accompanying photographs of the Applicant's house) with water running into the garage from the road, and not from the Respondent's land behind the garage.
6. On about 10 May 2024, Ms Nezhati responded with a photograph of a tree behind her house, and a photograph of water coming out of a pipe set about 3 feet above the ground in a concreted/stone revetment to the side of her garage. A map

shows that Llwyn y Haf is at a height of about 55m AOD, with the land behind and to the north of it, being largely agricultural grassland fields, rising steadily and steeply up to 157m AOD.

7. In accordance with Rule 45 of the Tribunal's Rules, the Tribunal commissioned an expert report from ADAS. That report, prepared by Mr Kirk Hill, is dated August 2024. He had interviewed both parties and surveyed the site, including the ditch to the north of the Applicant's property, marked A to D, and a recently dug-off ditch lying further north and marked I to J.
8. The ditch at Point D was very low (less than 10cm) 'which could easily result in flows breaching the ditch bank directly onto Ms Nezhati's property': see Report §7.4.
9. He also concluded that the northern ditch appeared shallow at one location, Point H, 'and could conceivably overflow onto the fields to the south to join water discharged via the main ditch under contention': see Report §7.5.
10. A report under Rule 45 "may make recommendations to the Tribunal regarding the application". A report is also "prima facie evidence of the facts to which it refers" (Rule 45(9)).
11. That report was delivered to both parties, and their written comments were sought. Where a Rule 45 report recommends that an order be made, the Tribunal may make such an order without a hearing if the following conditions are met— (a) the report recommends that a specified party to the proceedings should be required or authorised to carry out any work or authorised to enter any land; (b) that person has notified the Secretary of his acceptance of the recommendation; and (c) every other party has (i) notified the Secretary of his acceptance of the recommendation; (ii) failed to reply to the application within the time allowed; or (iii) withdrawn their reply: Rule 45(10).
12. The Report concluded that ditch locations at two locations were recorded as very shallow, and were considered to be at risk of breach by ditch water. It was recommended that they be maintained to deepen the channel. Ownership of a section of ditch, between the post and bend downslope of Point A, was disputed: see Report §7.8.
13. In her reply dated 28 August 2024, Ms Nezhati accepts the contents of the Technical Report, accepts its recommendations, and requests the Tribunal to make an order on her application in the terms of the recommendations. She accepts these things subject to a comment that in her opinion, the report is missing "vital information, for example the large amount of earth, soil, run-off from top of north ditch and from the side bank; existing hedge boundary. Needs removing". She attached further information in a document entitled 'Points of

Comment' and photographs. I have carefully considered those things, but have concluded that those do not stand in the way of my making an order.

14. On 11 November 2024, the Respondent's solicitors responded, referring back to their letter of 27 March 2024, "vehemently opposing the Application insofar as the Applicant alleges injury to land", but acknowledging the recommendations in the ADAS report, and saying that remedial work had already been done, as a precautionary measure, and without any admission of liability. A number of observations were made as to the Applicant's position; and I have carefully considered them. I have concluded that none of those things stand in the way of my making an order.
15. Ms Nezhati, as permitted by the Rules, made further representations to the Tribunal on 25 November 2024. I have carefully considered those, and have concluded that it nonetheless remains appropriate to make an order.
16. It is quite clear from both parties' correspondence that each party takes great issue with a number of the others' contentions. But this Tribunal cannot decide issues as to land ownership, or trespass, or fallen trees, or the retrieval of escaped animals, the behaviour of groundworks contractors, or the slope of the road.
17. As to interested parties: Carmarthen CC was contacted, and did not respond. The Tribunal's records indicate that the owners of the neighbouring property Bron Heulwen were not contacted, but they have not applied to the Tribunal, and nothing stood in the way of Ms Nezhati adducing evidence from her neighbours, if she had wished to do so.
18. Put simply, I am not prepared to defer making an order because of any of those matters. The application identified a problem; the technical report has identified a practical solution; and I am making orders which address that practical solution.
19. It is not clear to me whether there are other matters falling within this Tribunal's jurisdiction. There is no evidence that the pipe to the side of the garage door is causing injury to any land; but this pipe was referred to (indeed, there is a photograph of it: Photograph 6) in the technical report. Mr Hill concluded that it likely discharged a drain gully to the raised terrace to the west of the garage: see Report 6.10. He did not make any recommendations about it. I cannot make any findings as to whether any pipe alleged to lead into that outfall pipe 'appeared to be closed off during the surveyor's visit': see Point xiii of Ms Nazhati's email of 25 November 2024.
20. For the sake of completeness, I have also considered the photographs taken by the Applicant during Storm Bert (which, according to the Met Office, was a high rainfall event, leading to "around three-quarters of the whole-month average

rain" to fall "in a swathe from Gwent to Wiltshire to Northamptonshire."). 23 November 2024 was the wettest day in the UK since 2020. Over 400 houses in Wales were flooded.

21. I have also seen Mrs Nezhati's email of 25 February 2025, and the photograph. It is not clear to me where that water is said to be coming from, or the circumstances in which it appeared. I note that there was an amber alert for rain across the whole of Wales on 23 February 2025, with some locations seeing up to 100mm in a few hours.
22. Ditches cannot always entirely remove the risk of overflow during extreme events.
23. If Mrs Nezhati alleges that there are new matters, not present in her original application, and hence not considered by Mr Kirk in his interviews or site inspection, nor reported on in his Technical Report, then she must contact the Tribunal, within two weeks, clearly identifying the ditch concerned, and its condition. The Land Drainage Act clearly sets out the Tribunal's powers, which are limited. The Tribunal cannot engage in a free-ranging enquiry as to water ingress onto or across her land or buildings. As matters stand, there is simply insufficient evidence before me that any problems now are attributable to any matter over which the Tribunal has jurisdiction.
24. Standing back, as far as I am presently concerned, the statutory process has run its proper course, no further issues with which the Tribunal can deal were identified by the expert, both parties have accepted that orders can be made in line with the recommendations, I have made such orders, and I therefore propose, absent further representation from Mrs Nezhati as referred to above, to direct that the Tribunal closes its file.

#### **Further matters**

25. On 28 August 2024, Ms Nezhati wrote to the Tribunal concerning transparency and accountability, raising a concern that one Stephen or Steven Boyd, the Respondent's son-in-law, was employed 'for over 25 years' by Powys County Council at its Llandrindod Wells office, and asking whether any of the Tribunal's office staff or surveyors 'know in a professional capacity or have worked/work as a colleague with Mr Boyd'.
26. I deferred dealing with that letter until I was in a position to decide whether to make any orders in this case.
27. I am the sole decision-maker in this application. I am a fee-paid judge who has not visited the Llandrindod office for several years, and, as far as I am aware, have never encountered Mr Boyd in any capacity. Mr Evans (the then-secretary) has retired; and his replacement does not work in the Llandrindod Office. I do

not know whether Mr Kirk knows Mr Boyd, but I do not see, even if he did, that this would raise any arguable appearance of bias, applying the well-known guidance in Porter v Magill.

28. Ms Nezhati also asks, 'in the interests of transparency' whether 'any persons relevant to the Tribunal, adjudicators, solicitors, landowners' are 'currently members of the Freemasons' Association'. No further information is given as to why this is or might be relevant. But, regardless of relevance, the answer is that membership of the Freemasons is not information which is required to be gathered, or is gathered, by the Tribunal.