



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(AGRICULTURAL LAND AND
DRAINAGE)**

Case Reference : **ALD/SW/S/2020/014**

Property : **Trethevan Farm, St Kew Highway, Bodmin,
PL30 3DL**

Applicant : **Anthony Miles Thomas**

Respondent : **Countryside Solutions Ltd**

Representation : **Mr G. Bennison instructed by Michelmores
for the Applicant**
**Mr J. Ollech instructed by Loxleys for the
Respondent**

Type of Application : **Application for Direction for Succession
Tenancy on death**

Tribunal Members : **Principal Judge Nigel Thomas**
Mr R. Drew
Mr K. Bateman

Hearing Dates : **Hearing at Truro 16th -18th September
2025**

Decision Date : **16th day of October 2025.**

DECISION.

The Tribunal refuses the Application for a Direction for a Succession Tenancy on death made in Form TASD111 dated 2 November 2020 and the Application is hereby dismissed.

REASONS

1. This is an application by the Applicant for a direction for a succession tenancy upon the death of his father Richard Keith Thomas, who died on 7th August 2020, to an agricultural holding known as Trethevan Farm aforesaid (“the Holding”). The Application is made pursuant to **s. 39 Agricultural Holdings Act 1986 (the 1986 Act)** The Holding was let pursuant to the terms of a tenancy agreement in writing dated 6th October 1969 between Major E.W.M Magor C.M.G., O.B.E., and the late Mr. R.K. Thomas. The tenancy was one to which the provisions of the Agricultural Holdings Act 1986 applies and in respect of which there are statutory rights of succession.
2. The Respondent is now the landlord. It served a Case G notice to Quit dated 23 September 2020.
3. As mentioned above the Applicant applied for a succession direction by TASD111 dated 2 November 2020 (“the Application”). Originally there were two such applications namely in addition an application by Mrs F. Thomas, the Applicant’s mother and widow of Mr. R.K.Thomas. That application has however been withdrawn.
4. The Holding comprises according to the Application of 45.17 hectares of arable land, 7.28 hectares of permanent pasture and 5.47 hectares of other land, which translates as about 144 acres. The buildings on the Holding comprise a farmhouse, and farm buildings and yards a little to the south of the farmhouse, which is the home of Mrs F. Thomas.
5. The Holding lies to the east of the A39 opposite the village of St Kew Highway. We undertook a site view on 18th September when weather and visibility conditions were satisfactory.

- 6.** Apart from the Holding the Applicant purchased a small block of land of approximately 8 acres about one mile from the Holding, later he purchased a further 3 acres with his father but which is now vested in his name alone. Adjoining the 3 acres the Applicant together with his wife purchased a block of 34 acres. It remains registered in their joint names although as we understand it they are now separated.
- 7.** Additionally to this land the late Mr Thomas and his wife jointly owned 44.82 acres at Maidenland to the west of the A39. This land continues to be used for the farming business carried on by the Applicant.
- 8.** The land owned by the family is all to the west of the A39 and thus separated from the Holding by the road. The Applicant lives in a house in St Kew Highway near to the land held jointly with his wife.
- 9.** For completeness I should mention a block of land held on an informal licence arrangement with acquaintances of the Applicant, which is referred to as the annual land, and is used in the business. This land lies to the south west of the Holding and is to the east of the A39. We shall refer to the land other than the Holding as “the Owner-Occupied Land”.
- 10** The Applicant contends that all the land mentioned above including the Holding is the agricultural unit occupied by him, and that at all material times he and his father ran, in practical terms, a single business notwithstanding that there was no partnership, and that they maintained separate accounts, had separate VAT and SBI numbers and made separate BPS claims in respect of distinct parcels of land and were therefore taxed separately. Thus on paper, so the Respondents argued, they were two sole traders. This is a point to which we shall return. In addition to these documents the Respondent produced documentation relating to an application by the Applicant for a succession on retirement which appears to have been withdrawn. We did not find these of any material assistance as they related to matters and events 20 or 25 years ago.
- 11** The Applicant explained that the accounts and tax affairs of himself and his father were the result of historical arrangements dating back to the time when he left school at 18, and as far as he knew they were produced in this way as a result of accountancy advice.

- 12** The Tribunal was not asked to rule on the Applicant's suitability to become the tenant of the holding as it was accepted by the Respondent that he was a good farmer. Nor was there any issue about his status as a close relative or the occupation of a commercial unit.
- 13** The issues before the Tribunal are therefore, whether the Applicant can show that his sole or principal source of livelihood was "derived from his agricultural work on the holding or on an agricultural unit of which the holding forms a part" in other words did the Holding form part of an agricultural unit farmed by the Applicant and secondly and following on from the answer to the first question whether for the requisite period of 5 out of the 7 years immediately prior to the date of death he could show that the sole or principal source of livelihood was derived from his said agricultural work on the Holding: see **the 1986 Act s.36 (3)(a)**. Alternatively the Applicant contends that if the Tribunal is against him on the livelihood condition then in any event he satisfies it to a material extent: see **s.41 of the 1986 Act**
- 14** We considered the Applicant to be a straightforward and honest witness. He told us that he and his father ran a mixed arable and beef enterprise with the Holding given over predominantly to arable. He was responsible for the beef enterprise but that was not to say his father had no role in this, so for instance in the morning he would check the cattle and would be available if the cattle needed treatment. Typically some cattle belonged to the Applicant and some were designated Herd cattle.
- 15** As to the arable enterprise this was carried on from the Holding and the Owner-Occupied Land depending on the rotation pattern. About 75% of the crop was sold whilst the rest was used by them for feed or bedding.
- 16** The Applicant described decision making over the breakfast table or later on when he and his father met. The buildings and yards were used by them both and apart from the permanent pasture on the Holding there was no fixed division of the user of land. Cattle sales were undertaken as and when necessary and were not subject to allocation between the parties. The Applicant forcefully pointed out that his alleged separate business could not operate unless he had use of the Holding, and even in the case of the arable crops these were grown on both the Holding and the Owner Occupied Land

without any division or allocation. In cross examination the Applicant pointed out that there was insufficient grazing on the Owner Occupied Land.

- 17** In short he said the farming business was not viable without the Holding providing as it did the buildings and yards where machinery was stored, cattle kept and crops stored. It was also a source of additional grazing and animal feed and grazing.
- 18** It was he said in all but name an informal partnership and definitely not separate businesses. All the land was farmed as one unit on a normal farming basis. An issue emerged at the hearing on the last day about late disclosure. We have decided to admit it although the weight we give it is more limited than might otherwise be the case, nevertheless it does provide some corroboration of Mr John Powell's evidence. Mr Powell's evidence was agreed so he was not called.
- 19** The only factual oral evidence was tendered by the Applicant and nothing he said was directly contradicted by any other witness or the documents. For instance the fact that there were separate SBI numbers does not seem to us to be unusual and certainly did not prove the Respondent's argument.
- 20** There was evidence given on behalf of the Respondent by a Mr Humphris who was one of its directors. He was unable to give any factual evidence about the operation of the farming business as he knew nothing of it. He contented himself instead with producing a second witness statement which the Tribunal considered to be in the main inadmissible as it proffered opinion evidence on working hours in the style of an expert. For some reason the Applicant's representatives did not object to it, but we did, and we give the offending section no weight as being clearly contrary to the Tribunal's directions on experts and the rules of evidence. The point was neatly made when during cross examination he said that the calculations proffered by him were correct because he had telephoned the editor of a book on the subject who confirmed his calculations. We say no more.
- 21** It is true to say that the Respondent's case therefore rested entirely upon the farm accounts, records and other documents to which we have referred at paragraph 10. In our view none of them either singly or taken as a whole is sufficient to displace the evidence of the Applicant both written and oral.

- 22** On the basis of the facts to which we have referred we make the following findings: the Owner Occupied Land did not constitute a viable agricultural unit by itself, the Holding was required to make it so, the Applicant and his father carried on a farming enterprise on the agricultural unit comprising the Holding and the Owner Occupied Land, the business was in practical terms one farming business not two carried on by sole traders.
- 23** We also find that the Applicant derived his agricultural livelihood from an agricultural unit of which the Holding formed a part. In construing this wording in **s 36(3) (a)**, the correct approach is to decide whether the Applicant carried on agricultural work on an agricultural unit, and once that potential unit has been identified then to decide if the Holding formed part of it or not.
- 24** We came to the firm conclusion that the Holding was an essential and integrated portion of the agricultural unit.
- 25** We now turn to consider whether the Applicant has derived his only or principal source of livelihood from his agricultural work on the agricultural unit.
- 26** These well-known provisions are by way of shorthand referred to in this Decision as the livelihood condition. In order to meet it an applicant must satisfy the Tribunal that not less than 51% of the value in money and money's worth of his livelihood was derived from his agricultural work on the Holding or relevant agricultural unit of which the Holding formed part, in each of the five years out of the seven years before the day after the late tenant's death: **s.36 (3) (a)**.
- 27** "Livelihood" for this purpose means an applicant's "means of living" - what he actually spent and consumed for the purpose of living in the style which he had chosen and in which he in fact did lead his life during the relevant years. The annual monetary value of this livelihood is the aggregate of the cash spent and the value in money's worth of any benefit's in kind enjoyed and used by him to support or achieve that lifestyle in each of those years: per Stuart Smith LJ in **Thomas Casswell v Sir Richard Welby Bt and D & S Farms Ltd (1995) 71 P & CR 137 at 142**.
- 28** The Applicant derived his income from a variety of sources in addition to his qualifying income received from his agricultural work (on the agricultural

unit of which the Holding formed a part) as he earned non qualifying income from his work as an agricultural engineer for Truro Tractors . There thus arises the question as to how to account for qualifying and non- qualifying payments paid into a mixed account.

- 29** The parties each called an expert to prepare a report and to give evidence on this issue. The Applicant instructed Mr Nicholas Woodmansey of Francis Clark LL P and the Respondent instructed Mr Ian McVicar of Albert Goodman LL P. The experts having exchanged their reports met and produced a joint report dated 7th May 2025, which was of substantial assistance to the Tribunal. There was a large measure of agreement between the experts on the figures and resulting calculations which helped the Tribunal in reaching its conclusions.
- 30** Both experts gave evidence and were cross examined on their approach and the ensuing reports.
- 31** As between the two experts there were however areas of disagreement. One involves a significant difference of principle concerning the issue, to which we have referred, namely how does one deal with mixed funds?
- 32** The Tribunal was presented with what Mr Ollech Counsel for the Respondent called three models although it might be more accurate to say two models with a variation on the second.
- 33** The approach of Mr McVicar is to say that where one has a mixed account one has to look at the payments into the account and divide them rateably in proportion to the source of income. So in other words what proportion the qualifying income bears to the non- qualifying income. This approach is in line with the very highest authority: **Foskett v McKeown [2001] 1 AC 102 at 141** “A mixed fund, like a physical mixture, is divisible between the parties who contributed to it rateably in proportion to the value of their respective contributions, and this must be ascertained at the time they are added to the mixture” per Lord Millett.
- 34** The result of this approach is to accept that one cannot identify or trace specific expenditure from a mixed fund and attribute it to qualifying income; rather one has to treat payments out of the Farm accounts as being proportionate to the income received.

- 35** Mr Woodmansey on the other hand says that one must notionally assume that in spending on living expenditure the Applicant is spending first of all, qualifying income and only if the Applicant's expenditure exceeded the qualifying income does one deem that expenditure to come from a non qualifying source.
- 36** The difference in approach is summed up in paragraph 4.4 of the Joint Statement where it is stated that Mr Woodmansey asks "could" the expenditure come from a qualifying source of income whereas Mr McVicar asks "did" it.
- 37** Mr Bennison for the Applicant in his Skeleton Argument put forward a variation of Mr Woodmansey's approach by arguing that "the correct approach is not therefore to identify whether an applicant's sources of income, once received by him, were actually spent at a particular time or on particular items of livelihood expenditure, but instead to determine whether they were available to be spent on livelihood expenditure from time to time during the relevant period".
- 38** In support of this proposition he sought to rely upon various authorities which proceeded on the basis that one cannot rely in calculating expenditure upon sums which were not available to meet living expenses because they had become inaccessible due to them being for instance, invested or paid into a pension. On this basis Mr Bennison sought to extend the argument by saying that all qualifying sums which were available to be spent, but were not in fact so expended on living expenses, were available to be spent, which was enough, and thus went towards expenditure, notwithstanding they were not expended in this way.
- 39** In cross examination Mr Woodmansey appeared to admit that his approach depended upon whether the Applicant saw himself as a farmer who sometimes carried out agricultural engineering work or, alternatively, whether he saw himself as an engineer who did some farming. If he saw himself as a farmer then his expenditure would in his mind come out of his qualifying income as such. He was unable to answer Mr Ollech's example put in cross examination; namely a banker who earned £100,000 a year but also earned £30,000 as a farmer, and all monies were paid into a mixed account out of which his annual expenditure of £20,000 was paid, would then qualify.

- 40** In our judgment the Applicant's approach was subjective, depending on hindsight and likely, as mentioned in the preceding paragraph, to result in bizarre anomalies and we unhesitatingly prefer the Respondent's line on this point.
- 41** This then leaves the remaining points of disagreement some of which have been resolved: Western Power compensation payments, the hobby income of the Applicant's wife and funds from family are now agreed as non-qualifying; payments into account 8060 are agreed as qualifying income; the experts are agreed that tax credits, bank interest and child credits are all non-qualifying income. Mr Bennison argued that they should be treated as neutral payments although he cited no authority to that effect. It seems to us that they are income in the extended sense in which the provisions have been interpreted and we accept the joint experts' view that they must be non-qualifying income, in that they were not generated by income from agricultural work.
- 42** Finally there arose a question about payments designated as gifts in the accounts. The Applicant insisted that that was a misdescription, they were he said de facto payments for the extra work he had completed on the Farm. We confess that it was not an easy or straightforward exercise to disentangle the correct position but given that we considered the Applicant to be a straightforward and honest witness we accept his explanation and thus the gifts amounting to £10,570 in 2014, £6,589 in 2015, £369 in 2016, £10,000 in 2018 and £15,000 in 2019 should be treated as qualifying income.
- 43** As we have resolved the chief point of difference between the respective experts in favour of Mr McVicar, the Respondent's expert, then we accept his approach and analysis of the respective percentages of qualifying and non-qualifying income set out in Schedule 2 to the Joint Statement at page 12 thereof. Mr Ollech produced a helpful narrative analysis of these calculations which is appended to his Skeleton Argument and for which we are grateful.
- 44** On the basis that as we regard the gifts as qualifying income and it is now agreed that the profits paid into account 8060 are also qualifying then we find that the percentage livelihood from the Farm is set out in the first line of the final table of Schedule 2. These percentages for the seven relevant years to 7 August in each year are as follows: 2020, 44.6%, 2019 41.2%, 2018 45.3%, 2017 57.1 %, 2016 44.7 %, 2015 41.5%, 2014 47.2%.

- 45** The final question which falls for determination is whether notwithstanding our findings the Applicant nevertheless succeeds as he can show that the livelihood condition although not fully satisfied is satisfied to a material extent: **s.41 the 1986 Act.**
- 46** Our attention was drawn in the Skeleton Arguments to the relevant authorities, which we have considered. They do not take the matter much further so far as Tribunals are concerned when having to make a decision of this nature in that we are told it has to be “a really large failure”: **Wilson v Earl Spencer’s Settlement Trustees [1985] 1 EGLR 3.**
- 47** Given that on the accountancy evidence which we have accepted the Applicant succeeded in demonstrating that the livelihood condition is met for only one year out of the relevant seven years we consider this to be beyond what could be described as “satisfied to a material extent”. The position might have been different had the situation been the other way round that is to say he had only failed in one or two years with finely balanced results in the rest.
- 48** The Application therefore fails.