

**Case Name: The Trustees of the Eighth Earl Cadogan's 1961 Settlement Trust v
Neil and Lindsey Butler**

Case Ref No: XA58/23 and XA59/23

Date of Hearing: Thursday 11 July 2024 at 10.30 (1 day)

Division and Senators: First Division (Lord President, Lord Malcolm, Lord
Pentland)

Livestreamed Hearing?: Yes No

Agents and Counsel:

Agents / Counsel for the Appellants (*The Trustees*):

Lindsays LLP

Michael Upton

Agents / Counsel for the Respondents (*The Butlers*):

Shepherd and Wedderburn LLP

Robert Sutherland

Link to Judgment Appealed:

<http://www.scottish-land-court.org.uk/decisions/SLC.103.22and17.23.html>

Case Description:

These are conjoined appeals under section 88 of the Agricultural Holdings
(Scotland) Act 2003 against a decision of the Scottish Land Court. Both appeals are
brought by the Trustees of the Eighth Earl Cadogan's Settlement Trust. They relate
to Stewart Tower Farm, Stanley, Perthshire, of which the Trustees are the

landlords. The farm comprises approximately 301.73 acres, a farmhouse, agricultural buildings and four farm cottages. The tenants of the farm are Neil and Lindsey Butler. They use the farm principally as a dairy farm.

The first appeal concerns a resumption notice served on the Butlers by the landlords on 17 November 2022. The notice required the Butlers to vacate two of the farm cottages by 28 November 2023 to enable the landlords to either sell the cottages, or renovate and let them. The Butlers applied to the Land Court for orders declaring that the resumption notice was invalid because the cottages were a material part of the farm. For the landlords to resume occupation of them would be contrary to the good faith of the lease.

The Land Court agreed. Though the farm was not leased unequivocally for use as a dairy farm, the lease did not prohibit such use either, and two clauses of the lease expressly anticipated that it might be used for dairying. It was well known that the provision of on site accommodation for agricultural workers was customary practice on dairy farms, so that employees are available seven days a week and at antisocial hours. It was a marginal case but, on balance, the two cottages were a material part of the farm. The Land Court therefore granted declarator that the resumption notice was invalid.

The second appeal concerns an improvement notice which the Butlers served on the landlords on 15 December 2022. The notice relates to the proposed construction of two new agricultural buildings at the holding. The Butlers sought an order declaring that the improvement notice was reasonable and desirable on agricultural grounds for the efficient management of the holding. They sought the court's approval of their claim for compensation from the landlords for carrying out the works.

The Land Court found in favour of the Butlers as regards one of the proposed new buildings. The lease anticipated that the farm would be used for arable and mixed livestock farming. Improvements could only be approved where they were reasonably required to allow the tenants to carry out the type of farming specified in the lease. The Land Court therefore granted in part the declarator sought in relation to the improvements. It approved the Butlers' claim for compensation in relation to those parts of the improvements which related to arable and mixed livestock farming, but not those which related to dairy farming.

The landlords appeal each of these decisions. The First Division will hear the appeal on Thursday 11 July 2024.