AGRICULTURAL LAND TRIBUNAL

(South Western Area) Application Reference Numbers: SW1/1057 & 1058

George L.Newsom (Chairman),
Mr T.H.Wheatley-Hubbard and Mr T.L.Hammett

BETWEEN

STEPHEN GEORGE COLLINS ("Stephen Collins")

of Parkenoweth Farm, St Newlyn East, Newquay, TR8 5NF
Represented by: Leslie Blohm QC and Hancock Caffin, solicitors (Bruce Holt)

and

JEREMY DAVID SPOFFORTH
JAMES MICHAEL WILLIAMS
DAVID JOHN CECIL DAVENPORT
JOHN MOORE SLOANE KENNEDY ("the Trustees")

c/o Trewithen Estate Office, Grampound Road, Truro TR2 4DD

and

PROBUS GARDEN ESTATE LTD ("Probus")

registered at the same address (Company number 01083778)

together represented by William Batstone, Barrister, and
Messrs Coodes, solicitors (Sukhi Lota)

DIRECTIONS

(1) We dismiss the applications of the Trustees and Probus for consent to the operation of the notices to quit mentioned below.

(2) We direct that Stephen Collins is entitled to a tenancy of the holding.

(3) We direct under section 46(2)(b) that the "relevant time" shall be the 25th December 2008, unless either party successfully applies to us to substitute a different date.

Date: 27th November 2008. Signed *George L. Newsom* (Tribunal Chairman)

I certify that this is a true copy of the decision of the Tribunal

Date: 3/12/08 Signed (*illegible*) (Tribunal Secretary)

REASONS

1. These Reasons for the above directions relate to

    (a) an application dated 20th September 2006 by Stephen Collins against the Trustees and Probus ("the landlords") for a direction under section 39 entitling him to a tenancy of the holding known as Parkenoweth Farm (also known or formerly known as Parknoweth Farm), St. Newlyn East, near Newquay, Cornwall TR8 5NF, of some 89.746 hectares edged in red on application Plan A, following the death of his father, Arthur Collins ("Art Collins") the tenant on the 29th June 2006, and

    (b) the respective applications of 26th January 2007 of the Trustees and Probus (who own separate parts of the holding following a division of the reversion) for consents under section 44 to the operation of Case G notices to quit given to the Art Collins' executors and others on or about 25th August 2006 under section 43 by reason of his death to expire "next after the expiration of the year of the said tenancy which shall expire after the end of twelve months from the date of the service of this Notice."

2. A reference to a "section" in these Reasons is a reference to that section in the Agricultural Holdings Act 1986 unless the context requires otherwise.

The tenancy

3. The holding is located to the west and south of the village of St. Newlyn East. It originally comprised an aggregate of about 149 acres granted by the Trewithen Estates Company to George Collins (Art Collins' father) from 29th September 1956. The tenancy agreement was signed by E.Johnstone, director. Following negotiations generated by George Collins, he surrendered his tenancy, and Elizabeth Johnstone granted a new written tenancy to Art Collins beginning on the 29th September 1965. Statutory succession on retirement was introduced at a later date. George Collins then moved to 7 Station Road, which at that time was in the tenancy. After an exchange of arguments on the topic, Mr Batstone accepted that Stephen Collins would be a first, not second, successor for the purposes of the legislation if a tenancy is granted to him.

4. The tenancy agreement required the tenant to reside personally at the farm-house, to maintain buildings (other than main walls, roofs, roofing timbers and main structural timbers which, save in respect of redundant buildings, are to be repaired by the landlord on receipt of written notice from the tenant), to maintain hedges and fences etc, and to cultivate in accordance with the rules of good husbandry. By section 7, the Agriculture (Maintenance etc) Regulations 1973, apply except where the tenancy agreement imposes obligations on the other party.

5. At Michaelmas 1968 a further 78.1 acres (with redundant buildings) south east of the road passing through the bends at Fiddlers Elbow ("the Fiddlers Elbow road") was added to the tenancy. This additional land comprised the larger part of Penhallow Farm. Some 55 acres located south of the former railway line is at the edge of Penhallow Moor and was generally described as waste, rough or scrub in the schedule of agreement. Mr Usher, the respondent's principal independent expert, says that 27 acres of these can be grazed, the remaining 28 acres being wet with overgrown hedges. The grazing is poor, and there are very substantial areas of rushes.

6. Subsequently other adjustments to the tenancy were made including that the terrace house at 7 Station Road was sold out of the tenancy to Art Collins in 1983. He gifted it to Stephen Collins on the 31st August 2004 with a further £5K. Its value at the time was given as £75K. Art Collins gave his daughter Lyn £80K at the same time.

7. Stephen Collins did little to No 7 in the ensuing three and a half years. We inspected No 7 and found it to be a potentially attractive property but in a very dilapidated, completely uninhabitable

condition. He says that he would like to renovate, even extend, it and then let it out but since being given it he was unable to do so by reason of his time commitment to his elderly father and the farm. In May 2007 Mr Thomas revalued No 7 at £115K. Stephen Collins would be unwise to leave the renovation much longer, but he may not be able to do the work and run the farm, until one of his children has the ability and wish to assist him.

8. Recently a surrender of 0.56 acre has been negotiated for an extension to the parish burial ground at Cargoll Road. Other surrenders have been made over the years for village tree planting and development. The holding is now about 222 acres, of which about 25 to 40 acres are used for crops of modest yield for animal feed and bedding, 35 acres for sheep and the balance for cattle. Some 15 acres or so are under water for some part of the year.

9. Art Collins survived his wife Violet (who died in 2003) and died of natural causes on the 29th June 2006 at the age of seventy-nine. The tenancy is now vested in his children, namely Stephen Collins and Lynn Catherine Hopkins ("Lyn"), as executors and personal representatives. Lyn and her husband David Hopkins farm Trewinnian Farm of about 400 acres about four miles away.

10. We find that the tenancy is a yearly tenancy beginning on the 29th September each year and that the notices to quit of August 2006 would thus have expired at 28th September 2007. If we consent to the operation of either or both of the notices to quit, we would direct under section 44(6) that such notice or notices shall have effect from the day before the next usual quarter day after this decision ("the new operative date"). If Stephen Collins' application succeeds, we would direct under section 46(2)(b) that the "relevant time" as the next usual quarter day after our decision. These directions will apply with the dates described above unless either party successfully applies to us to substitute a different date.

Division of freehold reversion

11. The Trustees have been described in these proceedings as "Trustees of A.M.J. Galsworthy". They were the landlords of the whole holding until areas totalling about 7 acres were transferred to Probus in 2001. These comprised fields OS 5517 and part 6500 (edged red on application Plan B1) between the farmhouse and the village and also two buildings with curtillages at Fiddlers Elbow (edged red on application Plans B2 and B3) The remaining 215 acres or thereabouts of the farm belongs to the Trustees. We were informed that Probus was owned by Mr A.M.J. Galsworthy, his wife and son, but we note that as at 13th December 2006 Companies House records it as wholly owned by Trewithen Estates Holdings Ltd and that as at 21st April 2007 the holding company was owned by Arthur Michael Johnstone Galsworthy, "AMJ Galsworthy Settlement on Stamford Galsworthy", and Stamford Timothy John Galsworthy. Stamford is the son of Arthur Galsworthy.

12. The current annual rent is £8,500, apportioned as to £8,190 to the trustees and £310 to Probus. The rent is equivalent of nearly £40/acre which might be considered low, but the Penhallow land is of marginal agricultural use.

13. The severance of the freehold does not divide the tenancy itself, but that the landlord of each part has under section 140 of the Law of Property Act 1925 rights, including to serve a notice to quit, as if that part had alone been comprised in the tenancy.

Outline of eligibility and suitability tests

14. The landlords accept that Stephen Collins is the son of Art Collins and that he does not occupy another commercial unit of agricultural land. They also accept that Stephen Collins is suitable as regards age and health. But there is a dispute as to other aspects of suitability and as to whether he fulfils the "livelihood test" set out in section 36(3)(a), namely whether for an aggregate of at least 5 of the 7 years before his father died his only or principal source of livelihood derived from his agricultural work on the holding or on an agricultural unit of which the holding forms a part.

15. If we are satisfied as to the livelihood test, we are then required by section 39(2) to determine whether in our opinion Stephen Collins is a suitable person to become the tenant of the holding. In making the determination we have had regard to all relevant matters including the extent to which Stephen Collins has been trained in, and has had practical experience of, agriculture, his age, physical health and financial standing and also the views of the landlords, who have been afforded opportunity of stating their views in the documents presented to the tribunal and by way of evidence and submissions at the hearing.

16. The landlords' Replies of 20th October 2006 challenge training, practical experience and financial standing and express concern about whether Stephen Collins has the resources, aptitude and ability to enable him to create a profitable business that could discharge the rent and other outgoings of a tenant and whether the farm is too small and ill-equipped for him to be commercially viable, also whether his business plan is over reliant on the Single Payment and environmental stewardship schemes.

Interaction of the applications

17. If we dismiss Stephen Collins' application, the notices to quit will have effect from the new operative date. If however we find that he is eligible and suitable, we are next required by section 44 to afford the landlords an opportunity of applying for consent to the operation of the Case G notices to quit. If we then consent to the operation of a notice to quit, the bar on its operation in section 43 ends and we are then required by section 44 to dismiss his application.

The applications for consent

18. The landlords' applications contend that section 27(3)(b) (as applied by section 44(2)) is fulfilled, namely that "the carrying out of the purpose [for which the landlords propose to terminate the tenancy] is desirable in the interests of sound estate management of the estate of which the land to which the notice relates forms part ...." If we are satisfied as to this, we are required by section 27 to consent unless in all the circumstances it appears to us that a fair and reasonable landlord would not insist on possession.

19. It is not necessary for the landlords to establish the section 27 test when they served the Case G notice to quit. Such a notice merely cites that it is given by reason of the death of the tenant.

20. Deeming provisions as to the similar expression "good estate management" appear in section 10 of the Agriculture Act 1947 alongside deeming provisions in section 11 as to "good husbandry". We recognise that those sections may concentrate on the particular farm, rather than on the estate as is the case for the expression in section 27. Yet we find section 10 helpful in indicating that the management of the estate farm or farms should be such as enables occupiers who are reasonably skilled in husbandry to maintain efficient production as to both the kind and the quality and quantity of produce, having regard to, among other things, the extent to which the owner is providing, improving, maintaining and repairing fixed equipment so far as necessary to enable the occupiers to do so.

21. If we consent to the operation of a notice to quit, we may under section 27(4) impose such conditions as appear to us requisite for securing that the land to which the notice to quit relates will be used for the purpose mentioned above. Under section 27(5) we may subsequently vary or revoke such conditions if satisfied that this ought to be done by reason of any change of circumstances or otherwise. Failure to comply with any such condition renders the landlord liable to proceedings for a penalty and costs.

Hearing & overview of witnesses

22. We commenced the hearing on the 24th September 2007 by inspecting the holding. We also visited an adjacent farm, known as Cargoll Farm, accompanied by various representatives of the

parties. Owing to foot-and-mouth concerns the visitors were supplied with overalls and were required disinfect footwear at entry onto each farm. We viewed from the highway parts of Ventonarren Farm, Shepherds Farm and Trevalso Farm. We also inspected part of Polstain Farm. In addition we inspected 7 Station Road and also visited the house rented by Stephen Collins' partner Janet Smith at 5 Parkenoweth Close.

23. The hearing continued on the 25th, 26th and 27th September in Newquay and on the 17th December in Truro.

24. The witnesses on behalf of Stephen Collins were himself, Christopher Annear, David Hopkins (Lyn's husband), Mr T.Ewlyn Thomas FRICS FAAV and Mr R.R. Cowie FCIA.

25. Mr Annear, a nearby farmer, had known the Collins since about 1990 and become a close family friend. He says that Art Collins was a stubborn person set in his ways and that Stephen Collins coped despite his mother's long-term manic depression and also his father's ill health in Art's last few years. We note that the Strategic Review of 2000 mentions that Mrs Collins was "very ill". Mr Annear believes that Stephen Collins could make a great success at the farm if allowed to do so.

26. Mr Hopkins has known the family well for a dozen years. He says that Art Collins remained very much in charge and was an excellent stockman but entrenched in his farming methods. He too believes that Stephen Collins could make a success of the farm if Stephen Collins can put up a new stock building.

27. In 1950 Mr Thomas became a partner in Lodge & Thomas, surveyors and valuers at Truro, and later was the senior partner. He is now a consultant with that firm. He had known Art Collins for many years as a farmer of "the old school". He says this caused friction with Stephen Collins who had nonetheless stayed by his father and coped when his father's health deteriorated after his mother's death in October 2003, despite the lack of satisfactory buildings for animal husbandry. He had however only really got to know Stephen Collins after Art Collins died. He regards Stephen Collins as industrious, well trained in agricultural engineering, and not afraid to seek expert advice. He speaks in general terms of improvements made by Stephen Collins after this father's death and is critical of the landlords' perceived unwillingness to spend any money on the farm.

28. The landlords' witnesses were James Humphreys MRICS of Stratton Holborow, John Usher (farming consultant) and Charles Huntington-Whiteley FRIGS of Strutt & Parker's Exeter office.

29. Mr Humphreys has been involved with the Trewithen estate for 24 years and has been its land agent since 1991. He writes on notepaper of Trewithen Estates Management Ltd of The Estate Office, Trewithen, Grampound Road, Truro. On 26th July 2007 Messrs Coodes confirmed that Mr Huntington-Whiteley was instructed as the landlords' (surveyor) expert, rather than Mr Humphreys who is the landlords' agent and a director of Trewithen Estates Holdings Ltd and also of Probus.

30. The landlords' solicitors said that Mr Humphreys' evidence would deal with matters of fact. A few aspects of his evidence on fact depended on what he later accepted was gossip. The landlords' solicitors said that they relied on other experts (i.e. Mr Usher and Mr Huntington-Whiteley); yet inevitably matters of opinion were in Mr Humphreys' statements and emerged during his evidence.

31. Mr Huntington-Whiteley is a surveyor and valuer with residential and agricultural experience, including in aspects of rural estate management. He was instructed to provide a report and evidence in support of the landlords' applications. He issued a first report on 16th August 2007 and a supplementary report on the 15th September correcting several matters in the earlier report. His sources of information were confined to what Mr Humphreys had told or shown him and his

inspection of the Parkenoweth Farm on 10th July 2007. Although engaged on the sound estate management issue, he did not inspect the other farms beyond driving by. He has not seen the accounts of any of those farms. We consider that Mr Huntington-Whiteley provided evidence from a somewhat narrow base, whether by reason of limited instructions or otherwise. In addition in our view he had a tendency to draw what we considered to be unduly sweeping or definitive conclusions.

32. We find that in correspondence Mr Thomas considered his job as securing a tenancy to Stephen Collins and argued as he considered accordingly. His statement says that he now puts forward his independent views to the Tribunal. We do not find these positions to be entirely inconsistent. That too was the dual position of Mr Humphreys who probably has more personal interest in the outcome of the case. Both have expertise but neither can be described as fully independent.

33. Mr Thomas initially said he had "scanned" the evidence of Mr Huntington-Whiteley and later said that he had read it reasonably thoroughly but that as an auctioneer he couldn't help speed-reading. We find that his approach to giving evidence was rushed. Further in our opinion Mr Thomas was on occasions rather too ready to provide quick answers, rather than thoughtful answers from a considered standpoint. He accepted that he was principally a tenant's man. In the circumstances we apply lesser weight to his evidence.

34. Mr Usher is a farming consultant who has specialised in assessing agricultural businesses. He has a background of many years teaching at Seale Hayne Agricultural College and other activities in the agriculture industry. He inspected the farm but not others.

35. Mr Cowie is a chartered accountant and a senior partner in the firm of Winter Rule of Truro. He specialises in dealing with accounts and tax returns for farmers, but he does not work exclusively for farmers. He had not visited the farm but had passed it on many occasions, though not along footpaths. He had however interviewed Stephen Collins and Janet Smith at length.

36. Although Mr Usher visited the farm, his analysis is essentially a desk top analysis heavily based on a variety of farming statistics; Cowie's projections were based on the actual business and his local knowledge as a farming accountant in the county. We consider that the evidence of Mr Usher was useful in giving a general guide but found Mr Cowie's evidence rather closer to the farming realities of this particular case.

Background

37. Art Collins made his last will hi November 2004 leaving his net estate between Stephen Collins and Lyn. He died on the 29th June 2006 aged 79. As executors they obtained probate on the 22nd December 2006. The grant shows a net estate for probate purposes of £357,432. Lyn has provided a letter giving to Stephen Collins the part of her inheritance that consists of the live and dead stock of the farming business. The live and dead stock comprised almost all the assets of the business.

38. Stephen Collins was born at 7 Station Road on the 13th July 1959 and was brought up on Parkenoweth Farm from 1965. He left school in 1975 and has worked full time on the farm since then. In the late 1979 he became a partner with his father, albeit without a written partnership agreement. Their farming business was known as A.G.Collins & Son. The seven year period to Art Collins' death started on 30th June 1999, at which time the farm was concentrating on dairy, beef, sheep and com. Poultry, pigs and potatoes had been phased out in the late 1980s. The dairying operation ended on 31st March 2003. Of the proceeds of sale of the milk quota a year or so later 55% passed to the landlords. Stephen Collins says the herd was not sold, but the accounts show a subsequent bulge in sales. The present business comprises about 125 or so ewes and 110 or so cattle, suckler cows and growing/finishing cattle.

39. Since the mid 1990s Stephen Collins has had a relationship with Janet Smith, a shop assistant. The landlords contend that Stephen Collins derived some of his livelihood from living with her - before his father died. Stephen Collins responds that, until his father's death, he continued to live at the Parkenoweth Farmhouse, visiting her at her home nearby. He also states that he had to spend a considerable time looking after his father after the death of his mother and that he continued to live at the farmhouse until his father died. Stephen Collins accepts that he lived away from Parkenoweth for about two years from his marriage in 1988. He was divorced in 1991. He accepts that he moved out after his father died but continues to sleep there in periods of calving and lambing, although the farmhouse has been in a very poor condition for several years, with a serious damp problem and leaks round the chimneys, and also smoke from the Aga passing through cracks in the chimney into a bedroom above.

Eligibility

40. Having regard also to the documents produced in the supplementary bundle marked "Investment income and proof of address", we accept Stephen Collins' evidence that he lived and for the most part ate at the farmhouse in the seven years until his father's death, though he doubtless regularly visited 5 Parkenoweth Close, where Janet Smith lives with their children and also the children by his marriage. They doubtless regularly, though perhaps less frequently, visited him at the farm.

41. We find that any livelihood derived from 5 Parkenoweth Close is no more than minimal but that Stephen Collins has been receiving an investment income of up to about £2,500 a year. He has received £6,720 or thereabouts each year by way of regular of payments out of farm cash or the farm bank account, and these payments appear in the partnership books. We find that the annual accounts erroneously fail to reflect these payments in the capital accounts as between the partners. We do not consider that Stephen Collins can be criticised for living frugally and saving significant sums.

42. We were referred to the decision in *Casswell v Welby* & another (1995) 71 P&CR 137 in which in four of the seven years the appellant's share in the profits of the business was less than the amount drawn by him. Capital of the business included injections by the appellant and his father from outside sources. The Court of Appeal held that a purposive interpretation was to be preferred to a legalistic approach and that in common parlance the appellant derived his income from the business.

43. Mr Batstone submits that we must be satisfied that external capital was invested in the business before drawings can be regarded as qualifying income. The argument accepted by the court in *Casswell v Welby* included a submission that gross output of that business always substantially exceeded the son's drawings. But the court appears not to have accepted that submission as an annual or strict requirement, because there could for example be years in which the partnership conducted itself in a way that resulted in only modest profits or losses in the short term with a view to increased profits in the long term.

44. We read the decision in *Casswell v Welby* as meaning that the section is not concerned with how or precisely when the business is funded but requires the tenant to establish his economic dependence on the holding by showing that his work on it provided his main means of livelihood. We interpret the section as being concerned with money and benefits that are ordinarily available for or are used as a means of living.

45. We do not consider that the cheques making up the £6,720 or thereabouts can be considered as a series of gifts not reflecting the work that Stephen Collins did. His sister received no equivalent regular equality payments. There were other payments that were explicitly described as gifts. In our view he would not have received the £6,700 if he had not been working on the farm. His work went towards generating the gross income of the farm, and the sums he received were substantially less than the gross profit.

46. We find that Mr Collins received more money and benefits that were ordinarily available or used as a means of living from his agricultural work on the holding than from other sources. In common parlance he derived his principal source of livelihood, both income and food and housing, from his agricultural work on the holding. We conclude that his principal source of livelihood in at least five of the seven years before Art Collins died derived from Stephen Collins' agricultural work on the holding. We therefore hold that he is an eligible person within the meaning of section 36.

Parkenoweth Farm

47. The farm is within a few miles of the north coast of Cornwall and is exposed to the weather from that direction. It is mainly within Land Use Classification Grade 3, suitable for grassland and less demanding arable crops. It is generally well drained other than in valley floors. The core buildings comprise the farmhouse, some stone and other buildings round a yard, a dutch barn (used for storing hay, straw and machinery) and lean-to (used for housing cattle), a chicken building and some small sheds. The buildings do not lend themselves to efficient livestock handling and mucking out: they are very labour intensive. Mr Thomas said that mucking out by hand may take as much as 3 to 4 hours a day. Stephen Collins says that a new building would save a quarter of his time.

48. Mr Humphreys describes the farm buildings as basic or rudimentary, apart perhaps from the Dutch barn (built by the landlord in 1970 for £800) and lean-to (built by the landlord in 1975 for £1,140) even though the roofs of these now need to be replaced. The farmhouse, buildings and yards are accessed by track from Station Road. Two small farm buildings are located beside this track. The buildings on the farm include an outside lavatory, grain dryer house, concrete block dairy and two (wood and galvanised) machinery sheds, all built by Art Collins. Water for the farmhouse, buildings and troughs is pumped from a well behind the farmhouse. Stephen Collins replaced leaking water pipes on the basis that the landlords would pay the cost of the pipes, which they have now done.

49. The farm is bisected by the Fiddlers Elbow road after it leaves the village. The two farm buildings now owned by Probus are located on either side of this road at Fiddlers Elbow. Access to the fields to the south east of this road is primarily gained along the road.

50. The wiring in the farmhouse was antiquated, in lead sheathing, and declared dangerous on inspection by an electrical contractor, Mr N.J. Light, engaged by Stephen Collins in May 2007. The landlords have recently rewired the farmhouse but with superficial ducting, not recessed into walls, although a like-for-like quotation was requested. Electrical work in the buildings has not been done. One chimney stack was repaired but not the cracks below. The house remains very damp, and the old copper wire damp proof system is not working. The render on the wall is in poor condition in places. In April 2007 Stephen Collins informed Mr Humphreys of cracks in the main walls behind the wallpaper in the bedrooms. Internal plastering will also be needed. We find that, when the landlords have completed their obligations to repair the farmhouse, Stephen Collins would redecorate and return to live there if a tenancy is granted to him. We also find that there is no real point in spending time and energy on decorative work while the fabric of farmhouse is in its present state.

51. Mr Humphreys says that historically the landlords have done repairs as requested and has produced some correspondence dating back to 1984 in support. An exception was rewiring the farmhouse while he thought this was the tenant's responsibility. This work was done pursuant to a quotation of £3,200 plus VAT. Another exception is the rewiring in the buildings, for which there is an estimate of £7,050 plus VAT. In addition, Mr Humphreys has agreed to have the roofs of the dutch barn and its lean-to replaced and to do some other works. But he has deferred these works pending the outcome of the succession application or acceptance of Option 1 or 2 mentioned below. In the meantime storage of hay and straw is unsatisfactory, but Art Collins had not complained about this.

52. Mr Huntington-Whiteley says that he found that the land at Parkenoweth Farm was in reasonable condition but he is critical of the general appearance of the farm and its state of repair, though he did note that a number of new gates were being erected and other repairs being done. He says the general feeling he says he gained was “one of neglect and indifference to the responsibilities of a reasonable tenant”. He considers that Collins’s plans for the farm are over optimistic and show a lack of appreciation of current repairing liabilities.

53. In our view the landlords have operated a relatively hands-off policy, albeit with little input from the tenant, Art Collins. The result was relatively little expenditure on the farm. Mr Humphreys says that he estimated the cost of repairs in June or July 2007 at £25K. Mr Huntington-Whiteley says that this was on the basis of using a small local contractor. We have not seen any itemised schedule, but it appears from the answers of Mr Humphreys in evidence that the bulk of his estimate refers to landlords’ repairs.

New building

54. Stephen Collins wishes to increase his suckler herd of 40 by about 20, to reach a cattle head count of 140 to 150. The farm is probably already bearing at least as many cattle as is possible without better overwintering and feeding facilities. Cattle could be overwintered in a new building, rather than poaching the pastures. Their growth rate would also be faster. In addition, if planning permission is gained to convert the buildings at Fiddlers Elbow, Stephen Collins will need other white ring accommodation for his animals. If this occurs, he could add a lean-to on one side of the proposed building at relatively low cost.

55. Stephen Collins would also wish to run a bull with the herd to reduce artificial insemination costs. He proposes to retain to a ewe flock of about 130 and continue growing feed corn on about 30 acres and increase yields and also to grow potatoes or another specialist crop on 15/20 acres. Overall his intention is to run an economical, profitable operation, with low machinery costs and without borrowings, loans or hire purchase. This “low input, low output” system is broadly how the farm has been run in the past and has enabled Stephen Collins to build up savings. There is no suggestion that there is any history of not paying rent on time.

56. The existing tenancy contains tenant’s covenants (5), (29) and (34) against moveable buildings, fixtures or (without the consent of the minister or landlord) alterations or additions to or erection of buildings within sections 49 and 50 to the Agricultural Holdings Act 1948. Paragraph 14 of Schedule 1 to the Agriculture Act 1958 substituted the Agricultural Land Tribunal for the references in section 50 to Minister.

57. A potential question on arbitration for a succession tenancy may be whether these terms should be carried forward into the new tenancy in precisely the same terms. At all events it was accepted at the hearing that the Agricultural Land Tribunal will have power on an application under section 67 (the successor to section 49 and 50 of the 1948 Act) to approve tenant’s improvements. Stephen Collins’ solicitors say he will apply under this section if necessary.

58. An application under section 67(3) is not before us, but in our view it is appropriate for us to reach a view on the evidence currently before us as to the likely decision of a tribunal if the parties fail to reach agreement. The sub-section is concerned with long-term improvements of the type set out in Schedule 7 Part II, such as the erection of buildings, not of the type in Part I that could so alter the character of the holding that Parliament has determined that the landlord should have an absolute veto.

59. Section 67(3) does not set out criteria for the tribunal to apply, nor was any reported case law drawn to our attention on the topic. In the circumstances we consider that we are entitled to taken into account the purpose of section 67(3) that we consider can be inferred from its terms, namely to provide a context within which reasonable improvements in Part II may be facilitated and compensation may be fairly regulated.

60. Stephen Collins wishes to build the new livestock building near to the main access track to enable him to farm better, have a simpler feeding system, have direct loading access and gain FABBL (Farm Assured British Beef and Lamb) or like assured status. His father was not interested in assured status, but he recognises the value in obtaining this.

61. Mr Thomas has invited Mr Humphreys to suggest alternative farming policies which would be carefully studied. No alternative farming policies have been suggested.

62. The new building would save poaching on fields, save on feed costs, with less energy being spent on keeping warm. The existing buildings are old fashioned and require considerable manual effort to muck out. A new building would simplify feeding and cleaning, would improve animal welfare and reduce labour. If located off the access drive, direct loading of animals for slaughter would help Stephen Collins to obtain FABBL registration or the like, which should attract higher premiums and wider marketing. Mr Humphreys accepted that so far as he was aware there was no reason other than the absence of an appropriate building that prevented Stephen Collins obtaining farm assured status.

63. Stephen Collins proposes a 120x40ft Fingle farm building with 15ft bays and 16ft to the eaves and 5ft overhang on one side. The cost of the new building is estimated at £33,986, including groundworks, planning and feed barriers. The design will enable him to add a 120x40ft lean-to, for example if he loses the use of the buildings at Fiddlers Elbow. Roof water would be used as a water supply to the animals.

64. Mr Humphreys says that previous requests for improvements were refused, not least because Art Collins did not make any improvements himself to continue milking. Stephen Collins responds that milking was stopped because of the distance of the best pasture, the price of milk and cost of milk collection. He adds that on previous occasions when they had asked for assistance, the landlords had declined: so they saw no point in asking again.

65. Mr Humphreys' initial position was that Stephen Collins could not assume that the landlords would consent to the new building now proposed. In his witness statement he said that the landlords do not consider that erecting new farm buildings would be a sound investment "for this tenant" or for the size of the holding.

66. In cross-examination however Mr Humphreys said that, if a tenancy is granted to Stephen Collins, then in principle the landlord would not object to such a building "in the right place". He had no objection to the building design in principle but would want to see details of drainage, the floor and space for tractors to manoeuvre round it. His opinion was that the proposed position may not be in the best. He suggested that it might be better south west of the existing buildings or not so close to the driveway that access would cause a mess. Asked about access qualifying for multi pick up licensing, he said he would want to discuss this. In our view these points are capable of being satisfactorily addressed for a new building in approximately the position proposed.

67. We conclude that in farming terms the tribunal is likely to hold that a such building should be facilitated. The proposed building is not of a sort that would be particularly difficult to remove if circumstances change. No provision is made in the budgets for the sale of removed topsoil. In our opinion this should be placed somewhere on the farm for recovery in due course or be beneficially applied elsewhere on the farm. If giving approval, the tribunal might well consider a condition as to the disposal of top soil.

68. The siting of the building might however raise another issue. In his first witness statement Mr Humphreys said that the landlords have concerns about the position of the building on the proposed site and commented that the plan gives no indication about whether the open front would face the track or the field [487]. In cross-examination he mentioned in passing its effect on the farmhouse and separately suggested that the building might be placed behind a screen of trees

to the north (though this might present access problems). He said he would need to look at location very carefully.

69. It may be that he has a concern about any effect of such a building on the Probus land if residential planning permission can be obtained. We are not deciding an application under section 67 but anticipate that this concern may be raised in the form of an argument that the effect or potential effect of the building on its surroundings is a relevant consideration. Against this, the Probus land is in separate ownership to the land of the Trustees on which the building is proposed. So there might a question as whether and, if so, to what extent account is to be taken of possible impact on the Probus land if ever developed.

70. Mr Humphreys informed us that the estate had been involved in pressing for Parknoweth land to be in the Development Plan (i.e. for designation for residential development) subject of an inspector's decision. He also told us that, if the farmhouse was not in agricultural use, this would make it easier to get a change in the development plan but that the Probus land was not the local planning authority's favoured site. Furthermore he did not think there would be a difficulty with planning permission for the new livestock building. We conclude on a balance of probability that it is likely that the Probus land will not be zoned for residential development in the impending development plan.

71. In the circumstances we conclude that, if an application under section 67 has to be made in the immediate aftermath of the grant of a new tenancy to Stephen Collins, the tribunal is likely to permit a new building of the sort currently requested by Stephen Collins in or near to the location currently suggested. This is not to say that the landlords could not in those proceedings put forward an effective argument for the building to be located in some other identified position on the farm; but such an argument was not pursued before us.

Suitability evidence

72. Art Collins was very careful with his money, and he strongly encouraged his son to make regular savings. Stephen Collins now has a surprising level of own savings and investments of his own. He has over £50K with the Nationwide Building Society, just over £10K in a Nationwide ISA, just over £3K in a Barclays Bank current account, and a small number of shares mainly in national utilities. He also owns 7 Station Road. He says that his investments represent savings and a small inheritance from his mother and that he has no borrowings.

73. Stephen Collins has built on his early training and developed a particular interest in old and vintage farm machinery. It is clear that he is a skilled mechanic and can thus substantially reduce machinery purchase and hire costs. His skill was neatly summarised by Mr Thomas who said that Stephen Collins "can make a dead engine work". Stephen Collins is a keen member of the Cornwall Machinery Club.

74. Stephen Collins says that his father was very reluctant to buy machinery and that he (Stephen) did so out of his savings. He lists machinery that he says that he purchased himself, comprising 6 tractors (a Case International 1056, a Massey Furguson 699, two MF 698s, a Ford County and a Ford County with digger and excavator), Teagle Trimmer (for attachment to a tractor), a JCB with handler and grab, and an International B2275 digger and excavator. He said that his father took the view that the business did not need to invest in machinery, if his son bought machines and kept them running. The accounts indicate that when the purchases carried VAT, the cost passed through the partnership books. The price then generally appeared as capital introduced, and these machines were treated in the accounts as partnership assets.

75. Stephen Collins hopes to continue to have low overheads. This is supported by his lack of borrowing and his abilities with machines and by the useful range of machines at his disposal. However he does from time to time use contractors for intensive or specialist operations such as baling, lime/sand spreading, and sheep shearing.

76. As to training and experience ^Stephen Collins/cites that he was brought up on the farm and has worked on the farm for over 30 years since leaving school. He also attended various course at the Cornwall Technical College at Camborne in 1976, 1977 and 1978, obtaining a credit in the City and Guilds of London Institute's Farm Machinery (Stage 1) exam, passing its Agricultural (Stage 1, livestock and crops) exams, and passing with distinction its Farm Machinery and Equipment (Stage 2) exams. In 1977 and 1978 he also obtained Proficiency Test Certificates of the National Proficiency Tests Council for Agriculture and Horticulture for a variety of agricultural machines. More recently he attended a health and safety course at Royal Cornwall Showground.

77. Stephen Collins cites that he has worked on the farm for many years and latterly had a 60% share in the partnership. He says that he realises that in retrospect his parents were somewhat dependant on him, especially because of his mother's illness, and he says that spent a considerable time caring for his father after his mother died.

78. Stephen Collins emphasises his commitment to the farm despite his father's reluctance to spend money on the Farm and despite the landlords' past lack of investment in buildings. He argues that by proposing the offers mentioned below especially the Farm Business Tenancies ("FBTs") at Parkenoweth, the landlords accept that he is a suitable to be a tenant of the holding.

79. He adds that Janet Smith and his children are supportive and involved on the farm. Mrs Smith does most of the paperwork. His son Nathaniel now aged about twelve is particularly keen on the farm, and Stephen Collins would like to see him take on the farm in due course.

80. Stephen Collins has others he can call on to assist when the need arises. In addition he has the benefit of advice and experience for his brother-in-law and sister and their help in emergencies. For his Single Farm Payment Claims he uses Messrs Lodge & Thomas; for his accounts he says he now uses Messrs Winter Rule, whose specialities include farm finance; he uses Nora Lehane of Cornwall farmers as his agronomist.

81. It is contended that the farm was found to be scruffy and untidy on various inspections over the years, but for much of that time Art Collins was in charge of the farm. The 2000 Strategic Review's appendix summary of Parkenoweth Farm comments "Poor tenant. Some of land is good but generally wet on Penhallow Moor and adjoining Cargoll." Art Collins died in June 2006.

82. Stephen Collins' application was accompanied by accounts of A.G. & S.G.Collins trading as A.G.Collins & Son for 1998 to 2005, some of these marked draft. In these Reasons, references in an accounting context to a year is a reference to the accounting year ending on 30th September of that year. Reference to "K" after "£" is a reference to the nearest £1000 or thereabouts.

83. In the six years 2000 to 2005, the net assets of the business were between £33K and £66K; sales (including subsidies of £10K to UK a year) between £37K and £27K; and gross profits between £13K and £3 IK. Although, as Mr Usher accepts, there was good control of variable and overhead costs, net losses of between £4K and £7K were incurred in every year, except in 2000 when the loss was about £1.6K and in 2004 when there was a profit of about £14K. The profit in 2004 was apparently generated by increased livestock sales and also by £7,420 for milk quota leasing. As costs were low, the results indicate insufficient sales. The parties are agreed that "over the past 9 years the farming operation has been a marginal economic activity reliant on support payments". The losses might have been reduced if Art Collins had re-applied for a Countryside Stewardship Scheme of the Penhallow land.

84. The net book assets of the business correspondingly fell, except in 2004 when then was a capital injection of about £4IK, apparently from Violet Collins' estate. Stephen Collins and his sister themselves received about £7K each from their mother's estate. We have not seen her will or probate accounts. Nor have we seen the documentation on sale of the milk quota, but the 2004 capital accounts show a negative depreciation figure of £4,191 "Profit on sale of Quota".

85. The annual accounts provided by J.Anson & Co up to 2002 show the net equity in the business but contain no capital account as between the partners. Thereafter the accounts provided by Bryan Lawrence Gundry allocate profits between Stephen Collins and his father in the ratio 60% to 40%. They also applied this ratio to initial and introduced capital, and even to drawings, but any particular basis on which the accountants felt justified in these allocations was not revealed in the evidence before us.

86. Yet Stephen Collins says that over the last 10 years he had been receiving income from the partnership as £60 cash weekly (mainly on Wednesdays after his father returned from Truro Market and entered in the books as “wages”) plus £300 a month by cheque on the farm account (and entered in the books without description). He says that he received precisely these cash and cheque amounts (or when payments were missed accumulated amounts) even when his partnership percentage increased. He says he thought that he was leaving any entitlement over the resulting total of £6,720 a year in the business. Art Collins remained in charge of the cheque book almost until he died, but Stephen Collins had a card for use at Mole Valley Farmers and explained to his father as to why he bought things there.

87. It is an exaggeration to say that the amounts were paid precisely as mentioned above. They were more like an average. The parties are agreed that in reality “private capital was introduced to fund private drawings and essential capital expenditure.”

88. Stephen Collins’ application of September 2006 was accompanied by an unbudgeted “Parkenoweth Farm Business Plan 2006” compiled by him and his brother-in-law David Hopkins. This states that the farm needs to be upgraded by making a lot of changes to the overall business and improving the farmstead and buildings. In broad terms this plan envisages more sheds for overwintering cattle, making some changes to animal management and timing of animal sales, getting FABBL or like status, and setting up a stewardship scheme for the Penhallow land. There are several farm assured schemes and Stephen Collins accepts that there might be one more suitable than FABBL. He would shop around.

89. The Strategic Review mentioned below refers to the possibility of obtaining funding to help agricultural tenants and the estate under “Objective One”, a program to help reduce difference in social and economic conditions with the EU, and stated that a meeting was being arranged with the Cornwall Agricultural Council as the Objective One Task Force. We are not aware of the outcome of the meeting with the Cornwall Agricultural Council, but in September 2006 the landlords had obtained the support of the Rural Business Support Initiative (which is Objective One Funded) for an Action Plan from Mr Usher. The purpose of the Action Plan was to assess the viability of the farm.

90. Following a visit to the farm Mr Usher reported that grassland and stock were good. He considered this indicated competence in husbandry skills and animal welfare, but he commented that the nature and size of buildings are a major limiting factor. At that stage he had not seen the farm accounts, but he provided a “normalised budget” by applying survey data from other livestock farms and also other statistical data that he thought relevant.

91. Mr Usher provided a cash flow budget that depended on achieving a technical performance at least as good as Average Farms recorded by EBLEX and on strict overhead cost control, including “all family labour and very low interest charges resulting from very low debt”. He concluded that the farm single payment would remain vital to making a profit, as is a common feature of many farm businesses especially those with beef enterprises. The profit would be increased with environmental payments. He noted that the future of the Single Payment Scheme is uncertain after 2012. He then described the farm as marginal if the tenant relies on the business for all private drawings and added that this should be a matter of concern to both tenant and landlord.

92. Mr Cowie's report exhibits a number of other documents originating from Bryan Lawrence Gundry. These comprised draft partnership accounts for the nine months to Art Collins' death; draft accounts for Stephen Collins alone for the three months thereafter; and a sheet showing restated profit and loss accounts for the 2004 and 2005 and a combined profit and loss account for 2006. The last of these gives a net profit for 2006 of about £14K. We are sceptical about this as a true profit for that year. There is £10K increase from opening stock to closing stock, despite apparently healthy stock sales. A large part, possibly even all, of the profit may well be attributable to Mr Thomas's stock taking and valuation at probate following Art Collins' death.

93. Stock changes in the previous six years 2000 to 2005 were within £2K, generally a few hundreds either way; in the two years before that they were £4005 and £2667 respectively. It would seem that previous year end stock valuations (carried out by Art Collins and his accountant of the time) were low and that the 2006 increase in stock value represents additional profit in previous years. If so, previous profits were somewhat better than shown in the annual accounts. For example if the stock increase in 2006 is spread over the accounting years 2000 to 2006 inclusive, this would represent an annual increase in profits or reduction in losses in 2002 to 2005 of about £1,400 (e.g. a reduction in the 2005 loss to £3,601) and a corresponding reduction in the 2006 combined profit to £6,131.

94. If the above reasoning is correct, we calculate that the average profit for the best five years from 2002 to 2005 (i.e. omitting 2001) is about £1.6K. In our view the adjusted accounts for 2005 and 2006 are probably the most relevant as a starting point for assessing the future of the business.

95. Mr Cowie provided two business plans, with and without a new Fingle Farm Building, for 2008, 2009 and 2010. These show net profits with building of about £10K, £18K and £20K respectively or without the building (but refurbishing existing structures) of about £9K, £16K and £13K respectively. Mr Cowie has compared these figures with his firm's database, and he comments that for the second and third years the "with building" figures are in the top quartile (i.e. good) and the "no building" figures are in the next quartile (i.e. better than average). In his opinion it is fairly safe to say that the building would pay for itself in less than 10 years.

96. The figures should however be adjusted downwards by £700 to £950 as Mr Cowie accepted that higher amounts should have been shown for Sundry and Miscellaneous expenditure. The cost of the new building would be paid for by Stephen Collins himself, but the plan assumes that much of the additional work will be provided by Stephen Collins himself.

97. Other assumptions on which Mr Cowie's projections were based included

– valuing cattle sale prices with farm assured status;

– assuming environmental stewardship income of £30/acre over about 89 acres;

– assuming annual rent continuing at £8,500 as advised by Mr Thomas (who in evidence suggested that he would actually be thinking of a rent reduction, though the prospect of an increase could not be ruled out), as against a figure in excess of £9,850 that Mr Humphreys said he would seek (though he accepted he might not achieve this and had not previously to these proceedings proposed an increase).

– assuming low machinery costs;

– assuming continued low finance costs;

– and assuming 20 acres, which he said he had identified, would be available to generate approximately £3K to £4K/a from other enterprises if the new building is erected. The 20 acres would not necessarily need to be sublet. We find that it is very likely that such other enterprise use would be under contracting arrangements with people who have the appropriate machinery, e.g. for potatoes or brassicas.

Mr Cowie did not assume sewage injection as he considers this to be a controversial process. We were however told that treated sewage can help with the soil's lime content.

98. As to rent, there is a difference between Mr Thomas and Mr Humphreys on whether Mr Humphreys' comparables are truly comparable. Mr Cowie also comments that it is rare to find a tenant farmer who has no borrowing costs and that Stephen Collins is a lower risk than an applicant with borrowing.

99. Mr Usher emphasised the marginal nature of the existing farming operation and the financial challenges facing sheep and, more particularly, beef producers. As to Stephen Collins' proposal to increase the herd, Mr Usher considers that single suckled beef production is an inefficient system and that current prices fall far short of the level needed for profitability and long-term sustainability.

100. Turning to the 2010 Cowie budget, Mr Usher considers the projected profit of £20,318 to be a remarkably high proportion of output. He says this may be explained by overestimated performance levels and/or prices or unjustifiably low variable and/or overhead costs or unjustifiable "rent" for 20 acres of other enterprises. In his view the Cowie budgets are over optimistic. He illustrates this by reference to

(a) an imputed budget based on gross margins for Exeter University and EBLEX, which achieves the Cowie profit only by the "exceptionally low overheads of the business plan"; or to put it another way, a 32% increase in output from 2005/6 to 2010 is proposed with only a *2%* increase in variable and overhead costs;

(b) a normalised total gross margin of £18,691 (calculated in detail for a competent farmer achieving high targets in terms of breeding performance, live weight gain and forage quality) plus £12K Single Payment and £2,670 environmental payment, then deducting £28,480 overheads (at £320/ha on 89 hectares) for premium farms, thus arriving at a profit of £4,881.

101. Mr Cowie responded that Mr Usher had not used appropriate animal selling prices such that an upwards adjustment of £4,417 should be made. This was accepted. Mr Cowie did however make a safety allowance of 10% of the total gross margin, i.e. of the order of £2K, leaving a net upwards adjustment of about £2.5K. He also contends that an adjustment of £1,500 should be made because a difference in allocating veterinary and contracting costs. And in addition he contends that £4K should be allowed for other enterprises on the 20 acres released by the new buildings. Applying all these adjustments to Mr Usher's initial figure of £4881 would result in an adjusted profit of upwards of £13K, i.e. about £8K short of the profit in Mr Cowie's 2010 budget. If however Mr Cowie's budget overheads of about £2IK are used or actual overhead costs of £220/acre are used, the overall profit is little different to the approximately £20K in Mr Cowie's 2010 with buildings budget.

102. Mr Cowie's contention is that the overheads of Parkenoweth Farm will indeed be exceptionally low because of Stephen Collins skills as an agricultural engineer, because outstanding farm repairs are mainly the landlords' responsibility, with the remainder being done by Stephen Collins himself or if necessary paid for out of his private cash resources, and because there will be negligible business finance costs.

Further suitability considerations

103. Mr Humphreys suggests dilapidations and untidiness as reasons why Stephen Collins is not suitable. He referred to the state of the farm both before and after Art Collins died. Our task is to

assess Stephen Collins, the applicant. We consider that his performance as to the general appearance of the farm is better judged by reference to periods after Art Collins died, for example by the photographs taken in July 2007, our inspection of the farm before the hearing and the evidence of the witnesses. In our view the photographs show scenes that are not untypical and probably still to some extent reflect the particular stresses and a deterioration of the farm during the last year or so of Art Collins' life, but we find that since he died the farm has been gradually tidied up, including removal of some items of which Art Collins had said to his son "I want to keep that, boy." We consider that it is appropriate for Stephen Collins to store sundry old machinery that he considers could be useful to him in the orchard adjacent to the farmhouse.

104. In our view the poor state of repair of buildings on the farm is largely caused by a lack of expenditure by the landlords on roofs and chimneys. This was partly attributable to Art Collins' reluctance to communicate with or chase the landlords' agent; but in our view the need for timely repairs to the roofs and chimneys would have been obvious on an external inspection. The only file note that we saw of a farm inspection during Art Collins' lifetime was dated 8th September 1995. It is relatively brief, describing Art and Stephen Collins as very traditional farmers, mentioning that the farm has a lot of wet areas, and recording an agreement to increase rent, all without any explicit criticism of husbandry or maintenance.

105. Mr Humphreys says that consideration was given to serving an appropriate repairs notice but he did not go though with it after learning of the death in October 2003 of Violet Collins. It is likely that this occurred in late 2003 or early 2004 after an inspection in September 2003, but at no time did he mention the possibility of such a notice to Art Collins. Nor did we see a note of this inspection. In cross-examination Mr Humphreys accepted that he did not visit the farm again until a without prejudice meeting after Art Collins died in 2006. We saw no document addressed to Art Collins criticising him at any time before he died. In reality there has been a history of limited communication on both sides.

106. The landlords accept that they could themselves inspect and repair. Mr Humphreys was their agent for the purposes of inspection. In the farming context the parties should seek to keep up with known maintenance needs, as an aspect of good husbandry and good estate management. We consider that we are supported in this view by the provisions of the 1947 Act.

107. We endorse Mr Humphreys' evidence that part of his job as agent is to keep communications open between landlord and tenant and in part requires him to assist the tenant with advice. We do not think that the agent's inspection regime should be tied to the shooting season (as seemed to be the implication of one of his answers in cross-examination), nor that nearly three years should go by between inspections particularly where he considers that a farm is in an unsatisfactory condition. In our opinion not repairing merely because the tenant has not given written notice is not sound estate management. There is no suggestion that the tenant asked the landlord to refrain from carrying out repairs. We should perhaps add by way of clarity that in our view it is good estate management for the agent to raise the subject of repairs with the tenant on a regular basis.

108. We find that since Art Collins died no significant dilapidations can be attributed to Stephen Collins and that he has tidied up the farm. We also find that Art Collins was a relatively controlling father, but Stephen Collins would now give his attention to tenant's repairs as they arise, subject of course to the landlords attending to prior matters for which they are responsible.

109. Some of the yard buildings have for some years not been suitable as principal farm buildings and may deserve to be considered redundant. In the context of land that is appropriate to a cattle and fodder crop business, we consider that Stephen Collins' desire to have a substantial new cattle building makes good farming sense, particularly in terms of labour saving and productivity. Furthermore we find that the greater return could cover the capital costs comfortably within a ten year period.

110. The landlords have made the offers Options 1, 2 and 3 described below of Farm Business Tenancies of various sorts. The landlords' applications state that these offers would be made "in order to provide some compensation to Stephen Collins for the loss of the holding". The case of *Hopkins v Marlow* (decided by the Agricultural Land Tribunal in Wales in October 2006) is cited in support of the application. In that case the tribunal the tribunal did not "see that it is possible that the Applicant can be suitable to become a tenant of a farm under a farm business tenancy and at the same time unsuitable to be a tenant of the agricultural holding." We are not bound by that opinion. In our view it is relevant to consider the terms and prospects of the respective proposed tenancies.

111. In our view, Option 2 is materially different to a new tenancy under the 1986 Act, as to both the extent of the land offered and the length of the term. Option 1 is much more like a succession tenancy albeit for a fixed period of ten years, but we find that Mr Humphreys believes that the landlords have a substantial prospect of evicting Stephen Collins under the break clause. In our view this demonstrates that he still has doubts about Stephen Collins as a suitable tenant at least as to repairs. Option 3 lies somewhat between the other two options, but the relatively small size of Polstain Farm tends to suggest that the landlords consider that Stephen Collins would do better as a part time farmer. They probably also think that he would put the land at Polstain Farm into better heart. All three options may also have reflected a compromise in the minds of the landlords as to farming standards in the hope of increasing their prospects of gaining possession of Parkenoweth Farm one way or another within a decade.

112. We looked over the farmyard gates of the Trevalso Farm. This farm is 217 some acres, well short of the 400 acre target. In evidence Mr Humphreys said he thought Trevalso was "possibly" financially viable, but in the Strategic Review he had identified it as a core farm that should be equipped to carry out farming as efficiently as possible. In our opinion he must surely have thought that it was financially viable. We note that in evidence Mr Humphreys saw no reason why Parkenoweth Farm might be any less viable than Trevalso Farm if Parkenoweth Farm had appropriate buildings and the farmer had a good business plan.

113. It is objected that the business generally made losses and argued that it will continue to do so. We find however that the business has no real debts and that in broad terms Stephen Collins has good financial resources. He owns 7 Station Road (worth about £115K) and has some £65K savings and about £125K inherited from his father. Mr Humphreys acknowledges that Stephen Collins has substantial capital assets. Stephen Collins will have to clear his litigation costs and would spend about £35,000 on the new building if this allowed. Even then he should have a very useful level of savings and have No 7 in reserve.

114. Section 39 does not require us to find that the farm will be profitable. A contention that the farm will be unprofitable or only marginally profitable could be relevant to the question of whether possession should be regained on the grounds of good estate management. A farmer may yet be suitable if he has outside resources that he can bring into the farm, but he would not necessarily be suitable if it is reasonably clear that he will in the foreseeable future be unable to continue to farm properly, pay the rent and meet the other tenancy obligations. Stephen Collins has significant savings and also a freehold house in reserve.

115. Stephen Collins has committed his life to the farm and is familiar with it. He has the support of his partner, children and sister and brother-in law. He has used savings to buy machinery for it and currently proposes to spend a substantial sum out on a new farm building. He is more than willing to enter into a Stewardship Scheme, to seek farm assured status, and to make the best of the land, including entering into cropping arrangements for valuable crops such as potatoes and brassicas. We do not consider that such arrangements need be in breach of a covenant against subletting or parting with possession.

116. We find that Stephen Collins is in good health, that he has over 30 years relevant experience in farming, that he is a good stockman, a very good agricultural mechanic and that he is willing and

inclined to ask for, and take, advice. Mr Cowie said he had been impressed and surprised how astute Stephen Collins was. In our opinion Stephen Collins is determined to make a success of the farm if granted a tenancy and he has the mental abilities and physical health to do so.

117. Mr Usher comments that benchmarking by reference to outside data can provide a broad indicator of where the business is going. Having regard to data supplied by both him and Mr Cowie, we conclude that the main outstanding question on the budgets is as to the likely future overheads. There may well be an increase of rent, but we doubt that it will be for as much as Mr Humphreys suggests, if Stephen Collins (not the landlords) pays for the new building. We consider that Mr Cowie's figures for other overheads are somewhat optimistic; but in view of Stephen Collins' husbandry and machinery skills, hard working nature, lack of borrowing and tendency to keep a close control on costs, we doubt that the other overheads will approach the figures on which Mr Usher relied. Overall we conclude that, without the new building, the farm is likely to just break even and that, if any losses are incurred, these will be covered by Stephen Collins' savings for the foreseeable future. With the building we consider that Stephen Collins is likely to make a modest living from the farm.

118. Having regard to uncertainties about the future of CAP reform in 2012, Mr Usher contends that Stephen Collins aim should be to develop a profitable business without Single Payment. In our opinion this would be an unnecessarily demanding as a short-term objective. Further in our view the relevant authorities are likely to attempt to avoid a sudden end to very substantial parts of the animal husbandry industry. Nonetheless we do think that Stephen Collins should aim to achieve an above average level of productivity with good husbandry to maximise his prospects in the long term. In our view he is capable of doing that.

119. We conclude that Stephen Collins is a suitable person to become the tenant of the holding.

Sound estate management evidence

120. *The 2007 Future Proposals Report.* The landlords' applications are pleaded as based on a report ("the Future Proposals Report") complied by Mr Humphreys and dated 24th January 2007, two days before the applications.

121. The Future Proposals Report outlines the nature of the combined entity known as "Trewithen Estate". Some 2,756 acres of this is in three ownerships in the "Home" area in the vicinity of the village of Probus. Some 5,240 acres (in which there are 12 farming units including Parkenoweth Farm) is in the "St. Newlyn East Area". In the latter area the Trustees own 3,809 acres, Probus owns 15 acres and the remainder is spilt between Mr Galsworthy personally, the trustees of two funds and Susannah Galsworthy. In addition there are some small areas in St Just in Roseland and on the Lizzard. The expression "farming units" in the Report does not include 540 acres of accommodation or grazing land let in 19 units to farmers who live away from estate land, but it does include tenants in estate dwellings who farm land not on the estate. The Report also records that there are other enterprises on the estate including let cottages/farmhouses, workshops, golf courses and a rifle range.

122. No objection has been taken to the landlords' contention that the Trewithen Estate as so described is capable of being an estate for the purposes of section 27(l)(b). Nor is it challenged that the Trustees and Probus act in concert so far as management is concerned.

123. The landlords' applications say in effect that, if the landlords obtain possession of Parkenoweth Farm they would split the main farmland between three of the four adjacent estate farm tenants.

124. Mr Humphreys contends that Parkenoweth Farm is not a viable unit at present and that there are good adjoining farms that would benefit from additional land.

125. Mr Huntington-Whiteley accepts that the Newlyn East Area of the estate has no amenity value to an “owner’s residence” and is held As a long-term investment. The Home Area of the estate at Trewithen House is some 10 miles away. In his opinion it is good business to split small and poorly equipped farms between to adjacent farms, so that adjacent tenants may generate greater profit and may put their businesses on a sounder footing. He accepts that the gaining of vacant possession would result in the landlords obtaining a greater overall rent. In his opinion Stephen Collins would not be homeless if he left the farm and would then also be more financially secure.

126. *The 2000 Strategic Review.* The Future Proposals Report was dated 24th January 2007, some six months after the notices to quit; but it refers to a “Strategic Review” carried out in the year 2000 in relation to the St Newlyn East Area. A copy of the Strategic Review was disclosed six days before the hearing. It was included as an exhibit (initially omitting, but later including part of a paragraph as to Inheritance Tax). The Review was commissioned by the Trustees at their meeting in November 1999 and was produced by Mr Humphreys in October 2000 for their meeting in that year.

127. The opening paragraph of the Strategic Review states that it was commissioned “to identify strategic objectives, with long-term tax efficiency in mind”. The part of the paragraph on Inheritance Tax that we have seen recommended that where possible 1986 Act tenancies, which attract 50% Agricultural Property Relief (“APR”) should be converted to Farm Business Tenancies which attract 100% APR, although there is a chance that this relief will be reduced. Mr Humphreys also recommended that consideration be given to taking advantage or 100% business property relief, for example by creating a portfolio of properties for holiday letting.

128. The Review also considered the St Newlyn East Area in terms of maximising use of assets and reducing exposure to farming. Farms provided 68% of the estate income. Mr Humphreys proposed increasing the average size of farms on the basis that this would enable a wider spread of fixed costs and enable the farmers to become more competitive. He proposed an average of 400 acres, though this particular figure was not itself explained other than being the outcome of discussion with accountants, solicitors and a chartered surveyor. Then he says the increase should be to a minimum of 400 acres “bearing in mind that the average farm size is 242 acres”, but he does not provide a connecting logic. Earlier in the report it is said that the average farm size in the Newlyn East Area is 320 acres. All three figures are very much larger than the average of 43 hectares (106 acres) for Devon and Cornwall, suggested to Mr Usher without demur, or the 80 acres for Cornwall County Council starter stock farms or bottom of the range 150 acres for the council’s progressional stock farms.

129. In the Review Mr Humphreys summarised by saying “Generally however it is considered that core farms should get bigger and other residential holdings are exploited to take advantage of higher rents for dwellings.” The Review also stated that the Trustees should continue to consider alternative enterprises.

130. The Review then focused on the estate farms in turn, identifying “core farms” that would be equipped with sufficient farm buildings in order that they could be farmed as efficiently as possible and making other recommendations, while recognising that succession rights and existing lettings could mean that the scope for carrying out the recommendations was limited.

131. Parkenoweth Farm was not identified in the Strategic Review as a “core” farm. Instead the farmland would, if it became available, be divided between core farms Cargoll, Ventonarren and Shepherds. The only farm that we were told had new buildings was Cargoll Farm.

132. Events following the Strategic Review. The Review had identified areas with potential residential development including part of Parkenoweth Farm and stated that these had been put forward for allocation in District Plans. The Future Proposals Report states that the subsequent transfer to Probus (described as “a development company”) was with a view to obtaining planning permission and eventual sale.

133. The barns at Fiddlers Elbow were identified in the Strategic Review as having potential to sell with planning permission for dwelling conversion. Planning permission on the buildings at Fiddlers Elbow has been refused on more than one occasion, one on appeal. Mr Humphreys states that Probus will be trying again. At present Stephen Collins uses these buildings for cattle fattening in winter and for lambing.

134. The Future Proposals Report says that it was resolved that high value houses would be let separately from the main farm holding and that it was "agreed" that, if Parkenoweth Farm became vacant, the farmhouse and buildings would be let separately. Mr Huntington-Whitely said that, if the house is let on an assured shorthold tenancy, there would be no inheritance tax relief, but the rent would be higher than when in farming use. He said it was unlikely that the farm buildings would get full residential permission, but local planning authorities are keen to see employment use. The Future Proposals Report adds "the remaining .... 8 acres" (presumably meaning the Probus lands) would also be let separately. In addition the Future Proposals Report indicates that the estate would look to convert traditional farm buildings to alternative uses, depending on planning approval and would in due course to seek planning permission for development of the Probus land between the farmhouse and Station Road.

135. The Future Proposals Report suggests that the combined annual rents of the divided Parkenoweth Farm would more than double to over £21K, with most of the increase attributable to separate letting of the farmhouse, substantially renovated to a good standard for an assured shorthold tenancy. The case put forward by Mr Humphreys in the Future Proposals Report is that Parkenoweth Farm "is not a viable unit at present" and that the neighbouring core farmers would be able to spread fixed costs, become more efficient, increase productivity and that Penhallow Moor could be managed in conjunction with the adjacent stewardship scheme at Shepherds Farm. Stephen Collins responds that he too would wish to put the Penhallow Moor land into a Countryside Stewardship Scheme. Mr Humphreys accepted in cross-examination that there is no reason why Stephen Collins would not be successful in gaining environmental stewardship if he is granted a tenancy.

136. The Future Proposals Report states that a division was achieved in 2005 when a 174 acre farm in the Home Area became vacant in 2005, parts being let to an adjoining farmers, part taken in hand and the farmhouse let separately, thus generating a higher aggregate rent to the estate.

137. The landlords' intentions as to the farmhouse and buildings are not mentioned in the landlords' Applications, but we find that the Future Proposals Report indicates the sort of division that the landlords would be likely to carry out in the event that they obtain vacant possession of Parkenoweth Farm, though possibly subject to some adjustments.

Adjacent farms

138. The four "core" farms adjoin Parkenoweth Farm. These are Cargoll Farm to the North, Ventonarren Farm to the East, Shepherds Farm to the South and Upper (with Lower) Treludderow Farm to the West. The proposal is in effect to divide the Trustees' farm land between the first three, by way of FBTs. It is not proposed that Parkenoweth land be added to the Treludderow farms which already extend to about 722 acres.

139. Mr Usher has supplied an assessment of the proposed division. He outlines the general arguments for amalgamations where there is pressure on farms producing commodity products on a small scale and then provides his opinions as to the effects of the proposed amalgamations on the three farms. These are summarised below.

140. ***Cargoll Farm.***

(a) This is to the north with arable and grazing. It comprises 327 acres(including land at Cargoll West) tenanted by Mr Odgers who is in his 60s. We visited Cargoll Farm. The estate built new farm buildings there in 2003, and Mr Odgers is paying additional rent for them. A farm cottage has been surrendered to the estate for holiday letting.

(b) The Strategic Review did not consider Mr Odgers to be a “core tenant” at that time. The Review’s appendix summary of Cargoll Farm comments “good quality farm but poor tenant at present”. Mr Humphreys now says that Mr Odgers has improved, that the farm looks better, that the hedges are in better condition, that the yard and buildings are a lot tidier, and that the pastures are better. We note the contrast with his comment on Stephen Collins that “a leopard cannot change his spots”. We have not seen Mr Odgers’ accounts or examined his farming methods. From our necessarily superficial inspection we noted that the farm was tidy and animals in the near fields apparently healthy.

(c) We were informed that Mr Odgers uses contractors for doing his silage and corn but has his own mobile dryer. With the estate’s consent he lets out some ground for potatoes. Some fields have been used for sewage injection without consulting the landlords. Stephen Collins believes that Mr Odgers has largely given up sheep as being too much trouble.

(d) Mr Odgers has two sons in their late 20s or early 30s: one assists on the farm when required, the other works on the farm either full time (as Mr Humphreys says) or part time (as Stephen Collins says). Mr Usher says one of them is very enthusiastic. We did not however gain the impression that the farm had experienced any youthful or sustained initiative on the tenant’s side in recent years. A possible contributing factor is that (according to the Strategic Review) this farm did not have succession possibilities.

(e) The proposal would be to add 104 acres of Parkenoweth Farm to Cargoll Farm, which would take it to somewhat over the 400 acre average objective. Direct access to a substantial part of the 104 acres would be across the valley between them. In our view this access could be difficult or damaging except in dry seasons, unless a new trackway is made.

(f) The estate already has about 100 acres adjacent to Cargoll Farm from the division of Needham Farm, albeit currently subject to an FBT to a Mr Peter Sluggett. Mr Humphreys stated that adding this land to Cargoll Farm was considered but Mr Sluggett would pay more rent. He acknowledged that this land might eventually be added to Cargoll Farm. Nonetheless these events indicate that the landlords are more interested in revenue return than in a policy of farm amalgamations and would in our view justify a condition (if we consent to the operation of the notice to quit) requiring that Parkenoweth Farm land is thereupon divided between the adjacent farms.

(g) Mr Odgers initially kept his counsel regarding the farm division. In September 2007 he latterly signed a brief statement (that Mr Humphreys had typed out) that he would be willing and able to take on around 104 acres from Parkenoweth Farm at £6.240 p.a. “subject to formal terms being agreed”. Mr Humphreys did not discuss those terms with him. He did not appear as a witness and we do not consider that his statement carries much weight. Furthermore Mr Humphries did not discuss what the “formal terms” might be.

(h) Mr Usher says that on amalgamation Mr Odgers would use 80 acres of the land for cereals, mainly winter wheat, and 22 acres to carry an extra 22 suckler cows; but Mr Odgers’ statement does not mention how he would actually use the land; in the statement he says that the land would be extremely beneficial to his farming policy, but does not state what that policy is.

141. ***Ventonarren Farm***.

(a) This is to the south-east with a substantial dairy unit. It is farmed by Mr Sweet, who has a son and daughter in about their early teens. The Strategic Review identifies this as a farm with succession possibilities. Mr Sweet also owns and farms the adjacent Mitchells Farm. His total farming area is believed to be about 350 acres. We were not asked to inspect Ventonarren Farm but it was evident from the highway that it has good buildings and appears to be progressively farmed. We note that the Strategic Review refers Ventonarren as having "Good hard working tenants".

(b) The proposal is to add 19 acres from Parkenoweth Farm to Ventonarren Farm, but this would still be short of the 400 acre average objective.

(c) Stephen Collins says that Mr Sweet has told him that he was not fussed if they do not have the proposed additional 19 acres and rang him recently to wish him luck. Mr Humphreys says Mr Sweet has said he would take the land if became available, but there is no statement from his because he did not wish to become involved in the dispute.

142. **Shepherds Farm**

(a) This is south of Parkenoweth farm. It is a mixed farm, with dairy and beef herds, and comprises some 632 acres, already well over the 400 acre average objective. The Strategic Review mentions that its acreage had been increased by land from Polstain and Lanteague Farms. Shepherds is farmed by Mr Martin Harvey who is in his 40s and has no children. The Review refers to him as "hardworking and capable" and unmarried, living with his mother in the farmhouse. Shepherds Farm is not among those identified by the Strategic Review as having succession possibilities. We were not given access to the farm, and it was not easy to see its overall condition; but it appeared to have rather more serviceable buildings than Parkenoweth Farm and appeared to be in fair condition.

(b) The proposal is to add 89 acres from Parkenoweth Farm to Shepherds Farm, although the Strategic Review in 2000 recommended that "farming at Shepherds should be allowed to settle down and take stock of existing farming policy" and says "Probably farming enough at present".

(c) Much of the 89 acres forms part of Penhallow Moor south of the old railway line. Mr Humphreys suggests that these could be administered with or added to Mr Harvey's 173 acre environmental stewardship scheme at Penhallow Moor.

(d) Stephen Collins says that Mr Harvey has told him that he is not interested in adding the land to Shepherds Farm and has wished him luck. Stephen Collins doubts the land would be much use to Mr Harvey as in his opinion none can be ploughed and points out that there is public footpath that would impose limitations on running a bull with heifers there.

(e) Mr Humphreys says that Mr Harvey has said he would take the additional land if offered to him, but there is no statement from him because he did not wish to become involved in the dispute.

Stephen Collins' Replies

143. In his Replies Stephen Collins contests the fulfilment of the sound estate management requirement and that a fair and reasonable landlord would insist on possession. He argues that the Option offers mentioned below are unacceptable and illogical. Mr Thomas' position was that Mr Collins would be ill-advised to accept any of them.

144. Stephen Collins also says that, if Probus obtains planning permission for a non-agricultural use, it can seek to terminate the agricultural tenancy of its land on that ground alone. He says that he would encourage this as it might enable or encourage the landlords to spend money on improving the remainder of the holding, for example with new farm buildings. We accept that in broad terms the Trustees and Probus act in concert so far as management is concerned, but there is no

evidence before us that Probus would transfer any proceeds of sale to the Trustees to improve the remainder of Parkenoweth Farm. There might however be some prospect of money for improvements that would enhance the value or saleability of the development land or of the farm buildings.

145. The provision of a new cattle building (and in due course other buildings) might go some way towards facilitating some such development of the farm buildings. We note that the Strategic review recommends identifying further barns for conversion to dwellings and adds “The sale proceeds can go towards the cost of erecting new buildings”. Succession tenancies may need provision to enable notices to quit parts of the demised properties, as in the existing tenancy agreement.

146. Stephen Collins contends that the landlords’ mainly wish to increase rental and to qualify for 100% Inheritance Tax relief in respect of farm land on an FBT.

National Coal Board v Naylor

147. Mr Blohm argues that the purpose for which the landlords propose to terminate the tenancy is financial, namely to make money and/or save inheritance tax, which in this case may be considerable amounts. Mr Batstone submits that in effect these may be among the objectives: there can be more than one purpose and the section is satisfied if one of them is in the interests of good management of the estate as land.

148. Mr Blohm replies that the section refers to “the purpose” and contends that this refers to the principal purpose which he says on the facts of this case is financial. The Interpretation Act 1978 provides that in any Act, unless the contrary appears, words in the singular include words in the plural. We note that in two places section 27 uses the expression “the purpose is desirable for the purposes of” which, in using both the singular and the plural, perhaps indicates that the first is to be to interpreted only or primarily in the singular. In our opinion the persuasive point in favour of Mr Blohm is that the relevant expression is “the purpose”, not “a purpose”, still less “one of the purposes”. The problem in this case however is that the alleged financial and physical purposes are interlinked.

149. Mr Blohm then refers to *National Coal Board v Naylor* [1972] 1 WLR 1972 where the tenancy agreement provided that the landlord had to pay the excess over a fixed price for electricity consumed by the tenant at the farm. The NCB applied for consent on the sound management ground with a view to negotiating a new tenancy by which the tenant would pay for all his electricity. The Divisional Court rejected the NCB’s claim. Lord Widgery said that sound management of the estate was the successor of the more familiar phrase “good estate management” and that it refers to one of the partners in a partnership which produces food from the land.

150. Ashworth J added that, considering as a whole the various grounds on which an application can be made, “sound management of the estate” related to management of the farm in the physical sense of the word and is quite distinct from the financial result to the landlord himself. He commented that the provision that enables the tribunal to impose conditions requisite for securing that the land to which the notice relates will be used for the purpose for which the landlord proposes to terminate the tenancy refer to a purpose affecting the use of the land.

151. The reference by Lord Widgery to the production of food tends to indicate that releasing land for non-farming uses is not of itself within sound estate management for the purposes of this ground for consenting to the operation of a notice to quit. The provisions in section 27(l)(f) and the provisions for Case B notices to quit cater for that. But the release of a farmhouse and farm buildings can in our view be an incidental effect which is not inconsistent with sound estate management in the sense mention by section 27. If (contrary to this view) sound estate

management is interpreted in a broader sense, there may be a further benefit because such properties are likely to be substantially improved, albeit for non-farming purposes.

152. The purpose in question is the purpose for which the landlords propose to terminate the tenancy. The word "purpose" indicates the objective that the landlords wish to achieve. Mr Humphreys accepted that the tax consequences had been one of the important things in estate discussions and that a driver was to maximise values by residential development. That too is very clear from the contents of the Strategic Review. He also accepted that the reason why the estate wanted possession of Fiddlers Elbow barns now is to do works that would increase the chances of planning permission and that they also want possession of farmhouse as this would make it easier to get a change in the development plan. Here the underlying motive of the landlords is undoubtedly financial, but is it also the purpose in the sense meant by section 27?

153. In *NCB v Naylor* it was argued on behalf of the tenant that sound management relates to management of the land and that no purpose can be described as being desirable in the interests of sound estate management unless the purpose is connected with the way in which the land is managed and that the financial interest of the landlord looked on in isolation is not a matter of sound management of the estate for this purpose. Lord Widgery came to the clear conclusion that this was right. He added "In my judgment when we consider whether a particular purpose is in the interests of sound estate management in [the relevant sense], we cannot simply look at the landlord's pocket, but must ask ourselves what effect the purpose would have on the management of the farm, and, if as in the present case, the answer is that the purpose would have no effect whatever on the management of the farm itself, it seems to me to exclude the purpose from those contemplated by [section 27(l)(b)]".

154. In our opinion on the facts before us the financial motive cannot be looked at in isolation. There was no sound estate management purpose in the physical sense in *NCB v Naylor* because the objective was purely financial; but in the present case we do not consider that the landlords are acting purely for financial purposes. Furthermore achieving their financial aims in the manner proposed would have a dramatic effect on the physical management of the farm. The Strategic Review was not confined to financial and tax planning, and the Future Proposals Report moved further in the direction of physical planning. In our opinion they have been engaged in planning estate management in a physical sense within the section.

Option offers

155. The landlords' applications state that, if consent under section 44 is given, Stephen Collins would be offered three options

- Option 1: a 10 year FBI of the Trustees' part of the farm at £8,190 p.a. (with 3 yearly rent review) and a yearly FBT of the Probus land (other than the Fiddlers Elbow barns) at £310 p.a. The Trustees' offer is subject to a break clause, in the event of non-compliance with a repair schedule that would have yet to be agreed. The Probus offer is subject to 6 months notice in the event of planning permission of non-agricultural use.

- Option 2: a 5 year FBT of the Farmhouse and 58 acres (excluding Probus land) at £9,500 p.a. with 3 yearly rent review and no break clauses. Mr Humphreys indicates that this was conceived as a transitional arrangement to enable Stephen Collins to find employment elsewhere and to renovate 7 Station Road.

- Option 3: a 2 year FBT of the Trustees' part of Parkenoweth Farm at £8,500 p.a., followed by a 10 year FBT of Polstain Farm from 29th September 2009 at £9,500 p.a. with 3 yearly rent reviews and a break clause in 2014 in the event of non-repair. The farm is about 90 acres, being the rump of a previously larger farm that was split. Mr Humphreys accepts that about 20 acres is waste. This would about 70 acres of arable and pasture in relatively poor condition after grazing by horses. We visited the farmstead and viewed the fields from a hill.

The house had been recently renovated, but the nearby farm buildings are very limited. The papers before us contain no description of the buildings. We saw some sheds in the immediate vicinity of the farmhouse. In addition there was a substantial barn currently in other use but shown within OS 2729 on the Option 3 plan as part of the property that would be within the offer.

156. Each of these offers is subject to a number of terms, including that other terms would be as set out in the standard form of FBTs used on the Trewithen Estate, but the alleged standard form was not shown to us.

Further consideration of landlords' applications

157. The landlords' Option 1 offer is apparently asking us to consider what will be the situation in 10 years time, but the agricultural industry will doubtless have changed by then and one or more tenants of the adjoining farms might have changed. The landlord's case was supported by the evidence of Mr Usher.

158. In Mr Usher's opinion the additional 104 acres of Parkenoweth Farm would fit very well into the existing business at Cargoll Farm without serious resource or capital implications, yielding an extra "margin" (after rent) of the order of £15K; the 19 acres is well located for Ventonarren farm, possibly generating an extra margin (after rent) of about £3.5K; and the addition to Shepherds Farm would have a marginal effect on its management and financial performance but he suggests a potential annual margin of about £7.5K (if 40 other acres can then put to wheat) plus environmental payments of £2750 (possibly increased to £4490 with Higher Level Stewardship).

159. In very round figures Mr Usher's projections indicate a potential overall "margin" in the vicinity of £20K to £30K. By comparison the profit of Parkenoweth Farm, even with the new building, is unlikely to get into this range save in exceptional years and could well be rather smaller: a core range of £5K to £15K would not be an unreasonable expectation. These figures indicate that there are potential economies of scale as we would expect.

160. This was evidence of economies of scale of a sort that could apply in almost any era. In other words the landlord's case evidence was essentially of a long term character. An aspect of sound estate management is thinking in the long term, but a material part of the considerations that we consider we should take into account under the section is what would happen in the years immediately after the notice to quit is given effect.

161. Mr Usher had not seen the books or accounts of any of these farms, nor inspected the farms themselves. In his reports the expression "margin" is used to refer to money made before deduction of fixed costs. Some fixed costs, such as fuel and labour, would be attributable to the additional acreage. We were not supplied with a calculation of likely overall additional profits, but Mr Usher expressed the view that the additional fixed costs were likely to be relatively small.

162. Mr Humphreys however accepted that there is a thin dividing line on what additional acreage of farm did or did not require extra labour and extra fixed costs, depending on farming policy, and that each farm should be considered on its own merit. Yet the evidence before us did not directly consider the businesses at the respective farms in any detail at all. Mr Cowie similarly commented that the proposals presuppose that the additional land complements existing enterprises and that the changes make good sense in terms of business plans and projections. We saw no actual business plans or projections for accommodating the additional lands into the respective adjacent farms.

163. We did not see the accounts of Messrs Odgers, Sweet and Harvey. The prospect of increased land has apparently not been enthusiastically received by any of them. None gave evidence to us and,

as Stephen Collins conceded, they may be saying different things to different people. We find that they are not bothered either way and prefer to remain on good relations with both sides

164. We do however find that the lack of enthusiasm is some indication that none of them regard the benefits as particularly worthwhile. That is in reality the position for Ventonarren and Shepherds Farm. The small addition to Ventonarren Farm would be a relatively minor economic benefit to that farm. The case for adding the 89 acres to Shepherds Farm depends mainly on achieving common administration or amalgamation of the stewardship scheme areas south of the disused railway line.

165. The failure of the landlords to persuade Mr Odgers to give evidence and to produce his farm plan (if any) and supporting accounts, indicates to us that despite the prospect of a significant increase in acreage Mr Odgers is not particularly interested. The practical case for adding land to Cargoll Farm rests mainly with the land accessible directly from that farm or from the road along the western boundary. In our opinion direct access from Cargoll Farm to fields near to the Parkenoweth farmstead would be unsatisfactory without new trackway, but none has been proposed.

166. In our view the proposal to split the farmland between the neighbouring farms can (if actually carried out and followed through) reasonably be described as sound estate management. Farm amalgamations are capable of supporting the existing businesses in the three neighbouring farms and therefore would be likely on average to put them in a better position to cope with difficult times and the evolution of the Common Agricultural Policy. In our view a key question is as to the likelihood of that actually happening, given that the benefit to Shepherds Farm and Ventonarren Farm is marginal and the lack of enthusiasm of the tenant of Cargoll farm.

167. Although we find that the landlords themselves intend to allocate the Trustees' Parkenoweth farmland between the adjacent farms, they have no agreements with the adjacent farmers to do so. In our view a necessary part of fulfilling the section 27(1) criteria is that the landlords have a genuinely realisable prospect of carrying out a division between the neighbouring farms. If we impose a condition for division of the farmland between the neighbouring farmers but there is failure to reach agreement with the adjacent farmers or any of them, the landlords might return to the Tribunal for release from some part of all of the condition. They cannot anticipate such release unless they have offered fair terms that are designed to bring the additional lands into the adjacent farms on a permanent basis. The adjacent farmers have not rejected the notion of taking on the additional land. We conclude that if they are offered fair terms, they are likely to accept them and will farm the additional lands though not necessarily quite in the manner outlined by Mr Usher and that the overall effect will be farms better placed to cope in difficult times.

168. We do however note that the proposal as outlined to us is to create separate farm business tenancies, rather than adding the additional lands to existing tenancies. As the objective is to realign the respective farms in the interests of sound estate management, it is our view that any condition for division of the Trustees' farmland between the adjacent farms should require that the tenancies of the additional lands should be framed in terms that their duration is comparable with the existing tenancies of those farms.

169. On balance we would be satisfied as to section 27(3)(b) if the landlords accept a condition such as is described above.

170. *Reasonable landlord.* Would a fair and reasonable landlord insist on possession? The word "insist" assumes that at this stage of the reasoning the landlords are otherwise entitled to operate the notice to quit. The words "reasonable and fair" indicate a wide range of considerations including the situations, expectations, needs, conduct and interests of both landlords and tenant. Among those considerations is the relative weakness of the landlords' success in establishing the sound estate management requirement.

171. Stephen Collins would not be made homeless, but he has committed his entire working life to the farm. Even so, his age is in our opinion unlikely to preclude him from moving to some other occupation. He has been offered jobs in milking and as temporary herdsman. Understandably he says that he has "had enough of that"; but he probably has a future as an agricultural contractor or agricultural mechanic. He could even be a general mechanic, but he has farming interests and skills that it could be unwise to waste.

172. In our opinion it is material that the landlords and the Galsworthy family stand to make very significant savings and gains if Stephen Collins quits the farm. Although the landlords could apply to the tribunal on some future occasion on the same grounds and/or can obtain possession under Case B, it is not unreasonable for them to apply at this juncture before Stephen Collins further commits himself and a significant amount of his own capital to the farm on his sole account. Nonetheless in our view, a fair and reasonable landlord would not insist on possession without offering to provide Stephen Collins assistance in his transition to a new working life, whether monetary or in the form of suitable premises. For example it would be reasonable to offer to put him in a position where he could start to develop a business based on agricultural machinery, probably an agricultural contracting business, if he should so wish.

173. We do not think that the larger acreage of Option 1 would give Stephen Collins the time to devote to developing another business. It might be argued that a smaller farm for a few years could enable him to start in that direction, but we are not satisfied that the premises at Parkenoweth offered under Option 2 would satisfactorily meet Stephen Collins' new needs. For such a business he will need a substantial barn in which to house machinery out of the weather and for servicing; the existing buildings at Parkenoweth Farm do not in our opinion fit this description.

174. The big barn at Polstain Farm is probably suitable for Mr Collins to start a business based on agricultural machinery. We do however have concerns about the proposed Option 3 rent which we consider to be too high in all the circumstances: something like two thirds of market rent would in our view be more appropriate to enable Mr Collins to make the transition. A significant weakness in the landlord's case was that the terms offered would include the "terms set out in the standard Farm Business Tenancy" used on the Trewithen Estate; but we were not supplied with a copy of these.

175. In addition Option 3 envisaged a separate schedule of condition, a separate schedule of what would be the tenant's repair obligations applicable to a break clause in 2014, and another schedule as to tenant's repair obligations generally. These documents have apparently not yet come into existence and in our view are not matters that can be made subject to a satisfactory condition attached to a consent to the operation of the notices to quit. We consider that we must make a decision on the materials put in evidence to us and that these outstanding matters leave uncertainties such that in our view a fair and reasonable landlord would not insist on possession.

176. In the circumstances we will dismiss the landlord's applications, but the parties will be aware that our decision is a decision on the present applications as presented to us, not on any future notice quit application that might be made.