AGRICULTURAL LAND TRIBUNAL **Tribunal reference E1/1130**
EASTERN REGION

DECISION OF THE TRIBUNAL IN THE MATTER OF an application under Section 39 of the Agricultural Holdings Act 1986

BETWEEN:

LLOYD HUNTER HELM **Applicant**
of Sloemans Farm, Whitewebbs Road,
Enfield, Middlesex, EN2 9HW

AND

A.L.I.H. (PROPERTIES) LIMITED **Respondent**
Registered Office: 1 Buckingham Place,
London, SW1E6HR

WHEREAS application was made to the Tribunal in writing dated 30 October 2008 under Section 39 of the Agricultural Holdings Act 1986 ("the Act") for a direction entitling Lloyd Hunter Helm to a tenancy of the holding known as Sloemans Farm, Whitewebbs Road, Enfield, Middlesex, EN2 9HW amounting to 51.80 hectares as shown on the plan attached to the application

AND WHEREAS the application included an application by the Applicant for a determination under Section 41 of the Act that he is to be treated as an eligible person for the purposes of Sections 36 to 48 of the Act

AND WHEREAS a Tribunal comprising Mr. JG Orme (Chairman), Mr. CJF Matts (Farmer member) and Mr. EW Faure-Walker (Landowner member), duly appointed in accordance with the provisions of the Agriculture Act 1947 (as amended) to hear and determine the application, sat at Bush Hall, Mill Green, Hatfield, Hertfordshire, AL9 5NT on Wednesday 25, Thursday 26 and Friday 27 November 2009

NOW THE TRIBUNAL having considered the evidence and for the reasons set out in the schedule hereto

DETERMINES that Lloyd Hunter Helm is to be treated as an eligible person for the purposes of Sections 36 to 48 of the Act and

DIRECTS that Lloyd Hunter Helm is entitled to a tenancy of the holding known as Sloemans Farm, Whitewebbs Road, Enfield, Middlesex, EN2 9HW amounting to 51.80 hectares

AND IT IS FURTHER DIRECTED that for the purposes of Section 46(2)(b) of the Act the relevant time shall be 25 March 2010.

Dated 18 January 2010 (Signed) JG Orme (Chairman)

I certify that this is a true copy of the decision of the Tribunal signed by the Chairman on 18 January 2010.

Dated 7 February 2010 (Signed) AJ Collins (Secretary to the Tribunal)

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SCHEDULE OF REASONS FOR THE DECISION

Background.

1. The Holding is the farm known as Sloemans Farm, Whitewebbs Road, Enfield, Middlesex, EN2 9HW. The Holding has been farmed by the Applicant's grandfather and father for over 60 years by virtue of various written tenancy agreements which the Tribunal has not seen. The latest agreement, which the Tribunal has seen, is a written tenancy agreement dated 3 April 1978 made between Nigel Hugh Clutton as agent for and on behalf of the Trustees under the will of the late Admiral Sir Hedworth Meux as Landlord and William Hunter Helm ("Hunter Helm") as Tenant. The Holding was let to Hunter Helm from 29 September 1977 from year to year terminable by not less than 12 calendar months' notice in writing by either party. The area of the Holding at the time of the agreement was 143.49 acres.

2. The Respondent informed the Tribunal that by a deed of surrender dated 26 February 1992, Hunter Helm surrendered 0.38 acres comprising Sloemans Cottages and adjacent land.

3. On 7 June 2000 the Respondent was registered at HM Land Registry as the proprietor of the freehold of Title number EGL347154 which includes the Holding.

4. Hunter Helm died on 31 July 2008. The Applicant, Lloyd Hunter Helm, is the son of Hunter Helm.

5. On 26 September 2008 the Respondent's agents served on the Applicant a notice to quit the Holding on 29 September 2009. The notice was expressed to be given pursuant to the provisions of Section 26 and Schedule 3, part I, case G of the Agricultural Holdings Act 1986 ("the Act") by reason of the death of Hunter Helm.

6. On 30 October 2008 the Applicant applied to the Tribunal under Section 39 of the Act for a direction entitling him to a tenancy of the Holding. At the same time the Applicant applied to the Tribunal under Section 41 of the Act to be treated as an eligible person for the purposes of Sections 36 to 48 of the Act. in the application the Applicant stated that the Holding consisted of 51.80 hectares, being 50 hectares of arable land and 1.80 hectares of hard standing. He stated that the Holding included a farmhouse, barns, out buildings and a traditional barn and that the current rent is £8,750 per year. The Applicant stated that his sources of livelihood were board and lodging at the farmhouse in exchange for unpaid work on the Holding and income from an animal feeds outlet ("LHH animal feeds") based at the Holding. He also stated that he occupied

as tenant approximately 20 hectares of arable land immediately adjacent to the Holding ("the 20 hectares").

7. By its reply dated 1 December 2008 the Respondent disputed the Applicant's claim to be an eligible person on the basis that he did not derive his principal source of livelihood from the Holding during the relevant period. The Respondent also disputed the Applicant's claim to be treated as an eligible person on the basis that the agricultural work carried out by the Applicant on the Holding during the relevant period was neither substantial in terms of time nor important in terms of value. The Respondent denied that the Applicant is suitable to become the tenant of the Holding on the basis that he had insufficient technical knowledge and experience to run and manage an arable business successfully and that the Applicant did not have the financial wherewithal to invest in the business so as to ensure that it was economically viable.

8. The Respondent sought further documentary evidence from the Applicant. When that was not forthcoming, the Respondent applied to the Tribunal for directions. The Tribunal held a case management conference on 14 July 2009 at which the Chairman made directions providing for further documentary evidence to be disclosed by the Applicant, for exchange of statements of witnesses of fact, giving permission for the parties to rely on expert evidence and for a date to be fixed for the hearing of the application.

9. The Respondent has made no application to the Tribunal for consent to the operation of the notice to quit.

The Inspection

10. The Tribunal inspected the Holding on 25 November 2009 in the presence of the parties and their representatives.

11. The Tribunal inspected the interior of the farmhouse. It consists of a kitchen, dining room, living room and bathroom on the ground floor and 5 bedrooms on the first floor. There was evidence of damp penetration through the ceilings of 2 bedrooms. The house was in poor decorative order throughout.

12. The Tribunal inspected the interior of the building known as the shop from which LHH animal feeds is operated. It noted the range of stock which was offered for sale, the presence of an electronic till on the counter and a sign on the entrance door detailing the opening hours. It also inspected other buildings where stock for LHH animal feeds was stored. The Tribunal noted the presence of 2 horse boxes which were available for hire and were shown a third horse box which it was told was no longer in useable condition. A further 2 boxes were seen in the distance off the Holding.

13. The Tribunal inspected 2 barns which were full of hay and straw and a covered shed which was used for storing barley. The Tribunal noted the presence of a large stack of waste hay and straw behind the barns. The Tribunal noted the presence of a number of tractors and other implements on the hard standing.

14. The Tribunal inspected a grass field between the house and the road which is used for the production of hay. The Tribunal then walked 2 tracks to the rear of the house and buildings from which it was able to see the extent of the Holding and the 20 hectares.

The Law

15. Sections 34 to 48 of the Act provide a mechanism whereby a close relative of a deceased tenant of an agricultural holding may apply to the Tribunal for a direction entitling him to a tenancy of the holding. The application is made under Section 39 and must be made by an eligible person within the period of 3 months beginning with the day after the date of death.

16. Section 34 sets out the tenancies to which the Sections apply and that includes any tenancy of an agricultural holding granted before 12 July 1984.

17. Section 36 provides that any eligible person may apply under Section 39 unless excluded by certain provisions which do not apply in this case. Section 36(3) defines "eligible person" as follows:

"(3) For the purposes of this section and sections 37 to 48 below, "eligible person" means (subject to the provisions of Part I of Schedule 6 to this Act and without prejudice to section 41 below) any surviving close relative of the deceased in whose case the following conditions are satisfied –

(a) in the seven years ending with the date of death his only or principal source of livelihood throughout a continuous period of not less than five years, or two or more discontinuous periods together amounting to not less than five years, derived from his agricultural work on the holding or on an agricultural unit of which the holding forms part, and

(b) he is not the occupier of a commercial unit of agricultural land."

18. "Close relative" is defined by Section 35(2) of the Act and includes a child of the deceased.

19. "Agricultural unit" is defined by Section 96 of the Act as "land which is an agricultural unit for the purposes of the Agriculture Act 1947." Section 109(2) of the Agriculture Act 1947 ("the 1947 Act") defines "agricultural unit" as "land which is occupied as a unit for agricultural purposes, including – (a) any dwelling house or other building occupied by the same person for the purpose of farming the land, and..."

20. Section 41 provides for a person who is not fully eligible to be treated as eligible. It provides as follows:

"(1) This section applies to any surviving close relative of the deceased who for some part of the seven years ending with the date of death engaged (whether full-time or part-time) in agricultural work on the holding, being a person in whose case -

(a) the condition specified in paragraph (b) of the definition of "eligible person" in section 36(3) above is satisfied, and

(b) the condition specified in paragraph (a) of that definition, though not fully satisfied, is satisfied to a material extent.

(2) A person to whom this section applies may within the period of three months beginning with the day after the date of death apply to the Tribunal for a determination that he is to be treated as an eligible person for the purposes of sections 36 to 48 of this Act.

(3) If on an application under this section –

(a) the Tribunal are satisfied that the applicant is a person to whom this section applies, and

(b) it appears to the Tribunal that in all the circumstances it would be fair and reasonable for the applicant to be able to apply under section 39 above for a direction entitling him to a tenancy of the holding,

the Tribunal shall determine that he is to be treated as an eligible person for the purposes of sections 36 to 48 of this Act, but shall otherwise dismiss the application.

(4) In relation to a person in respect of whom the Tribunal have determined as mentioned in subsection (3) above sections 36 to 48 of this Act shall apply as if he were an eligible person,

(5) A person to whom this section applies may make an application under section 39 above as well as an application under this section; and if the Tribunal determine as mentioned in subsection (3) above in respect of a person who has made an application under that section, the application under that section shall (without prejudice to subsection (4) above) be treated as made by an eligible person.

(6) Without prejudice to the generality of paragraph (b) .of subsection (1) above, cases where the condition mentioned in that paragraph might be less than fully satisfied include cases where the close relative's agricultural work on the holding fell short of providing him with his principal source of livelihood because the holding was too small."

21. If an application is made by an eligible person or a person treated as eligible then section 39(2) provides –

"(2) Where only one application is made under this section the Tribunal, if satisfied –

(a) that the applicant was an eligible person at the date of death, and

(b) that he has not subsequently ceased to be such a person,

shall determine whether he is in their opinion a suitable person to become the tenant of the holding."

22. Section 39(8) sets out the matters to which the Tribunal shall have regard when considering whether an applicant is suitable in the following terms –

"(8) In making a determination under subsection (2) above in the case of a particular applicant, ..., the Tribunal shall have regard to all relevant matters including –

(a) the extent to which the applicant or each of those applicants has been trained in, or has had practical experience of, agriculture,

(b) the age, physical health and financial standing of the applicant or each of those applicants, and

(c) the views, (if any) stated by the landlord on the suitability of the applicant or any of those applicants."

23. If an applicant is found to be a suitable person then section 39(5) provides –

"(5) If under the preceding provisions of this section only one applicant is determined by the Tribunal to be in their opinion a suitable person to become the tenant of the holding, the Tribunal shall, subject to subsection (10) and section 44 below, give a direction entitling him to a tenancy of the holding." Subsection (10) and section 44 are not relevant in this application.

The hearing and the issues

24. The hearing took place at Bush Hall, Mill Green, Hatfield over 3 days from 25 to 27 November 2009. The Applicant was represented by Miss Serena Gowling of counsel. The Respondent was represented by Mr. Derek Wood QC.

25. The Respondent accepted that the tenancy was one to which sections 34 to 48 of the Act applied and that the Applicant was the son of the deceased. The Respondent disputed that the Applicant

was an eligible person because it said that he did not satisfy the livelihood test in section 36(3)(a). It said that his principal source of livelihood did not derive from his agricultural work on the Holding but rather from LHH animal feeds. !t submitted that the free board and lodging provided to the Applicant throughout his life derived from him being his parents' only child living with them in the family home and not from his agricultural work on the Holding. It submitted that the 20 hectares did not form part of the agricultural unit of which the Holding formed part and that any income from that source should be excluded. Further, the Respondent said that the Applicant should not be treated as an eligible person because he did not satisfy the test to a material extent and it would not be fair and reasonable for him to be able to apply for a direction.

26. At the beginning of the hearing the Respondent indicated that the Applicant had provided evidence which the Respondent accepted as establishing that he was a suitable person to farm the Holding. After hearing part of the Applicant's evidence, the Respondent changed its position at the beginning of the second day of the hearing and asked the Tribunal to consider the question of suitability in one respect, namely whether the Applicant was financially responsible having regard to the way in which he manages his affairs. In the light of that change of position, the Applicant was allowed by the Tribunal to adduce further evidence on that issue.

The Applicant's evidence

27. The Applicant: The Applicant provided 2 written statements accompanied by a substantial number of documents. Much of the statements and the accompanying documents related to the question of his suitability to farm the Holding rather than to the issue of eligibility. Much of his evidence in relation to eligibility was given in oral evidence.

28. The Applicant produced a copy of his birth certificate showing that he was born on 18 August 1971. He was the only son of Hunter Helm and Sonia Florence Helm. He is a single man with no children. He described how he started to help on the farm as a young boy, driving tractors, helping with hay making and undertaking farm repairs. He remembered his mother collecting him from school with his work clothes in the car and he would change in the car so as to be ready to start work as soon as they arrived at the farm.

29. He had always intended to work on the farm. He produced a statement of vocational guidance dated 27 October 1987 from the London Borough of Enfield Careers Service which states "You intend to join your father working on the farm." It goes on to advise about colleges for further education. He attended Oaklands Agricultural College and obtained a certificate in agriculture, phases 1 and 2.

30. As he grew older, his involvement became greater and he assumed more responsibility. He says that, alongside his father, he did everything that needed to be done on the farm. Hunter Helm suffered from mental health problems for a substantial number of years and there were periods when he was incapable of running the farm and had to go into hospital. During these periods, the Applicant was running the farm alone.

31. As time went on the Applicant became involved in the administration of the farm. He describes how he dealt with the sale of the grain, payment of bills, purchase of new machinery and generally assisting with the office work. He says that this took hours of his time, often late into the night.

32. In 1995, a company associated with the Respondent became the landlord of the Holding. RH and RW Clutton were appointed as the landlord's agents. From that time there were a number of contentious issues including a rent review, a notice to quit relating to repairing obligations which lead to an application to the agricultural land tribunal, a dispute about access to a telecommunications mast and a claim in the Edmonton County Court. The Applicant assisted his father with these disputes by composing and typing letters, attending meetings with his father's lawyers and others, including the landlord and its agents.

33. The Applicant described Hunter Helm as "a totally autocratic and self-willed individual. It was always difficult to be his son." Hunter Helm would have been offended if the landlord's agents had addressed correspondence to the Applicant. The Applicant had no knowledge of the dealings between Hunter Helm and his accountant and he had no knowledge of the state of the farm accounts. He said that he and his mother were "gobsmacked" when they discovered following Hunter Helm's death that he had savings in his bank account amounting to just under £200,000. During his lifetime, Hunter Helm had appeared to be struggling to pay bills and the Applicant had feared that the legal proceedings might force his father into bankruptcy.

34. The Applicant says that for the / years prior to his father's death his average working week consisted of working 7 days a week during daylight hours and beyond. His mother would help him in the farm shop so that he could work on the farm as there were no other regular employees engaged in the farming activities.

35. In his covering letter to the application, the Applicant says "The holding financially supported my parents only, by including my regular unpaid farm work on the holding. This unpaid work was in exchange for my only and principal source of board and lodgings." The Applicant has lived in the farmhouse all his life. He lived there with his mother and father as a family unit. The home was sustained from the family budget which was provided by Hunter Helm. The Applicant did not pay anything to his father nor did he contribute financially to the family income.

36. Hunter Helm paid all the Applicant's living expenses for the 7 years prior to Hunter Helm's death. The Applicant did not pay anything towards the council tax until his father's death. Conversely, Hunter Helm never paid the Applicant any money from the farm business whether in return for work or otherwise. Hunter Helm provided accommodation, fuel and lighting, food, clothing, household goods and the use of a motor car. If the Applicant went out to the pub, he would pay for that out of his own pocket. He had little requirement for personal goods such as presents or meals out. He paid for his own holidays which were usually one week a year skiing in Europe or America. He paid for his own gym subscription and Sky subscription. He would occasionally buy high value items such as a television or digital camera.

37. The Applicant is interested in machinery and bought several items from his own resources within the 7 years before the date of death. Details are set out at pages 15 and 16 of Mr. Couling's report.

38. The Applicant said that his father always used to crush oats and barley and sold them on a retail basis together with hay and straw produced from the Holding. Hunter Helm did not want to be involved in the sale of other products and so it was agreed that the Applicant would take over that side of the business. The Applicant started this business on his own account on 1 October 1994 when he was 23 years old. They obtained permission from the landlord to operate a farm shop from the Holding and that was reflected in the rent for the Holding.

39. The Applicant traded under the name of LHH animal feeds. At page 445 of the bundle is a copy of his business card describing the business as "Equestrian specialists". The card lists the range of goods supplied including pet and animal feeds, horse and stable accessories, feed supplements and bedding. It also provided horse-box trailer hire. The card also mentions provision of wormers. The Applicant said that he stopped that supply in 2006 when his licence expired.

40. The Applicant's tax returns show that during the period from 2001 to 2005, the Applicant was paying employees. They show that for part of that period the employees were earning more than the Applicant from the business. The Applicant said that during that time they were delivering goods to customers using his own transport. He said that the business was never very profitable. He described it as a high turnover, low profit business. The profitability of the business declined from about 2005/06 when the Applicant was distracted by looking after his father and his affairs.

41. The way in which the Applicant dealt with the financial side of LHH animal feeds came under much scrutiny in cross-examination. The Applicant admitted that he did not keep a record of daily sales in a day book. He was paid for sales in cash or by cheque or credit card. Cheques were more common in 2002 than in more recent years. When he received cash, some was paid in to his bank account but some was retained by him to pay suppliers or to pay for his own personal expenditure such as holidays or machinery. Credit card payments went direct to his bank account. He would give all his bank statements and paid invoices to his accountant and he would rely on his accountant to prepare his tax returns from that information. He accepted that his book-keeping was poor but he thought that all receipts were accounted for.

42. The Applicant disclosed no accounts for LHH animal feeds. In his statement he said that he had found, during that week, copies of his personal tax returns for the years ended 5 April 2003, 2004, 2005 and 2006. Those returns included statements of income and expenditure for LHH animal feeds for the accounting years ended 30 September 2002 to 30 September 2005. He said that he had not yet prepared tax returns for subsequent years. The Applicant identified his accountant as Mr. Barber who operated from an office in Waltham Cross. The Applicant would collect all his papers together including bank statements and paying in books and take them to Mr. Barber and leave it to him to prepare the tax returns. Mr. Barber produced no separate accounts. The tax returns were completed in manuscript by Mr. Barber and then signed by the Applicant. The first 3 returns were dated 8 November 2007 and the other was dated 18 December 2007. The Applicant had taken his papers for subsequent years to Mr. Barber in the autumn of 2008 so that he could prepare further tax returns. The Applicant said that he had no correspondence from Mr. Barber and all their communications were face to face. He admitted that dealing with his accounts was not one of his priorities, particularly in 2007 and 2008 when he was dealing with his father's illness.

43. The Applicant was skiing in January 2009 when he received a telephone call from a friend who told him that Mr. Barber had died. The Applicant received no communication from Mr. Barbers office confirming that fact or asking him to collect his papers. He did not visit Mr. Barber's office on his return from skiing as he did not think that it was appropriate. He visited the office during the summer of 2009 but found the building locked. He visited again on the morning of the hearing and found Mr. Barber's office empty. He spoke to someone in an adjoining office who told him that Mr. Barber had died before Christmas 2008 and that his office had been cleared before the end of January 2009 with any papers and other items being thrown away.

44. Until May 2009, the Applicant maintained an account with Barclays Bank Plc. He said that his cheque book was taken away from him and he ended up running his business through a cash card account. The Applicant produced no bank statements except for statements for the cash card account no.70214841 for the period from February to May 2009. They were produced on the last day of the hearing. His explanation was that he had given all the bank statements for the period of 7 years before the date of his father's death to Mr. Barber. He had requested copies from Barclays but they had not been forthcoming. Barclays had closed the Applicant's account following notice. The Applicant did not know why that had happened but thought that it was because it was a cash card account of the type available to students and that Barclays had realised that he was running his business through the account. The final entry on the statements that were disclosed (bundle page 634MM) shows a transfer of a credit balance to Debt management.

45. The tax returns disclosed by the Applicant show the following figures for the business of LHH animal feeds:

Year ended 30.09	Turnover	Cost of sales	Expenses	Net Profit
2002	£399,375	£341,003	£44,423	£13,949
2003	£387,955	£333,624	£41803	£12,528
2004	£287,359	£238,115	£36,269	£12,975
2005	£249,060	£204,239	£35,727	£9,094

46. There is shown in each year as part of the expenses a cost under the heading of "premises costs" which ranges from £6,345 in 2002 to £7,984 in 2005. The Applicant said that he paid no money to his father for rent for the shop. In his statement he said that these costs represented payment to his father to help with legal fees, in cross-examination he said that he did not know what the payments represented and he thought that they were figures that his accountant put in to the returns.

47. The Applicant was asked about the entries for employee costs, motoring expenses and finance charges. He explained that he had employed a lorry driver for a couple of years full-time and subsequently employed some part-time labour. He had purchased a lorry on finance which accounted for motor expenses and some finance charges but he was not able to explain finance charges after 2004.

48. The tax returns do not show any benefit in kind received in terms of board and lodging. The Applicant said that he did not know what had to be disclosed in tax returns and he relied on his accountant to complete them. He did not have a discussion with Mr. Barber about disclosing a taxable benefit. Mr. Barber would have known that Hunter Helm kept the family.

49. At one stage LHH animal feeds was registered for VAT. The Applicant said that he had not completed VAT returns for a number of years. He no longer received forms from HMRC and he considered that he was no longer registered for VAT. He said that a large proportion of his sales were zero rated for VAT. He clarified the position on the second day of the hearing having spoken to an official at HMRC who told him that he was recorded as "cancelled, missing trader". He was told that as he was usually claiming refunds, HMRC was not minded to chase him for his returns. He said that he had not claimed the VAT paid on machinery purchases in 2004 and 2005.

50. The Respondent's agents first asked the Applicant to produce copies of the farming accounts for his father's business and other financial information on 12 November 2008. He did not provide that information believing that he did not have to and that the agents were trying to obtain the information for their own purposes. His refusal to provide the information lead to the directions given by the Chairman of the Tribunal on 14 July 2009. The Applicant said that it was at that stage that he understood that he had to provide the information and he set about trying to find it.

51. He produced copies of accounts for the farming business of Hunter Helm for the years ended 5 April 1996 to 2002. He said that he had found those accounts in the cupboard in the kitchen of the farmhouse. He also produced a letter from Charles Lamb ACA dated 9 December 2002 addressed to Hunter Helm asking for information to prepare those accounts and a letter dated 19 January 2003 from Charles Lamb ACA enclosing the completed accounts. The Applicant had not been able to find any other accounts. He was not involved in preparation of his father's accounts. He had tried to contact Charles Lamb but had been unable to trace him. He had been told by a friend that he had gone to Brazil.

52. The accounts show net income from the business of Hunter Helm ranging from £6,730 in 1996 to £16,312 in 2002 with a low of £3,806 in 2001 and a high of £ 19,069 in 1999. The Applicant said that he thought that they were representative of his father's business. The accounts show no receipts for rent and no payments for wages.

53. Hunter Helm had maintained a current account no. 70500151 with Barclays. The Applicant had obtained copy ledger statements for that account covering the period from 25 July 2003 to 1 September 2008. He had asked Barclays to supply copies of statements for 3 other accounts maintained by Hunter Helm but Barclays had not done so. On the last day of the hearing the Applicant produced a bundle of bank statements relating to various accounts held by Hunter Helm. They covered various periods from 1992 to 2001. He had found these in the kitchen of the farmhouse during the previous evening. He had also found a bundle of unopened envelopes addressed to his father. The only one which was opened contained a self assessment statement for October 2007.

54. The Applicant said that he took the lease of the 20 hectares in 2004. It was an oral tenancy. He is the tenant and he pays £50 per acre per year. The rent was paid cut of his income from LHH animal feeds. He said that he was the occupier of that land. In the first year he made hay on the land. After that it was incorporated into the arable rotation for Sloemans Farm and farmed as one with that farm using the same machinery. The grains produced from that land went into his father's grain shed. The hay and straw was sold through LHH animal feeds.

55. The Applicant said that all the straw produced on the farm was sold through LHH animal feeds. In addition there is an 8 acre field on the farm which is grass and which is used for making hay. That hay was sold through LHH animal feeds. He said that it produced about 1000 small bales of hay each year. He was unable to put a figure on straw production. At the inspection he had shown the Tribunal a large pile of waste hay and straw which he said he had cleaned out from the bottom of the hay barns. He said that this represented wastage from a number of years.

56. **Simon Richard Clark:** Mr. Clark is a technical agronomist employed by Harlow Agricultural Merchants Ltd who was instructed to provide an expert opinion on whether the Applicant derived his principal source of livelihood from his agricultural work on the Holding and whether he would be a suitable tenant. His report dealt only with the second issue and he accepted in cross-examination that he could not give an opinion on the first issue. He was not able to express an opinion on the profitability of the farm.

57. Mr. Clark had acted as agronomist for Hunter Helm from about 1989. He had visited Sloemans Farm on a regular basis from 1989 to 1994 and again from 2004 to 2007. He was in a position to give factual evidence as to what he found on those visits. He described Hunter Helm as an honest and sincere man who had his good days and his bad days. He said that Hunter Helm did not deal with paper work well. He described the paper work as being kept in piles ail over the farm house. Hunter Helm was not good at paying his bills and Mr. Clark used to take copies of invoices with him to get them paid. Eventually he had to put Hunter Helm's account on cash on delivery basis. He had observed the Applicant helping his father on the farm doing both physical work and discussing cropping programmes.

58. Mr. Clark said that he had noticed the difference in the farm since Hunter Helm had died. He described it as being much tidier. His bills are now paid on time by giro credit.

59. Mr. Clark expressed an opinion that the hay crop would produce 100 to 130 bales per acre and that the straw would produce about 110 to 130 bales per acre, 80 in a poor year. He did not think that wastage would amount to more than 5%.

60. **Richard Antony Couling BSc(Hons) MRICS:** Mr. Couling is a chartered surveyor. He produced a written report expressing his opinion on the eligibility and suitability of the Applicant, specifically looking at the assessment of the Applicant's principal source of livelihood.

61. First, he assessed the value of the rent free accommodation received by the Applicant based on his occupation of 2 bedrooms and sharing the use of the common parts of the farmhouse. He did that by comparing it with the closest possible arrangement offered on the open market which he

considered to be the renting of a room in a shared house. He produced 3 comparables where a double room had been let in August and September 2009 in 3 different houses in Waltham Cross and Enfield at prices varying from £80 to £122 per week to include utilities and bills. Based on those comparables and allowing for 2 rooms in Sloemans Farm, he valued the rent free accommodation in a range of £180 to £240 per week. He discounted those figures to take account of the increase in property prices since 2001 to arrive at a range of values for each year from 2001 to 2009. The values are set out in a table on page 12 of his report. Taking 2006 as the mid-point in the 5 years before the date of death, he put a value of £7,780 to £10,374 per year on the value of the rent free accommodation.

62. In cross-examination he accepted that the relevant value to be considered was what the Applicant would be paying for the rooms at Sloemans Farm if they were not free. He accepted that it would not be possible to let those rooms at £180 to £240 per week. He was unable to put a figure on the value of those rooms but disagreed with Mr. Rollings that the rooms were not lettable. He was not aware of any comparables with a letting value of zero. He said that the rooms would be attractive to someone looking for a large bedroom in a large house in the country. He said that it might be necessary to allow a rent free period to allow for the poor decorative condition.

63. Mr. Couling and Mr. Rollings agreed the value of the free food provided for the Applicant at £25 to £30 per week.

64. Mr. Couling assessed the value of other benefits received by the Applicant by using figures found in a report produced by the Office for National Statistics. By manipulating those figures he arrived at a value for those other benefits including food. Those values are set out in a table on page 1 3 of his report.

65. Adding the value of the other benefits to the value of the rent free accommodation, he arrived at a figure for the value of the total livelihood derived by the Applicant from his work on the Holding. The values are set out in a table on page 14 of his report. He then supports those figures by comparing them with the amount that he would expect an agricultural worker with supervisory ability to be paid. His figures are about 90% of the salary figures.

66. **David John Hargreaves Bolton FAAV FRAgS:** Mr Bolton is the senior director of David Bolton Partners and was instructed to prepare a farm budget for the year ending 30 September 2010. Incorporated into that budget is a figure of £9750 income from sale of wheat straw calculated on the basis of 65 bales per acre from 60 acres at a sale price of £2.50 per bale. He considered the figure of 65 bales per acre to be low and to allow for wastage. Mr. Bolton’s budget also allowed for income of £2,503 from sale of hay calculated on the basis of 100 bales per acre from 7.7 acres at a price of £3.25 per bale.

67. Mr. Bolton commented on the gross margin figures produced by Mr. Turney. He accepted the assumed cropping programme used by Mr. Turney as a realistic one. He disagreed with Mr. Turney’s figures for the value of straw produced on the Holding saying that his figure for bales per acre was too low and his wastage rate was too high.

68. **Sonia Florence Helm:** Mrs. Helm is the mother of the Applicant. She made a written statement but was not available to be cross-examined. She confirmed that Hunter Helm provided rent free lodging for the Applicant and that she did ail his washing and cooking without payment. This enabled him to spend his income on holidays and non-living expenses such as machinery, gym subscription, sky subscription, computers and other technology.

68. **Others:** The Applicant relied on written statements from 26 other witnesses, none of whom were available for cross-examination. The statements either report observations of the Applicant taking part in a variety of farming operations before Hunter Helm died or speak of the Applicant’s suitability to farm the Holding. The Respondent did not object to the Tribunal reading any of those statements.

The Respondent's evidence

70. **Jeffrey A Rollings BA(Hons) MRICS:** Mr. Rollings is a chartered surveyor. He was instructed to advise on the value of the rent free accommodation at Sloemans Farm and the value of other benefits enjoyed by the Applicant.

71. Having inspected Sloemans Farm, he concluded that, in view of the condition of the interior of the house, the bedrooms would not be lettable and had no market rental value. He had inspected the comparables produced by Mr. Couling and considered that they were all in much better condition. He was unable to produce any comparables for property in poor condition. In cross-examination he accepted that he was valuing the market value of the rooms. He accepted that he had not valued the benefit to the Applicant of having that accommodation or the cost to Hunter Helm of providing it. He accepted that there was a value to the Applicant over and above the letting value. He accepted that if the rooms were not available to the Applicant then he would have to pay for alternative accommodation and he accepted Mr. Couling's figures as being a reasonable guide to the cost of alternative accommodation.

72. Mr. Rollings agreed the figure of £25 to £30 per week for food. He did not express an opinion on the value of other benefits in kind.

73. **Robin Turney MBIAC FAAV:** Mr. Turney is an agricultural consultant. He prepared a hypothetical set of accounts for Hunter Helm's farming operation on the Holding for the years 2002 to 2008. He did not know the actual cropping programme for the Holding so he based his figures on an assumed cropping programme and he made assumptions for both sales and expenditure. He concluded that Hunter Helm would have made a small profit in only 2 out of the last 7 years of his life. After allowing £8,000 per year for personal drawings, Mr. Turney concluded that the farm did not generate sufficient income to cover its operating cost, to provide Hunter Helm with private drawings or to allow for re-investment. Mr. Turney's figures did not include the 20 hectares.

74. Mr. Turney included the following sums for sale of straw:

2002	£3,135
2003	£3,286.50
2004	£3,135
2005	£3,286.50
2006	£3,135
2007	£4,002
2008	£3,135

Those figures were based on the assumed area of wheat grown each year producing 50 bales per acre of which 20% was waste, allowing for sales of 40 bales per acre at £1.50 per bale, Mr. Turney said that £1.50 per bale was the average price of straw during the period 2002 to 2008, Mr. Turney did not accept the higher figures used by Mr. Bolton for either bales per acre or price per bale.

75. Mr. Turney accepted Mr. Bolton's figure of £2,503 for hay sales in his 2010 budget.

76. **Martin Anthony Crawley FCA TEP:** Mr. Crawley is an accountant. He produced 2 reports. In the first he considered whether the bank statements for Hunter Helm's account provide any evidence of payments to the Applicant. He concluded that there was no evidence of any payments being made by Hunter Helm to the Applicant or for the benefit of the Applicant. He concluded that it was not possible to give any opinion as to the financial position of Hunter Helm or the

viability of Sloemans Farm. In the second report he considered the Applicant's tax returns and concluded that they provided no evidence of the Applicant's income from agricultural work on the Holding. He said that the provision of board and lodging is a taxable emolument which should have been declared on the Applicant's tax returns unless it was made "in the normal course of the employer's domestic, family or personal relationships." Therefore, if the Applicant was receiving his board and lodging in return for work on the Holding, he should have been declaring that as a benefit in kind on his tax returns. Conversely, Hunter Helm could have claimed the cost of the benefits as a deductible expense on his tax returns.

77. In cross-examination, Mr. Crawiey said that if Hunter Helm was providing hay and straw for the Applicant to sell through his business, there should have been a cost shown in the Applicant's books and a sale shown in Hunter Helm's books. He was also of the opinion that the Applicant should have been preparing separate accounts for the income from LHH animal feeds and the income from the 20 hectares.

78. **George Hugh Back MRICS:** Mr. Back is a chartered surveyor and he is the Respondent's agent. He provided a written statement in which he reviewed his firm's files going back to 1999. He said that Hunter Helm was solely and exclusively in charge of the operation of the Holding and that there was no evidence of the Applicant being involved in working on the Holding or being involved in the management of the Holding. Further, he gave evidence as to the lack of suitability of the Applicant to farm the Holding. Mr. Back was not called to be cross-examined on his statement.

79. **Torquil Crawford:** Mr. Crawford provided a written statement in which he describes the shop and the stock offered for sale by LHH animal feeds. Mr. Crawford was not called to be cross-examined on his statement.

Conclusions

80. The Respondent did not dispute and the Tribunal is satisfied on the basis of the documents which it has seen that:

    a. The application under Section 39 was made within the period of 3 months beginning with the day after the date of death of Hunter Helm;

    b. The tenancy was granted before 31 July 1984 and is one to which Sections 34 to 48 of the Act apply;

    c. The Applicant is the son of Hunter Helm and is a close relative within the meaning of Section 35(2) of the Act;

    d. The Applicant was not the occupier of a commercial unit of agricultural land at the date of death and that continued to be the position at the date of the hearing.

    e. No other application was made within the time allowed by Section 39.

81. The Respondent submitted that the Applicant was not an eligible person because he did not derive his principal source of livelihood from his agricultural work on the Holding or an agricultural unit of which the Holding formed part during at least 5 years of the 7 years immediately prior to the date of death. The burden of proof lies on the Applicant to prove that he is an eligible person. Before considering that main issue, it is necessary to consider 3 subsidiary issues:

    a. Was the board and lodging provided to the Applicant derived from his agricultural work on the Holding?

b. Does the 20 hectares form part of the agricultural unit of which the Holding forms part?

c. Did the proceeds of sale of the hay and straw sold by the Applicant through LHH animal feeds derive from the Applicant's agricultural work on the Holding?

It was accepted by the Applicant that the income which he received from LHH animal feeds, with the exception of the proceeds of sale of the hay and straw, did not derive from his agricultural work on the Holding.

82. Before considering those issues, it is necessary to comment on the Applicant's evidence. The Tribunal's consideration of the issues has not been helped by the lack of financial documentation relating to both the farming business of Hunter Helm and the business of LHH animal feeds, in respect of the period of 7 years before the date of death, the Tribunal has seen no bank statements for accounts maintained by the Applicant, no accounts for the business of LHH animal feeds, no VAT returns for that business and tax returns for the Applicant for only 4 of those years. The Tribunal has seen an account for the business of Hunter Helm for only 1 of the 7 years prior to the date of death and bank statements for only 1 account maintained by Hunter Helm when it appears that there were at least 3 others. The Tribunal has sympathy with the position of the Respondent. Had those documents existed and been produced, the Respondent may have been able to form a better view as to the eligibility of the Applicant and the need for a hearing may have been avoided. However, the lack of those documents does not necessarily prevent the Applicant from satisfying the Tribunal that he is an eligible person.

83. Having seen and heard the Applicant giving evidence, the Tribunal is satisfied that he was honest and was telling the truth to the best of his ability. At times he appeared belligerent towards the Respondent. The Tribunal is satisfied that that attitude and his lack of trust in the Respondent and its agents, derived from the history of dealings between the Respondent and Hunter Helm since 1995. At times, the Applicant appeared financially naive. The Tribunal is satisfied that that derived from the lack of financial training which he received from his father. The Tribunal accepts the evidence of both the Applicant and Mr. Clark that Hunter Helm was not good with paper work, that he kept it in piles in the kitchen, that he shoved it in cupboards and drawers and that he had no proper system for dealing with it. There was no direct conflict between the evidence of the Applicant and the evidence produced by the Respondent as the Respondent's evidence was evidence of opinion rather than fact. Having observed the Applicant giving his evidence, the Tribunal was persuaded that it should accept the factual evidence of the Applicant.

84. **Board and Lodging:** Mr. Wood submitted that the Tribunal should conclude that the free board and lodging provided to the Applicant throughout his life was derived not from his agricultural work on the Holding but from the fact that he was his parent's only child living with them in the family home. Mr. Wood points to the fact that from, the Applicant's earliest days, the family budget was provided by his father's business on the Holding. Nothing changed when the Applicant left school and started to work on the Holding. Furthermore, the fact that the Applicant failed to disclose this benefit in kind as an emolument on his tax returns supports the fact that the Applicant treated this as a family arrangement. Mr. Wood says that the Applicant cannot have his cake and eat it.

85. The Tribunal does not accept Mr. Wood's submission on this issue. The Applicant's evidence in relation to the tax returns was that he did not know that benefits in kind should be declared as emoluments, that his accountant knew the position at home and that he relied on his accountant to complete the tax returns correctly. The Applicant said that his father provided his board and lodging in return for his work on the Holding. The Tribunal finds it inconceivable that Hunter Helm would have allowed the Applicant (now aged 38) to continue living at home without contributing to the household expenses if he was not working on the Holding.

86. The Tribunal is satisfied and finds as a fact that the free board and lodging provided to the Applicant by Hunter Helm was provided in return for his agricultural work on the Holding and that it was derived from that work.

87. **The 20 hectares:** Mr Wood submitted that the 20 hectares do not form part of the same agricultural unit as the Holding. He points to the definition of "agricultural unit" contained in section 96 of the Act which refers to section 109(2) of the 1947 Act. He says that the key to the definition is unity of occupation. He says that it follows that for the purposes of the 1986 Act both the Holding and the other land which is claimed to form part of the agricultural unit must have been occupied by the deceased. He accepted that both parcels of land do not need to be in the same tenure but he says that it is not possible to amalgamate two parcels of land which are in the occupation of different persons. He submitted that the 20 hectares are in the occupation of the Applicant.

88. Miss Gowling submitted that occupation is not the same as tenure or legal possession and she submitted that, looking at the way in which the land was farmed and managed, both parcels of land were in the same occupation as a matter of fact.

89. It was not disputed that the Applicant is the tenant of the 20 hectares and that he paid the rent for it out of the proceeds of LHH animal feeds. He said in evidence that he is the occupier of the 20 hectares. The Tribunal is of the opinion that the Applicant meant by that answer that he is the tenant of the land. The Tribunal accepts the Applicant's evidence about how the land was farmed and managed. The Holding and the 20 hectares were farmed and managed together using the same machinery and the same system of cultivation. The inputs, in the form of seeds and fertilisers, were purchased by Hunter Helm and were paid for through his farm accounts. There was no separation of inputs between the 20 hectares and the Holding. The products from the 20 hectares were amalgamated with the products from the Holding. The grains and beans went into Hunter Helm's grain store and were sold through his farm business. The straw (and the hay in the one year in which it was produced) was amalgamated with the hay and straw from the Holding and sold through LHH animal feeds.

90. The Tribunal considers that the words in section 109(2) of the 1947 Act "land which is occupied as a unit" must be given a common sense meaning. It is land which is farmed together as a unit for ail practical and financial purposes. On the basis of the evidence the Tribunal finds as a fact that the 20 hectares and the Holding formed one agricultural unit occupied by the deceased's business. References to "the Agricultural Unit" will be a reference to the Holding and the 20 hectares combined.

91. **Hay and Straw:** The Applicant's evidence was that ail the hay and straw produced on the Agricultural Unit was sold through LHH animal feeds. The Applicant said that he did not pay his father for the hay and straw and that he retained the proceeds of sale in the business of LHH animal feeds. The Tribunal accepts that evidence. Mr Wood accepted that the straw which derived from the Holding was the product of the Applicant's agricultural work on the Holding. He sought to differentiate the hay and straw produced from the 20 hectares.

92. In the light of the Tribunal's finding that the 20 hectares and the Holding formed one agricultural unit, the tribunal finds as a fact that the proceeds of sale of the hay and straw, whether derived from the Holding or the 20 hectares, derived from the Applicant's work on the agricultural unit of which the Holding forms part.

93. Eligibility: !n the majority of cases, the process of deciding whether an applicant satisfies the eligibility test laid down in section 36(3)(a) involves carrying out a comparison between the income and benefits in kind derived from the applicant's work on a holding and the income derived from other sources. Due to the limited amount of financial information available to the Tribunal, it is not possible to make a full comparison in this case. However, what the Tribunal is required to determine is whether, during the relevant period of time, the Applicant derived "his

only or principal source of livelihood ... from his agricultural work on the holding or an agricultural unit of which the holding forms part.” The act does not require the Tribunal to carry out a mathematical calculation although that is an obvious way of approaching the question when the information is available.

94. in this case the Tribunal has evidence as to the value of the benefits in kind in the form of board and lodging, it has evidence as to the value of straw sold by the Applicant and it has some evidence about the profits of LHH animal feeds. The tribunal will examine each of those elements in turn. Mr. Wood accepted that the values of benefits in kind are to be taken into account when considering the livelihood test.

95. **Value of lodgings:** Miss Gowling relied on paragraph 14.50 of Muir Watt and Moss on Agricultural Holdings where it is stated “It is submitted that the valuation of this benefit should be not what was the cost to the provider of the accommodation but what was the value of it to the applicant. In other words, What would the applicant from time to time have had to pay in order to enjoy the benefit of the accommodation?” She submitted that it is necessary to value the accommodation provided but on the basis that the Applicant is a special purchaser who would be prepared to pay more than most people for that accommodation. She said that the Tribunal had to determine what the Applicant might be prepared to pay for the accommodation.

96. Mr Wood submitted that when valuing the accommodation the value of the benefit is the value of what is provided. If any commodity has a price and it is provided free of charge, the value of the benefit to the recipient is the price which would otherwise have been paid. He said that that is what a third party would pay for the accommodation at Sloemans farm and not what the Applicant would have had to pay in order to live somewhere else nor what the Applicant might pay for the rooms at Sloemans farm if he and his father had had the conversation.

97. The Tribunal prefers Miss Gowling’s submission on this issue. It is the value of the accommodation to the Applicant which is to be valued and that value must be obtained by considering what the Applicant would pay for that accommodation. That is, of course, a hypothetical exercise because there is no evidence that the Applicant and Hunter Helm ever considered the question. The Tribunal considers that the best evidence of that value is what the Applicant might have had to pay for alternative accommodation if he had had to move elsewhere. That may result in a very different conclusion than considering the cost to Hunter Helm of providing the accommodation which could be valued by considering what a third party might pay for the accommodation at Sloemans Farm.

98. Mr Couling’s approach was to look at the cost of alternative accommodation in the close locality. He used 3 comparables where a room was available to let in a shared house varying in price from £80-£122 per week to include utilities and bills. He took an average figure of £120 per week and then, to take account of the fact that the Applicant had the use of 2 rooms, multiplied it by 1.5 to 2 to arrive at a range of £180 to £240 per week. Having arrived at an annual figure for 2009, he then discounted that figure to allow for the increase in house prices since 2001.

99. Mr. Couling accepted that the rooms at Sloemans Farm could not be let for £180 to £240 per week but that is not what he was being asked to value. The value to the Applicant was what he was saving by not having to live elsewhere.

100. For the landlord, Mr Rollings concluded that the rooms at Sloemans Farm were not lettable and had no market rent. He had not valued the benefit to the Applicant of having that accommodation or the cost to Hunter Helm of providing it. He accepted that there was a value to the Applicant over and above the letting value.

101. The Tribunal does not find the evidence of Mr. Rollings to be of assistance. he did not provide any evidence as to the value of the accommodation to the Applicant. He was merely valuing the accommodation on the open market. The Tribunal prefers the approach of Mr. Couling. The

accommodation at Sloemans Farm undoubtedly has a value to the Applicant as it has provided him with a home. If he did not have that accommodation, he would have to pay for alternative accommodation elsewhere. The comparables used by Mr. Couling may provide a better standard of accommodation to that at Sloemans Farm but there was no other evidence available to the Tribunal. The Tribunal accepts Mr. Couling's valuation evidence but takes the lower end of the range of figures in the table on page 12 of his report. Those figures are set out in the first column of the table in the appendix to these reasons. The Tribunal finds as a fact that that was the value of the accommodation.

102. **Value of food:** Mr. Couling and Mr. Rollings agreed the value of the free food supplied to the Applicant at between £25 and £30 per week. Mr. Wood invited the Tribunal to adopt a figure of £1,500 per year. The Tribunal accepts that suggestion and finds as a fact that the value of the free food supplied to the Applicant was £1,500 per year.

103. **Value of other benefits:** The Applicant's evidence was that apart from board and lodging, his parents paid for his clothes, motoring expenses and household goods. He does not smoke. He has little need for personal goods and services. He paid for alcoholic drinks, holidays, his gym subscription and his Sky subscription from his own resources. The only evidence before the Tribunal as to the value of those items was produced by Mr. Couling on page 13 of his report. He based his figures on a table produced by the Office for National Statistics showing household expenditure for 2007. He included in his calculation the items for food, household goods, household services, personal goods and services, motoring (50%) and miscellaneous. The total for those items was 40% of the total expenditure of £456.80 and so he had taken 40% of the individual expenditure of £193.80 to arrive at his weekly figure of £77.52. If the figures for food and personal goods and services are extracted (the food because it is separately valued and the personal goods and services because the Applicant did not benefit from any), the proportion comes down to 20% which means that the value of other benefits received by the Applicant from Hunter Helm was one half of the figures set out in Mr. Couling's table on page 13 of his report. The Tribunal finds as a fact that the annual value of those other benefits to the Applicant was:

2008	£2,055.82
2007	£2,015.52
2006	£1,968.72
2005	£1,921.92
2004	£1,875.12
2003	£1,828.32
2002	£1,781.52
2001	£1,734.72

104. **Value of hay and straw:** The Applicant gave evidence that the Holding produced about 1000 bales of hay each year from the 8 acre field in front of the house. However, he gave no evidence as to the sale price of that hay other than to produce a copy of his current price list showing the current price to be £1.50-£4.00 per bale, in his budget for 2010, Mr Bolton allowed for sales of hay amounting to £2,503, based on 100 bales per acre from 7.7 acres at £3.25 per bale. Mr. Bolton says that that is the current price of hay. Mr Turney did not dispute that figure. However, there was no evidence before the Tribunal as to the sale price of hay during the period 2001 to 2008. The Tribunal accepts that the Applicant was able to sell 1000 bales per year but is unable to put a price on that hay in the absence of any evidence as to the sale price during the 7 years prior to the date of death.

105. The position in relation to sales of straw is more complicated. The Applicant gave no evidence as to the quantity of straw sold through LHH animal feeds. His tax returns do not provide any

breakdown showing sales of straw or hay as a separate item. The Applicant gave no evidence as to the quantity of straw produced on the Agricultural Unit year by year or as to the price at which that straw was sold. Mr Clark gave evidence that he would expect a production of 110-170 bales of straw per acre or 80 bales in a low year. He would expect wastage of about 5%. Mr Bolton based his budget for 2010 on a production of 65 bales per acre after taking wastage into account. Based on 60 acres and a sale price of £2.50 per bale that produced an estimated income of £9,750. The price of £2.50 per bale is what the Applicant had told Mr. Bolton was the current price. Mr Turney's estimated accounts for the Holding were based on a production of 50 bales per acre with 20% wastage reducing it to 40 bales per acre. He used an average sale price for the period 2002 to 2009 of £1.50 per bale, resulting in the income figures as set out in paragraph 74. Those figures exclude the 20 hectares.

106. The Tribunal found Mr. Bolton to be a convincing witness and where his evidence conflicts with the evidence of Mr. Turney, the Tribunal prefers his evidence.

107. The tribunal does not accept Mr Turney's evidence in relation to wastage of hay and straw. The Tribunal has seen the pile of waste hay and straw at the Holding and accepts the evidence of the Applicant that that was the waste which he cleared out of the barn representing the waste from a number of years. The Tribunal accepts Mr Bolton's estimate of 65 bales per acre as being a reasonable estimate after wastage. The Tribunal considers that figure to be a more realistic estimate than the figures produced by either Mr. Clark or Mr. Turney. In the absence of any other evidence as to the acreage of straw produced each year or the price at which it was sold, the tribunal accepts Mr Turney's estimates as to the acreage produced and the sale price £1.50 per bale as the best available evidence of those matters. However, Mr. Turney's figures have to be increased by 62.5% to take account of an increase in production from 40 bales per acre to 65 bales per acre. That results in the figures set out in column 5 of the appendix. Those figures do not include straw from the 20 hectares as there was no evidence as to how much straw was produced on that area each year.

108. Profits of LHH animal feeds: The net profits shown by the tax returns for the 4 years ended 30 September 2002 to 2005 are set out in paragraph 45 above. Mr. Wood submitted that the tax returns understate the turnover of the business. The Applicant accepted that some money was received in cash and not paid into his bank account. He said that the tax returns reflected the true state of his business. There was no direct evidence to contradict that statement. Mr. Wood has asked the Tribunal to make an assumption. Having heard the Applicant's evidence, the Tribunal accepts his evidence on this issue. The Tribunal has no evidence as to the net profits for years after 2005. The Tribunal accepts the Applicant's evidence that the business was declining and that the profits would have continued to decline.

109. The Tribunal also accepts the Applicant's evidence that he did not pay his father for the hay and straw which he sold through his business. That means that the proceeds of sale of the hay and straw were all profit and went straight to the bottom line. Therefore, when considering the income derived from sources other than the Applicant's agricultural work on the Holding, it is necessary to deduct the proceeds of sale of the hay and straw from the net profits of the business.

110. The Tribunal notes the evidence of Mr. Crawley that there should have been book entries in the accounts of Hunter Helm and LHH animal feeds to reflect the supply of hay and straw by Hunter Helm to LHH animal feeds. Whilst that may be an ideal situation from an accountant's point of view, that is not what happened in practice.

111. Principal source of livelihood: Miss Gowling submitted that the meaning of livelihood is wider than income. She says that the test is essentially whether the Applicant was economically dependent for his livelihood on his work on the Holding. She referred the Tribunal to extracts from two reported decisions. The first is *Trinity College, Cambridge v Caines* [1984] 2 EGLR 17 where Webster J. said "I conclude that the expression "source of livelihood" means what the applicant spends or consumes on her ordinary living expenses from time to time in money and/or

kind and that it does not include money that she has available to spend but does not in fact spend for that purpose." The second is *Welby v Casswell* [1995] 2 EGLR 1 where Stuart-Srnith LJ said "In my judgement, Mr Wood's submissions are to be preferred. Like most questions of construction, this one is largely a matter of impression. Moreover, I consider that the subsection should be construed in a purposive manner and very much in the way that a jury would do and without adopting too legalistic an approach. Livelihood can be defined as "means of living" (see Shorter Oxford Dictionary), that is to say what is spent or consumed for the purpose of living. The source of one's livelihood in so far as it is money, is income; in so far as it is the use or consumption of goods, it is benefits in kind. An applicant may have income derived from one or more sources. If so, in order to qualify under section 36(3)(a) the income derived from work on the agricultural holding must be greater than his income from his other sources."

112. Pulling together the results of the Tribunal's findings as to the values of the various benefits in kind, the hay and straw and the net profits from LHH animal feeds, the Tribunal has been able to produce a table setting out the figures, so far as it is possible to do. That table is attached as an appendix to this decision. The first column shows the value of the accommodation and is extracted from the table on page 12 of Mr Couling's report. The second column shows the agreed figure of £1,500 for the value of food. The third column shows the value of other benefits and is extracted from paragraph 103 above. No figure is included for the value of hay as the Tribunal has made no finding in that respect. The fifth column shows the value of straw. Those are the figures from paragraph 107. The sixth column shows a total of the previous five columns and represents the total value of the benefits in kind received by the Applicant from his agricultural work on the Agricultural Unit. The seventh column sets out the net profits of LHH animal feeds in so far as they are known. The eighth column is those net profits less the straw sales and represents the Applicant's income from sources other than his agricultural work on the Agricultural Unit. It should be stressed that the figures in the sixth column exclude any benefit from the sale of straw on the 20 hectares and from the sale of hay, both of which would count towards the value of benefits received from work on the Agricultural Unit. Conversely, the value of that straw and hay, if known, should be deducted from the figures in the eighth column.

113. What those figures show is that in the years 2002 to 2005, the value of the benefits in kind received by the Applicant which were derived from his agricultural work on the Agricultural Unit exceeded his net profits from LHH animal feeds after the value of straw sales has been deducted. The difference between the 2 totals would be even greater if the value of the straw from the 20 hectares and the hay were to be included. The Tribunal has already accepted the Applicant's evidence that the net profits of LHH animal feeds were declining. If that is correct, then it must follow that the value of the benefits in kind received by the Applicant in the years 2006 to 2008 also exceeded the income received from other sources. Following the guidance of Stuart-Smith LJ to construe section 36(3)(a) in a purposive manner, the Tribunal concludes that that the Applicant derived his principal source of livelihood from his agricultural work on the Holding or an agricultural unit of which the Holding forms part throughout the period of 7 years before the date of death of Hunter Helm.

114. However, to test that conclusion the Tribunal has approached the matter from a different direction. The Applicant has given clear evidence, which has been accepted by the Tribunal, that everything that he needed to live on was provided by his father. It was clear to the Tribunal from the inspection that the family lived at a frugal level. There were no signs of an extravagant lifestyle. The Applicant spent the money which he derived from LHH animal feeds on holidays, his gym subscription, his Sky subscription, buying technology such as televisions and computers and buying machinery. He did not spend his money on everyday living expenses. He had no need to do so because his father provided everything that he required for everyday life. What money he had to spend was spent on extras, some of which may be classed as ordinary living expenses. Purchase of machinery would certainly not be classed as ordinary living expenses and Mr. Couling has given evidence that substantial sums were spent on that. Moreover, a substantial part of the profits of LHH animal feeds was derived from the sale of hay and straw which was derived

from agricultural work on the Agricultural Unit. That income was more than sufficient to cover the cost of those items which might be classed as ordinary living expenses such as holidays, subscriptions and home technology. On that basis as well, the Tribunal is satisfied, on the basis of the evidence that it has heard, that, in the seven years ending with the date of death of Hunter Helm, the Applicant's only or principal source of livelihood derived from his agricultural work on the Holding or an agricultural unit of which the Holding forms part.

115. Mr Wood urged the Tribunal to find that in the light of the evidence of Mr Turney, with which Mr Bolton agreed, that finances on the Holding were extremely tight to support a family of three, that it was not possible to rely on the evidence as to value of the benefits in kind which had been produced to the Tribunal. He said that the value of the benefits in kind suggested by the Applicant far exceeded what Mr. Turney estimates to have been the income of Hunter Helm from his business. That submission overlooks the fact that Hunter Helm died leaving just under £200,000 in his bank account. Hunter Helm clearly had sufficient resources to maintain his family even though it was at a frugal level.

116. Mr. Wood invited the Tribunal to draw the inference that LHH animal feeds was set up to supplement the modest profitability of the farming business conducted on the Holding. That may be the case but the Tribunal is satisfied that the Applicant's principal source of livelihood was derived from the Holding. Having heard and considered the evidence, the Tribunal is satisfied that it is able to come to the conclusion which it has reached.

117. It follows from that conclusion that the Applicant has satisfied the condition set out in section 36(3)(a) and that he was an eligible person at the date of death of Hunter Helm and he has not subsequently ceased to be such a person.

118. **Section 41:** In the light of the Tribunal's finding in relation to section 36(3)(a) the Applicant does not need to rely on his application under section 41 of the Act. However, as he has made the application, the Tribunal will determine it.

119. In order to succeed on that application, the Applicant has to show that although he has not satisfied the condition specified in section 36(3)(a), he has satisfied it "to a material extent". His Honour Edgar Fay QC considered the meaning of those words in the case of *Littlewood v Rolfe* [1981] 2AII ER 51 where he said "I therefore find that the Tribunal erred in law in following the narrow interpretation. But I must go beyond this and endeavour to afford some guidance for those who have to solve these difficult problems. I agree wholeheartedly with the view that no mathematical formula can be laid down. Percentages of fulfilment, when worked out, are a useful guide to put the facts of finance or of time in perspective and to help judge their weight, but I would think it wrong to try to impose a mathematical cut-off point to what is material. After considerable casting about I do not feel that I can do better by way of definition than to adopt what the Northern Area Tribunal said, in *Dagg v Lovett*, namely that "material" means "substantial in terms of time and important in terms of value." That definition has been approved subsequently in the cases of *Wilson v Earl Spencer's Settlement Trustees* [1985] 1 EGLR 3 and *Thomson v Church Commissioners for England* [2006] 3EGLR 1.

120. Mr Wood submitted that the Applicant has never satisfied the test whether for a substantial time or at all. Further, he says that any livelihood which the Applicant has derived during the relevant period has not been important in terms of value. He submitted that it should be possible for the Tribunal to work out the periods of time during which the test is satisfied and the periods during which it is not satisfied.

121. The Tribunal has already made findings of fact in relation to the valuation of the benefits in kind. Those results of those findings are set out in the appendix. From that table it is clear that the Applicant has satisfied the test set out in section 36(3)(a) in the years 2002, 2003, 2004 and 2005. In the Tribunal's opinion, satisfying the financial test for 4 out of 5 years is substantial in terms of time. Further, based on the evidence available to it, the Tribunal is satisfied that if the figures

were available for subsequent years, they would show that the value of the benefits in kind derived from the agricultural work exceeded the income from LH H animal feeds excluding hay and straw sales. Moreover, it is important to note that, in the table, no value has been attached to sales of hay or to the sale of straw from the 20 hectares. Moreover, the livelihood gained from his agricultural work was important in terms of value. From the Applicant’s point of view, it was more than 50% of his livelihood. From Hunter Helm’s point of view, his son managed the Holding and did all the necessary work whilst Hunter Helm was unable to do so through illness. For those reasons the Tribunal finds that the Applicant has satisfied the conditions set out in section 36(3)(a) to a material extent. He has satisfied them for at least four of the required 5 years. That is substantial in terms of time. On the basis of the figures available to the Tribunal, the contribution has been important in terms of value as the evidence points to the value derived from agricultural work far exceeding the income derived from other sources. The Tribunal is satisfied that the Applicant is a person to whom section 41 applies.

122. Miss Growing invited the tribunal to make a finding under section 41 (6) that the Holding had failed to provide the Applicant with his principal source of livelihood because it is too small. The Tribunal is not prepared to make such a finding. There is insufficient evidence to do so. Indeed, the evidence produced by the Applicant was to the effect that the Holding produced sufficient income to maintain himself and his parents.

123. **Fair and reasonable:** Mr Wood submits that it would be unreasonable for the Tribunal to exercise its discretion in favour of the Applicant for 2 reasons. First he says that the Applicant has a prosperous business which is sufficient to support an adequate standard of living for himself and his mother. Secondly he says that the Applicant has conducted his financial affairs in such a manner that the Respondent has found it impossible to get at the truth of his family’s finances. The Tribunal does not accept those submissions. There is no evidence before the Tribunal that LHH animal feeds is a prosperous business capable of sustaining an adequate standard of living. Whilst the Tribunal accepts that the Applicant has not conducted his own financial affairs in an exemplary manner, the Applicant cannot be blamed for similar failings by his father.

124. Miss Gowling has set out at paragraph 33 of her written submissions a number of factors which she says should be taken into account by the Tribunal when exercising its discretion in favour of the Applicant. The Tribunal accepts all of those factors but the overriding reason for exercising its discretion in favour of the Applicant is the fact that the Applicant has lived on the farm all his life, he has helped his father with work on the farm since he left school and he was kept by his parents in return for that work. In all the circumstances, the Tribunal determines that it is fair and reasonable for the Applicant to be able to apply under section 39 for a direction entitling him to a tenancy of the Holding.

125. Accordingly, the Tribunal determines that the Applicant is to be treated as an eligible person for the purposes of section 36 to 48 of the Act.

126. **Suitability:** The Respondent accepted that the Applicant is a suitable person to become the tenant of the Holding in all respects other than his financial ability to manage the Holding. The Applicant’s evidence showed that he had been dilatory in maintaining proper financial records for LHH animal feeds. At one time he had registered that business for VAT purposes. However, it appears that he failed to maintain his VAT returns. His evidence in relation to his dealings with his accountant shows that he does not put his financial paperwork as his top priority. Against that there is the evidence of Mr Clark who says that matters have improved since the death of Hunter Helm. Mr. Clark’s invoices have been paid on time and he noticed that the paperwork has been kept more tidily. There is also the Applicant’s evidence about his poor management of his bank account with Barclays bank. He gave further evidence as to how he is now keeping track of his finances using his Halifax bank account. The Applicant gave evidence that he intends to improve the quality of his paperwork and that he intends to employ a book-keeper. The Tribunal has to keep in mind the question of proportionality. The financial ability of the Applicant is but one of a

number of factors to be considered under the heading of suitability. Section 39(8) requires the Tribunal to have regard to ail relevant matters including those set out in that subsection. Whilst the Tribunal accepts that dealing with financial matters is not the Applicant's strongest attribute, his failings in that area are not sufficient to persuade the Tribunal that the Applicant is not a suitable person to become the tenant of the Holding. In the opinion of the Tribunal, the Applicant will be able to manage the financial aspects of the Holding and The Tribunal is of the opinion that the Applicant is a suitable person to become the tenant of the Holding.

(Signed) J G Orme Chairman

Dated 18 January 2010

Appendix to reasons:

	Lodging £	Food £	Others £	Hay	Straw £	Total £	LHH net profit £	LHH less straw £
2002	5674	1500	1782		5094	14050	13949	8855
2003	6201	1500	1828		5340	14869	12528	7188
2004	6727	1500	1875		5094	15196	12975	7881
2005	7253	1500	1922		5340	16015	9094	3754
2006	7780	1500	1969		5094	16343		
2007	8307	1500	2016		6503	18326		
2008	8833	1500	2056		5094	17483		
2009	9360	1500				10860		