**IN THE AGRICULTURAL LAND TRIBUNAL YORKSHIRE AND HUMBERSIDE REGION** **ALT/Y/S/59**

**HOLDING:** West Cawthorne Farm, Pickering, North Yorkshire

**BETWEEN:**

NIGEL MONKMAN
School House
Cropton
Pickering
North Yorkshire Applicant

Represented by: Dickinson Dees LLP
One Trinity, Broad Chare, Newcastle
upon Tyne 28

and

PETER J MITCHELSON AND JOHN D MITCHELSON
3 Manor Court
Main Street
Little Ouseburn
York
YO26 9TB Respondents

Represented by: Messrs. Grays,
Solicitors Duncombe Place, York
YO1 7DY

The Tribunal sat at the Beansheaf Hotel, Malton Road, Kirby Misperton, Malton, North Yorkshire YO17 6UE at on 20th May 2009, continuing on 21st May 2009, to consider an application by the applicant dated 16th August 2006 made under section 39(1) of the Agricultural holdings Act 1986 for a direction giving entitlement to a tenancy of the holding known as West Cawthorne Farm, Pickering, North Yorkshire ("the holding").

The Tribunal having considered the application and other documents relating to it and having heard the evidence given on behalf of the applicant and the evidence given on behalf of the respondents, and the parties agreeing that an inspection of the holding was not necessary in this case, concluded for the reasons attached to this decision that the applicant is eligible and suitable to become the tenant of the holding.

The Tribunal makes a direction under Section 39 of the Agricultural Holdings Act 1986 entitling the applicant to a tenancy of the holding. The Tribunal specifies the relevant time for the purposes of Sections 46 and 48 and this direction to be 1st October 2009.

Signed this 1st day of September 2009 Miss A SEIFERT
CHAIRMAN

The members of the Tribunal were Miss A Seifert (Chairman), Mr R N Elmhirst (Landowner's Panel) and Mr A J G Davy (Farmer's Panel). I hereby confirm that this is a true record of the decision of the Tribunal.

Signed this 8th day of September 2009 Mrs. J. Noble
Secretary

## Schedule of Reasons for the Decision

## Background

1. The applicant, Nigel Monkman ("Mr Monkman"), is the son of the late Colin Monkman who held and agricultural tenancy, within the Agricultural Holdings Act 1986 ("the Act"), of West Cawthorne Farm, Pickering, North Yorkshire. This holding comprised a farmhouse, farm buildings and 104.699 hectares of land. Mr Colin Monkman passed away on 21st June 2006.

2. On 16th August 2006 an application under Section 39 of the Act was made by the applicant, Mr Monkman, for a direction giving entitlement to a tenancy of the holding known as West Cawthorne Farm, Pickering, North Yorkshire ("the holding").

3. In order to obtain such a direction the applicant must satisfy the Tribunal that:

   (i) He is *eligible* to be granted a new tenancy; and

   (ii) He is a *suitable* person to become the tenant of the holding.

4. Mr Monkman has farmed the holding with his father since 1979 and has been a partner in the farm business since 1985. It was accepted that Mr Monkman is a suitable person for the purposes of Section 39 of the 1986 Act.

5. The issue in this application is whether Mr Monkman is eligible to be granted a new tenancy of the holding. The statutory requirements of the eligibility test are found in section 36(3) of the 1986 Act.

6. There is no dispute that the applicant is a surviving close relative of Colin Monkman and that he is not the occupier of a commercial unit of agricultural land. The issue is whether the applicant can satisfy the livelihood test in section 36(3)(a) of the Act.

## Representation

7. At the hearing the applicant was represented by Miss C Taskis of Counsel, instructed by Dickinson Dees LLP, Solicitors. The respondents were represented by Miss J Moss of Counsel, instructed by Messrs. Grays, Solicitors.

## The nature of the application

8. Under the livelihood test the applicant for a direction must demonstrate that:

   Section 36(3)(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.*

9. Mr Monkman and his wife, Mrs Valerie Anne Monkman ("Mrs Monkman") attended the hearing. They confirmed the contents of their witness statements each dated 8th May 2009, and gave additional oral evidence.

10. Mrs Monkman prepared or assisted with the preparation of the applicant's schedules on pages 238 to 242 and 243 to 246 of the hearing bundle.

11. The schedule on page 243 was described by Miss Taskis as the applicant's 'overarching schedule'. This set out the percentages of livelihood expenditure which the applicant contended was derived from his work on the holding.

Percentages presented by the applicant in the hearing bundle.

| **Year ending 21 June** | **Livelihood Expenditure derived from Applicant's work on Holding (£)** | **Livelihood Expenditure not derived from Applicant's work on Holding (£)** | **Total Livelihood Expenditure (£)** | **% of Livelihood Expenditure derived from Applicant's work on Holding (£)** |
|---|---|---|---|---|
| 2006 | 10029.02 | 6775.35 | 16804.37 | 59.68% |
| 2005 | 10313.32 | 7090.29 | 17403.61 | 59.26% |
| 2004 | 13250.70 | 1962.62 | 15213.32 | 87.10% |
| 2003 | 9606.92 | 6371.22 | 15978.14 | 60.13% |
| 2002 | 11277.92 | 4995.95 | 16273.88 | 69.30% |
| 2001 | 9225.90 | 6875.44 | 16101.34 | 57.30% |
| 2000 | 9705.29 | 7227.61 | 16932.90 | 57.32% |

12. If accepted, the percentages presented, being above 50%, showed that the applicant is eligible under the statutory test.

13. Detailed breakdowns of the applicant's figures above were provided on pages 244 to 246 of the hearing bundle, and were explained in the evidence, particularly by Mrs Monkman. These covered livelihood items derived from the farm business, livelihood items derived from joint current accounts/private accounts, and calculations to apportion the livelihood expenses met from joint current account/private accounts between farming and non-farming sources. The schedules were explained and amplified in further schedules and in the evidence, and an additional source of benefit in kind, produce consumed from the farm, was referred to in Mrs Monkman's evidence.

14. Although many of the figures produced by Mrs Monkman were adopted by the respondents for the purposes of their calculations, the parties used different approaches to the treatment and analysis of the figures.

15. The respondents' primary Schedules were on pages 100 and 101 of the hearing bundle. The respondents' Schedule on page 100 covered each year ending 21$^{st}$ June from 2000 to 2006 inclusive. This was headed Schedule comparing applicant's sources of livelihood derived from his work on the holding with all sources of livelihood. It was stated that this was based on figures provided by the applicant and allowed for all the applicant's benefits in kind claimed by him. The column headings were as follows:

(i) Applicant's drawings from farm business (net of tax).

(ii) Applicant's benefits in kind from farm business.

(iii) Joint unearned income.

(iv) Wife's earned (net) income.

(v) Wife's unearned income.

(vi) Applicant's unearned income.

(vii) Total of all sources of (net) Livelihood.

(viii) Half of total pool.

(ix) Sum of columns (i) and (ii).

(x) Sum of columns (i) and (ii) expressed as a % of column (vii).

(xi) Half of sum of columns (i) & (ii) expressed as a % of column (viii).

The percentages presented by the respondents in column (xi) of this schedule were:

| | |
|---|---|
| Yr to 21 June 2006 | 38.19% |
| Yr to 21 June 2005 | 39.20% |
| Yr to 21 June 2004 | 49.17% |
| Yr to 21 June 2003 | 38.20% |
| Yr to 21 June 2002 | 33.01 % |
| Yr to 21 June 2001 | 36.22% |
| Yr to 21 June 2000 | 31.99% |

16. The applicant's primary case was that the respondents' approach was incorrect but he also proposed various changes to the respondents' schedule if the respondents' approach was accepted. During his evidence, Mr Smith, the respondents' expert, considered the proposed adjustments and the effect that these would have on the respondents' Schedule. He concluded that, even if accepted, such adjustments resulted in only one year (2004) in which half of the sum in columns (i) and (ii) expressed as a % of column (viii) was above 50%. This was 72.23% in 2004.

17. The respondents' primary case was that the applicant's approach was incorrect. However, if the Tribunal accepted the applicant's approach, the respondents challenged a number of areas, which if accepted, would have resulted in the applicant failing to show that he satisfied the statutory test. These areas of challenge were particularly addressed in the Respondents' Reply to the Applicant's Revised Schedule ('the Reply"), and the evidence of Mr Smith.

18. Using the same headings and columns as contained in the applicant's schedule, in the Reply the respondents' proposed changes resulted in the following proposed percentages in the fifth column (% of Livelihood Expenditure derived from the Applicant's work on the Holding (£)) as set out in paragraph 11 above;

| | |
|---|---|
| Yr ending 21 June 2006 | 31.05% |
| Yr ending 21 June 2005 | 27.59% |
| Yr ending 21 June 2004 | 17.68% |
| Yr ending 21 June 2003 | -7.02% |
| Yr ending 21 June 2002 | 27.10% |
| Yr ending 21 June 2001 | 32.08% |
| Yr ending 21 June 2000 | 21.69% |

19. These challenges were addressed in the evidence of Mrs Monkman and Mr Robinson. Additional explanatory schedules were provided by Mrs Monkman.

20. The burden of proof is on the applicant to show that the statutory test is satisfied and the standard of proof is the ordinary civil standard of the balance of probabilities.

**Evidence at the Hearing**

**Mr Nigel Monkman**

21. Mr Monkman, the applicant, confirmed the contents of his witness statement and gave additional oral evidence. He described his family's connection with West Cawthorne Farm. His grandparents had moved to the farm in 1947. His grandfather and his father ran the farming

business in partnership from about 1958. Their joint tenancy of the farm commenced in 1959. Mr Monkman's grandfather died in 1962. His father, Colin Monkman, continued running the farm. Mr Monkman grew up at the farm and from the age of sixteen joined his father in running this. After he and Mrs Monkman were married in 1984, although they would have liked to remain at the farm, this was still the home of his grandmother and sisters. His parents had separated earlier. Mr and Mrs Monkman moved to Wrelton where they lived for fourteen and a half years. Mr Monkman continued to run the farm with his father. They went into partnership in April 1985. Mr Monkman has had no other employment except on the farm since he was sixteen. He is now in his forties.

22. In 1996 Mr Monkman's grandmother passed away. His sisters had left the farm. Negotiations were commenced with the landlord including renovation and repair work to be carried out to the farmhouse. Mr Monkman's intention was that he and Mrs Monkman would live at the farm with his father. These negotiations were unsuccessful. In the meantime Mr Colin Monkman's health was deteriorating. He suffered from heart failure, asthma and diabetes. From time to time he was in hospital. Mr Monkman was his chief carer during this time and his responsibilities on the farm increased. He was with his father when he passed away, and his affection for both his father and for the farm was evident in his oral evidence.

23. Mr Monkman said that during the unsuccessful negotiations he and Mrs Monkman had lost the opportunity of purchasing a property. When the opportunity arose to purchase their current home, School House, in Cropton, they did so. He said that they never considered School House as a long term alternative to the farm but considered that developing their own property would give them additional financial security.

24. Mr Monkman described the farm as a traditional mixed farm. The farm covers approximately 260 acres in total. The most northerly part adjoins the north Yorkshire moors and comprises about sixty acres of severely disadvantaged land which is use to support a small suckler herd. Homebred calves are finished on the farm with additional store cattle bought in if market conditions are favourable. The fields closest to the farmhouse and buildings are light sand and are primarily in permanent pasture or temporary grass to support the livestock enterprise, which also includes two hundred breeding ewes. In the southern areas of the farm the light limestone land forms the majority of the arable enterprise, mainly producing barley for malting and feed. This land is used to grow fodder crops primarily for finishing the home bred lambs and any additional store lambs purchased. The farm has also had a number of links with Cropton Brewery.

25. Mr Monkman's evidence was that he worked 50 to 60 hours a week at the farm, but Mrs Monkman in her evidence said that this was more like 80 to 100 hours.

26. Mrs Monkman regularly looks farm book keeping, VAT and taxation matters. They have been married for 25 years and have two sons, born in 2003 and 2006. She worked full time but reduced this to three days a week when their first son was born.

27. One of the areas queried by the respondents in the Reply was benefits in kind. This included costs of vet's bills and food for two dogs. Mr Monkman said that one of the dogs was a Springer spaniel. This was a family pet throughout and had recently died at the age of fourteen years. Vets bills had been incurred as this dog had suffered accidents. The other dog was a Collie. This was primarily a pet but also "did what a Collie did on the farm". It was not trained. It stayed in the farm overnight. Mr Monkman had purchased both dogs.

28. It was also questioned whether it was appropriate to classify items of Mr Monkman's clothing as a benefit in kind. The respondents suggested that this was work wear. Mr Monkman said that this was general outdoor clothing that he also wore at home. This included Wellington boots, which he had bought through the business.

29. Another item that was queried was three vehicles. Mr Monkman said that these were the type of vehicles that were used for running the dogs back and forth to the farm. These included a Mitsibushi pickup and two Ford Fiesta vans in succession. The primary use was for travel to and from work. They had been classified as commercial vehicles for insurance purposes. He currently also uses a private car that his father had used.

30. In answer to questions in respect of the farm accounts, Mr Monkman said that any farm business will run their accounts by putting vehicles and dogs through as expenses, but that did not stop these being benefits in kind for other purposes.

31. In respect of the family's day to day living arrangements, Mr Monkman said that he and Mrs Monkman have their evening meal and breakfast together. They each have their separate lives and interests, but do have a joint bank account. They both have earnings, and generally speaking these funds are put in their joint account. They contribute to a lifestyle together, but they contribute from various sources and each has expenditure.

32. Mr and Mrs Monkman use a credit card occasionally. They only have one credit card. Mr Monkman has a debit card for the farm account that he uses very rarely. For example, Mr Monkman said he bought an item for the farm on the internet and Mrs Monkman uses a card for purchasing petrol. The business profits are in the business bank account and he draws money based on what he thinks the business can afford.

33. He did not consider that he received a great deal of benefit in lifestyle terms when Mrs Monkman took a holiday. He did not accept that even if an item appeared to benefit one party in effect it benefits another party. He rejected the suggestion that there is a total lifestyle supported by a total pool.

34. There were some special drawings which from time to time moved from the farm business into the joint bank account. He rejected the suggestion that money was circulating freely into the joint bank account. Some capital sums had come from the savings account and were one off occurrences.

35. Mr and Mrs Monkman and their sons live in the School House. This had been renovated. On the same site another building, The Old School House, had undergone the very early stages of conversion. It was uninhabitable when Mr Colin Monkman passed away. They had intended to convert it but had not done so yet.

**Mrs Valerie Anne Monkman**

36. Mrs Monkman has undertaken the bookkeeping and related tasks for the farm business for many years. In addition she has worked for approximately twenty eight years for a local engineering company. For the first ten years she worked on accounts and finance. Although she does not hold a professional accounting qualification, her experience covers most aspects of management and financial accounting. She confirmed the contents her witness statement and gave oral evidence.

37. The Summary of Income and Expenditure that Mrs Monkman prepared provided information regarding income and expenditure over the seven year period up to 21st June 2006. In her witness statement she provided additional information and explanations in respect of the various sources. These included:

- 'Nigel's Farming Income' - these figures were prepared by Mr Richardson, Mr Monkman's accountant.

- ‘Other Income for Nigel’ - Mrs Monkman said she sought to identify all other sums of money received by Mr Monkman whether or not these might be otherwise classified ‘income’, such as a small inheritance from his grandmother and proceeds of the sale of his motorbike.

- ‘Nigel’s Benefits in Kind’ - She had referred to the accounting records of the business and reviewed all business transactions during the seven year period. A detailed Schedule was generated which was supported by documentation, mainly supplier invoices. She had cross referenced this to information relating to Mr Monkman’s drawings from the business supplied by Mr Richardson to ensure that there was no duplication. She also added as an additional item to that set out under this heading produce consumed from the farm, to reflect fruit and vegetables grown on the farm and consumed within her household, which she had sought to value on the basis of retail prices when the items are in season.

- ‘Nigel’s Investments Into and Drawings From the Farm Business’ – Mrs Monkman had prepared this section with reference to the farm accounts and their own financial records. The information in respect of regular drawings was provided by Mr Richardson. This included a figure of £8,000 in the year to 21st June 2003, which was cash invested into the farm business from their joint savings account. ‘Special drawings’ of £6,600 in the year to 21st June 2002 and £20,000 in the year to 21st June 2004 were drawings from the farm business paid into their joint current account. Regular drawings were based on the accounts and then time apportioned to reflect the period to 21st June each year.

- ‘Analysis of Nigel’s Regular Drawings’ - This included drawings which Mr Monkman used to pay his income tax, and drawings used to pay for property development at School House / Old School. The main item of expenditure from cash drawings was on food;

- ‘Joint Current Account/ Private Accounts Income and Expenditure’ – Mrs Monkman provided details of how she had prepared this section and the information relied upon.

- ‘Summary of Improvement Costs for Own Home’ - This section identified the investment in developing Mr and Mrs Monkman’s property over the seven year period.

39. In respect of housing costs, Mrs Monkman said that the schedule incorporated the proportion of total costs that was relevant to their accommodation at School House. In respect of Mortgage Costs, Mortgage Protection and Legal Fees/Mortgage, she had used a figure of 65% of total costs. These costs were apportioned in line with the property valuation carried out by local estate agents in February 2007. In respect of House/Contents Insurance, these had been apportioned in line with insurance renewal notice from NFL). In respect of Council Tax, the full sum had been allocated to School House, no council tax being currently payable in respect of The Old School.

40. Their private property comprises two separate buildings and they had apportioned the mortgage costs on the basis of the capital value of these buildings. Part of the mortgage is paid in respect of The Old School, and part in respect of School House, where they live. The Old School was purchased with planning permission for development. It is not habitable and was purchased as an investment. She confirmed that it is still intended that it would be developed. They had just had three years of unsuccessful negotiations in respect of the farmhouse renovations so that they could live there. As they could not live at the farm they purchased the School House and The Old School House. She considered that the housing costs only arose because they did not have the benefit of living on the farm. When it was put to her that her current residential enjoyment was unitary enjoyment of a single unit, Mrs Monkman said that she could not enjoy a building that they are not living in and that the applicant was trying to offer a reasonable approach to considering their housing costs. She believed it to be a fair and reasonable basis to split this on the relative capital value of the two components.

41. Mrs Monkman said that she had held a current account with the Yorkshire Bank since she started working in 1981 as her salary was paid into a bank account. When they married they changed this account into their joint names as Mr Monkman did not have a bank account. Their current account is used to meet the type of expenses typically met by direct debit or standing order or where it is more practical to pay by cheque. On a day to day basis the account is under her control and in the absence of any other current account she uses it from time to time to meet her personal expenses.

42. Mr Monkman uses cash drawn from the business to pay for their everyday expenses, in particular items such as food and other typical household/laundry goods. This was a continuation of the previous position when Mr Monkman's father lived at the farmhouse. Their finances were organised primarily around historical habits or practical reasons. They would have taken more money out of the farm had they known that what they believed to be sensible practical actions to support the business might later be interpreted under the livelihood test.

43. In respect of benefits in kind, she had reviewed the farm records and made sure that she did not duplicate benefits in kind with drawings. She then cross-referenced this to check that there was no duplication. Benefits in kind and drawings were both funded either through the accounts of the farm or using monies from the farm. In respect of the suggesting that some of the benefits in kind had been treated for the purposes of the farm accounts as a business expense and therefore could not be a benefit in kind, Mrs Monkman said that this did not exclude these items from being benefits in kind. It was normal accounting procedure to treat these items as business expenses for the purposes of the profit and loss account Had the business not met these Mr Monkman or she would have had to meet them from another source.

44. In respect of the dogs, at no time had they ever purchased a dog through the business. The Springer spaniel was Mr Monkman's companion. Throughout the seven year period there had been a Border Collie. The Collie slept on the farm overnight and was company to Mr Monkman's father. In respect of the items of clothing, Mrs Monkman said that she had been through the farm accounts and had identified these items as Mr Monkman's and not his fathers. She confirmed that he wears them at the farm and at home. They are not specialist work clothes, but are general items of outdoor clothing.

45. She said that it had been suggested that the vehicles were not benefits in kind because of terminology in the insurance documents. However that description related to the appearance of the vehicles only. The main use that Mr Monkman had made of them was to travel back and forth to the farm.

46. Commenting on the respondents' version of the applicant's analysis schedules in the Reply, Mrs Monkman said that the figure of £20,000 was made up of two sums of £10,000 and were paid into Mr and Mrs Monkman's current account. From March 2003 a change had been made to that account. They had taken on the mortgage debt at that time. The £20,000 would only reduce their mortgage borrowings if they did not spend the money. However, some proportion of it was clearly spent. It was not the applicant's case that all of the £20,000 was spent on livelihood items, and they had tried to provide an apportionment. It was not correct that the figure of £20,000 was used to reduce the mortgage and therefore should be ignored as the respondents contended.

47. In respect of the figure of £6,600, Mrs Monkman said that this was paid into the current account at the time when it was a standard current account with no mortgage debt attached to it. The figure of £8,000 went directly from their joint savings account into the farm account so that they could purchase some store cattle. Included in the documents was an invoice from a livestock dealer from whom they purchased cattle in 2002. This went directly from their savings account into the farm and formed a capital investment into the business and not a reverse drawing.

48. The respondents had sought to add back items of expenditure that were excluded by the applicant from the list of livelihood items. Mrs Monkman commented on a number of these. The item 'Annie's car' was a personal item of expenditure of Mrs Monkman. Her Union membership came about due to a stressful situation at work. Items for the farm included those paid for over the internet. From time to time they used their personal funds to pay for expenses of the farm business for convenience.

49. Mrs Monkman considered that it was inappropriate for the respondents not to take into account Mr Monkman's drawings used to pay income tax. These were no different to any other expenditure met from his drawings from the business. She considered that the respondents' Schedule on page 100 should have reflected an additional £6,600 in 2002, £20,000 in 2004, and all years should be increased to include Mr Monkman's drawings to meet his personal tax liability.

**Mr Andrew Wesley Richardson FCCA**

50. Mr Andrew Wesley Richardson FCCA of White and Hoggard, Chartered Certified Accountants, gave evidence in support of the applicant's case. Mr Richardson confirmed the contents of his witness statement date 11th May 2009 and gave additional oral evidence.

51. Mr Richardson qualified in 1979 and has worked at White and Hoggard since 1980, although he is a sole practitioner. He has nine employees and they act for a wide range of clients. He said that the firm is very experienced in the preparation of farm accounts. He has acted as accountant for the farm business run by Mr Monkman, formerly in partnership with his father Colin Monkman, for at least 20 years.

52. Mr Richardson said that he had provided the figures for farming income and also the information relating to Mr Monkman's drawings from the business referred to in Mrs Monkman's witness statement.

53. Mr Richardson also provided the regular drawings information referred in Mrs Monkman's statement, and produced the time apportioned drawings figures where it was necessary to identify the drawings falling within years ending 21st June, rather than the conventional accounting year.

54. Based on his experience he confirmed that the farm business had consistently generated a profit and that is a well run farm. The Monkman family had protected the profitability of the farm business by mot making excessive demands for personal purposes.

55. He considered that the accounting records maintained by Mrs Monkman were amongst the best records that he had seen in his professional career of 35 years. He said that he had no doubt that the details that Mrs Monkman had provided prepared meticulously and accurately and are capable of being substantiated wherever necessary.

56. In respect of benefits in kind, Mr Richardson explained that certain items have a dual element, such as clothing, which is used privately and around the farm. If items were shown in the business accounts as business expenses, this did not preclude them from being regarded as benefits in kind.

57. He considered that columns (i) (applicant's drawings from farm business net of tax) and (iv) (wife's earned (net) income) on the respondent's Schedule on page 100 were not comparable. Mrs Monkman's income is net of tax. Tax is withdrawn at source. Mr Monkman's drawings are different. Mr Monkman has to pay tax on his drawings. This is treated in the same way as if it were drawn to pay for an electricity bill. Mr Monkman has the use of the money for six months before it is paid out.

58. He said that the term “special drawings” is an accountancy term used in Mr Richardson’s office to identify an unusual sum of money. He preferred to call it undrawn profit from previous farming activities. There was no reason to treat this in any other way than regular drawings.

**Mr William R Smith BSc FRIGS FAAV**

59. Mr William R Smith BSc FRIGS FAAV of Messrs. Stephenson & Son Agricultural, attended the hearing. He confirmed the contents of his expert report dated 8th May 2009. Mr Smith had prepared a report on West Cawthorne Farm, on behalf of the respondents.

60. The report included an introductory section and background information, none of which was in dispute at the hearing. The report then went on to state that it was not in dispute that the suitability test was satisfied.

61. At paragraph 3 of his report, Mr Smith said that Mr Monkman had provided copies of his previous years’ accounts, farming proposals and had allowed access to his owner occupied house and the adjoining former school site with consent for development to residential use. Mr and Mrs Monkman own these properties jointly.

62. At paragraph 4.0 of his report, Mr Smith stated:

*4.1 The applicant has provided details of the matters referred to in the direction dated 26th November 2008. The information provided by the applicant is full and clearly itemised on the schedules and supported by documentation. The landlord’s accept this information as being full and accurate, but subject to analysis in relation to which of the items fall to be considered under the direction’s headings.*

*4.2 Discussions have taken place with the valuer and solicitor acting for the applicant and it has been confirmed to them that the amounts shown and detailed are agreed by the respondents, but not the detailed analysis.*

63. At the hearing Mr Smith addressed the question of Mr Monkman’s eligibility. He said that he had difficulty with the applicant’s approach because using the applicant’s method it becomes a very complicated and arbitrary calculation. An attempt had been made to divide expenses between personal and family expenses and to apportion between investment property and other expenses. He considered the divisions and allocations made by the applicant’s analysis to be artificial and arbitrary. His preferred method was pooling the income and using the total income against the expenses. He considered this to be a fair reflection of the situation.

64. In his Schedule (page 100) Mr Smith treated Mr and Mrs Monkman as a single unit. Mr Smith accepted that his Schedule did not deal with expenditure. He said that he had adopted Mrs Monkman’s figures and that format of the Schedule had been provided at a previous directions hearing.

65. He had considered the meaning of livelihood for the purposes of the statutory test before preparing the Schedule. He had included only income in the respondents’ Schedule. He accepted that income and expenditure are different. The income has to come in to fund the expenditure. The respondents’ approach makes the assumption that the income is spent, and that income equals expenditure. Mr Smith considered that it was not necessary to show how income is spent if a pool system is in operation. Therefore it was not necessary for the respondents’ Schedule to provide information about expenditure. The respondents’ Schedule does not show expenditure. It makes the assumption that expenditure comes out of the pool in the same proportion that it goes in. Mr Smith said that there had been no attempt to deal with Mr and Mrs Monkman separately.

66. In respect of the applicant's apportionment of mortgage costs, in so far as the monies had to be apportioned under the applicant's approach, Mr Smith accepted that the applicant's method was a fair way to make the apportionment. Also, if the applicant's approach was followed he had no difficulty with the applicant's treatment of the household insurance.

67. In respect of benefits in kind, Mr Smith's view was that most or all of the items had been reflected in the farm accounts as expenses of the business. This reduced the tax payable by the business and it would be wrong to now include them again as benefits in kind. In his view a vehicle such as a pickup is a farm vehicle and a farmer would have no difficulty treating this as a legitimate business expense. He did not dispute that there could be some element of benefit in kind. He regarded the Collie as a legitimate business expense and the spaniel as a benefit in kind. He had not allowed for the clothes in his figures as the sums were so small. He accepted in principle that there was a benefit in kind from the property and that this should have been reflected on the respondent's Schedule. However, he had not produced alternative figures for this element.

**The applicant's and respondents' approaches**

68. There was no substantial disagreement between the parties' Counsel as to the relevant law. The factual information supporting applicant's schedules had been accepted by Mr Smith as full and accurate and supported by the documentary evidence. There was an element of 'pooling' by both parties in this case.

69. The main area of dispute between the parties, which led to the differences in the treatment of the figures and result in terms of satisfying or failing to satisfy the statutory test, was the different approaches adopted by the parties.

70. Miss Taskis submitted that Section 36(3)(a) was directed towards identifying an applicant's primary "source of livelihood". This raised two questions:

(i) What is the applicant's principle source of livelihood during the relevant period of seven years - five years within that seven; and

(ii) From what source is it derived? Whether the applicant derived more than 50% of that livelihood from work on the holding rather than from other sources?

71. In respect of the first aspect, Miss Taskis submitted that livelihood should be defined in terms of expenditure. The starting point was to identify all of the applicant's day to day expenditure excluding money spent on matters other than ordinary living expenses. What must be excluded is expenditure on things which are not maintenance and subsidence items, such as savings and investments. It was then necessary to identify the source(s) of this expenditure, to see whether it comes from farm work or not.

72. The two aspects of the test are referred to in the leading authority on what constitutes the meaning of "source of livelihood"; the decision of the Court of Appeal in *Welby v Caswell* [1995] 2EGLR 1. She referred to the judgment of Lord Justice Stuart-Smith at 3D.

*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.*

73. In *Trinity College Cambridge v Caines* [1984] 2 EGLR 17, Mr Justice Webster concluded that the livelihood meant what was spent or consumed by the applicant on "ordinary living expenses from time to time in money and/or kind". In that case Mr Justice Webster considered the predecessor to the 1986 Act, but the subject provisions were in identical terms. The question for the Court in that case was how far undrawn farm profits, accordingly not applied in maintaining

or sustaining the applicant, could properly be a source of livelihood. It was held that they could not. The meaning of livelihood was considered and equated with expenditure. In considering livelihood the focus is on consumption, what is spent by the applicant on ordinary living expenses. The Court in that case was considering a specific question, but Mr Justice Webster did not confine his meaning to that question and Miss Taskis submitted that there is no reason to confine the meaning of the words to this particular context. The same meaning was subsequently applied in the general context by Stuart-Smith LJ in *Welby v Caswell.*

74. Miss Taskis submitted that not all expenditure by the applicant or his household constituted the type of expenditure on 'ordinary living expenses' which are relevant to the livelihood test. For the purpose of the first stage of the test, it has been said that 'living' encompasses more than merely the basic concept of staying alive, which would reduce the definition of livelihood to what is spent on or consumed in the provision of food, drink and other such basic necessities. 'Living' has been interpreted as 'the way on chooses to live one's life'; leaving room for a degree of personal choice. On this basis, livelihood includes not only basic expenditure on such matters as food, household bills and the cost of provision and running of the family car, but extends to money spent in keeping the applicant's family in the way or to the standard he deems appropriate. However, expenditure on such matters as pension contributions and savings schemes cannot properly be categorised as expenditure 'for the purpose of living[1]. Such expenditure is not properly treated as livelihood and the source of such expenditure is not relevant for the purpose of the statutory test.

75. She referred to the decision in *Thomson v Church Commissioners for England* (2005) ALT/N/D/29 in which it was held that the cost to the applicant of keeping four horses so that her children could have use of them was properly part of her livelihood. It was said that "the way a parent entertains, trains and brings up [his] children must surely be described as part of that parent's 'living' and thus the means by which it is paid for must constitute part of the livelihood of that parent". In *Townson v Executors of Waddington* (2008) ALT/W/S/352, the 'livelihood' test was described by the Tribunal as what the applicant actually spent and consumed for the purpose of living in the style which he had chosen and in which he in fact did lead his life during the relevant years.

76. In each of the above cases the approach taken was to consider first whether the nature of the expense is properly considered as livelihood, and if so, categorising the means of funding that expense as relevantly or non-relevantly derived from agricultural work on the holding or not.

77. The applicant's approach to this application was to identify the outgoings on livelihood first. What has been spent or consumed by him on his ordinary living expenses for maintaining his whole family unit (his wife and children) including what spent on food drink, accommodation and life style choices.

78. Once relevant expenditure had been identified (what has been spent for the purpose of living), then the next step is to consider and compare the sources of the income (or other non-monetary input) from which these items of expenditure are supplied. For this purpose the applicant had brought into account all sources of household income, including the salary of Mrs Monkman.

79. In determining the applicant's principal (in this context more than 50%) source of livelihood, the proper approach is to make a comparison of those sources derived from the applicant's agricultural work on or from the holding (relevant derived sources), with any other sources.

80. Miss Taskis submitted that the first and second aspects are:

(i) What has been spent or consumed by the applicant on his ordinary living expenses for maintaining his whole family including what spent on food, drink and lifestyle choices, but excluding expenditure on non-maintenance items such as savings and investments; and

(ii) What applicant has brought from farm business including what has been enjoyed in the way of benefits in kind from farm business (relevant livelihood expenditure) and set against it anything that came in from other sources outside the farm business, such as income of the applicant's wife, inheritances etc.

81. She submitted that in some cases there may be very little difference between (i) and (ii); but not in this case. This case is unusual as it is possible to identify very accurately categories of expenditure incurred by the applicant and identify expenditure on living expenses i.e. mortgage and food and then by contrast non livelihood expenditure i.e. savings and investments.

82. The applicant's approach is objected to by respondents on the basis that to try to attribute particular expenditure to particular sources of income is artificial process. Miss Taskis submitted that the applicant's approach reflects the reality of how the applicant's household is managed. It is an exercise that is not only possible but practicable in this case.

83. Miss Moss submitted that there was virtually no dispute between the parties as to the law. What both parties are trying to address is consumption, which can take all types of forms. The parties have two different ways of trying to identify consumption generated from agricultural work on the holding. There are large areas where the figures are common to the parties. However, there is a divergence between the parties in respect of how the manner in which the applicant is living is to be reflected.

84. Miss Moss said that the respondents use the word 'pooling' to deal with the problem of pooled consumption. The respondents pool throughout but the applicant does not. The matter is complicated by two different kinds of inter-relationship; that of husband and wife, and outside income. The applicant has a problem dealing with the joint bank account. The respondents do not. What pooling produces is a percentage, and that is taken as indicative of the amount of expenditure in the total pool. If capital items are included this produces only one year in which the applicant exceeds the 50% threshold.

85. She submitted that the respondents do not accept that the applicant's approach adequately reflects the situation of a husband and life living together. The respondents were seeking to establish total available livelihood. The statute does not require specific items of expenditure to be dissected as to source. It makes no difference if items are paid with cash or credit card. Everything that the husband enjoys is in a sense enjoyed by his wife. If she buys a dress this is part of the joint standard of living. If a man's wife takes a holiday, he obtains a benefit when she returns with renewed energy.

86. Miss Moss said that the parties agreed that what claimed to have been bought or expended on individual items was actually bought or expended. If it is known where the money came from and that everything expended during that period was paid from that single total pool, then the relationship of the relevant total consumable income or benefits to that total pool can be identified. It is an interlocking relationship. The pool of consumable resources, consumable money and consumable benefits, establishes a percentage that expresses fairly the strength of the farm dependence within the overall family resources. The respondents make the assumption that what is available is used, and it was submitted that nothing in this case suggests otherwise.

87. The respondents had relatively little to say about the underlying figures. However, for the sake of clarity, the applicant's drawings from the farm business, items that might go into the Schedule on page 100 of the bundle, do not include a figure of tax because it is not available for consumption.

88. In respect of the applicant's approach, Miss Moss suggested that there were elements that should cause disquiet, including money moving in and out of the joint account. The applicant had made the best use of the information available to it, but this approach can be manipulated. However, nothing in the respondents' Schedule can be manipulated. There should be a process

of stepping back and asking whether the farm dependency looks right. The applicant’s approach does not fully reflect the fact of pooling. The applicant’s approach does not take into account that half of the benefit belongs to his wife because they are a family unit with a pooled mixed financial situation. She submitted that the methodology adopted by the respondents is the easiest and least problematic approach.

89. Miss Moss submitted that there was no simpler method of approach than that of the respondents. So far as the respondents could establish, all of the expenses came out of the Schedule on page 100. This represents the applicant and his wife’s total available consumable resources and shows how the applicant and his family were living during that period. It is a simple test of relative contribution to global consumption. Miss Moss said that this is a functioning family unit with diverse sources of income. The respondents do not see that separating out individual items help. She submitted that the applicant’s approach produces too much subjectivity, whereas the respondents’ have adopted an objective approach.

90. It had been suggested that about £1,000 per annum is the value of the produce of the kitchen garden. This could count against the applicant, not in his favour. It is not a reflection of his agricultural work on the holding. However, the respondents were not inviting the Tribunal to revise page 100 of the bundle to include this figure in the respondents’ favour.

91. Miss Moss submitted that with the applicant’s approach, there is an intermixing of figures and a problem about how to deal with accommodation. In order to work out the contribution of the agricultural tenancy, it is appropriate to assess the true value of an item objectively. She said that accommodation is usually a key item in assessing livelihood. In some cases an applicant may have accommodation on the farm. If this not reflected in any other way, the question is what its true value objectively. If the person lives on the farm this is a consumed item. If he does not live on the farm, the accommodation cannot be ignored, and has to feature somewhere. The question could be asked, who puts the money in to fund the mortgage of the property. This is often not complex where there is only one income, and the answer to the question how does the person pay for it, is that he pays for it off the farm. However, this becomes more complex where there is more than one income. The question is then how does the applicant treat the money that he has. She submitted that it does not matter if you buy a sandwich or a house, the principal is the same.

92. The respondent’s Schedule deals with sources which would have dealt with the payment situation for the house. The respondents say this comes from one or other of the sources or from capital generated in the past. The respondents took a broad view that the pool to which the applicant and his wife contribute covers lots of items, including the house payment. The applicant and his wife have a mortgage where the amount of interest payable is dependent on the outstanding debt. This caused money to be taken in and out of the farm business from time to time to support the mortgage.

93. Miss Moss submitted that livelihood is all about dependency. This includes all sorts of consumption, including quality of life and home. It is not a list of items consumed. Here is a unitary lifestyle. That is how that applicant and his family run their life.

94. She submitted that the basic difference between the parties is that the respondents do not consider it possible or satisfactory to make a list and separate items out in the manner adopted by the applicant. The respondents have followed the statutory test and looked at the Schedule globally. It is known that there is income and that some of it went to a mortgage payment. It is not necessary to enquire what funded that particular mortgage payment. Proportionately, the contribution will be reflected through for every benefit.

95. The parties have expressed themselves in figures because the Courts have said that the principal source of livelihood has to be measured in a precise way or a quantified equivalent.

96. As a matter of background the applicant had failed to make an application under Section 41 of the Act. The Tribunal therefore had no discretion.

**The Tribunal's conclusions**

97. Having considered the evidence as a whole and the helpful submissions made by both Counsel, the Tribunal has come to the conclusion that the appropriate approach in this case is that adopted by the applicant.

98. The information provided by the applicant in support of his Schedules was accepted as full and accurate by Mr Smith, the respondents' expert, in his report.

*The information provided by the applicant is full and clearly itemised on the schedules and supported by documentation. The landlords accept this information as being full and accurate, but subject to analysis in relation to which of the items fall to be considered under the direction's headings.*

99. The evidence at the hearing, as summarised above, in the witness statements and recorded in the record of proceedings, amplified the detailed information that was available in support of the applicant's case. On the particular facts and circumstances of this case, Mrs Monkman was in the best position to provide very full details which might not have been available in other applications of a similar nature. Whilst the approach adopted by the respondents may be suitable in other cases, on other facts, the circumstances of this case are more suited to the applicant's approach to determine whether the applicant meets to requirements of Section 36(3)(a). We consider that the approach adopted by the applicant is of greater assistance to the Tribunal in reaching its conclusions in accordance with the law and authorities.

100. Mrs Monkman, although not professionally qualified, has years of experience supported by a close knowledge of the facts of this case. Her abilities and reliability were supported and confirmed in the evidence of Mr Richardson, the Accountant. Mrs Monkman has an interest in the outcome of this application and the Tribunal has taken this feature into account in assessing her evidence. We considered that she addressed her research, preparation and conclusions in a professional manner and accept her factual evidence and explanations as credible and reliable.

101. The respondents do not follow the two stage process adopted by the applicant and outlined by Miss Taskis. This case is unusual as it is possible to identify reasonably accurately categories of expenditure incurred by the applicant and identify expenditure on living expenses i.e. mortgage and food, and then by contrast non livelihood expenditure i.e. savings and investments. The respondents object to the applicant's approach on the basis that to try to attribute particular expenditure to particular sources of income is artificial process. However we agree with Miss Taskis that in this particular case the approach is appropriate to reflect the reality of how the applicant's household is managed.

102. The respondents' Schedule on page 100 (whether in its initial or adjusted form), in effect contained a summary of the income available to be enjoyed by the applicant. However, on the available evidence not all of that income had been consumed for a relevant purpose. The question that the respondents' Schedule does not address is the source of the applicant's expenditure on livelihood.

103. The applicant has identified relevant expenditure and then went on to identify the source of that expenditure as best he could on the evidence available. It is not possible for this to be an exact and precise exercise, and the Tribunal considers that the way that the applicant approached this was a sensible and proper in the circumstances. In respect of pooling, the approach of the applicant does not deny that Mr and Mrs Monkman operate as a single unit with income from various sources. However, not everything they spent their money on was on livelihood. The

thrust of the applicant's approach was that not all of that income has been consumed for a relevant purpose.

104. As to whether the expenditure was for Mr and Mrs Monkman's mutual benefit, Mr Monkman did not consider that for example, he gained a benefit by Mrs Monkman having taken a holiday.

105. If, contrary to the respondents' primary submissions, the Tribunal accepted the applicant's approach, the respondents' raised a number of challenges to the treatment and analysis of various areas of expenditure. These items were referred to in the Reply dated 6th May 2009, and was addressed in the evidence.

106. In respect of the 'benefits in kind', some items were questioned by the respondents. These included the cost of the vet's bills for the two dogs and food for the dogs; clothing and vehicles. Mrs Monkman later added a further item of produce consumed from the farm.

107. The Tribunal does not agree that the treatment of these items otherwise than as benefits in kind in the accounts, necessarily excludes these items from being regarded as benefits in kind for the purposes of this application, if that is their true nature. The Tribunal accepts the evidence of Mr and Mrs Monkman as to the role of the Spaniel as a pet and the Collie being also a pet albeit that it helped out at the farm due to the nature of the breed and its role staying overnight at the farm. We accept that the expenditure in connection with the dogs was correctly presented by the applicant as benefits in kind.

108. Having considered the evidence we also find that the vehicles have correctly been regarded as benefits in kind for the purposes of this application. Mrs Monkman's evidence was that that the category of commercial vehicles was for the purposes of insurance classification and we agree that this should not necessarily exclude these items from being benefits in kind. These were used for the purpose of Mr Monkman travelling to and from the farm, and he would otherwise have had to use other means of transport. The outdoor clothing was not specialist clothing, and was used at home as well as on the farm, and was also a benefit in kind for the purposes of the applicant's lifestyle.

109. Mr Monkman's 'special drawings' of £6,600 in 2002 and £20,000 (comprising £10,000 in November 2003 and £10,000 in June 2004) were paid into the joint account. It was contended by the respondents that these sums were used to reduce the parties' mortgage and that as such they could not be said to have been a source of income for the livelihood expenditure from the joint current account. Submissions were also made in respect of the sum of £8,000 paid into the business from the savings account.

110. During the hearing Mrs Monkman produced her versions of the respondents' schedules in Appendix 2 and 3 to the Reply. She gave detailed explanations, which the Tribunal accepts, in respect of the respondents' main areas of challenge. Mrs Monkman also pointed out that the sum of £6,600 was paid into the current account, which was a standard account at the time with no mortgage debt attached to it. In respect of the mortgage, she explained that the parties had a current account mortgage from March 2003. She described this as a current account that offered a large overdraft facility at low interest, secured against the property. Interest was charged according to the balance. In respect of the two sums of £10,000, any payment into the account would only reduce the level of the debt as long as it remains unspent. As a partner in the business Mr Monkman was entitled to make drawings from the business as long as there were adequate funds and any other partner did not object. He made two drawings of £10,000, which Mrs Monkman said were indistinguishable from the other money in the account. It was not correct that the total of £20,000 was used to reduce the mortgage and therefore should be ignored. This would only reduce the mortgage borrowings if they did not spend the money. However, some portion of the money was spent and on that basis they had tried to provide an apportionment. It was noted that in evidence, Mr Smith said in respect of the applicant's

apportionment of mortgage costs, that in so far as monies had to be apportioned under the applicant's approach, that the applicant's method was a fair way to make the apportionment.

111. The £8,000 went directly from Mr and Mrs Monkman's savings account into the farm so that they could purchase cattle in 2002. This was from a joint savings account and not from a joint current account. This was a capital investment into the farm business. It was a matter of how the farm business was funded and not livelihood expenditure and should not be regarded as a reverse drawing.

112. In respect of items identified as relevant expenditure by the applicant, in the Reply the respondent identified items they considered should be added back in. Mr Smith's evidence was that these were ordinary items of household expenditure, apart from the last three items, 'endowment policy', 'house improvements' and 'savings/mortgage reduction'. Having considered the matters raised in the respondents' Reply and the explanations provided, the Tribunal considers that the applicant's Schedules are generally correct. There was one item 'children's clothes' which appeared twice, but it was noted in 2000 to 2004 there was a zero entry under one of these headings.

113. Having reached the conclusion that the applicant's approach is the most appropriate on the particular facts of this case, and having considered the respondents' various areas of concern, the Tribunal concludes, looking at the figures presented globally and recognising the efforts by both sides to reduce livelihood into figures, that the applicant has shown on the balance of probabilities that he meets the requirements of the livelihood test in Section 36(3) (a) of the Act. The Tribunal makes the direction claimed and specifies the relevant time to be 1st October 2009.

(Signed) A Seifert
Anne Seifert
1st September 2009