AGRICULTURAL LAND TRIBUNAL – WALES
SUCCESSION TO A TENANCY

DECISION OF THE TRIBUNAL IN THE MATTER OF Applications under Sections 39 and 41 of the Agricultural Holdings Act 1986

HOLDING: Ty Crwner
Betws yn Rhos
Abergele

BETWEEN: Norman Steven Roberts **Applicant**
Ty Crwner
Betws yn Rhos
Abergele

AND

Gloria Holmes and **Respondent**
Philip Frederick Holmes
3 Southbank Road
Grassendale
Liverpool

WHEREAS the Tribunal sat at The Kinmel Manor Hotel, Abergele on 19 and 20 March 2009 to consider Applications dated 3 December 2007 made under Sections 39 and 41 of the Agricultural Holdings Act 1986, for a Direction giving entitlement to a tenancy of Ty Crwner, Betws yn Rhos, Abergele comprising 7.30 hectares or thereabouts and situated in the County of Clwyd

AND WHEREAS a Tribunal comprising Mr J A F Buxton (Chairman), Sir R T Williams-Bulkeley (Landowner Panel) and Mr J C Jones (Fanners Panel) was duly appointed in accordance with the provisions of the Agriculture Act 1947 (as amended) to hear and determine the said Applications.

Now the Tribunal, having considered the Application and the documents presented, the evidence given by and on behalf of the Applicant, the evidence given by and on behalf of the Respondents and having inspected the subject holding, do hereby dismiss the said Applications for the reasons set out in the Tribunal's Decision.

No Order as to costs.

Dated 6 May 2009

Signed *J A F Buxton*
J A F Buxton
Chairman

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

Signed *C A Davies*
C A Davies, Tribunal Secretary

IN THE AGRICULTURAL LAND TRIBUNAL (WALES) Ref. No. ALT/6230

BETWEEN:

NORMAN STEVEN ROBERTS

Applicant

-and-

GLORIA HOLMES
PHILIP FREDERICK HOLMES

Respondents

DECISION OF THE TRIBUNAL

1. By Application dated 3 December 2007 Norman Steven Roberts ("the Applicant") applied to the Agricultural Land Tribunal for a Direction entitling him to a tenancy of the agricultural holding known as Ty Crwner, Betws yn Rhos, Abergele, Conwy extending to 7.30 hectares ("the Holding"). The Application followed the death of the late Gwen Meirionwen Roberts, the Applicant's mother ("the deceased") on 10 September 2007. By their Reply dated 21 December 2007 the Landlords of the Holding, Gloria Holmes and Philip Frederick Holmes ("the Respondents") opposed the Application. The Respondents subsequent applied under the Agricultural Holdings Act 1986, S.44(1) for consent to operation of the Notice to Quit served on behalf of the Respondents and dated 1 April 2008. The Applicant opposed this Application by his Reply dated 25 April 2008 but subsequently the Application was withdrawn by the Respondents on 9 January 2009. A Directions Hearing was held thereafter on 13 January 2009 and Directions dated 19 January 2009 were subsequently issued by the Tribunal in advance of the substantive Hearing.

2. The Hearing took place on 19 and 20 March 2009 at The Kinmel Manor Motel, Abergele. At the Hearing the Applicant was represented by Mr Philip Meade MRICS, MRAC, MEWI and Mr J Eifion Bibby MRICS, FAAV, both of Davis Meade. Property Consultants, and the Respondents were represented by Mr David Young of Hibberts LLP, Solicitors. The Hearing was preceded by a detailed inspection of the Holding, including the Farmhouse and the farm buildings together with other land occupied by the Applicant.

3. At the outset of the Hearing Mr Meade informed the Tribunal that he would not be contending on behalf of the Applicant that the Applicant was eligible in accordance with S.36 of the 1986 Act but that it would be contended on his behalf of that he should he treated as eligible in accordance with S.41 of the 1986 Act. Mr Meade also explained that it would be contended that the Applicant was suitable to be granted a tenancy of the Holding and that he satisfied the criteria contained in the 1986 Act thereby enabling the Tribunal to issue a Direction.

4. The background to the Application was largely not in dispute. The parents of the first-named Respondent, Joseph Baker and Margaret Baker, acquired the Freehold reversionary interest in the Holding by a Conveyance dated 31 May 1973. As we have already recorded, the Holding extends to about 7.30 hectares. It is situated on the outskirts of the village of Betws yn Rhos and comprises a detached farmhouse containing three bedrooms: a two-bay traditional pole barn; and a random stone and slate traditional outbuilding incorporating a store, loose box and cow stalls with loft over

part. The land is generally sloping and the farming carried on consists of the rearing of sheep and suckler cows.

5. At the time that Messrs. Baker acquired their interest in the Holding it was subject to a protected tenancy held by the Applicant's father, the late Robert Roberts. On or about 28 March 1979 Robert Roberts died as the result of a farm accident, following which his widow, the deceased as earlier referred to in this Decision, applied for succession. Following contested proceedings a Direction was granted in her favour by the Tribunal. At or about the time of the commencement of the deceased's tenancy, she and the Applicant entered into a Partnership Agreement dated 30 June 1980. By Clause (2) of the Partnership Agreement it was provided that the net profits of the farm business were to be divided 90 per centum to the Applicant and 10 per centum to the deceased. At the Hearing it was not in dispute that this division of profits continued unchanged until the deceased's death. By Clause 2 of her Will dated 29 May 2003 the deceased gave her estate and interest in her live and dead farming stock, including machinery, equipment, plant, implements, fodder and all her interest in the farming business, together with her partnership share, and all quota and subsidy entitlements, as well as the benefit of the tenancy that she had held, to the Applicant.

6. Throughout his life the Applicant has lived at the Farmhouse which is also occupied by his sister, Ms Carys Wyn Roberts, together with the deceased until her death. It was not in dispute that the Applicant has in practice been solely responsible for farming the Holding and the other land referred to in the following paragraph which comprises part of the agricultural unit of which the Holding forms part.

7. The farming business consists of the Holding and four further parcels of agricultural land extending to 10.9 hectares approximately, two of these parcels extending to approximately 8.13 hectares being owned by the Applicant and the remainder being occupied by him as tenant. Apart from the farming business the Applicant is employed as a welder by Davies Brothers of The Smithy, Llanfair T.H., Abergele who carry on business as manufacturers of steel framed buildings. That employment is generally on a full time basis although there is some flexibility agreed by his employers as to the Applicant's hours of work.

8. Apart from the issue of suitability, the other issue for our determination was whether or not the Applicant should be treated as eligible under S.41 of the 1986 Act. It is convenient at this stage of our Decision to set out the statutory provisions relevant to an application by an applicant not fully eligible to be treated as eligible:

   S.41 of the 1986 Act provides as follows:

   (1) This section applies to any surviving close relative of the deceased who for some par! 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 (3j 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.

(7) The references in subsections (1) and (6) above to agricultural work carried out by a person on the holding include –

(a) agricultural work carried out by him from the holding, and

(b) other work carried out by him on or from the holding,

which is of a description approved in writing by the landlord after the commencement of this subsection.

S.41(1)(a) of the 1986 Act refers to S.36(3) which is in the following terms:

(3) For the purposes of this section and sections 37 and 48 below, "eligible person" means (subject to the provisions of Part 1 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 dale of death his only or principa 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 or a commercial unit of agricultural land.

9. The evidence before us on the S.41 issue focused on the impact of the Applicant's income from Davies Brothers when compared with the livelihood derived by the Applicant from the farming enterprise. That consisted of drawings, as evidenced by the Farm Accounts; the value of the Applicant's accommodation in the Farmhouse; and the benefits in kind derived by the Applicant

from the farming business. In respect of the value to be attributed to these items, oral evidence together with helpful Schedules were adduced on either side which materially assisted us.

10. The quantum of the net and gross income derived by the Applicant from his work for Davies Brothers during the seven year period ended with the deceased's death, was not in dispute. Equally there was no dispute as to the Applicant's drawings from the farm business, these being apparent from the Farm Accounts, or as to the value of the Applicant's benefits in kind again as recorded in the Farm Accounts. The main issue therefore concerns the value of the Applicant's accommodation in the Farmhouse and how this should be assessed.

11. Valuation evidence was adduced on behalf of both the Applicant and the Respondent as to the rental value of the Farmhouse, Mr David Jones BSc (Hons) FRIGS of Jones & Redfearn, Chartered Surveyors giving evidence on behalf of the Applicant, and Mr Peter Lewis BSc (Hons), MRICS of Wright Manley, Chartered Surveyors doing so on behalf of the Respondents. The valuation approach adopted by Mr Jones was to assess the value of the Farmhouse by reference to comparable properties let under an Assured Shorthold Tenancy, Mr Lewis also undertook the valuation by reference to this valuation method but included alternative methods in his Report. The evidence given by the valuers on the basis of the Farmhouse being let on an Assured Shorthold Tenancy is summarised in the following table:

Year ended 10 September	**Mr Peter Lewis Assessment**	**Mr David Jones Assessment**
2001	£5400	£5100
2002	£5400	£5400
2003	£5700	£5700
2004	£5700	£6000
2005	£5700	£6600
2006	£6000	£7200
2007	£6000	£7500

12. It can be seen from the table set out above that the differential between the assessments of the valuers during the relevant period was narrow, or in some cases non-existent, other than in Ihe last three years to 10 September 2005, 10 September 2006 and 10 September 2007. In evidence Mr Jones stated that the practice of his firm extended all over North Wales and that members of the firm arranged the letting of five or six properties each month. He also stated that the Farmhouse was somewhat unusual and that compatibles were not readily obtainable in the area. He agreed following questions from the Tribunal that having regard to the fact that the Farmhouse was not in fact let on an Assured Shorthold Tenancy, but instead was subject to more extensive repairing obligations contained in Statutory Instrument 1473 of 1973 (as amended) it would be right to apply a 5 per centum discount to the figures that he had adduced, based on Assured Shorthold Tenancy lettings.

13. Mr Lewis confirmed the rent assessment set out in Table 4 of his Report. He also produced statistics in Tables 5 and 6 of his Report (further explained in Tables 8, 9 and 10) intended to assess the livelihood benefit derived by the Applicant from his occupation of the Farmhouse by reference to Agricultural Wages Board allowances, as well as a notional apportionment to the Farmhouse of the total rent payable for the Holding which currently amounts to £2,050 per annum.

14. Having carefully considered the valuation evidence adduced on either side we conclude that the evidence given by Mr Jones is to be preferred and that the starting point for assessment should be the rental value of the Farmhouse if let on an Assured Shorthold Tenancy, rather than any other method of assessment but subject to the 5 per centum adjustment to which we have referred and which we agree is reasonable. We also conclude that in determining the value of the livelihood derived by the Applicant from living in the Farmhouse, that determination should reflect the fact that during the relevant period he occupied it with his mother (the Tenant until her death) and his sister. The argument advanced by Mr Meade was that no discount should be made to reflect the Applicant's occupation of the Farmhouse in common with the other members of his family and that the value of this element of the Applicant's livelihood should simply be assessed by reference to the cost of the Applicant occupying a comparable property on an Assured Shorthold Tenancy. We are unable to accept this argument. The Applicant did not have the benefit of exclusive occupation of the Farmhouse at any time, and his actual occupation was constrained by the presence of other members of his family. In this connection we consider that the approach contended for on behalf of the Landlords is broadly correct, namely that the benefit should be assessed by reference to one-third of the Assured Shorthold rental value. On the basis of our findings as to the rental assessment to be adopted, the effect is as follows:

Year ended 10 September	**Assured Shorthold Tenancy rent**	**5 per centum discount**	**Assured Shorthold Tenancy rent net of discount**	**One-third of Assured Shorthold Tenancy rent net of discount**
2001	£5100	£255	£4845	£1615
2002	£5400	£270	£5130	£1710
2003	£5700	£285	£5415	£1805
2004	£6000	£100	£5700	£ 1 900
2005	£6600	£330	£6270	£2090
2006	£7200	£360	£6840	£2280
2007	£7500	£450	£7050	£2350

15. It is convenient at this stage in our decision to draw together with relevant figures, all of which were agreed, apart from those relating to the value of the Applicant's residence in the Farmhouse to which we have referred above. Our analysis of the figures is contained in the Schedule which for convenience is annexed to this Decision. It can be seen from the calculations set out in the Schedule that in none of the relevant years did the Applicant's total livelihood derive from the agricultural unit exceed approximately 22 per centum of his total income. Nevertheless, we

consider it to be clear from the Applicant's evidence, that apart from his work for Davies Brothers, his farming business was his main interest and occupied much of his spare time. In the course of giving evidence he outlined a typical day which included 4 hours farming work before going to work at Davies Brothers, week-end work and work during periods which otherwise might be taken as holiday. The Applicant also explained that his employer was flexible about the actual time that he was required to start work. Furthermore, a letter from Davies Brothers was produced in evidence which referred to the Applicant's hard work in the fanning business late into the evenings, and at week-ends, as well as him being a person of integrity, trustworthiness and loyally. None of this evidence was challenged by the Respondents. However, although we agree that the Applicant's time commitment to the farming business had been substantial over a long period, including the period relevant to our determination, the profit that he has derived from it has been very limited.

16. We have already referred to S.41 of the 1986 Act and the related S.36(3). The interpretation of S.41 (or its predecessor), and the approach to be adopted in cases in which reliance is placed on it, have been considered by the Tribunal and the High Court in reported decisions which we intend to follow. In *Littlewood v Rolfe* [1981] 2 ABR 51 the Court referred to the earlier Tribunal Decisions in *Judge v Umpleby* (Yorkshire/Lancashire Area Tribunal – July 1978); *Dagg v Lovett* (Northern Area Tribunal – February 1979); and *Clark v Bernard* (South East Area Tribunal – March 1980), and concluded that the phrase "material extent" (now contained in S.41(1)(b) of the 1986 Act) should be given a wide interpretation. In endeavouring to afford guidance as to the approach to be followed Judge Edgar Fay QC stated as follows:

> "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"."

In *Wilson v Earl Spencer's Settlement* Hodgson J provided the following guidance as to the correct approach:

> "What the Tribunal have to consider is the extent to which the condition is not satisfied, or. put another way. the extent of failure. If on the facts it is shown that there has been, in the words of one of the Tribunal Decisions, "a really large failure", then the Applicant cannot bring himself within the section. Clearly the test requires a comparison between the value of what the applicant derives from the holding and her total livelihood. It is not the importance of the "holding value" to her which is relevant but whether the "holding value" is an important satisfaction of the requirements of 51 per cent. This 1 think clearly follows from the wording of section 21 (1) (b) itself, which begins with the postulate that the condition, namely 51 per cent, was not fully satisfied."

More recently in *Thomson v Church Commissioners for England* (Case No. CO/5766/2006) the Decisions in *Littlewood v Rolfe* and *Wilson v Earl Spencer's Settlement* were applied by the High Court in an Appeal from a decision of the Tribunal (by a majority) that the applicant was not a person who ought to be treated as an eligible person and that her application for a succession tenancy therefore failed. Mr Andrew Nicol QC, sitting as a Deputy High Court Judge, pointed out that the critical phrase in the legislation that the Tribunal had to consider was that of whether the condition in S.36(3)(a) of the 1986 Act, that for 5 of the 7 years the applicant's only or principal source of livelihood had been derived from agricultural work on the holding was satisfied to a material extent, the crux of the question being the word "material". In line with *Littlewood v Rolfe* and *Wilson v Earl Spencer's Settlement*, to which we have already referred, the Court confirmed that a wide interpretation of the phrase should be adopted; and that although percentages of fulfilment when worked out were a useful guide to put the facts of time or finance in perspective and to help judge their weight, no mathematical cut off point should be imposed as to what was material.

17. We apply the principles to be derived from these authorities lo the facts of this case having carefully considered the persuasive submissions of Mr Meade on behalf of the Applicant. Mr Meade entirely correctly pointed out that to adopt a mathematical cut off point would be incorrect and that on the figures as produced by him there had been a substantial, albeit, not complete satisfaction of the 51 per centum criterion required to satisfy the primary test contained in S.36(3) of the 1986 Act. However, the figures produced on behalf of the Applicant, showing a maximum income from the Applicant's agricultural work during the relevant period of 39.2 per centum, were based on the premise that the full value to the Applicant of his residence in the Farmhouse should be taken into account in assessing livelihood, an argument that we have rejected for the reasons stated earlier in this Decision.

18. Mr Meade also drew our attention to the provisions of S.41(6) of the 1986 Ac! which provides a statutory example of a situation in which it might be held that there had been satisfaction to a material extent, namely if the particular holding was too small to provide the applicant with his principal source of livelihood. However, having regard to the financial position of the Applicant's farming business as evidenced by the Farm Accounts, we do not consider the true position to be that the size of the agricultural unit operated by the Applicant resulted in the imbalance of income as between the unit and his earnings from Davies Brothers. In our view the true position is that even if the agricultural unit had been substantially larger, a substantial imbalance would still have existed having regard to the limited profits to be derived from the type of farming carried out by the Applicant.

19 We consider that the extent of the Applicant's failure to satisfy the principal source of livelihood test is so substantial that we are bound to hold that the Applicant has not established his case under S.41(1) of the 1986 Act. In reaching this conclusion we have taken into account both the time devoted to the (arming business by the Applicant and the extent of his commitment to it. However, we are satisfied that the Applicant has not come near to satisfying the required criteria since in reality his source of livelihood by a very substantial margin derives, and has derived during the relevant period, from the income that he receives from his paid employment with Davies Brothers. As we have already pointed out, the profitability of the farm business, and the income that the Applicant has derived from it during the relevant period, has been minimal and although we have taken into account the additional financial benefits in kind derived by the Applicant from the business, together with the benefit of his living in the farmhouse, it is in our view impossible to conclude that the combined value results in satisfaction of the criterion contained in S.41(1) of the Act. In short, we consider that the Applicant has failed to satisfy the principal source of livelihood criterion to a material extent and that in these circumstances we have no alternative other than to dismiss the Application.

20. In the circumstances it is unnecessary for us to consider the issue of the Applicant's suitability to be the future tenant of the holding.

Application dismissed.

No Order as to costs.

(Signed) *J A F Buxton*
J A F Buxton
Chairman

Dated 6 May 2009

Note:

Mrs Pat Thomas, a member of the Administrative Justice and Tribunal’s Council, was present as an observer on 19 March 2009. Mrs Thomas took no part in the discussions between the members of the Tribunal about the case and made no observations to members of the Tribunal about the matters in issue.

SCHEDULE

Year ended 10 September	1 Applicant's gross wages (agreed) £	2 Applicant's net wages (agreed) £	3 Applicant's drawings (agreed) £	4 Rent equivalent re. Applicant's occupation of the Farmhouse £	5 Applicant's benefits in kind (agreed) £	6 Total livelihood derived by Applicant from agricultural unit £	7 Total livelihood of Applicant £	8 Applicant's livelihood from agricultural unit as percentage of total income
2001	11168 17	9917 50	353.53	1615	392.31	2360.84	12278.34	19 22
2002	12274.79	10810.68	322.89	1710	574.04	2606.93	13417.61	19.42
2003	12926.61	11316.57	452.13	1805	446.11	2703.24	14019.81	19.28
2004	14975.95	12984.24	978.17	1900	725.78	3603.95	16588.19	21.72
2005	15917.44	13720.90	923.25	2090	608.77	3622.02	17342.92	20.88
2006	16025.12	13845.21	673.99	2280	623.66	3577.65	17422.86	20.53
2007	15886.33	13792.75	780.60	2350	617.96	3748.56	17541.31	21.36