FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(AGRICULTURE LAND AND DRAINAGE)

Case Reference	:	**ALD/SE/S/2016/006**
Holding	:	**Home and Pishill Farm, Stonor, Henley on Thames, Oxfordshire**
Applicant	:	**William Graham Carr**
Represented by	:	**Michelmores LLP**
Respondents	:	**John Patrick Michael Hugh Evelyn** **Peter John Evelyn** **Henry William McCowen** **(as the Trustees of the JPMH Evelyn 1997 Settlement)**
Represented by	:	**Taylor Wessing LLP**
Type of Application	:	**Succession and Consent to Operation of a Notice to Quit**
Tribunal Members	:	**Regional Judge T Bowles**
Date of Decision	:	**16 August 2019**

REASONS

IN THE FIRST TIER TRIBUNAL **ALD/SE/S/2016/006**

PROPERTY CHAMBER

AGRICULTURAL LAND AND DRAINAGE

WILLIAM GRAHAM CARR

APPLICANT

AND

(1) JOHN PATRICK MICHAEL HUGH EVELYN
(2) PETER JOHN EVELYN
(3) HENRY WILLIAM MCCOWEN
(as the TRUSTEES of the JPMH Evelyn 1997 Settlement)

RESPONDENTS

REASONS OF THE TRIBUNAL

1. By a tenancy agreement dated 3rd July 1964, Graham Francis Carr, who died on 15th July 2016 and who was the father of the applicant, William Graham Carr (Mr Carr), became the tenant of an agricultural holding, at and known as Home and Pishill Farm, extending to some 158 hectares and forming a part of the Stonor Estate, at Stonor, in Oxfordshire (the holding). That holding constitutes an agricultural holding for purposes of the Agricultural Holdings Act 1986 (the Act).
2. By his application, dated 13th October 2016, Mr Carr has applied, under section 39 of the Act for a direction by the Tribunal that he succeed to the holding.
3. That application is opposed by the Respondents, who, as trustees of the JPMH Evelyn 1997 settlement, are the owners of the Stonor Estate. The Respondents have served notice to quit under Case G of Schedule 3 of the Act and have, also, issued their own application, under section 44 of the Act, for the Tribunal's consent to the operation of that notice.
4. In respect of Mr Carr's section 39 application, the Respondents concede that Mr Carr was, at the date of his father's death and remains, an eligible person, for purposes of the application and, therefore, that all three of the 'close relative' condition, the 'livelihood' and the 'occupancy' condition are made out (section 35(2) and section 36 (3) (a) and (b) of the Act). They concede also that, in respect of his suitability to succeed to his father's tenancy (section 39 (1) (b) of the Act) and to the explicit criteria, set out in section 39(8) (a) and (b) of the Act,

Mr Carr is suitable having regard (a) to the extent to which he has been trained in, or has practical experience of, agriculture; and (b) to his age, health and financial standing.

5. What is left in dispute before the Tribunal and which the Tribunal must determine, in deciding whether, in its opinion, Mr Carr is a suitable tenant of the holding, is whether there are, as the Respondents contend, other 'relevant matters', rendering Mr Carr unsuitable and whether the Respondents' view, as expressed in the evidence led before the Tribunal, that Mr Carr is not a suitable person to succeed to his father's tenancy, should lead the Tribunal to that conclusion. The particular matters raised by the Respondents, as to Mr Carr's suitability are discussed later in these Reasons.

6. Under section 44 of the Act and where, as here, an application has been made under that section, the Tribunal, in dealing with that application, must apply the provisions of section 27 of the Act. Those provisions preclude the Tribunal from giving its consent to the operation of a notice to quit (here the Respondents' Case G Notice) save and unless it is satisfied as to one or more of the matters mentioned in sub-section (3) of the section. Even if the Tribunal is so satisfied, it must still, by sub-section (2) of the section, withhold consent to the operation of the notice to quit if, in all the circumstances, it appears to the Tribunal that a fair and reasonable landlord would not insist upon possession.

7. In this case, the Respondents rely upon section 27(3)(b) of the Act and contend for a finding by the Tribunal (a) that it is satisfied that the carrying out of the purpose for which they propose to terminate the tenancy, as specified by the Respondents in their application for the Tribunal's consent, is desirable in the interests of the sound management of the estate (here the Stonor estate) of which the land to which the notice relates (that is to say the holding granted to Graham Carr in 1965) forms apart; and (b) that it appears to the Tribunal, in all the relevant circumstances, that a fair and reasonable landlord would insist upon possession.

8. The purpose, specified by the Respondents, in their section 44 application and which they contend is desirable in the interests of the sound management of the Stonor estate and thus to justify, or warrant, the termination of the tenancy of the Carr holding, is said to be a three part purpose.

9. The first part of that purpose is, in summary, the intended reduction and amalgamation of the number of holdings within the estate from three to two, on the basis that that would result in two more profitable holdings, upon which the Respondents could focus their resources, while minimising administration, and upon the basis that, because the two proposed and enlarged holdings would be farmed as a mixed livestock and arable operation, whereas the Carr holding has, in recent times, been an all arable operation, the amalgamation of the Carr holding into

the two other holdings would benefit the health and fertility of the estate land, viewed as a resource.

10. The second part of the Respondents' purpose, again, in summary, is said to be that, by the removal from that part of the Carr holding to be amalgamated into the two other holdings on the estate, of a number of buildings, including Stonor Cottage (the farmhouse for the holding), the bulk of the farm buildings forming the farm yard of the holding and two elderly dutch barns on the holding, opportunities would exist for the redevelopment, or refurbishment of some, or all, of those buildings, such as to enable the profits, or proceeds of redevelopment, or any income stream arising from renovations to be applied for investment in the estate.
11. The third part of the Respondent's purpose, as specified in the Respondents' application notice and which is, therefore, said by the Respondents to be desirable on grounds of sound estate management, is to procure the termination of their relationship with the Carr family and, thereby, it is said, to procure a relationship with the entirety of the estate's tenantry which would, in contrast with what is said to have existed as between the Respondents and the Carr family, be harmonious and mutually productive.
12. In regard to what may be termed the fair and reasonable landlord test, the Respondents rely primarily upon the fact that, as they allege, the applicant, Mr Carr, and his wife are a wealthy couple, such that the loss to them, strictly to Mr Carr, of the holding would not imperil either their finances, or their housing; Mr and Mrs Carr currently live in a converted barn, held, as I understand it, in the name of his wife, close to, but not upon the holding. The Respondents also contend that the advantages, in terms of sound management of the estate, are such that a fair and reasonable landlord would insist upon possession, even if the consequence of so doing would be that the Carr family would be obliged to cease the farming of a holding that had been in their family's hands for some sixty years.
13. Reliance, initially, in respect both of this question and, also, Mr Carr's suitability to succeed to the holding was placed upon the averment that Mr Carr and his advisers had 'manipulated' his finances, such as to satisfy the 'livelihood' condition. That averment was not pursued, however, once Mr Carr had given evidence to the effect that no such 'manipulation' had taken place and that his finances had, for many years, been organised in a way that, as it has transpired, has satisfied the 'livelihood condition.'
14. Reliance was also placed upon a letter, written by Mr Carr's solicitor. Mr Peter Williams, shortly before the commencement of the Tribunal hearing, to Mr Simon Stracey, who, with his son, Edward Stracey, would be the main recipient of the land forming the Carr holding, should the Respondents succeed, either in persuading the Tribunal that Mr Carr is not suitable

to succeed to his father's tenancy, or, even if suitable, that, nonetheless, consent should be given to the operation of the Respondents' Case G notice and, therefore, that, as explained below, Mr Carr's application to succeed to his father's tenancy should be dismissed. That letter, which will be discussed later in these Reasons, is said by the Respondents to have been an attempt to influence Mr Stracey not to assist the Respondents in their application and, in consequence, to bear, considerably, both upon Mr Carr's suitability as a tenant of the holding and upon whether it would be fair and reasonable for a landlord to insist upon possession.

15. Before turning to the merits of the Respondents' opposition to the section 39 application and of the Respondents' own application for consent to the operation of its Case G notice, it is as well to clarify the interaction between the one and the other. Under section 43 of the Act, the Case G notice, which was, of course, served upon Mr Graham Carr's personal representatives, which include Mr Carr, will, given the existence of Mr Carr's section 39 application, only take effect to terminate what had been Mr Graham Carr's tenancy of the holding in the event, either that Mr Carr is not found to be suitable to succeed to the tenancy of the holding, or the Tribunal gives its consent to the operation of the notice. Under section 44 of the Act, putting to one side provisions which operate in circumstances where a section 39 applicant agrees to take a tenancy of part only of the holding and which are not applicable here, the effect of the Tribunal giving its consent to the operation of the Case G notice is, by section 44(4) of the Act, that Mr Carr's section 39 application will fall to be dismissed, even if he has, otherwise been found to be suitable to succeed to the tenancy of the holding.

16. It follows that, to succeed to the tenancy of the holding and to prevent the operation of the Case G notice and the termination of what had been his father's tenancy of the holding, Mr Carr must both establish his suitability to succeed to his father's tenancy and successfully oppose the Respondents' section 44 application. In that event, the effect of a direction from the tribunal under section 39 will be that he will acquire a tenancy of the holding from the date directed by the Tribunal, in accordance with section 46 of the Act and the existing tenancy will be treated, by section 45(5) of the Act, as being terminated, as at that date, as if terminated by a tenant's notice to quit expiring on that date. The terms of the new tenancy would, at inception, be the same terms as applied in respect of Mr Graham Carr's previous tenancy, but would be subject to such variations, as to its terms, as might be determined by arbitration, or expert determination, under section 48 of the Act, to the extent that those variations were justified, having regard to the circumstances of the holding and the length of time since the holding had been first let on the existing terms. It is the Respondents contention, although not subject to detailed before the Tribunal, that the variations which

might be determined upon by the arbitrator or expert could include variations as to the extent of the demise and so could, for example, operate to exclude from the demise redundant, derelict, or under-used buildings.

17. In light of the foregoing, the first question for the Tribunal's determination is that of Mr Carr's suitability to become the tenant of the holding. If he is not suitable, then no direction will be granted under section 39 and the Case G notice will take effect to terminate the current tenancy in the hands of Mr Graham Carr's personal representatives. Additionally, as it seems to the Tribunal, the fact, if it be a fact, that Mr Carr is a suitable person to take on the tenancy of the holding, must, among all the other circumstances, be relevant in any determination as to whether it is desirable, on grounds of the sound estate management of the estate, that the tenancy of the holding be brought to an end. The existence of a suitable tenant for the holding, including, as conceded, a tenant with the necessary farming experience and financial standing to take on the tenancy of the holding, must, necessarily be something to be placed in the balance, when deciding that question.
18. In determining whether Mr Carr is a suitable person to take on the tenancy of the holding, the Tribunal is enjoined and required by the Act to have regard to all relevant matters and, in consequence, to make its evaluation as to his suitability by bringing into account all such matters and by reaching a determination which gives proper weight to all such matters.
19. The starting point, as indicated by the matters which, by section 39 (8) (a) and (b) of the Act, must, necessarily, be the suitability of the applicant for the tenancy, in terms of his ability to farm. It is for that reason that the Tribunal is required to have specific regard to the applicant's training and/or practical experience in agriculture and the age, health and financial standing of the applicant. A suitable applicant must have the appropriate agricultural knowledge and experience, must be physically capable of carrying on the demanding business of farming and must have sufficient financial resources to enable him, or her, to make the necessary investment in the farming of the holding, such as to give to the landlord of the holding the security, or assurance, that the applicant will be able to establish, or maintain a viable farming business and, thereby, be in a position to meet his obligations to the landlord under and in respect of the tenancy of the holding in question.
20. Relevant also to the suitability of an applicant to succeed to an agricultural holding and his ability to farm such a holding must be, where known, the skills that the applicant has demonstrated as a farmer. An applicant may have training and experience but, if demonstrably, he, or she, is not a good farmer, then that would, undoubtedly, afford a

Tribunal good reason to regard the applicant in question as unsuitable to take on the tenancy of a holding.

21. Relevant, also, and material to this application must be the character of the applicant. An applicant, however able, as a farmer, but who cannot be trusted by the landlord, as tenant of the holding, cannot be suitable to take on, or succeed to an agricultural holding.
22. In this case, it is conceded and really had to be conceded that Mr Carr satisfies all of the matters identified in paragraph 19 of these Reasons.
23. Although his father, Graham Carr, was tenant of the holding, Mr Carr has had, as he told the Tribunal, everyday management of the holding since the mid nineteen nighties and became, with his father, a partner in the farming partnership, pursuant to which the holding has been farmed, as long ago as 1988. Even prior to that, Mr Carr, who is now sixty two years of age, had worked on the holding, from age eighteen and since 1974. Mr Carr is, so far as appeared to the Tribunal in robust good health. Graham Carr died aged eighty five in 2016 and it is not in realistic doubt but that, for a substantial period of time prior to his death, Mr Carr has been the prime mover in relation to the farming partnership and the farming operation.
24. From 1975, Mr Carr and his father also farmed a further 305 acres, of freehold land, at Suddern Farm, Over Wallop, near Andover, in Hampshire, some sixty five miles from Stonor. At the date of Graham Carr's death, that land had for some years been jointly owned by Graham Carr and Mr Carr, in the proportions 55% to 45%, and had been farmed, with the holding, as one farming operation and as part of the farming partnership carried on between Mr Carr and Graham Carr.
25. Both the holding and Suddern Farm are and have been farmed, in substance, as an arable operation The holding, itself, extends, as already stated, to some 158 hectares (390 acres) of largely arable land, with some permanent pasture and with some 38 hectares laid down under and pursuant to the Higher Level Countryside Stewardship Scheme.
26. The holding was subject to a completely successful statutory inspection under and in respect of that scheme, in 2017. Under that scheme, there is a requirement to bring sheep on to the holding for certain periods of the year. Both the arable operations at Suddern and on the holding are carried on under the assurance scheme. Mr D'Olley, Mr Carr's expert witness and head of rural professional services at Carter Jonas LLP, inspected the holding, pursuant to these proceedings, during the difficult and very dry Summer of 2018, and described himself as impressed by the crops. Mr Bayliss, who was the independent crop consultant and agronomist advising Mr Carr, between 2012 and 2017, in respect of the holding, was not challenged as to the view that he expressed as to the land forming the holding, namely that

Mr Carr achieved the highest standard of husbandry. The Tribunal, itself, saw no evidence, during its inspection of the holding, to suggest anything other than the land was well farmed and in good heart. The only matter of concern to the Tribunal, in respect of the entire farming operation, was the state of the concrete floor of the dutch barn at Hollanridge Lane, used by Mr Carr for temporary grain storage. The Tribunal will return to the question of the repair of this and other farm buildings later in these Reasons.

27. The upshot, though, of all the last foregoing, is that, over and above experience and training, Mr Carr is a very capable farmer and eminently suitable, in that regard, to take on the tenancy of the holding.

28. In regard to the viability of his farming operation, it is not in doubt but that the farming operation carried on by Mr Carr and his father and now by Mr Carr and his son, Harry, who he has brought into partnership, since his father's death in 2016, has been profitable and well capitalised and there is no suggestion that that would not continue to be the case, should Mr Carr succeed to the tenancy of the holding.

29. The net profits, for the years, to 31st July, 2014, 2015 and 2016 were, respectively, £50,953, £23,200 and £31,430 and the net assets of the farming partnership, for those same three years, were, respectively, £328,744, £297,844 and £297,959. In the seven years to 31st July 2016, the proportion of Mr Carr's livelihood that he obtained from the composite agricultural unit, of Suddern and the holding, ranged from 78.05% to 86.79% and reflected, in money terms, amounts ranging from £25,855.56 to £39,233.99.

30. The farming business, that Mr Carr would carry on, were he to succeed to the tenancy of the holding and which would, as now, continue to operate across both the holding and Suddern Farm, would be viable, well-resourced and, as set out above, operated by a thoroughly competent and experienced farmer.

31. On this footing, Mr Carr advances, in the opinion of the Tribunal, a very strong case that he is a suitable person to take on the tenancy of the holding.

32. Set against that, the Respondents raise two matters.

33. Firstly, they contend that the letter, referred to in paragraph 14 of these Reasons and written by Mr Carr's solicitor upon his behalf, was of such a flagrant nature as to demonstrate and establish that Mr Carr is not a fit, or suitable, person to take on the tenancy and not a person with whom the Respondents should be required by the Tribunal to enter into a long term landlord and tenant relationship.

34. Secondly, the Respondents submit that Mr Carr and his wife are so well resourced and are persons of such wealth that it would be contrary to the purpose and the policy underlying the

succession provisions of the Act for Mr Carr to succeed to the tenancy of the holding and that he is, for that reason, an unsuitable person to take on the tenancy.

35. Mr Jourdan, who appeared for Mr Carr, described Mr Williams' letter as 'unfortunate'. It was, indeed, a letter, which, in the form that it was written, should not have been written.

36. The letter was written on 26 April 2019, on the same day that the Tribunal, in the person of the Regional Judge, gave directions as to evidence concerning the viability of the farming business carried on by Mr Simon Stracey and his son, Edward, in the event, in particular, that, as proposed by the Respondents, the bulk of the Carr holding was let to the Straceys; that evidence being relevant to the question as to whether it was, or could be, desirable, upon grounds of sound estate management, to expand, or extend, the Stracey holding, if the consequence of so doing might be to prejudice the viability of the Straceys' farming business.

37. The intended purpose of the letter, as explained to the Tribunal, was to procure, or seek to procure a meeting between Mr Williams, Mr Carr's solicitor, and Simon Stracey and his son and, perhaps, other family members , in order to ask questions, as the Tribunal understands it, about certain aspects of the Straceys' business and the steps which had been taken , as discussed later in these Reasons, by Mr Simon Butcher, one of the Respondents' expert witnesses, to assist the Straceys in securing the bank finance which would be required if the Straceys were to take on an extended holding. In principle, there was nothing wrong with that approach and with seeking such a meeting.

38. The criticism of the letter goes to its content. The letter is lengthy, discursive and critical of the Respondents' application. There is nothing, in itself, wrong in that. It indicates that, by reason of the application, the financial stability of the Straceys' business has become 'centre stage'; that has proved, to a real extent, true. Where, however, the letter can be seen as imposing pressure is in the very explicit references that it makes to publicity and to the unpleasantness of the trial experience. The letter avers that the hearing is public and that there is likely to be both local and national publicity in, in particular, the farming press. The suggestion made is that, if the proposed meeting, which was, in the event, declined, took place, there would be an opportunity to consider means of avoiding what was described as being a thoroughly unpleasant experience. Conversely, the letter warns of the risk that Mr Stracey's wife and daughter might be compelled to give evidence. Mr Stracey is seventy one and his wife is, as the Tribunal understands it, of a commensurate age.

39. It can be readily seen that a letter, written to a relatively elderly person, emphasising that his business will be centre stage at a 'Trial', that the 'Trial' will be thoroughly unpleasant, that there is likely to be national and local publicity, in respect of what is said, in the letter, to be

an ill-founded application, and that the possibility exists that other family members will be drawn into the proceedings, is, at best, likely to discourage the recipient from involving himself and his family in the proceedings. The Respondents submit that the letter, in fact, threatened Mr Stracey with the adverse consequences identified in the letter, in the hope, it is submitted, that Mr Stracey would be unwilling to give evidence to the Tribunal and, thereby, prejudice the Respondents' section 44 application.

40. The letter was, of course, written not by Mr Carr but by his solicitor, Mr Williams. Mr Williams is an extremely experienced solicitor, in this area, as his letter indicates. He is the author of one of the leading works in respect of agricultural holdings and, again, as disclosed in the letter, he has been solicitor to the Carr family for some thirty years. For all his experience and expertise, the letter, in the aspects just set out, was plainly ill-advised. Whether calculated, or not, it undoubtedly imposed a pressure upon Mr Stracey which should not have been imposed. The question, however, for the Tribunal, is whether the fact that the letter was written with the authority of Mr Carr has the effect of demonstrating such an unsuitability of character in Mr Carr as to render him a person unsuitable to take on the tenancy of the holding.

41. The Tribunal's conclusion is that the fact that Mr Carr authorised this letter does not have that effect.

42. Both Mr and Mrs Carr were closely cross-examined about this letter and the Tribunal is in no doubt but that they gave honest evidence. They could have, but did not, deny that they bore any responsibility for the letter, or its contents. What they, in fact, said was that they were advised by Mr Williams that it would be helpful for him to meet with the Straceys, that Mr Williams drafted the letter and that Mr Williams, their long standing adviser, told them that the letter was appropriate. At the time, they saw no problem with the letter. With hindsight and looking again, Mr Carr, in particular agreed that the letter could be seen as threatening and that it would have been better had it not been written.

43. The Tribunal is satisfied that, whatever Mr Williams' intentions, Mr and Mrs Carr, when accepting their solicitor's advice that the letter was appropriate and when, following that advice, they authorised the sending of the letter, had no intention to pressure, or threaten, Mr Stracey, or his family. It is fair to say, that, in other parts of the letter, Mr Williams was at pains to point out that one of the Carrs' concerns was to seek to preserve the friendly relationship between two of the families that have farmed the Stonor estate for very many years The Tribunal accepts that this was their intention and that the letter, however ill-advised

and unfortunate in its drafting, was not designed by the Carrs to put pressure on the Stracey family, or understood by the Carrs, aat the time of its sending, as having that effect.

44. In the result and in consequence, the Tribunal is satisfied that the letter does not bear so adversely upon the character of Mr Carr as to render him unsuitable, in character, to succeed to the tenancy of the holding. At worst, under the pressure of this litigation, which, when all is said and done, puts at risk the Carr family's entire way of life, Mr and Mrs Carr were too uncritical of the advice that they received and too involved, perhaps, in their own situation to appreciate the possible impact of the letter. None of that renders Mr Carr an unsuitable tenant.

45. Turning to the second matter that the Tribunal is invited to bring into account, as rendering Mr Carr an unsuitable tenant for the holding, the starting point is the Respondents' contention that Mr and Mrs Carr are persons of substantial wealth. It is on that factual footing that the argumenti s, then, advanced that, having regard to the purpose and the underlying policy of the succession provisions of the Act, Mr Carr, is by reason of his wealth and resources, an unsuitable tenant for the holding. The same factual contention is brought into play by the Respondents, as already set out, in support of their submission that, in the event that the Tribunal is satisfied that it is desirable on grounds of sound estate management that the Case G notice takes effect, a fair and reasonable landlord would insist upon possession.

46. Mr and Mrs Carr's finances were explored in some detail. They were, commendably, very open and helpful and, in the result, there is very little in dispute between the parties and very little that requires analysis by the Tribunal.

47. Mrs Carr is the owner of the family home, a converted thatched tithe barn, some half a mile, on foot, from the holding. It is subject to a £500,000 off-set mortgage, which has been used, among other things, in the financing of a small portfolio of properties in Cornwall. Net of mortgage, the property, probably, has a value of circa £400,000.

48. Suddern Farm, itself, has a probate value of some £2.83M. As already set out, prior to Graham Carr's death, Mr Carr had a 45% interest in that property, with a value, therefore, of circa £1.3M. Under arrangements which have, as the Tribunal understands it, been agreed within the extended Carr family, Graham Carr's 55% interest in Suddern Farm will also vest in Mr Carr, if and provided that he is in a position to make and makes payments, totalling some £500,000, to other family members, who would otherwise be interested under the discretionary trust of Graham Carr's share in Suddern Farm, arising under his will. Mr Carr's evidence to the Tribunal was that, contingent upon these proceedings and the costs of these proceedings, as he put it, he was in a position to make this payment.

49. In that event, the entirety of Suddern Farm, with a value of some £2.2M (net of the payments to be made for its complete acquisition and net of the hope value, of £100,000, in respect of a development plot on the farm, which was included in the probate valuation, but which has now been sold out of the farm), would be left in Mr Carr's hands.
50. In regard to the development plot, which has been sold out of the farm, with benefit of planning permission for circa £780,000, 45% of those proceeds, subject to tax, belong to Mr Carr and are, as the Tribunal understands it, currently held in cash.
51. In addition to Suddern Farm itself, Mr Carr was, with his father, his aunt and his cousin the joint owner of a currently vacant industrial building, adjacent to the farm. The probate value of that building is said to be £189,000 and the property is on the market with no current interest. Mr Carr has a 17% share in that property, but, as his father's residuary beneficiary, he will inherit his father's 23% share in that building, giving him a 40% interest, with a potential value of some £75,000. The residuary gift in favour of Mr Carr is, however, as with his acquisition of the entirety of Suddern Farm, contingent, as the Tribunal understands it, upon the payment of the £500,000 mentioned above.
52. As indicated earlier, Mr and Mrs Carr have, over a period of time and utilising, in part, the off-set mortgage upon their home, acquired a portfolio of properties in Cornwall. The properties, Gryffindor, Atlantis and Flats 4, 7 and 8 Westcliffe Flats, have, in broad terms, a collective value of circa £730,000. Additionally, following the sale of another Cornish property, Hufflepuff, Mr and Mrs Carr have purchased a one-bedroomed apartment in St Anton, in Austria. The purchase price, in sterling terms, was £220,000.
53. Mr and Mrs Carr also have the benefit of cash ISAs. Mr Carr's ISA stands at circa £125,000 and Mrs Carr's ISA is worth some £80,000.
54. The overall value of these disparate assets, to Mr and Mrs Carr, is, accordingly, some £4.5M, of which Mr Carr's share is about £3.6M.
55. In regard to income, or potential income, to be derived from these assets, putting aside income from the holding, the position, in very approximate terms is as follows.
56. The collective income from the two ISAs, assuming a return of 2%, is in the order of £4,000 per annum.
57. The potential income from the Cornish properties, subject, inevitably, to voids, maintenance costs, bad debts (Atlantis, a three bedroomed bungalow, had, for example, in 2016, a seriously defaulting tenant) and other incidentals, is, or could be, in the order of £29,500.

58. The industrial building, at Suddern, currently unlet and on the market for sale and, as the Tribunal was told, with unsatisfactory access, had been let, some considerable time ago, as a toy factory, at a rent of some £10,000 per annum.
59. In the understanding of Mr and Mrs Carr, no income, by way of holiday letting etc., is derivable from the St Anton property.
60. In regard to Suddern Farm, itself, the situation there is in some flux. The grain store is in process of replacement, following a fire. A sub-letting to a pig unit of part of the land ceased in 2013. Some part of the land, adjacent to the grain store is used by a vehicle repair business, but, currently, no rent is being paid, because the fire to the grain store destroyed a part of the grain store that had been used in that business.
61. Those matters aside, Mr Carr was prepared to accept that some 57.5% of his farming income derived from Suddern and the balance from the holding. In identifying this income, the parties adopted different approaches. The Respondents looked at the matter in terms of profit share; the applicant, by reference to the extent to which Mr Carr had procured his livelihood from Suddern, as opposed to the holding.
62. From the perspective of profit share, averaged over six years, Mr Carr's overall profit share from both properties has been £17,545 per annum. That, however, reflects a 50% share, whereas, now, under the new partnership arrangements with his son, his entitlement will be to 66%. On that basis, his averaged profit share would be about £23,000, of which 57.5% (circa £13,300) would relate to Suddern.
63. Looked at in terms of contribution to livelihood, the averaged annual contribution to Mr Carr's livelihood, flowing from his 50% profit share, over seven years, has been £31,795.On the footing of an entitlement to a 66% profit share, the amount that would, or could, be available to Mr Carr for his livelihood, would increase to about £42,000 and the share of that livelihood which would be derived from Suddern would be 57.5% of that figure (say, £24,300).
64. Looked at in the round, Mr and Mrs Carr would, or could, have an income, or an income benefit, derived from their assets, in the order of £50,000 per annum.
65. The Respondents' case is that a person, such as Mr Carr, who, independently of his economic relationship with the holding, has sufficient income and resources for his economic survival is not a suitable person to take on the tenancy of an agricultural holding, because the purpose of the succession provisions, of which Mr Carr seeks to take advantage, are intended only to be available to those who, without benefit of those provisions, would suffer hardship.In support of that proposition reliance is placed upon a passage in **Muir Watt & Moss on Agricultural Holdings (15th Ed. 2018), at 17.3** and the statement, in that passage, supported

by no citation from Hansard, or otherwise, that 'Parliament considered that there was sufficient evidence of hardship, although in a minority of cases, to justify the conferment on close relatives of a qualified right of succession'.

66. No effort was made, before the Tribunal, to justify that statement, by way of a **Pepper v Hart** enquiry, or at all, and the Tribunal is not satisfied, in the absence of any clear words in the Act, to that effect, that the Tribunal, in determining an applicant's suitability to take on the tenancy of an agricultural holding, under the succession provisions of the Act, is obliged to limit the category of suitable applicants to those who, absent a direction from the Tribunal, in their favour, would suffer hardship.

67. The Tribunal, of course, appreciates that the eligibility provisions of the Act have the effect of limiting the category, or class, of persons eligible to succeed to the tenancy of an agricultural holding to those who can demonstrate an appropriate close relationship with the previous tenant of the holding, that they have secured their livelihood from the holding and that they are not, independently, already the owner of a free standing and self-sufficient agricultural unit. The consequence, no doubt intended by the legislature, of those eligibility requirements is to bring within the class of potential successors to a given holding those who, absent the succession provisions, would, or could, suffer hardship from their exclusion from succession. That, however, is a very different thing from an intended limitation upon the class of those eligible to succeed to those who, but for the succession provisions, would suffer hardship.

68. Such a limitation, if intended, would, as it seems to the Tribunal, emerge from the clear words of the Act, which they do not, rather than, as submitted by the Respondents, some unstated purpose, or policy, to be given effect by reference to the requirement that the Tribunal consider, when determining suitability, all relevant circumstances.

69. In this regard, it seems to the Tribunal that, if the supposed limitation upon those entitled to take on the tenancy of a holding had been intended by the legislature, that limitation would have emerged not as a matter of suitability but as a matter of eligibility and that the eligibility provisions would have made clear that a person who satisfied the other eligibility provisions but who would not suffer hardship if denied a succession to the relevant tenancy was not eligible to succeed. The eligibility provisions provide no such thing and the Tribunal is wholly unpersuaded that the requirement, in reference to suitability, not eligibility, that the Tribunal have regard to all the circumstance either provides, or is intended to provide, a substitute for the absence of such a provision.

70. In the view of the Tribunal, the absence of any words of limitation, such as to reduce the class of applicants to those who, but for a direction as to succession, from the Tribunal, would suffer hardship, was not unintended.

71. It is clear from the suitability provisions, themselves, that the existence of sufficient and appropriate financial resources, available to an applicant, is relevant in the determination of suitability and, as already set out, the rationale for that is obvious. A landlord should not be required to take on, as tenant, someone who has insufficient finance to properly run the holding and to afford the landlord sufficient security that the tenant's obligations, as to rent, or otherwise, will be fulfilled. In that context, far from the Act being intended to afford a succession to those applicants who are viable, but only marginally so, it is very much more likely that the statutory intention was to endorse applicants who would come to the tenancy with financial strength, such as to ensure that a landlord was not required to take on, as tenant, someone who, for want of that strength, or who, for lack of a sufficient margin of financial strength, might be unable either to properly farm the land, or to meet his, or her responsibilities, as tenant.

72. It is, further, the view of the Tribunal that the Respondents' approach to suitability and the suggested limitation upon the class of suitable applicants involves a misunderstanding of the purpose which underwrites both the existence of the succession provisions and the limitations imposed by those provisions.

73. It seems to the Tribunal that the extension of security of tenure created by the succession provisions, when enacted by the Agriculture (Miscellaneous Provisions) Act 1976, in favour of eligible close family members, reflected, continued and was all of a piece with the approach that Parliament had adopted, over a lengthy period, in respect of agricultural tenants and in respect of the public interest in farming and good husbandry, as explained by Lords Hailsham and Simon, in **Johnson v Moreton [1980] AC 37 at pages 59, 67 and 68.** Lord Hailsham, in particular, described, **at page 59**, the importance of continuity to good husbandry and the process whereby, over time, Parliament, in the interests of good husbandry and the protection and enhancement of the land, had, in that interest, extended the security of tenure of tenant farmers.

74. The 1976 legislation, now embodied, at least in respect of tenancies granted prior to 1984, in the 1986 Act, represented, as the Tribunal sees it, a further extension of that process and for the same reasons.

75. Against that background, the limitations, as to eligibility to succeed and as to suitability to succeed contained in the 1976 legislation and, now, in the 1986 Act, were intended, not,

primarily, to prevent hardship to the near relatives of a tenant farmer, who had been working on and living off the land, albeit that it had, or might, in particular cases, have that consequence, but, rather, to ensure, in the interest of landlords and in recognition that the extension of security, necessarily, had the effect of taking land out of a landlord's full control, that the extension of security only went to persons who met the strict eligibility requirements of the Act and further that the person who took on the holding was, in all respects (training, skills, resources, health and character) a suitable person to carry on the farming of the land and to be tenant of the land.

76. In the view of the Tribunal, Mr Carr wholly satisfies those criteria. Far from his wealth, or resources, constituting a handicap, or bar, to his suitability as a tenant, they reinforce that suitability, in that they afford the Respondents the security and satisfaction that he has the resources available to ensure the proper farming of the holding and to meet, in full, all his obligations as tenant of the holding.

77. Looked at overall, it is the opinion of the Tribunal that Mr Carr is a more than suitable person, or candidate, to take on the tenancy of the holding. He is experienced; a known quantity as a skilful farmer. His health is good. He is well resourced. His enthusiasm for the holding and his farming of the holding, particularly as it related to the stewardship scheme operated on the land, was manifest throughout the proceedings. He is, as it seems to the Tribunal, precisely the kind of person for whom the succession provisions were intended and who would provide the continuity on the holding that the succession provisions of the Act were intended to achieve.

78. In light of the foregoing, the next question for the Tribunal is as to whether, notwithstanding Mr Carr's ability as a farmer and his suitability as a tenant of the holding, the Tribunal is satisfied that it is desirable, on the grounds of sound estate management, in respect of the Stonor estate, that Mr Carr should not succeed to the tenancy of the holding and that the Respondents' Case G notice should be allowed to have effect.

79. In closing submissions, it became clear that the Respondents' were no longer explicitly putting forward, as a ground upon which it was desirable, in the interests of sound estate management, that the Case G notice take effect, that the Carr family be removed from the estate in order to procure a more harmonious relationship with the tenantry (as it had been put in the Respondents' section 44 application notice). Nor was a watered down version of this contention; namely that it would be administratively convenient for the Respondents to deal with two tenants on the estate, rather than three; actively pursued.

80. What was pursued, in closing, was the proposition that it was desirable, on grounds of sound estate management, to allocate the bulk of the Carr holding to the Straceys and a smaller part of the holding to Richard and James Hunt, who, together, as father and son, farm the third holding making up the Stonor estate, and to release, from the land which would be so allocated from the holding, such that it would be retained by the Respondent, Stonor Cottage (the holding's farmhouse), 1 Park Lane Cottage (the farm cottage currently occupied by harry Carr), a plot of land adjacent to Stonor Cottage, the Home Farm yard and buildings (the holding's farmyard) and two dutch barns, on the holding, at Pishill and Hollandridge Lane.

81. The estate management purpose, it is said, by the Respondents, for terminating the tenancy of the holding and withholding a direction in favour of Mr Carr, is that the existence of two larger holdings, on the estate, would produce economies of scale, render, it is said, the two units more profitable and, thereby, best enable the holdings on the estate to meet future uncertainties and, in particular, those that may flow from Brexit. The further purpose, of bringing the bulk of the holding into the hands of the two other estate tenants was, at the outset, said to be that the move from the arable operation carried on by Mr Carr to a mixed livestock and arable operation, as carried on by the Straceys and the Hunts, would improve soil health and fertility. Given, however, the concession, already noted, that Mr Carr has farmed the land to the highest standards of good husbandry, it did not appear to the Tribunal that, in the end, this contention, or supposed advantage, was anything other than faintly pursued.

82. In regard to the buildings, the proposition advanced, and which, cumulatively, with the advantages said to flow from amalgamation, are said to render it desirable in the interests of sound estate management to refuse a direction in favour of Mr Carr, is that the release of the buildings from the holding and from the let estate will enable the Respondents (a) to renovate and let Stonor Cottage upon an Assured Shorthold Tenancy and at a market rent; (b) to do the same in respect of the farm cottage occupied by Harry Carr, save and unless he has security of tenure, in which case the Respondents would enter into an agricultural occupancy agreement in respect of that property; (c) to explore the planning prospects, for development, in respect of the plot adjacent to Stonor Cottage; (d) to explore the planning prospects, for development, in respect of the Home Farm farmyard and buildings; and (e) to recover control of the two barns, in the hope either that value could be extracted from the land, or , at the least their demolition would improve the visual amenity of the estate.

83. Before examining, in any greater detail, the desirability, in terms of the sound management of the estate, of the Respondents proposals, it seems to the Tribunal to be helpful to first

explore the intended meaning and effect of the language used in section 27(3)(b) of the Act (the sound estate management ground for giving effect to a notice to quit, or, as in this case, declining to give a section 39 direction) and, second, to explore the provenance, genesis and underlying purpose of the section 44 application, in this case.

84. For that provision to operate, such as to allow, in this case, the Case G notice to take effect the Tribunal must be satisfied that the carrying out of the proposal put forward, which justifies the termination of the tenancy of the holding, or the refusal of a succession to a suitable and eligible applicant, is desirable in the interests of the sound management of the estate. The proposal must, in short, be a 'good thing' for the estate and, to be a good thing, it must be better than the alternative. Accordingly, in this case, the Tribunal, if it is to give effect to the Case G notice, must be satisfied that the proposal put forward by the estate is better for the estate than the grant of a direction in favour of Mr Carr and better, therefore, than the continued farming of one of the three major holdings on the estate by an experienced and skilful farmer, who has farmed the holding to the highest standards of husbandry. In the view of the Tribunal, that necessary comparison sets the Respondents a high hurdle.
85. The proposal, put forward, must also be a proposal the carrying out of which is in the interests of 'sound management of the estate', as that phrase is properly understood, in the context of the proper construction of the Act.
86. In construing that phrase, the Tribunal has had regard, in particular, to the decision of the Divisional Court, in **National Coal Board v Naylor [1972] 1 WLR 908** and the speeches of the House of Lords, in **Johnson v Moreton supra.**
87. In **Joseph v Moreton**, the House of Lords, in the persons, most specifically, of Lords Hailsham and Salmon, explained, as already mentioned, the core and underlying purpose of the agricultural holdings legislation as being the protection, preservation and improvement of agricultural land, in the public interest and the function and importance of the security provisions of the agricultural holdings legislation, as enacted from time to time, in achieving that purpose. While, in 2019, it may well be that the post-war emphasis upon productivity has, in part been replaced, by a consideration of the environmental importance of farmland, as reflected in schemes, such as the Higher Stewardship Scheme, which operates, on the Carr holding, there is no reason to think that the core underlying purposes of what is now the 1986 Act have been modified, or have ceased to apply.
88. In consequence, the Tribunal is in no doubt that, in the construction of the termination provisions of the Act and in considering the circumstances in which the termination provisions were intended to operate, in favour of the removal of protection and the termination of a

tenancy of an agricultural holding, including, therefore, the right to seek a termination, upon the grounds of sound estate management, the management with which the statute is concerned is the management of the estate with a view to achieving the statute's primary purpose, namely the protection, improvement and husbandry of the land in question.

89. That approach is entirely consistent with and reflected by the decision in **Naylor**. In that case, Lord Widgery CJ and Ashworth J were both completely clear that sound management, under the identical predecessor section to section 27(3)(b) of the Act, referred, not to the management of the estate, as an economic unit, but to the management of the land comprised in the estate; that is to say the management of the estate, as an agricultural unit.
90. Lord Widgery accepted, in terms, the tenant's contention that the purpose for which it was desirable, on grounds of sound management that a tenancy be terminated must be a purpose relating to the land forming the estate. The so-called partnership between landlord and tenant, to which Lord Widgery refers, **at page 913, below B**, is 'a partnership which produces food from the land', under which the tenant's obligation is to farm the land in accordance with rules of good husbandry and the landlord's obligation is to manage the estate farmed by the tenant properly. On that footing, as Lord Widgery explains, **at page 913, below C**, the Tribunal is not to judge whether a proposal is desirable on grounds of sound estate management, by reference, as he put it, to the effect upon 'the landlord's pocket', but the effect that the proposal would have on the management of the particular farming estate.
91. In the same vein, Ashworth J, having analysed the inter-relationship between the various grounds upon which a Tribunal could give effect to the operation of a notice to quit, expressed the clear view that the sound management, contemplated by the section, was limited to the management of the estate, in a 'physical' sense, that is to say the management of the land making up the estate, and was 'something quite distinct from the financial result for the landlord himself'.
92. In further support of that approach, Ashworth J drew attention to the language of section 25(5) of the Agricultural Holdings Act 1948, now replicated in section 27(4) of the 1986 Act, which entitles a Tribunal to impose conditions such as to ensure that, following the termination of a tenancy of a holding, the land released is used for the purpose for which the tenancy has been terminated. In his view that provision served to confirm that the purpose for which a tenancy can be terminated, inter alia, upon grounds of sound management, must be a purpose relating to the user of the land.
93. Finally and in the view of the Tribunal, importantly, Ashworth J posited the position which might arise, if sound management of the estate was allowed, as a matter of construction, to

embrace the management of the estate as an economic unit; namely that it would be open to a landlord, on grounds of sound management of the estate, to seek to terminate the tenancy upon the ground that a sale of the tenancy land with vacant possession would enable him to do better with his capital than by keeping it in the estate. Ashworth J's ultimate conclusion was that an approach to the 'problem', by which he meant the question of what meaning to attach to the words 'sound management of the estate', which involved the landlord's financial position, rather than the actual management of the estate, was not, in accordance with the intention of the statute.

94. In the light of the foregoing and as set out in paragraph 88 of these Reasons, the Tribunal is satisfied that the sound estate management purpose, the carrying on of which, by a landlord has to be found to be desirable, in the interests of the sound management of the estate, before a notice to quit is to be allowed to have effect, must be a purpose which relates to the actual management of the estate and is designed to improve, or protect, the farming of the estate land and, thereby, to benefit the husbandry of the estate land.

95. Put in short form, the question for the Tribunal is whether the purpose for which the landlord proposes to terminate the tenancy, or to persuade the Tribunal to decline to make a section 39 direction, is desirable in the interests of the sound management of the estate as an agricultural, or farming unit. The question is not, at all, concerned with whether the landlord's intended purpose would be desirable in the interests of the management of the estate as an economic unit. The statute and the Tribunal is concerned with the sound management of the estate for the purposes which underly the Act; namely the protection, or improvement of the farming of the estate land and the good husbandry of the land forming the estate.

96. Applying those criteria, it is clear that the Tribunal could not consent to the operation of a notice to quit, upon the section 27(3)(b) ground, if the landlord's contended purpose was, as Ashworth J postulated, the clearance from the estate of tenants to accommodate a sale. Likewise, as it seems to the Tribunal, that ground cannot be used, for example, to terminate the tenancies of agricultural holdings, upon an estate, in order to replace such tenancies with farm business tenancies. Although such replacements would be economically advantageous to the owners of the estate, they would not contribute to the husbandry of the land, or serve to improve the farming of the estate land, or, therefore, to constitute sound management of the estate in the manner contemplated by the sub-section.

97. For the same reason, it is the clear view of the Tribunal that the section 27(3)(b) ground cannot be used to terminate the tenancy of an agricultural holding upon an estate if the sole purpose of the termination is to enable the development of the land, or buildings, on the

holding, for a purpose other than for agriculture. In that circumstance, the purpose of the proposed termination would not relate, at all, to the sound management of the estate, as an agricultural estate, or, in the required sense of improving the farming, or husbandry of the estate land. That is not to say, of course, that possession could not be obtained for that purpose, by way of a notice served under Case B, of Schedule 3 of the Act, providing that the conditions attaching to the service of such a notice are met.

98. In regard to the foregoing, a different position might arise, if the purpose of the termination in question was to sell, or to develop, land, or buildings, within a holding in order to raise money for necessary expenditure upon the estate. In that situation, the purpose underlying the sale, or development would be to improve the estate, as an agricultural unit, and, thereby improve, or protect, the farming and husbandry of the estate land, taken as a whole. The termination of the tenancy of a holding, in those circumstances and where the monies released by the sale, or development, were intended to go and went towards, for example, the cost of new and necessary agricultural buildings which would, themselves, contribute to the effective farming of the estate, would, or could, constitute sound management of the estate, in the way that, in the view of the Tribunal, that phrase is to be understood on the true construction of the 1986 Act.

99. In **Collins v Spofforth and Others, 27th November 2008 ALT Refs. SW1/ 1057/8,** an unreported decision of the Agricultural Land Tribunal, the Tribunal, while taking, at paragraph 151 of its Reasons, the same view as this Tribunal, namely that the release of land for non-farming purposes could not, of itself, constitute sound estate management, was prepared to accept that, if the release of such land for such a purpose was no more than an incidental consequence of the implementation of some purpose which did amount to sound estate management, then the fact of that release and the incidental benefit arising to the landlord from that release would not preclude the Tribunal from giving effect to a notice, upon the ground set out in section 27(3)(b).

100. On the same basis, the Tribunal, in **Spofforth**, was prepared to take the view, as this Tribunal reads that decision, that the fact that one of the consequences of the implementation of the purpose for which a tenancy of a holding on an estate was to be terminated, or, even, the fact that the motivation underlying the implementation of the purpose for which the tenancy of such a holding was to be terminated, was that the landlord would benefit financially, was not, of itself, conclusive against the landlord, in the determination by the Tribunal, as to whether the purpose for which the landlord proposed to terminate the tenancy of the holding in question fell within the ambit of sound estate management, if and provided

that the purpose which was sought to be achieved, by the termination of the tenancy was one which went to the improvement, or protection, of the farming of the estate in question, or the husbandry of the land forming the estate.

101. This Tribunal agrees with the Tribunal, in **Spofforth**. The fact that the landlord hopes, or intends, that a particular course of action will be profitable does not preclude that activity from constituting sound estate management, if, otherwise, it falls within the ambit of sound estate management, as that phrase is to be understood under the Act.

102. The Tribunal, in **Spofforth**, was, as regards section 27(3)(b) of the Act, primarily concerned with the question as to whether the amalgamation of the holding, there in question, into a number of 'core' farms on the relevant estate was capable of constituting sound estate management, for purposes of the Act. The Tribunal's view, expressed at paragraph 166 of its Reasons, was that such an amalgamation could 'reasonably be described as sound estate management'.

103. This Tribunal agrees that the amalgamation of a holding into other holdings on an agricultural estate is capable of constituting sound management of the estate in question. If, for example, an estate was made up of a number of unviable holdings, the farming of which was likely to fail, then one can well see that the amalgamation of the holdings into a smaller number of viable units would benefit the farming and the husbandry of the land in question and constitute sound management of the estate. Similarly and relevantly to the current application, if the purpose of proposed amalgamations was to enable the expanded units to weather uncertainties and to deploy economies of scale, then amalgamations to that end and to protect, or enhance, the viability of the extended units could well be regarded as sound estate management and as a sensible safeguard to the effective farming and husbandry of the land in question. Again, an amalgamation of holdings, in order to enhance the farming of the overall estate land, by bringing into play, upon the holding to be amalgamated, beneficial farming methods, such as to improve the heart and husbandry of the land, is, as it seems to this Tribunal, something which would readily fall within the concept of sound estate management, as contemplated by the 1986 Act.

104. Materially to the foregoing, it is noteworthy that, in **Evans v Roper [1960 1 WLR 814**, reported, primarily, upon the question as to whether, sound management of an estate, for purpose of what is now the section 27(3)(b) ground for consent to termination, entitled the Tribunal to have regard to the effect the contemplated termination would have upon the tenant of the holding and for the court's conclusion that it did not, the landlord's proposal was that land should be taken from one holding and amalgamated into another, in order to

better ensure the viability of the latter holding, as part of the landlord's estate. There is nowhere any suggestion, in that case, that the landlord's proposal did not, in principle, constitute a matter of sound estate management and, for the reasons set out in paragraph 103, of these Reasons, in the view of this Tribunal, that understanding of, or approach, to sound estate management, in the context of the facts of that case, was correct.

105. In the light of all of the foregoing, the Tribunal, as set out in paragraph 83 of these Reasons, now turns to the genesis, as it was put, by Mr Jourdan, for Mr Carr, of the Respondents' section 44 application. Mr Jourdan's submission is that the real underlying motivation behind the Respondents' section 44 application is the Respondents' desire to remove the Carr family from the Stonor estate and that the section 44 application is, in effect, a construct to achieve that purpose.

106. The relevance of this submission, if made out, is that it would require the Tribunal, when considering the application and when considering whether it is desirable upon the grounds of sound estate management that consent is given to the operation of the Respondents' Case G notice, to test the application and the material put forward in support of the application with more than usual care and with a critical, even sceptical, eye, in order to ensure that the application is well made.

107. An application, made under section 44, to remove a competent and suitable tenant of a holding, on the basis of some antipathy between that tenant and his landlord, could, very plainly, not be justified upon the grounds of sound estate management. The removal from the estate of a competent and suitable farmer could hardly be said to benefit the farming of the land and the good husbandry of the estate.

108. Equally, however, if, objectively considered by the Tribunal, a landlord puts forward and establishes a proposal, in respect of an estate, which is desirable on the grounds of sound estate management and which requires the termination of the tenancy of a holding upon the estate, then, the fact, that there is a bad relationship between landlord and tenant and even that the landlord is motivated in his actions by the wish to secure the removal of the tenant, would not, in itself, preclude the Tribunal from giving, subject to the fair and reasonable landlord proviso, its permission to the operation of the relevant notice to quit.

109. In that circumstance, however, the Tribunal would, as indicated above, have taken special care to ensure that the supposed sound management purpose was both real and desirable and would also, when making the determination as to whether a fair and reasonable landlord would insist upon possession, give very careful consideration as to whether a fair and reasonable landlord, devoid of any personal antipathy with the tenant in question, would

regard the sound estate management reasons, albeit made out, as justifying the eviction of the tenant in question.

110. In this case the Tribunal is satisfied that the motive underlying the section 44 application has been the Respondents' wish to remove the Carr family from the estate. The Tribunal does not form that view lightly.

111. The starting point is the section 44 application itself and the fact that, on the face of the application and as an ostensible ground of the application, the Respondents aver that they would be 'relieved of a relationship with the Carrs' and that that would result in a harmonious and productive relationship with the entire tenantry of the estate. For the reasons already stated an application grounded upon the desire to remove a particular tenant, but with no farming basis to support that desire, does not constitute a sound estate management purpose and could not, of itself, found an application for consent to the operation of a notice quit. No doubt it was for that reason that Mr Batstone, for the Respondents, did not pursue this aspect of the application in his closing submissions.

112. The question, here, however, is not whether the Respondents want the Carr family gone, as they plainly do, but whether the section 44 application, in its entirety has been designed, Mr Jourdan would say concocted, to achieve that end. In the view of this Tribunal, it is clear that the application has been so designed.

113. The application, itself, asserts that the death of Graham Carr afforded the opportunity to the Respondents to, as it was put, extend their estate management policy across the entire estate. That is not, strictly, true. The matters raised in the section 44 application; the amalgamation of the three estate tenancies into two and the consequential release of the buildings identified in paragraph 80 of these Reasons, for the purposes set out in paragraph 82 of these Reasons; could, had the Respondents been so minded, been the subject of a notice to quit, coupled with an application for consent to the notice taking effect, at any time in recent, or not so recent years. The fact is that nothing was done to implement what is said to have been the Respondents long standing policy of amalgamation, or to effect the release of any buildings from the holding, until such time as that policy could be prayed in aid to prevent Mr Carr from succeeding to the tenancy of the holding. There is, therefore, a strong suggestion, arising simply from the chronology, that the real reason for the section 44 application was to preclude Mr Carr from procuring a section 39 direction and that the application and that the estate management reasons put forward in support of the application were a means to an end.

114. That that was the case seemed to the Tribunal to become very clear from the evidence.

115. In particular, it is clear from the evidence of Mr John Evelyn (Mr Evelyn), who describes himself as the senior trustee of the three Respondent trustees, that the section 44 application did not flow from any unprompted decision made by the Respondents, themselves, as to steps that they wished to be taken, on farming grounds, for the sound management of the Stonor estate. There is no suggestion, in the evidence, that the currently proposed amalgamation of the tenancies on the estate had been given any consideration prior to the point when, as appears from his written evidence, the legal advisers to the estate raised the proposition that an application under section 44 could be made on grounds of sound estate management. There is no evidence, for example, that the proposals made in that application were discussed with either the Stracey family or the Hunt family at any time prior to that proposition being raised and it is, noteworthy, that the heads of agreement, under which the Stracey and Hunt families agreed, contingently, to take on additional land from the holding, were only finalised in May 2018; a year after the section 44 application had been made. Likewise, as emerged in evidence and in contrast to the position which arose in **Spofforth**, no analysis had been made, prior to the time when the prospect of a section 44 application was advanced , as to the impact of the Respondents' proposals upon the estate, or as to whether the implementation of those proposals would be advantageous to the estate, as might have been expected had those proposals been, as it were, free-standing and not motivated by legal advice as to the possibility of a successful section 44 application.

116. The fact that the suggestion that such an application could be made and, as it seems to the Tribunal, the fact that the shape of the proposals to be put forward by the Respondents, as justifying the termination of the tenancy of the Carr holding, on grounds of sound estate management, both emanated from the estate's legal advisers was confirmed, in his evidence, by Mr Philip Trower, who has been for very many years the Respondents' principal agent in respect of the Stonor estate.

117. Mr Trower explained that the suggestion arose out of what he termed a meeting of professionals, including, as the Tribunal understands it, Mr Batstone, counsel for the Respondents, that it was at that meeting that the tribunal decision, in **Spofforth**, was raised, as being potentially helpful to the Respondents, in procuring the Tribunal's consent to the operation of the, already served, Case G notice, and that it was following that meeting and with the decision in **Spofforth** explicitly in mind that Mr Trower took to the Respondents the

idea that a section 44 application could be made for consent to the operation of the Case G notice on what might be called **Spofforth** grounds.

118. There is no doubt at all, in the view of the Tribunal, that the Respondents' current proposals have been designed around the decision in **Spofforth** and have been so designed with a view to precluding the Tribunal from making a direction in favour of Mr Carr. Both those facts emerge plainly from correspondence between the Respondents' solicitors, Taylor Wessing, and one of the witnesses called by the Respondents, as an expert, Mr Simon Butcher (Mr Butcher).

119. Mr Butcher was instructed in February 2017, some four months after Mr Carr made his application for a succession tenancy, at a time when that application was already opposed and, inferentially, following the receipt by the Respondents of the legal advice referred to above. Mr Butcher's explicit instructions were to inspect the holding and to prepare a report to assist the trustees in deciding whether to make a section 44 application, which, if successful, would require this Tribunal to dismiss Mr Carr's application.

120. The letter of instruction went on to recite the material parts of the Act, including section 27(3)(b), and to purport to analyse and explain the decisions in **Naylor** and, most particularly, the decision in **Spofforth**. As regards the latter, the letter of instruction went through, in detail, a number of the considerations taken into account in **Spofforth** and explained to Mr Butcher, by reference to particular paragraphs in that decision, the way in which the Respondents proposals dealt with those considerations and the way in which Mr Butcher might address and deal with those considerations in his report. In making his report, Mr Butcher was specifically required to work on the assumption that this Tribunal would apply the same principles and apply the same approach as had the tribunal in **Spofforth**.

121. The clear conclusion to be derived from all of the foregoing is that the Respondents' current proposals to this Tribunal stem entirely from the advice that they received, via Mr Trower, from their legal advisers, that an application could be made under section 44 on **Spofforth** grounds, that their proposals are based around that decision, that those proposals had never been in the mind of the Respondents prior to their receipt of advice as to the possibility of a **Spofforth** based application under section 44 of the Act and that, as confirmed in the instructions given to Mr Butcher, the Respondents' underlying purpose in making their current proposals has been to prevent Mr Carr from procuring a direction in his favour from the Tribunal.

122. That conclusion, somewhat regrettably, derives further support from the very obvious animus, as between, in particular, Mr Trower and Mr Carr, or the Carr family, which emerged when Mr Trower gave his evidence.

123. Mr Trower chose, in his evidence, to raise a number of matters, the majority going back well over ten years, which he contended bore on the integrity of Mr Carr, as a potential tenant, but, in fact, related, substantially, to Graham Carr's conduct as tenant. None of these matters (bearing on such issues as the fact that Graham Carr had, contrary to his tenancy agreement, spent a substantial part of his older age living elsewhere than the farmhouse, that, in that time, one of Mr Carr's sisters had lived in the farmhouse, that a farm cottage had been used, at a rent for someone not, in Mr Trower's view, taking any real part in the farming of the holding and that, in Mr Trower's view, there had been inordinate delay in informing the estate, at a time when Graham Carr had contemplated retirement and that Mr Carr's brother, James, might succeed to the tenancy that that proposal was not to be pursued), eventually, featured in the Respondents' final submissions. What that evidence and, more particularly, Mr Trower's demeanour, when dealing with that evidence, did do, however, was to demonstrate Mr Trower's very clear dislike of the Carr family and of their conduct in respect of the holding.

124. The root of that dislike appeared to the Tribunal to derive, principally, from the fact that, over the Carr family's long association with the holding, Graham Carr and, more recently, Mr Carr had not been as accommodating to the estate as the other major tenants on the estate. The kind of complaints that emerge from the evidence are that those responsible for the Carr tenancy had taken a harder line than other tenants in respect of their rights in the land and had not, for example, been so acquiescent in respect of rent reviews, or repairs, or in agreeing to new buildings, or in surrendering old buildings, other than for a return. Put shortly, Graham Carr and, now, Mr Carr had seen their relationship with the estate as a working relationship between equals; a partnership, no doubt, in respect of the husbandry and management of the land, but not in any other way. Mr Trower had not.

125. The reason, or sources, of this dislike are not, in themselves, of any importance and need no further investigation. The important fact is the evident fact of Mr Trower's dislike. It is that fact, coupled with the further fact that Mr Trower has been the principal agent of the estate for very many years and, as described by one witness, the face of the Respondents, which, in the view of the Tribunal, explains and colours the decision of the Respondents to act in the way that they did.

126. All the foregoing said, however, it remains the case, as set out in paragraph 108 of these Reasons, that, if, after careful examination, the Tribunal is satisfied that the termination of the tenancy of a holding, or the refusal of a direction to an otherwise suitable and eligible applicant for a succession, is desirable upon grounds of sound estate management, then, subject only to the Tribunal's exercise of discretion, under section 27(2) of the Act, it would be the duty of the Tribunal to give effect to the notice to quit irrespective of the landlord's underlying motivation.

127. On that footing, therefore, the Tribunal returns to the Respondents' specific proposals and to a consideration as to whether the implementation of those proposals is, in this case, desirable on grounds of sound estate management, as that phrase has been explained in these Reasons.

128. The short answer is that the Tribunal is not so satisfied.

129. In reaching that conclusion, the Tribunal has not felt able to attach any weight to or place any reliance upon the supposed expert evidence given for the Respondents by Mr Butcher. The Tribunal's view is that Mr Butcher, although called to give independent expert evidence, was not truly independent and was, on the evidence and using the familiar colloquialism, a 'hired gun' put forward by the Respondents to make their case and with evidence tailored to that purpose. To use another colloquialism he was a member of the Respondents' team and not, therefore, a witness upon whose impartiality and independent expertise the Tribunal could rely.

130. The reasons for forming that conclusion are as follows.

131. Firstly, it is apparent that, although ostensibly instructed to prepare a report to assist the Respondents in determining whether to advance a section 44 application, the clear reality and intention of the instruction was that Mr Butcher should prepare a report in support of such an application. That that was the case is explicitly apparent from the letter of instruction which, at paragraphs 34 to 43 explains to Mr Butcher the manner in which his report should be prepared for the Tribunal and from the draft report, prepared, in form, as a report to the Tribunal, that Mr Butcher produced.

132. Secondly, the draft report, itself, which would appear to have preceded by some months the making of the Respondents' section 44 application (dated 25th May 2017) was, quite plainly, not an impartial evaluation, such as to enable the Respondents to make an informed decision, but a working draft of the report which was intended, in due course, to be placed before this Tribunal. It envisaged the provision and inclusion of substantial further information, not then available, but to be obtained. It contained also a series of 'headlines', in

respect of matters which could and, ultimately, were included, in support of the Respondents' case. Quite palpably, it was a document prepared in conjunction with the Respondents, or their advisers (the Tribunal note a specific request to Mr Trower for confirmation of information), to be worked up for presentation to the Tribunal.

133. Thirdly and as already indicated, in these Reasons, in instructing Mr Butcher, the Respondents' solicitors gave detailed directions to Mr Butcher as to the matters that he should take into account and the approach that he should adopt, in order that his report should address and satisfy the considerations arising out of **Spofforth**. Put shortly, Mr Butcher was instructed to build his report around what were seen as the **Spofforth** criteria and, in so doing, to give his support to the Respondents' **Spofforth** based case.

134. Taking all these matters together, it is plain to the Tribunal that, as submitted by Mr Jourdan, Mr Butcher, although put forward as such, was not and never had been independent of the Respondents, but rather had been from the outset a key participant in the preparation of the Respondents' case.

135. If there could be any doubt about this, that doubt is, unfortunately, dispelled by Mr Butcher's conduct at a later stage in the preparation of the Respondents' case for the hearing.

136. As appears later in these Reasons, it became common ground between expert accountants instructed to explore the viability of the Straceys' farming business, both before and after the postulated expansion of their holding out of the Carr holding, that the viability of that expansion, given the increased expenditures associated with the proposed expansion and given that the Straceys' net asset position is not a strong one, was, or would be, dependent upon increased financial support from the Straceys' bankers.

137. Extraordinarily, given his supposed independence, Mr Butcher, at the request and cost of the Respondents, was deployed to assist the Straceys, in this regard, by presenting to their bankers (Lloyds) cash flows, budgets and a report, all designed to satisfy those bankers that the farming business could support and sustain the level of overdraft which would be required should the Straceys acquire a much expanded holding and, thereby, to procure for the Straceys the funding that would be required if the Respondents' proposals were to be put into effect. Although in a witness statement dealing with his involvement in the Straceys' application for overdraft finance, Mr Butcher described his role as being one of gathering and incorporating relevant data and putting forward, as he put it, 'a form of words', the reality is that Mr Butcher, in his capacity as a farming consultant at his firm, Strutt and Parker, presented the bank with a formal report in support of the Straceys' funding proposal.

138. The quality and content of Mr Butcher's report to the bank will be considered later in these Reasons. For present purposes, the significance of Mr Butcher's involvement in the preparation of that report and the budgets and cash flows underwriting that report, in order to secure for the Straceys the banking support, essential to their capacity to take on an extended holding and essential to the implementation of the Respondents' proposals in respect of the extension of the Straceys' holding out of the Carr holding, is that it demonstrates, unequivocally, that Mr Butcher has not been acting in any independent fashion in respect of these proceedings, but is and, in the view of this Tribunal, has always been an active member of the Respondents' litigation team. The consequence of that fact is that his supposed expert evidence is not and cannot be seen to be an independent and uninfluenced product and for that reason cannot be admitted in evidence, or relied upon, by the Tribunal.

139. As already outlined, in paragraphs 80 to 82 of these Reasons, the fundamental proposal advanced by the Respondents and said by the Respondents to be desirable on grounds of sound estate management is that the large bulk of the Carr holding should be divided up between the two other main tenants on the estate; the Straceys and the Hunts; allowing the release from the let land on the estate of the buildings identified in paragraph 82 of these reasons and allowing those buildings to be dealt with by the Respondents as set out in that paragraph.

140. The three tenancies making up the let farming estate together extend to some 601 hectares, or 1485 acres. Of the balance of the estate, some 300 hectares, is in hand woodland with a very small amount of land (one hectare) being in residential, or other, use.

141. The Carr holding, as already set out, extends to 158 hectares, or 390 acres, and is, essentially an arable enterprise. As detailed in paragraphs 28 and 29 of these Reasons, it is run in conjunction with Suddern Farm and is a well-capitalised and profitable operation. Again, as already discussed and determined, Mr Carr, now in partnership with his son, Harry, is a highly competent and experienced farmer, who has farmed the holding to the highest standards of husbandry. The Carr holding lies, in large part in the north west of the estate, but with a limited amount of land in the south of the estate

142. The Hunts, (Richard and James) are the tenants under the Act of Coxlease and Upper Assendon Farms, located at the southern end of the estate, and consisting of about 187 hectares, 463 acres, of largely arable land. Their overall enterprise, however, extends to about 445 hectares, 1,100 acres, and includes 78 hectares of estate land, held outside the Act, together with other land. Although the land held under the Act is mainly arable, their overall operation is a mixture of beef and cereals. The focus of these proceedings was not on the

Hunts' holding, or their farming business, but it was accepted, on all sides, that the Hunts run an efficient and, largely, profitable enterprise.

143. The Straceys (Simon and Edward) are the tenants of White Pond, Balhams and Rose Farms, together amounting to about 172 hectares, 426 acres, of arable land and permanent pasture at the north east of the estate. They, additionally, farm a further 49, or so, hectares of non-estate land, giving an overall farming operation over 221 hectares, 545 acres. They operate a mixed cereal and beef operation. Additionally, they have been accepted into the Countryside Stewardship Scheme and, with the Respondents' consent, run a separate holiday let business, making use of redundant farm buildings, which pays a rent to the farming business, together with a direct selling operation, at Christmas, selling beef and turkeys directly to the public.

144. As earlier set out, the viability of the Straceys' farming business and overall operation, both as matters stand and following any implementation of the amalgamation of Carr holding land into their holding, has been an issue in these proceedings. In regard to current viability, concern had arisen because the 31st March 2017 business accounts had disclosed a balance sheet insolvency. That matter had been investigated, however, by their new accountant, Mr Nixey, who had been able to confirm that the insolvency was not real, but reflected a failure, in essence, to properly account for the value of the cereals used as feed for the Straceys' beef stock. In regard to the current year accounts, to February 2019, Mr Nixey informed the Tribunal that, although formal accounts had not been prepared, the figures available from the Straceys disclosed a potential profit from the business of some £47,000. The matter had also been investigated by independent accountants appointed by each of the parties and their agreed conclusion was that the business, as currently constituted, was viable, albeit that it was restricted in terms of working capital. The Tribunal will return to the question of the viability of the Stracey business, in the event of implementation of the Respondents' proposals later in these Reasons.

145. Under those proposals, as currently under discussion, the Carr holding, other than the relevant buildings, already identified, would be divided between the Hunts and the Straceys on the footing that 132 hectares of the Carr holding land (327 acres) would pass to the Straceys and 25 hectares (62 acres) to the Hunts. The proposed division would, broadly divide the let estate into two units; the Straceys to the North and the Hunts to the South. The result of these proposals, if effected and bringing into account the land farmed by the Hunts, other than their holding under the Act, would be to create two farming units of similar size; the Hunts farming 720 acres and the Straceys farming 720 acres. The Stracey holding from the estate would

increase by 77%. As currently, both businesses would continue as mixed cereal and stock operations. An alternative proposal, a so-called Option B, has been raised by the Respondents, arising, in the understanding of the Tribunal, principally because of the concerns that have been advanced as to the viability of the Straceys' business post implementation, under which the bulk of the Carr holding would pass to the Hunts. By agreement of the parties and by the direction of the Tribunal, prior to the hearing of these applications, that alternative proposal was not debated at the hearing and has been stood over to await the outcome of the Tribunal's consideration of the proposal as now set out.

146. In regard to the buildings, which, under both sets of proposals, would be released from the Carr holding and made available for refurbishment, redevelopment or other use by the Respondents, and, in particular, the two dutch barns and the farmyard buildings, the Respondents contention, as set out in a report prepared by Mr Chichester, an additional expert called by the Respondents, is that the buildings are very poor and not fit for modern farming operations.

147. The position as to those buildings, as is acknowledged by the Respondents, is that they are landlords' buildings. Under the tenancy agreement, under which they have been held, the obligations both as to structural repair and as to repainting, tarring , or creosoting lie upon the landlord, subject only to an entitlement to recover one half of costs incurred in respect of painting, tarring and creosoting from the tenant (clauses 6(h) and 26 of the tenancy agreement).

148. There is no doubt but that the buildings in question are substantially out of repair and the evidence before the Tribunal is that the issue of repair has been a long standing bone of contention, going back many years. Mr Trower, when asked about this, was candid as to the fact that repairs had not been carried out because of cost; He considered that repairs might result in 'six figure costs'. Repairs had not been carried out because of cost, because, in contrast to other farm buildings on the estate, they were not listed and because, in his view, the buildings, even in repair, would not be suitable for modern farming.

149. In regard to one of the dutch barns, at Hollandridge Lane, which, at inspection, was very plainly in a very poor state, Mr Trower told the Tribunal that he had sought to come to an arrangement with Mr Graham Carr that some form of caulking repair be carried out and be treated as falling within the painting covenant, such that the cost be shared. Even making all allowances for the passage of time since that proposal had been made, the Tribunal was satisfied, in light of its own inspection, that the repairs required went well beyond some ad

hoc recaulking and that Graham Carr had been wholly entitled to refuse to enter into this suggested arrangement.

150. Mr Trower took the point that Graham Carr could, under clause 27 of the tenancy have carried out the necessary work and charged it to the Respondents. Mr Carr's evidence, on this, was that his father had not wanted to get into litigation and that the question of repair had been dealt with pragmatically, by the tenant finding a system of management of the farming operation which allowed, as it had plainly done, the effective farming of the land without benefit of the relevant buildings

151. No steps had been taken by the Respondents to invoke the provisions of clause 35 of the tenancy agreement, such as to put to arbitration the question of the redundancy of any building on the estate.

152. In the view of the Tribunal, it cannot be said to be sound management of a farming estate to allow, for whatever reason, buildings for which the landlord bears structural responsibility to fall into disrepair and, then, to use that disrepair as a ground for procuring the release of those buildings from the tenanted land, by the process of application under section 27(3)(b) for consent to the termination of the tenancy of which the buildings form part. That must be the more the case where the buildings in question could be put into farming use. As to that, it is the fact that traditional farm buildings, such as the farmyard buildings, in this case, but in good repair, are in use on both the Hunts and the Straceys holdings and that it was Mr Chichester's evidence, for the Respondents, that such buildings, in repair, are in everyday farming use all over the country.

153. While the Tribunal accepts that the proposal to release farm buildings, for redevelopment, or other use, forms only one aspect of the Respondents' overall proposal, the Tribunal is clear, that given the long standing disrepair of the fam yard buildings and the dutch barns and for the reasons articulated in the previous paragraph, that aspect of the Respondents' proposal cannot be justified as constituting sound management of the estate and as being desirable for that purpose.

154. There are other and broader reasons, also, as to why the Respondents' proposals as to the buildings, or land, to be released from the Carr holding cannot be justified on grounds of sound estate management.

155. As explained earlier in these Reasons, the concept of sound estate management, for purposes of section 27(3)(b) of the Act, contemplates and is limited to acts of management of the estate which are designed to improve the farming and husbandry of the estate. Accordingly, conduct by the estate owner, or proposals in respect of such conduct, which do

not go to that purpose cannot constitute sound estate management for purposes of the Act. In consequence the sale, or development of farm buildings, where the purpose of the sale, or development of the buildings is other than to invest the proceeds in improvements to the estate, such as to render the estate a better and more effective farming estate, do not and cannot constitute sound estate management, for purposes of the Act.

156. In this case, the evidence of Mr Evelyn is that the estate had no plan for the use of any potential proceeds of redevelopment, or refurbishment, let alone any plan relating to their use in improvement of the Stonor estate. His further evidence was that no separate accounts are held for the Stonor estate, that monies from Stonor, therefore, went into the same accounts as monies from the Evelyn family's other estate, at Wotton, in Surrey, and that monies arising from any released land might well be spent on that estate. In the light of that evidence, the Tribunal is satisfied that the Respondents' proposals, in respect of the release of land from the Carr holding, cannot be regarded as proposals that go to the sound management of the Stonor estate, in the sense required by section 27(3)(b) of the Act.

157. Even if those proposals could constitute sound estate management and even putting aside any considerations arising out of the Respondents' failure to repair, the Tribunal is further satisfied that the object of releasing land from the holding would not, on the facts of this case and on the law, as argued by the Respondents justify the termination of the tenancy of the Carr holding in order to secure that release.

158. The Tribunal is mindful that, although any new tenancy arising from a direction in favour of Mr Carr would be of the same demise and upon the same terms as the existing tenancy, section 48 of the Act would entitle the Respondents, if they so chose, to take the terms of the tenancy to arbitration and to invite the arbitrator to vary those terms 'having regard to the circumstances of the holding and the length of time since the holding was first let on those terms. Mr Batstone, in his closing submissions, adverted to this section and to the proposition that the terms of the tenancy, susceptible of variation, would include the extent of the demise itself.

159. If that be right (and the Tribunal did not hear full argument on the point), then the cure for any problem arising out of the existence of redundant , or sterile buildings, within the holding, would be to arbitrate the point and secure a determination that circumstances dictated that the buildings in question be released from the holding. It would not be desirable, given the existence of the section 48 jurisdiction and even if the release of redundant farm buildings for development could be brought within the concept of sound estate management, to bring to an end a long standing and profitable farming business, on the holding, or to refuse

a direction in favour of a skilful and experienced farmer wishing to carry on that business, simply in order to effect the release of such buildings.

160. All that said, the Tribunal accepts, as earlier set out, that if a landlord's estate management proposals are sound and desirable, in the interests of the farming and husbandry of the estate, then the fact, that, by way of collateral advantage, the implementation of the relevant proposals, enables land to be released and developed for extraneous purposes, does not preclude the Tribunal from giving effect to a notice to quit on the ground set out in section 27(3)b of the Act.

161. In the view of the Tribunal and as earlier explained, it is not in doubt but that circumstances can exist whereby the amalgamation of holdings on an estate and the consequent termination of a holding, or holdings, can constitute sound estate management in respect of an estate and may, in certain circumstances, be desirable in respect of an estate. The kind of circumstances where this may be the case are set out and identified in paragraph 103 of these Reasons.

162. Although there are important differences in financial strength as between the three relevant holdings on the estate, this is not a case where amalgamation is necessary because, in their current formulation, the farming businesses carried on the three holdings, or any of them, are unviable. While the Straceys' business may be under, or poorly, capitalised, both Mr Nixey and the two expert accountants, Mr Shelton and Mr Close, have all agreed that the Straceys' current business is a viable one. No question has ever been raised as to the viability of either the farming operation on the Carr holding, or that carried on by Richard and James Hunt. It follows that, as a matter of sound management, there is no need for the proposed amalgamation, on grounds of a lack of existing viability, or any immediate need to preserve the farming and husbandry of the estate.

163. The outstanding question, however, is whether it is desirable on grounds of sound management to amalgamate the Carr holding into the other two holdings, on the footing that, by so doing, the remaining holdings would be better able, by taking advantage of economies of scale and possible enhanced profitability, to withstand the future vagaries and uncertainties which may face agriculture and, perhaps most particularly, those that may arise out of Brexit.

164. As already stated, the suggestion raised in the original section 44 application that amalgamation was desirable in order to bring a mixed farming regime to the land in the Carr holding was, by the close of the hearing, only very faintly pursued. As to that, the Tribunal is clear that, given the unchallenged evidence as to the quality of Mr Carr's husbandry of the holding and the want of any evidence, going beyond mere assertion, that an advantage to the

estate would be obtained from bringing into play a mixed farming regime over all the estate, rather than over the two holdings where such a regime is currently in place, this factor, whether taken alone, or in conjunction with the other supposed advantages of amalgamation, comes nowhere near rendering it desirable, as a matter of sound estate management, that Mr Carr's tenancy be terminated, in order that a mixed farming regime be put in place over the holding.

165. The Tribunal is, in the event, equally unpersuaded that the other supposed advantages of amalgamation, as set out above, render it desirable to bring the tenancy of the holding to an end, or to refuse Mr Carr a succession tenancy.

166. With all respect, the evidence advanced in support of the proposal came to very little more than the generic proposition that larger agricultural units, because of economies of scale and because of consequent enhanced profits, reap better result than smaller units and are, for that reason, more secure in hard times. That proposition, however, takes no regard, at all as to the particular circumstances of particular businesses, or as to the risks which go with the expansion of any business and the dangers of over extension.

167. The Respondents' evidence, moreover, did not grapple at all with the fact that, under their proposals, it is the least secure of the businesses on the existing holdings, given the Straceys' absence of strong net assets and their restrictions as to working capital, which is to benefit from the amalgamation. In the view of the Tribunal, if the sound management object of the exercise was to set in place two secure farming businesses, capable of surviving potential hard times, then the proposition which would be desirable upon the grounds of sound management, would be one that reinforced the stronger units rather than the weakest.

168. In this case, because, very largely, of the weakness of the Straceys' capital position, the Tribunal is satisfied that the risks to the Stracey business, arising out of the proposed extension in the size and of their holding and the enhanced costs to their business, consequent upon that proposed extension radically outweigh the putative advantages which might arise from the proposed extension and that, for that reason, the proposed extension, by way of the amalgamation, far from reinforcing the Straceys' business and protecting the husbandry and farming of the Carr holding land and their own holding, potentially put in jeopardy the farming of both; this to be contrasted with the current position where three extant and viable businesses farm the estate and where, as already stated, a direction in favour of Mr Carr would retain to the estate and to the farming and husbandry of the state his very considerable skills and experience. Parenthetically, it is common ground that the relatively modest amount of

Carr land, which, under the current proposal, would be absorbed into the Hunts' holding, would not significantly affect the business carried on on that holding one way or another.

169. As set out by the two accounting experts, Mr Close and Mr Shelton, the success, or otherwise, of the proposed extension of the Straceys' holding, in terms of the future viability of the business to be carried on, on the extended holding, depends entirely upon the continuing support of the Straceys' bankers, Lloyds, and, hence, upon the projections put to Lloyds Bank, by Mr Butcher, being met, or there being, as it is put, good understandable reasons as to why the projections have not been met.

170. Mr Butcher's projections contemplate an overall funding requirement of some £260,000 to reflect the expenditures required to bring into effect the much expanded beef and arable operation which would go with the extended holding. His cash flow projections further contemplate that, even if his projections are met, the bank will have to support an overdraft, in favour of the Straceys' business, peaking, alarmingly, at some £256,000 in September 2020. The overdraft arrangement, prior to these proposals, put to the Bank in March 2019, provided a maximum facility of £125,000 (agreed in January 2019). Based upon Mr Butcher's report, the bank has increased that facility (by letter of 9th April 2019) to £190,000, to 31st January 2020, by which date, according to Mr Butcher's projections, the overdraft is expected to stand at circa £175,000. Unsurprisingly, the bank has given no formal commitment beyond January 2020, although, subject to the Straceys meeting Mr Butcher's projections, or showing good reason why they have failed to do so, their facilities manager, Mr Unsworth has stated that the bank <u>should</u>, its underlining, be able to support the even larger overdraft which would be required, under the projections, to support the next phase of the expansion project. All of the foregoing compares with the existing overdraft position, currently in the area of £110,000.

171. It is plain from the foregoing that the Straceys, in order to implement the amalgamation into their holding of the bulk of the Carr holding are entering into very large financial commitments, which, at their peak would increase their overdraft liabilities by well over 100% It is also plain that everything is dependent either upon the projections put forward by Mr Butcher being achieved, or by the bank accepting such explanations as might be available for the non-performance of the projections. Even without any other concerns, this is, in the view of the Tribunal, a high risk operation.

172. Both Simon and Edward Stracey were taxed with this concern, in cross examination. It was plain to the Tribunal that the idea of extra land was of great appeal. When the risks were put, both of them took the view that, somehow, they would make it work; they would

put in the hours; they would, in Mr Nixey's phrase tighten their belts; underlying their position was what the Tribunal felt was the rather naïve, or at least, optimistic, proposition that Mr Unsworth, their long standing facilities manager, would stand by them. The Tribunal did not find itself so sanguine. The Tribunal was not persuaded that, should matters go amiss, the bank would necessarily continue its support.

173. That concern was heavily reinforced by the Tribunal's further concerns as to the quality and accuracy of the projections put forward by Mr Butcher.

174. Two very obvious errors had been incorporated into Mr Butcher's proposals. Firstly, in presenting the arable income for the 2019 harvest, Mr Butcher, as he eventually and rather reluctantly acknowledged, had doubled the number of hectares from which winter wheat would be produced. Secondly, he had applied a yield per hectare, in respect of winter wheat (9.25 tonnes per hectare) both in that year, where, in point of fact, Mr Stracey had achieved 8.75 tonnes per hectare, and over the subsequent years covered by his projections, when, according to Simon Stracey, his average yield has been 8.00 tonnes per hectare. The consequence of this, when factored into the projections, was to increase projected cash receipts by £64,000. Removed from the projection, the consequence, is to increase the requirement from the bank, at the high point of the overdraft, to a sum in excess of £300,000. As important, as it seems to the Tribunal, is that the shortfall, as against projected figures, for the 2019 winter wheat harvest, taken alone, will be some £32,000 and that this figure, if removed from the projections, could well mean, of itself, that the Straceys do not meet Mr Butcher's projections in January 2020, when the overdraft facility will not merely require to be renewed, but, also, substantially increased.

175. The foregoing takes no account of other risks that may arise in meeting Mr Butcher's projections. They take no account of the possibility of falling wheat prices. They take no account of the fact that, as projected, the Straceys, who, unlike Mr Carr, are not experienced in large scale arable production (in 2018 only 17% of farm income came from arable sales), are expected, in the first two years covered by the projections, to secure the totality of the additional income to be achieved by the business from the arable side. They take no account of the fact that, as recently as 2017, the arable side of the Straceys' business made a loss of £87,000, with the reasonable suggestion that arable farming may not be Mr Simon Stracey's stronger suit.

176. Other risks arise in respect of the beef operation. TB has affected the herd in the past and may not be as readily managed, in the view of the Tribunal, as Edward Stracey sought to suggest. Injury is always a possibility when dealing with livestock.

177. Standing back, it is the Tribunal's view that Mr Butcher's projections veer on the optimistic and that there are very many reasons to think that they may not be achieved.

178. In that event, there are very real grounds for thinking that the bank's continued support could not be assured.

179. In essence, the concern is, as expressed by the expert accountants, as to the Straceys' capital base.

180. Other than the farm machinery, the crops in ground and in store, feedstuff and the current livestock, the Straceys have little in the way of capital assets. Their only significant asset is a bungalow in Lyme Regis, valued at £290,000 and, currently, in mortgage to the bank to the extent of some £85,000. Farm machinery has been valued by the Straceys, in their farmer's statement to the bank, at £233,000, closely, it would appear, approximating to the price of the machinery when new, and livestock, crops and feedstuff an overall value of £343,000.

181. In the experience of the Tribunal, the reality, in the event that projections were not met and the Straceys' business fell into difficulty, is that the bank would not attach much weight to the supposed value of the farm assets.

182. On the other side of the equation, in addition to the overdraft, at whatever figure might ultimately emerge, and the mortgage, some £68,000 is owed in respect of the hire purchase of farm machinery and a further £67,000 in respect of a business loan taken out in 2012.

183. The foregoing summary does not, in the view of the Tribunal, provide any confidence that, should things go awry, the bank will, nonetheless, sustain the Straceys' business. There are, as set out above, many reasons why things might go awry.

184. Taking all matters together, the Tribunal is not at all persuaded that the proposed extension of the Straceys' holding would do anything other than to impose serious potential strains on the Straceys' business. Far from improving the long term viability of the Straceys' business and so protecting the farming and husbandry of the land farmed and, under the Respondents' proposals, to be farmed by the Straceys, it seems clear to the Tribunal that the proposed amalgamation might very well have the opposite effect and, in consequence, put at risk the continued farming and husbandry both of the Straceys' current holding and of the prospectively expanded holding.

185. In those circumstances, given the risks arising from those proposals and contrasting the position with that which will obtain if a direction is given in favour of Mr Carr, as set out

in paragraph 168 of these Reasons, there is no basis upon which the Tribunal can be satisfied that the current proposals are desirable upon grounds of sound estate management.

186. The consequence of that conclusion is that, in respect of the current proposals, no question arises under section 27(2) of the Act.

187. It may be helpful to the parties, however, if, albeit in short order the Tribunal gives some indication as to the manner in which it would have approached the section 27(2) question had, contrary to its actual conclusion, the Tribunal concluded that the respondents' proposals were desirable on grounds of sound estate management.

188. In that event the Tribunal would have given considerable weight to the fact that, as found by the Tribunal, the motive underlying the section 44 application was to evict the Carr family from the estate, that, at least in part, that motivation derived from the animus existing between Mr Trower and the Carr family and that absent that motivation the Respondents' proposals would, in all probability, never have been brought forward. A fair and reasonable landlord would not have acted upon that basis and, in the hypothetical context that it was, nonetheless, entitled to implement the notice to quit, would discount any personal motivation in deciding whether or not to insist that the notice take effect

189. The Tribunal would also have had in mind the fact that, even without the implementation of the notice, there would have remained in place on the estate three viable tenancies and that, in that event, the estate would have retained the benefit of a skilled farming tenant, in the shape of Mr Carr. The fair and reasonable landlord would have set those facts against such benefits, in terms of the increased long term viability of the farming and husbandry of the estate as might derive from their proposals.

190. The Tribunal, while appreciating that the loss of the holding would not leave Mr Carr in financial hardship would also have had in mind the undoubted fact that the implementation of the notice would, on any view, nonetheless, cause a degree of financial loss to Mr Carr. Perhaps more importantly, given the length and strength of his involvement, from a child, with the holding, the Tribual would have had real regard to the personal dislocation which would arise if his connection with the holding was terminated. The Tribunal would also have regard to the impact upon Harry Carr, who, again, on any view, derives his livelihood from the holding. The fair and impartial landlord would place these personal factors in the balance against the benefits to be derived from implementation of the notice.

191. Finally, in regard to the collateral benefits, in terms of the release of land for exploitation, which would arise from implementation of the notice, the Tribunal, as would a

fair and reasonable landlord, give weight to the possibility, at least, that land could be released without the implementation of the notice.

192. Taking all the foregoing matters together, the Tribunal, had it had to do so, would have concluded that a fair and reasonable landlord would not have concluded that the benefits to the estate, in terms of the improved viability of the tenanted estate, arising from the implementation of the notice, were sufficient to warrant any insistence upon the implementation of the notice, given the viability of the tenanted estate and the advantages to be had from Mr Carr, as tenant, in the event that the notice was not implemented, and given, also, the adverse personal impact upon Mr Carr and his family which would arise from implementation. In regard to the collateral advantages, in terms of the release of land for exploitation, which would arise from implementation, the Tribunal's conclusion would have been that a fair landlord would, in all the circumstances, not insist upon implementation purely to secure those advantages, but would prefer to approach that matter by way of negotiation, or arbitration.

193. In the event, however, the section 27(2) determination not arising, the substantive determination of this Tribunal is that Mr Carr is both an eligible and a suitable tenant for the holding and that it is not desirable on grounds of sound estate management that the Respondents' proposals, as discussed in these reasons, are carried into effect.

194. In the result the direction of this Tribunal is that, unless within twenty one days of receipt by the Respondents of these Reasons, the Respondents apply for directions as to the determination by the Tribunal of their alternative proposals (Option B), or unless some other agreement is made between the parties, Mr Carr is entitled to a tenancy of the holding, as from 29th September 2019. The parties are requested to lodge an agreed draft in implementation of this direction and also to lodge an agreed draft of the Tribunal's earlier directions of 26th April 2019.