

AYRSHIRE VALUATION APPEAL PANEL

Secretary to the Panel:

Alan M. Urquhart LL.B

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28th June 2021

Kilmarnock
KA3 3EB

Dear Mrs

Ayrshire Valuation Appeal Committee Hearing 24th June 2021
Appeal re Shootings Rights at
Property Reference 07/97/F94000/0001

I refer to your appearance before the above Meeting of the Ayrshire Valuation Appeal Panel on behalf of your above Firm when you appealed against the entry in the Valuation Roll of "Shooting Rights". The Assessor was represented by Mr Jonathan Murphy, Advocate, assisted by and instructed by Magnus Voy, Divisional Assessor with his witness Sarah Parkinson, Valuation Surveyor within the Assessor's Office at Ayr. The Valuation Appeal Committee was chaired by Neil Shedden, Panel Chairman and attended by 3 Panel Members. I was in attendance as Panel Secretary to give guidance, legal or otherwise, to the Committee throughout the proceedings. The Appeal Committee has ruled as follows:

A THE FACTS

1. The appeal property comprises a dairy farm amounting in size to some 220 acres (126.74ha) situated between ?????????????????????? in Ayrshire. It is dissected in part by the B769 road which is subject to the national speed limit of 60 mph. It is further dissected by the unclassified road leading to and from .
2. The farm has been in the ownership of the same family for over 100 years. You are a partner in the business and have been connected with the business for over 50 years.
3. In line with the national scheme of valuation of shooting rights (SAA Practice Note 35), the appeal property is classified as "Grassland" and therefore subject to a valuation rate of £2.80 per hectare. A 15% end allowance has been granted for noted disabilities, producing an end value of £193. This leads to an entry in the Valuation Roll of £190 with effect from 1st April, 2017. It is this entry in total, not just the figure, which you are challenging and seeking to have deleted.

B. THE LAW/PRACTICE (so far as relevant to this appeal)

1. From 1st April, 1995, Shootings & Deer Forests were removed from the Valuation Roll. This removal was repealed by the Land Reform (Scotland) Act 2016, the effect being to reintroduce Shootings and Deer Forests with effect from 1st April, 2017. The Scottish Assessors' Association (SAA) approached this new area of valuation by forming a working group which led to publication of SAA Practice Note 35. The general approach taken by SAA was to deal with such matters in the same way as had historically happened up to 1995. In so doing, SAA took note of the Scottish Government's Policy Memorandum which states:

"Shootings & Deer Forests are not identified in Statute, nor does the Scottish Government propose to do so. Interpretation of the terms would be for the Assessors, subject to the Valuation Appeal framework, as it was pre-1995. In arriving at respective values, Assessors would consider all aspects of the use being made of the lands and heritages."

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However, a significant departure from the previous system was a decision not to proceed via “bag returns” but to adopt a rate per hectare method which was considered more robust and avoided the need to establish different rates for different species of bird and game.

Finally, the Assessors took the view that an entry required to be made in the Valuation Roll if the land was capable of exercising Shooting Rights and if there was an expectation that there would be game to shoot.

2. Game does not have a clear definition in Scots Law. The term however, normally refers to such as deer, pheasant, partridge, grouse, ptarmigan, wildfowl, snipe, woodcock, pigeons, rabbits and hare. This however is not an exhaustive list and some animals may be considered as vermin. The Law states that a party claiming only to shoot vermin does not preclude the possibility of other game or the like being available to shoot on that land.

3. In Rating Terms, Shooting Rights are defined as a right to occupy land for the purpose of shooting game. A shooting right comes into being either through ownership of the land or by the owner granting a lease to another party to conduct shooting. It is the right to shoot, rather than the land, which is being valued.

4. In determining the rent to be paid by the hypothetical tenant, the Assessor will follow the standard definition of net annual value as set out in Section 6(8) of the Valuation & Rating (Scotland) Act 1956, which states that:

“The net annual value of any lands and heritages shall be the rent at which the lands and heritages might reasonably be expected to let from year to year if no grassum other than the rent was payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of repairs and insurance and other expenses, if any, necessary to maintain the Lands and Heritages in a state to command that rent”.

In order to determine actual value, Assessors will determine which category from the following list applies to the particular subjects, namely (a) Arable; (b) Deer Forest/Hill/Moor; (c) Grassland; (d) Mixed; (e) Woodland /Forestry; and (f) Commercial Forestry and apply a rate per hectare (as agreed within Practice Note 35 referred to above) subject to any end allowances.

5. There may be cases where the occupier of the Shooting Rights does not shoot nor has an intention to shoot or to grant a lease over the shootings despite the property being otherwise suitable for the exercise of shooting. This is considered to be a voluntary restriction and does not preclude the subject from having a value for rating. However, shooting rights should only be entered in the Roll where shootings are capable of being exercised. There may be cases where the size of the land or proximity to a town or other factors would make it impracticable to let or use the land for shooting purposes. The Assessor therefore must pay regard to the nature of the land as well as its locality. Additionally, in order to identify the existence of an unlet shooting, the question must be answered whether there is game to be shot on the lands at more than a de minimis level.

C. CONTENTIONS (for the appellant per Mrs)

1. You contended that the Assessor's valuation entry for the appeal subjects should be deleted as there is no actual or possible shooting on the land. The appeal subjects are heavily stocked with between 500 and 600 head of cattle including about 150 dairy cows on the farm at any one time. On a regular if not daily basis, there are personnel crossing the farm to milk the cows, deliver feed products, provide veterinary services and to uplift the daily milk supply. There is therefore no available ground or part of the appeal subjects where it would be safe, never mind possible, to conduct shooting.

2. The farm fields are used for grazing cattle (fairly intensively due to the limited acreage), growing silage and a little barley, both for animal feed. The silage is cut 4 times per year with the fields fertilized in between, The few hedges that there are, are cut back in the interests of good visibility. There is no forested land over which shootings could take place, which could reasonably contain wildlife or game.

3. There is no history of game or the type of bird of interest to a shooting party on the appeal subjects. If animals such as crows become a nuisance to your cattle, a bird banger is used to disperse. On no occasion, has anyone sought to shoot birds or indeed vermin. In answer to a question from Mr Murphy during cross examination, you advised that you had seen a pheasant on your land in around April, 2020 (ie during the first Covid-19 lockdown when the nearby road was empty of traffic) and had no recollection of ever seeing a fox or game bird. In further

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answer to cross examination, you contended that the Return of Information form had been completed by your mother aged 95. In answer to question 2 “Are Shooting Rights exercised by anyone”, she had answered both “yes” and “no” with a possible mark indicating a cancellation of the first of these. In respect of question 4 “Please provide a brief description of all shooting activities”, she had answered “occasional pest control only”. You advised the Committee that that answer was wrong. There was no letting of shooting in place and no-one on the Farm owned a gun or had ever owned a gun. Shooting was therefore not possible. You contended that it was improper of the Assessor to rely upon answers on a form completed by a lady of 95 years of age.

4. The appeal subjects are dissected in part by the B769 road to Stewarton which is a busy main road and in part by an unclassified road leading to Kilmaurs which is used daily by walkers, cyclists, and horse riders. Additionally, a development of houses sits at the very edge of the appeal property. Neighbours graze horses in fields which lie immediately adjacent to the appeal subjects. A further neighbouring property operates as a equestrian cross country course. It would be reckless to even consider conducting shooting on the appeal property under such circumstances.

5. You contended that the comparisons provided by the Assessor prior to the Hearing were not true comparisons. Of the list of 23 properties, 13 were not dairy farms, so were not true comparisons given the intensive nature of stock on a dairy farm. In particular, you challenged the inclusion of the following:

(a) High Castleton Farm which is quoted as being arable/livestock/dairy farm. You contended that there was no dairy element on that farm. It is however situated adjacent to a listed mansion house with large woods and policies which may provide suitable habitat for game;

(b) Lochside Farm. This farm was originally part of the Lochridge Estate which also has large areas of woodland and policies capable of providing cover for game birds and the like; and

(c) Bottoms Farm which has to one side, the mansion house Chapelton House which comprises woodland, wooded gardens and links to Lainshaw Woods, all of which are capable of providing cover for game.

As such, all these properties are wholly different from the appeal property and fail as suitable comparisons.

6. In discussion with the Assessor prior to the Hearing, Ms Parkinson advised that of over 1,000 Shooting Right entries in the Valuation Roll, 238 appeals were lodged of which 118 were professionally represented. Of these appeals, only your appeal and 3 others were not agreed and none has been removed from the Roll. Ms Parkinson alleged that this proved that the Assessor’s scheme of valuation for shooting rights was generally accepted and proved. In response, you contended that there were several good reasons for this, namely (a) all ratepayer liability is subject to 100% small business bonus, thus currently reducing the actual liability to nil. In such circumstances, many landowners may not see the need to appeal or benefit to them in so doing; (b) many appeals will have been settled following a much-reduced offer from the Assessor; and (c) many people are not capable of dealing with a matter such as an appeal to the Valuation Appeal Committee and would not therefore lodge an appeal. That cannot surely prevent others who have the skill and time to pursue such an appeal from doing so. Each ratepayer is unique and each is entitled to exercise his/her democratic right to challenge a rates assessment which he/she feels is unfair and unjust. It is an incorrect conclusion on the part of the Assessor that someone who has not appealed their Rateable Value is content with same.

7. In conclusion, you contended that your property is wholly unsuitable as a habitat for game birds and other animals capable of being shot for sport or personal consumption. The land is intensively farmed, it has no wooded areas, it has personnel on the land for various purposes daily, it is crossed by 2 roads to which the public have unfettered access and there is no evidence of the existence of game birds or the like such as would justify an entry in the Valuation Roll which should be deleted.

D. CONTENTIONS FOR THE ASSESSOR (per Mr Murphy and Ms Parkinson)

1. Following the reintroduction of shooting rights into the Valuation Roll by the Land Reform (Scotland) Act 2016, the Assessor was required to determine the net annual value for all lands capable of being used for the shooting of deer and other wild animals. The Assessor must comply with Section 6(8) of the Valuation and Rating (Scotland) Act 1956 which states that “*The net annual value of any lands and heritages shall be the rent*

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at which the lands and heritages might reasonably be expected to let from year to year if no grassum other than the rent was payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of repairs and insurance and other expenses, if any, necessary to maintain the Lands and Heritages in a state to command that rent”.

The NAV is therefore a reflection of the rent which would be paid by a hypothetical tenant where the tenant agrees to pay all repairs and insurance.

The appeal subject has, following that direction, been valued in accordance with the SAA Practice Note 35 and was originally entered in the Roll at £625. Following an amendment to the Practice Note and the application of an end allowance for disabilities, the current entry is £190 which is being defended by the Assessor today.

2. From public records made available to the Assessor, it was noted that the predominant use of the appeal subjects was grassland. This produced at rate per hectare of £2.80 per the Practice Note. An end allowance of 15% has been offered to reflect disabilities such as the proximity to neighbouring properties and the nearby public roads.

3. Shooting Rights have been valued on a Scotland-wide scheme based on analysis of rental information ingathered from across Scotland over a variety of land types.

4. The Assessor has noted that there are hedgerows dividing the fields and wooded areas on or adjacent to the appeal subjects which could produce cover for game. You produced to the Committee photographs showing 2 crows present on the appeal property and on adjacent land.

5. A Return of Information completed by Jean H Forrest advised that there were shooting activities on the land consisting of occasional pest control. This implies that it is safe to discharge a firearm and that some game is present on the land.

6. A scheme of valuation produced by the Assessor is considered to be sound, or perhaps less subject to challenge, if it has received general acceptance from other ratepayers in that locality, more so if the level of values has been challenged and then accepted after discussion, rather than just general acquiescence. Shooting rights valuations in this locality which are similar in nature to the appeal subjects have been accepted without appeal or agreed after appeal and negotiation.

7. You produced for the Committee a Table of Comparisons detailing 5 farms (Castleton High Farm, Lochside Farm, Floors Farm, Titwood Part, and Bottoms Farm) all lying adjacent to the appeal subjects, of similar or indeed smaller size, of mixed or grassland predominant land type. All of these had either not appealed the valuation roll entry or had agreed a new value after discussion. All of these are fair comparisons and can be directly related to the appeal subjects as the type of premises where game birds etc are to be found. It is a fair conclusion that if these farms can sustain game etc (as is concluded by acceptance of the valuation roll entry for each premise), then the appeal subjects being similar and in the same locality can do so as well.

8. Mr Murphy then moved onto the legal framework which the Committee requires to consider, contending that there are various legal principles which apply and must be followed when approaching the identification of a right of shooting, namely:

(a) **Shooting Rights are lands and heritages of a particular type**, they are not lands as such but rights which can be exercised over lands. They can best be described as “restricted lease rights”. Mr Murphy referred to Drummond Estates v Central Scotland Assessor 2004 RA 145 and quoted particularly the Lands Tribunal who said “the clear contrast is between the identified physical subjects and the “shootings” which are not lands but rights exercised over land;

(b) **It is irrelevant that an owner does not in fact let out any rights to shoot**. Unlet shootings are to be entered in the Valuation Roll in the same way as let shootings. Reference was made to Lord Deas in Leith v Leith 1862 D 1059 at page 1082 who stated that “the conclusion having been arrived at that let game is taken into account, it appears to me to be very difficult, indeed impossible, in point of principle, to stop short of holding that there may be cases in which the game, although not let, and never has been let, is to be taken into account”.

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(c) **In order to identify the existence of an unlet shooting, the question is whether there is game to be shot on the lands at a more than de minimis level;** Lord Deas recognised in *Leith v Leith* that the recognition of unlet shootings might give rise to difficulties in identifying what potential unlet shootings exist over a property. His answer (foot of page 1081) is one of pragmatism and realism. He stated that matters must be dealt in a reasonable way.

(d) **A voluntary restriction on the exercise of a shooting right is to be disregarded.** It is explained in *Armour on Valuation* (paras 18-11 & 18-16) as follows:

“The rule that premises will be valued on the basis of their actual beneficial use is subject to an important qualification that if a proprietor places an arbitrary restriction on the use to be made of the premises so that they are wholly or partially sterilized, they will be valued on the hypothetical basis that full beneficial use is being made”.

Mr Murphy cited *National Trust for Scotland v Assessor for Argyllshire* 1939 SC 291 and specifically Lord Pitman at page 300 who explained that it is the action of the Trust and not Parliament that has reduced the lettable value of this forest. If Parliament chooses to enact that the public may wander over grouse moors, their value to owners will diminish. But in this case, it was not Parliament that has enacted that the public are to be allowed to wander over the forest but the Trust and its value must be determined at what it would have let for had the public been excluded; and

(e) **that occupation of a part is occupation of the whole.** If a subject has a recognized value, the owner cannot restrict his liability as occupier by using only a part of the property.

9. In summary, Mr Murphy contended (a) that the fact there is no letting of shooting rights is irrelevant; (b) the fact that the owner does not himself exercise shooting rights is irrelevant; (c) what is critical is whether, as a question of fact, there is game available to be shot on the property at more than a de minimis level; if so, there is a shooting right.

10. Mr Murphy therefore contended that there is game present on the appeal subjects at more than a de minimis level, that the entry in the Valuation Roll is correct and, consequently, the appeal should be dismissed.

D. THE PANEL DECISION

The Valuation Appeal Committee was grateful to parties for their detailed and clear presentation of evidence and to Mr Murphy for his detailed exposition of the Law as he understood it. The Committee required to determine if the legal principles giving proper rise to the entry in the Valuation Roll had been established and to consider the evidence from both parties. The Committee has therefore ruled as follows:

1. The Assessor has erred in law by determining that all farmlands in Ayrshire are capable of being used for shootings. The Assessor has failed to take into account the differing and varied use and type of farmland such that, in some cases, shooting by the owner or letting out to a tenant for shooting may simply not be possible. In this case, the intense use of a fairly small farm for dairy and beef cattle with the attendant personnel on site daily, plus the intersection of the appeal subjects by 2 public roads and the existence of neighbouring private houses must militate against any possible use of the appeal subjects for shooting purposes. The Committee refers to Lord Deas in *Leith v Leith* above that determining whether there is a possible right to shooting must be dealt with on a basis of pragmatism and realism. Lord Deas stated that matters must be dealt with in a reasonable way. The Committee is satisfied that the Assessor did not do so.

2. The Committee preferred the evidence from the Appellant that there was no game present on the site and no history of any game being present. A photograph of 2 crows as produced by the Assessor as indicating the presence of game on the appeal subjects did not impress the Committee and certainly did not, in the Committee's opinion, prove the existence of game or birds such as would give rise to a shooting right. To the extent that there are indeed game birds present at any time on the appeal subjects, and the evidence was that this was very rare, the Committee held that there is no game available to be shot on the appeal subjects at greater than a de minimis level which must therefore be disregarded.

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3. The Committee was not impressed with the Assessor's reliance on a Return of Information where 2 answers to one question were given. The use of such information when the correct position could have been, and possibly was, determined by the Assessor during pre-hearing discussion with the Appellant was unfortunate and perhaps illustrated the weakness of the Assessor's case.

4. In conclusion, the Committee has granted your appeal. The Assessor is hereby instructed to delete the entry in the Valuation Roll relating to Shooting Rights at .

I have copied this letter to the Assessor. If he is dissatisfied with this decision, he may appeal to the Lands Valuation Appeal Court but requires, if he intends to do so, to lodge grounds of appeal with me within 14 days of today's date.

Yours sincerely,

Alan M. Urquhart
Secretary to the Valuation Appeal Panel