

AYRSHIRE VALUATION APPEAL PANEL

Secretary to the Panel:

Alan M. Urquhart LL.B

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28th June 2021

,
DALMELLINGTON
Ayrshire

Dear Mr ,

Ayrshire Valuation Appeal Committee Hearing 24th June 2021
Appeal re Shootings Rights at
Property Reference 11/97/F96124/0001/00000

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 Karen McGartland, Senior Valuer 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 subjects of appeal comprise shooting rights over land at Estate, which sits in close proximity to the town of Dalmellington in East Ayrshire
2. The land is owned by the appellant and is of a mixed type comprising hill, forestry and land for grazing livestock. The land subject to shooting rights extends to 1140.44ha.
3. In line with the national scheme of valuation of shooting rights (SAA Practice Note 35), the appeal property is classified as "mixed" and therefore subject to a valuation rate of £3.75 per hectare. A 27.5% end allowance has been granted for noted disabilities, producing an end value of £3,099. This leads to an entry in the Valuation Roll of £3,000 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 This removal was repealed by the Land Reform (Scotland) Act 2016, the effect being to reintroduce Shootings and Deer Forests with effect from 1st April, 2017.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."

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.

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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 Mr)

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. You acquired the property 21 years ago when it was substantially derelict and have since regenerated the land and buildings to their present state as a renowned nature estate. The estate now comprises 900 acres of native woodland, pasture land, meadows and rivers. There are 18 miles of hedgerows and 17 miles of footpaths.

2 The estate has gained a reputation for dedicated conservation management, encouraging public access (there are over 100,000 visitors to the estate per year), and works closely with local schools to encourage respect for the natural world. Shooting would be totally contrary to the ethos of the estate.

3. Shooting would not be possible or practicable due to the existence of 2 SSSIs. Further, within the estate, are ?????????? House and gardens, self-catering accommodation, a riding school, and a dark sky observatory. All the foregoing would make shooting impossible.

5. In conclusion, you contended that your property is wholly unsuitable as a location for shooting. As such, the entry in the Valuation Roll which should be deleted.

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

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

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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”*.

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 £5,400. Following an amendment to the Practice Note and the application of an end allowance for disabilities, the current entry is £3,000 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 “mixed”. This produced a rate per hectare of £3.75 per the Practice Note. An end allowance of 27.5% is applicable due to specific disabilities.

3. Shooting Rights have been valued on a Scotland-wide scheme based on analysis of rental information gathered from across Scotland over a variety of land types. Shooting Right valuations in this locality which are similar in nature to the appeal subjects have been accepted or agreed after discussion.

4. 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”.

(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 with 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.

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Mr Murphy accepted that the appeal subjects were a country park with a number of public activities taking place. However, he specifically highlighted agreements which had been reached with National Trust for Scotland per Savills representing them in relation to (a) Culzean Castle Country Park; and (b) Brodick Castle Country Park. Both properties are landed estates operating as visitor attractions with many public trails, play areas etc. In both, the agents accepted that public access was a voluntary restriction on use which would otherwise have permitted a shooting right to exist. Culzean was settled with a 30% end allowance, Brodick 15%. The appeal subjects have many comparable features such that a shooting right must exist in Law with a voluntary restriction. Equivalent disabilities lead to an end allowance in this case of 27.5% which is fair and reasonable as reflecting public access, proximity of buildings and the existence of the SSSI; 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.

5. The fact that the appeal property is, in part, within an SSSI does not preclude shooting. The SAA Practice Note does however acknowledge that such an SSSI places a restriction on use and for that reason, a disability end allowance is recommended. This has been applied in this case.

6. 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 likely to be game available to be shot on the property at more than a de minimis level but which is not being shot on the basis of a voluntary restriction by the landholder. If so, there is a shooting right in Law.

7. Mr Murphy therefore contended that the criteria for an entry in the Valuation Roll had been met and that the entry in the Valuation Roll is correct. 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. This is a landed estate with a use not dissimilar to Culzean Castle and Brodick Castle estates. The size of the appeal subjects and the appellant's description of the layout with particular reference to wooded areas, hedgerows and footpaths leads to a natural conclusion that the circumstances exist which would sustain a shooting right.

2. It is clear from the evidence that the particular use being made of the appeal subjects, while of great merit, is a voluntary restriction on the shooting right which would otherwise exist and does in fact exist.

3. In conclusion, the Committee has dismissed your appeal and confirmed the Assessor's entry for the appeal subjects in the Valuation Roll.

I have copied this letter to the Assessor. If you are dissatisfied with this decision, you may appeal to the Lands Valuation Appeal Court but, if you intend to do so, you must lodge formal grounds of appeal with me within 14 days of today's date.

Yours sincerely,

Alan M. Urquhart

Secretary to the Valuation Appeal Panel