

AYRSHIRE VALUATION APPEAL PANEL

Secretary to the Panel:

Alan M. Urquhart LL.B

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28th June 2021

Cumnock
Ayrshire
KA18 3LW

Dear ,

Ayrshire Valuation Appeal Committee Hearing 24th June 2021
Appeal re Shootings Rights at Cumnock
Property Reference 11/97/F96016/0001/00000

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 _____ which sits in close proximity to the village of _____ in East Ayrshire
2. The land is owned by the appellant who occupies and uses the land as a sheep farm. The land type is predominately moorland and the land subject to shooting rights extends to 380.68ha.
3. In line with the national scheme of valuation of shooting rights (SAA Practice Note 35), the appeal property is classified as "moorland" and therefore subject to a valuation rate of £2.00 per hectare. A 15% end allowance has been granted for noted disabilities, producing an end value of £647. This leads to an entry in the Valuation Roll of £625 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 This removal was repealed by the Land Reform (Scotland) Act 2016, the effect being to reintroduce Shootings and Deer Forests with effect from 1st April, 2017.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 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 used as a sheep farm to the extent of approximately one third of its area and this area lies immediately adjacent to Village. The remaining two-thirds is within the Muirkirk & North Lowther Uplands Special Protected Area and is designated under categories SSSI, SPA and “naturally kept”.

2 No shooting is possible within the area occupied by the sheep due to its close proximity to . To do so would be reckless and dangerous. The protected areas are not suitable for shooting as it mainly moorland. In any event, there is no history of game birds or the like on the farm.

3. You acknowledged that you have, in the past, shot vermin which threaten your animals. These vermin are not the type of game which anyone would be interested in shooting except to disperse from a field of sheep or other animals.

4. There is no history of game or the type of bird of interest to or of sufficient numbers to interest a shooting or shooting tenant. The Assessor has shown no evidence of game being present on your land. The Assessor has referred to a Scottish Natural Heritage leaflet issued in June 2008 which states that “some areas of the SSSI are still managed for grouse shooting”. The Assessor has produced no evidence that this statement still applies some 13 years later. If it does however, you contended that the SSSI covers a wide area north and south of Muirkirk and it does not prove the existence of grouse on the part of the SSSI within your occupation.

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5. 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 of personal consumption. The land is a sheep farm or protected moorland 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 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 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 £1,900. Following an amendment to the Practice Note and the application of an end allowance for disabilities, the current entry is £625 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 moorland. This produced a rate per hectare of £2.00 per the Practice Note. An end allowance of 15% has been offered to reflect disabilities such as the proximity to Cronberry village.

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 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

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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.

5. 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.

6. 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 use of a fairly small farm for sheep farming with the attendant personnel on site daily, plus the proximity to a nearby village 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. To the extent that there are indeed game birds present at any time on the appeal subjects and in particular grouse on the SSSI portion of the appeal subjects, (and there was, in fact, no evidence of this on the appeal subjects led by the Assessor), 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.

3. 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