THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 4 September 2019

Subjects	Reference Number
Shooting Rights, Dunballoch, Inverness	**06/39/290040/3**
Appellant **Iain MacKenzie**	Respondent **Rob Shepherd, Assistant Assessor** Represented by **BJ Gill, Advocate**

INTRODUCTION

This Appeal concerned the inclusion in the Valuation Roll of Shooting Rights at Dunballoch, Inverness. The entry in the Roll was for a Rateable Value of £500. The Assessor was seeking dismissal of the appeal at a reduced value of £200. The Appellant sought the removal of the entry from the Valuation Roll.

EVIDENCE FOR THE APPELLANT

Mr Iain MacKenzie gave evidence on his own behalf. He advised the Committee no commercial shooting takes place on Dunballoch and has not done in his lifetime. Guns are used on the farm rarely and only for vermin control and the humane destruction of farm animals. No third parties have permission to shoot on the farm and there is no record of a valuation being placed on the subjects in respect of shooting rights.

There are five private houses on the farm including the farmhouse. They are all owned by the farm. Four are let out on long term leases to third parties who have no farm connections.

A commercial shoot would be logistically difficult and would not be practical given the location of the holding. The farm land is split by the main A862 Inverness to Beauly road. This is a very busy commuter route and is also part of the North Coast 500 route. The North Coast 500 attracts many holidaymakers in various modes of transport, including cyclists and walkers.

To the east the farm is flanked by the B9164 Beauly to Kirkhill road.

There is a busy caravan site and campervan hire business, Beauly Holiday Park, between the river and the farm on the north boundary. There are permanent residents in the caravan park all year round. The road to the caravan park goes alongside one of the farm fields.

The railway line to the north and west from Inverness splits the farm on the north east side. This is a busy line with numerous trains through the day and into the evening.

The Beauly River which bounds the farm is a popular salmon river and as such attracts fishermen and women who have unrestricted and unannounced access to the fields that lead to the fishing beats on the farm boundary. There are stiles provided and steps down from the main road and it is normal to see members of the public using these. Across the river from the farm is a track that is used by the fishing

company to access their chalet and fishing beats. This track is also heavily used by walkers and cyclists.

The village of Beauly is just across the river from Dunballoch and access by members of the public is regularly taken across the railway bridge, over the river to the river bank and fields on the east side of the farm. In the view of the Appellant these issues would make the holding of a shoot on the farm irresponsible at the very least. The use of high power deer rifles would be very risky given the topography of the land and the locality of walks and other recreational activities. The farm is not big and the shape does not allow for shooting to take place any distance from the hazards listed.

In cross-examination by Counsel for the Assessor, when asked if shootings could be managed on the farm the Appellant stated it could not because it would be very unpopular. The Appellant did not say it would be impossible to manage.

On questioning from the Committee the Appellant confirmed that he was in receipt of Small Business Rates Relief and so was not actually having to pay rates in respect of the shootings. He thought, though, that that particular relief could be removed at any time.

As for game being present on the farm, the Appellant was aware of two hares living there. He would not want these to be shot. There have been no rabbits on the farm since the population was wiped out by an outbreak of myxomatosis in 1977.

The farm is split roughly 50:50 between grazing for sheep and barley and grass for hay.

EVIDENCE FOR THE ASSESSOR

Robert Shepherd, Assistant Assessor and Stephen MacKenzie, Valuer, gave evidence on behalf of the Assessor.

Mr Shepherd is a member of the Royal Institution of Chartered Surveyors. He has been qualified for over 28 years. He has worked for the Highland & Western Isles Valuation Joint Board since 1992. In 2016, following the reintroduction of Shooting Rights to the Valuation Roll, he was appointed by the Scottish Assessors Association as Practice Note Author for the valuation of subjects of this class. He confirmed his compliance with the RICS Professional Statement "Surveyors Acting as Expert Witnesses in Scotland".

Mr Shepherd spoke to the principles applying to the entry of shooting rights in the Valuation Roll.

Principles:-

From 1 April 1995 Shootings and Deer Forests had been excluded from entry in the Valuation Roll. They were re-entered in the Roll with effect from 1 April 2017 in terms of the Land Reform (Scotland) Act 2016.

Land Reform (Scotland) Act 2016

Section 74 Repeal of exclusion of shootings and deer forests from valuation roll

(1) The Local Government etc. (Scotland) Act 1994 is amended as follows.

(2) In section 151(1) (exclusion from valuation roll of shootings, deer forests, fishing's and fish counters), "shootings, deer forests," is repealed.

(3) The title of section 151 becomes "Exclusion from valuation roll of fishing's and fish counters".

Section 75 Valuation of shootings and deer forests

(1) The Local Government (Scotland) Act 1975 is amended as follows.

(2) After section 1 insert -

"1A Valuation of shootings and deer forests

The assessor for each valuation area must, when making up or altering a valuation roll, enter separately any

(a) Shootings relating to,

(b) Deer forests, in so far as situated in, that area.".

Section 76 Net annual value of deer forests

(1) The valuation and Rating (Scotland) Act 1956 is amended as follows.

(2) In section 6 (ascertainment of gross annual value, net annual value and rateable value of lands and heritages) -

(a) In subsection (8), after "provisions" insert "of subsection (8ZA) and",

(b) After subsection (8) insert -

"(8ZA) In arriving at the net annual value under subsection (8) of lands and heritages consisting of deer forests, regard may be had to such factors relating to deer management as the assessor considers appropriate.".

(c) After subsection (10) insert -

"(10A) In subsection (8ZA), "assessor" means the assessor appointed under section 27(2) of the Local Government etc. (Scotland) Act 1994 for each valuation area.".

The Act came into force on 28 June 2016. This gave Assessors very little time to carry out the necessary work of identification, analysis and then value all of the Shooting Rights in Scotland on a consistent basis in time for making up the 2017 Valuation Roll. Given the passage of time since these subjects were last entered in the Valuation Roll, Assessors did not have any current information as to what rights were in existence or what leases existed. Most, if not all, of the valuation expertise had been lost and there was very limited information to work on.

In answer to a question from the Committee, Mr Shepherd explained that although the Act came into force on 28 June 2016 his preparatory work for the reintroduction of shootings to the Valuation Roll had begun towards the end of 2015.

The first step was to identify potential Shooting Rights and Deer Forests. Data was obtained from the Scottish Government with address details of the holdings (farms, crofts, forestry, etc) which were in receipt of government funding under the Integrated Administration Control System (IACS).

Questionnaires were issued to all of the approximately 5,000 of these holdings in the Highland & Western Isles Valuation Area requesting information as to the land type, bag numbers and shooting leases. Information on a mapping system was also obtained from Scottish National Heritage which assisted particularly in identification of the large estates and deer forests.

From the information gathered an analysis of rents was undertaken and a Practice Note - Scottish Assessors Association, Miscellaneous Properties Committee, Practice Note 35, Valuation of Shootings Rights & Deer Forests was prepared. This was accompanied by a Guidance Note.

The Assessor's general approach was that the same legal principles that applied before Shooting Rights were deleted from the Valuation Roll should now once again apply. Mr Shepherd referred the Committee to paragraph 214 of the Scottish Government's Policy Memorandum which states "Shootings and 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 made of the lands and heritages."

The reintroduction of shootings was clearly a fresh start for the Assessor and it was evident from investigations that Shooting Rights were being exercised in many different types of holdings. The Assessor's view was that an entry which should be made in the Valuation Roll if the land was suitable for shootings in terms of size, was capable of exercising the Shooting Rights and there was game to shoot.

A significant change in the SAA Practice Note was the decision not to value shootings on the basis of bag returns. That had been the traditional methodology used. The SAA decided that this methodology should no longer be used because the advantage of the Valuation Method of a rate per hectare is that it removes the problem of estimated reasonable averages of numbers killed when insufficient information has

been provided. A rate per game bird or deer was not possible to establish since the information returned was often insufficient and relationships between rates for different species of bird and animals proved difficult to establish.

Following the introduction of approximately 2,000 entries in the Valuation Roll in the Highland & Western Isles Valuation Joint Board Area in respect of shootings and deer forests there had been approximately 1,000 appeals and also representations were made by some rate payers. After discussions with the individuals and their agents some of the issues raised were accepted and the Practice Note was amended accordingly. In particular as a result of new rental evidence emerging, the Rates were amended for some of the land types in Appendix 1 in the Note, for example, mixed rates reduced from £5 to £3,75. There were also changes in the quantum scheme and the end allowances for certain disabilities.

The Nature of Shooting Rights:-

In Rating terms, Shooting Rights are defined as the right to occupy land for the purpose of shooting game for sporting purposes.

Game does not have a clear definition in Scots Law but the term normally refers to wild birds and animals which are killed either for sport or for consumption. Game belongs to no-one until it is caught or killed.

Species normally considered to fall within the definition of game are deer, pheasants, partridges, black or red grouse, ptarmigan, wild fowl (most species of wild duck and geese), snipe, woodcock, pigeons, rabbits and hares. Some of these, such as

marauding deer and stray game birds, may be considered by some to be vermin rather than game. However, the fact that a party states that only shooting of vermin takes place does not necessarily mean that there is only vermin to be shot.

A shooting right comes into being either through ownership of the land or by the owner granting a lease of the shooting rights to another party. He emphasised that it is the right to shoot which is being valued rather than the land over which the right may be exercised.

Valuation of Shooting Rights:-

The Assessor aims to determine the rent which the hypothetical tenant would pay. This net annual value is defined in Section 6(a) of the Valuation & Rating (Scotland) Act 1956 as follows:-

"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 or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the costs of the repairs and insurance and the other expenses, if any, to maintain the land and heritages in a state to command that rent." The subjects in this case have been valued in accordance with the Practice Note by the application of the comparative principle.

In order to determine the value of the Shooting Rights the land over which Shooting Rights are exercised has been split into a number of categories. These were the main types from the previous Practice Note and also what Mr Shepherd considered to be

various land types where shooting would tend to take place. The predominant land types are:-

- Arable.
- Deer Forest/Hill/Moor.
- Woodland/Forestry.
- Mixed.
- Grassland.

Rental Analysis:-

The rates promulgated in the Practice Note are to be applied in the absence of sufficient local evidence to merit a variation relative to the predominant land type over which the rights are exercised. If the nature of the land is of relatively equal proportions of particular land types then the "mixed" rate should be applied.

The analysis of the available rental evidence indicated that quantum was appropriate for certain sizes of holdings and details of the quantum allowances appear in Appendix 2 of the Practice Note. End allowances for certain disabilities will also be granted if appropriate and these are set out in Appendix 3 of the Practice Note.

In answer to questions about the methodology which underpinned the analysis of the available rental evidence, he explained he accepted the completed returns which he received as a reasonable place to start. He had not taken account of the effect that different types of agricultural operations on the same land type might have on the suitability for letting shooting rights over the land. He had not taken account of the impact shootings might have on livestock management on particular subjects nor its

impact on agricultural activities on a farm ore widely. Instead he had taken a "broad brush approach". He had not taken account of the interaction of different wild animal species and the availability of game for shooting such as small vermin being predated by badgers, the badgers being a protected species.

Anticipated Valuation Roll Entries:-

Valuation Roll entries should be made for the following situations:

- Owner occupied farm holdings (whether exercised or not).
- Shooting rights and the occupation of a landlord over several leased farm holdings.
- Commercial forests where predominantly deer are capable of being shot (whether exercised or not).
- Managed estates either owner occupied or leased.
- Multiple shooting rights - there may be different shooting rights over the same land for which separate entries and different occupations may be required (See paragraph 7.1 of the Practice Note).
- Retained rights - any leased shooting should be closely examined to establish the nature of any shooting rights which have been retained by the landlord (see paragraph 7.2 of the Practice Note).
- Shooting rights let with the land to tenant farmers.
- The above are illustrative and not exhaustive of the types of entry which may appear.

Unit of Valuation:-

In accordance with the general principles of rating, the unit of valuation is generally the same as unit of occupation. It is evident that although the shooting rights are for the whole holding, the shooting may have only occurred in a certain part as it may not be possible to shoot in certain areas at any given time. It is the whole holding area which makes up the shooting right - e.g. it is common to only shoot pheasants over a section of a holding but the entire holding is required to hold, provide cover and operate the pheasant shoot as a whole. This factor has also been taken into account in the analysis of shooting rights. Therefore, the area occupied, regardless of whether shooting rights may not be exercised over part, will comprise the unit of valuation.

Identification of *Unum Quid*:-

There may be instances where separate parcels of land, otherwise considered separate entries in the Valuation Roll, may be regarded as a *unum quid*. As the shooting right rather than the physical boundaries determines the unit of valuation, a shooting right which is divided into a number of parcels of land or split by public roads, parts, access tracks, etc may only require one entry rather than a number of separate entries.

Voluntary restriction is a term often used in rating and to refer to, for example, an empty warehouse which the owner decided they did not want to use. The fact the building is vacant and not in use does not mean it has no value. It could quite easily be used or let and will, therefore, have a value similar to other occupied warehouses.

Shooting rights should only be entered in the Roll in relation to land and holdings where shootings are capable of being exercised. There may be cases, particularly in

areas on the boundaries of large towns, where a parcel of land is so small, or its topography such, that it would prove not practicable to be let for shooting purposes. In these cases regard would need to be given to the nature of the holding itself as well as its locality. In such situations, no entry need be raised in the Valuation Roll.

Particulars of This Appeal:-

Stephen MacKenzie gave evidence on the specifics of the Appeal Subjects. He is a member of the Royal Institution of Chartered Surveyors. He qualified in 2010. He has been involved in the valuation of all types of non-domestic subjects throughout the Highlands. In 2017, following the reintroduction of shooting rights and deer forests to the Valuation Roll he assisted in the task of identifying and valuing those subjects liable for entry in the Roll. He confirmed his compliance with the RICS Professional Statement (Surveyors Acting As Expert Witnesses In Scotland).

He explained this appeal relates to an entry in the Valuation Roll on 29 September 2017 with an effective date of 1 April 2017 at a NAV/RV of £500. However, following appeal discussions and revisal to the National Scheme of Valuation the NAV/RV defended by the Assessor is £200. The Appellant sought removal of the subjects from the Valuation Roll on the basis that there were no shooting rights of value associated with the subjects.

Mr MacKenzie confirmed agreement with the Appellant as to the nature and extent of the subjects extending to approximately 97 hectares of grassland.

Assessor's Valuation:-

The subjects comprise a holding of predominantly grassland with some arable fields, extending in total to approximately 97 hectares. The subjects had been valued by the application of the comparative principle and are valued as follows:

97 hectares at £2.80 (grassland rate) -	£272
Deduct 30% for public access, roads, etc -	£ 82
	£190

Final value, rounded to £200.

The rate of £2.80 per hectare is from the National Scheme of Valuation. The local evidence produced suggested that there were a number of shooting leases over farmland which indicated that the rate of £2.80 was reasonable.

A table was produced containing rental evidence in respect of shooting rights from 22 subjects across the former shires of Inverness, Nairn and Ross.

For the majority of comparison subjects, the description of shooting activities, as provided on the Return of Information form included reference to pests or vermin control in addition to listing a variety of other game.

Comparisons 3 and 6 refer to farmland on the Black Isle, considered to be a comparable location to the Appeal Subjects. These have been let at an analysed rate of £6.40 and £2.45 respectively with the latter described as covering rough shooting in addition to pest control (pests being described as geese and pigeons).

As for the scale of the subjects, comparisons 8, 10 and 15 are a similar size, close to 100 hectares and range in location from Ross-shire to near Dores by Inverness. The rates achieved range from £13.24 at Edderton to £4.64 on the Clune near Dores (arguably the best comparison of the three) and £5 at Kilravock.

Mr MacKenzie also produced a list of 15 comparisons, all of them in the general locality of the Appeal Subjects.

Numbers 3, 6 and 7 are farmed on a similar scale to Dunballoch in comparable locations. Any shooting is generally limited to pest control. The appeals for these have been settled with the owners, incorporating end allowances similar to those proposed for Dunballoch.

Number 10 is a large subject which comprises a mix of land types and includes more than one tenanted farm, again fairly close to the Appeal Subjects. There is no shooting activity other than pest control and this appeal has been settled with a professional agent acting on behalf of the landlords.

Numbers 2 and 14 are smaller than the Appeal Subjects and are split by the A862, similar to the Appeal Subjects. Of these, it is not known whether any shooting takes place on number 2 and the owners of number 14 have stated that no shooting takes place. No appeals have been received against these subjects.

Number 15 has been included as it is directly across the river from the Appeal Subjects and is considered to be similar in nature. The shooting rights are held by the owning estate. The Assessor has been advised shooting rights are not exercised. No appeal has been made in respect of this subject. Mr MacKenzie did not dispute, as put to him in cross-examination, that number 15 differed from the Appeal Subjects in terms of use of public access and therefore the safety of any shooting which did take place. Public access to number 15 is controlled and restricted by those subjects being walled and gated whereas the Appeal Subjects are open and access impossible to control.

An end allowance of 30% has been granted to reflect the disabilities of the holding - public access, railway, road, proximity to caravan park, etc.

In relation to the comparisons produced in cross-examination Mr MacKenzie conceded that the low number of appeals among them did not impact the validity of the instant appeal. He acknowledged that the relatively low level of value attributed to the shooting rights across the comparisons might have led some ratepayers to conclude "it was not worth the bother" lodging or maintaining an appeal, particularly for those who benefit from Small Business Rates Relief.

In questioning by the Committee, Mr MacKenzie accepted, for the reasons put to him by the Appellant and set out in the immediately preceding paragraph, that the weight to be attached to the evidence of the comparisons - the numbers who had not appealed and those who had appealed and settled - was limited.

Response to the Appellant's Grounds of Appeal

Mr MacKenzie responded to the Appellant's grounds of appeal as follows:-

1. **"No recreational shooting takes place, neither now or in the past, only vermin destruction and marauding deer"**.

The fact that there has been vermin destruction and disposal of marauding deer acknowledges that the shooting rights exist. It also acknowledges that game can be present on the farm.

2. **"No permission has ever been granted to wild fowlers or other third parties sporting guns"**.

This is not relevant as to whether the shooting rights should be entered in the Valuation Roll.

3. **"The farm is split in half by the main A862 road, etc".**

These factors are acknowledged and have been accounted for in the valuation.

4. **"There is a caravan park on the west boundary of the farm, etc".**

The presence of the caravan park is acknowledged and an appropriate allowance has been made in the valuation.

5. **"There are five private houses on the farm, etc".**

This is acknowledged and is considered to have been reflected in the valuation.

6. **"The proximity of the village of Beauly …….. difficult to rent out the shooting rights to third parties unaware of the risks to the public at large".**

Third parties would be made aware of their obligations with regard to public safety.

The Appellant had stated to Mr MacKenzie that there is very little or no game to shoot. In cross-examination Mr MacKenzie confirmed that in being driven around the subjects by the Appellant during his inspection, he, Mr MacKenzie, had not seen any game birds or animals. However, in the view of Mr MacKenzie, in a holding of this nature there may be some element of game such as geese, pigeons or rabbits, in addition to the marauding deer referred to in paragraph number 1 above.

Having consulted a selection of archives, Mr MacKenzie could find no evidence of the shooting rights over Dunballoch having been entered in the Valuation Roll previously. However, this was not conclusive and it is not inconceivable it may be covered by another larger entry such as Beaufort or Lovat Estates although there was no evidence of that either. Even if it could be confirmed that there was no entry on the Roll historically for these subjects this would not be justification for the Assessor to omit them from the Roll. Every revaluation is a fresh start and the Assessor is not bound by the contents of previous Valuation Rolls or the way in which subjects have been valued.

Mr MacKenzie accepted that consideration should be given to the factors identified by the Appellant which would affect the free and safe operation of shooting activities over the Appeal Subjects but only to the extent that they would influence the rental value of the shooting rights. Mr MacKenzie did not accept that these limitations

operated so as to remove the existence of shooting rights and reduce the value to nil. The maximum aggregate end allowance permitted by the SAA Practice Note, 30%, has been applied to achieve what he regarded as a realistic value.

In the view of Mr MacKenzie, someone would pay £200 per annum for exclusive shootings rights over the subjects.

SUBMISSIONS FOR THE APPELLANT

The Appellant elected not to make submissions.

SUBMISSIONS FOR THE ASSESSOR

Mr Gill invited the Committee to dismiss the appeal at a reduced level of value, £200. He submitted that the entry was in accordance with legal principles and the available evidence.

He submitted there were four legal principles which apply when approaching the identification of a right of shooting:-

Principle 1:

Shooting rights are "lands and heritages" of a particular kind:-

(a) They are incorporeal heritages: they are not lands, but rights which can be exercised over lands, which are corporeal heritages; and

(b) They are best understood as "restricted lease rights".

Principle 2:

It is irrelevant that the owner does not in fact let out any rights of shooting:-

(a) Un-let shootings are entered and valued in the same way as let shootings; and

(b) In order to identify the existence of an un-let shooting, the question is whether there is game available to be shot on the lands, at a more than *de minimis* level.

Principle 3:

A voluntary restriction on the exercise of a shooting right is to be disregarded.

Principle 4:

Occupation of a part is occupation of the whole.

Principle 1(a): Rights of Shooting Are Incorporeal Heritages Which Are Distinct From The Corporeal Heritages Over Which They Can Be Exercised.

The distinction was explained by the Lands Tribunal for Scotland in Drummond Estates -v- Central Scotland Assessor [2004] RA145. The issue was whether a Deer Larder fell to be excluded from the Valuation Roll under (the then) Section 151 of the 1984 Act, either because it was a pertinent of a deer forest or as part of a shooting. The Tribunal held it was a pertinent of a deer forest but that there was no separate right of shooting. It explained (at page 157):

"It is plain that the shooting can only be defined by reference to lands - in the widest sense - and by reference to the extent of rights in such land. We did not understand Counsel for the Appellants to suggest that the terms 'shootings' referred directly to a physical asset. The word may occasionally be used casually to refer to an area of land

but such imprecise usage has no bearing on use in the present context. For completeness it may be noted that Hall's List of Shootings while capable of being understood to refer to physical subjects, in fact included only 'shootings' which were regularly let. They were all subjects which could be defined by reference to limited rights granted in respect of use of land. The provisions of Section 6 of the 1886 Act reflect the distinction. The section provided for the Assessor to enter separately the yearly value 'of the shootings over the lands and of the deer forest'. The clear contrast is between the identified physical subjects and the 'shootings' which are not lands but something - rights - exercised over lands. [……] It seems plain that the terms 'shootings' is applied to the right as opposed to the land itself and this is confirmed by the nature of the discussion in both Leith -v- Leith and Stewart -v- Bulloch."

Mr Gill suggested that the drafter of the new Section 1(a) of the 1975 Act recognised this distinction.

(a) A Deer Forest, which is an identified physical subject, is "situated in" the Assessor's area; but

(b) A Shooting, which is a different incorporeal kind of property, "relates to" the Assessor's area.

Principle 1(b): A Restricted Lease Right

As the authorities developed in the course of the nineteenth century, a right of shooting came to be recognised as a particular right under a lease, to occupy land for the limited purpose of exercising the right to kill wild animals. The tenant already had the right to kill wild animals as a matter of law - what the shooting gave him was

the right to exercise that pre-existing right in a particular place. Mr Gill referred the Committee to the explanation by the Lord President (Lord Inglis) in Stewart -v- Bulloch (1881) 8R381, pp383 to 384: "What the tenant receives under such a lease is a right of occupation of lands, as much as in the case of an agricultural tenant. It is for a different purpose no doubt but it is not the less a right of occupation. The sporting tenant goes on to the land for the purpose of shooting game, just as the agricultural tenant goes for the purpose of tilling the ground; and although the object is different the one case just as much as the other is an occupation of land under a contract, and I know no other species of contract which will include the present except the contract of lease".

Although a restricted right of occupation, the right is therefore nevertheless a leased right.

Principle 2(a): Un-Let Shootings Are Entered And Valued In The Same Way As Let Shootings

Referring to Armour (6-15) it was established early on that a shooting must be entered in the Valuation Roll even if it is not in fact let. One of the authorities vouching that proposition is Leith -v- Leith (1862) 24D 1059. At page 1082 Lord Deas explained - "the conclusion having been arrived at that let game is to be taken into account, it appears to me to be very difficult, and indeed impossible, in point of principle, to stop short of holding that there may be cases in which the game, although it is not let, and never has been let, is to be taken into account."

Although that case was not a Valuation Roll case, it was followed by the deletion of the exception of un-let shootings from Section 42 of the 1854 Act.

Principle 2(b): In Order To Identify The Existence Of An Un-Let Shooting, The Question Is Whether There Is Game Available To Be Shot On The Lands, At A More Than *De Minimis* Level

Lord Deas recognised in Leith that the recognition of un-let shootings may give rise to difficulties in identifying what potential un-let shootings exist over a property (p 1081). His answer is one of pragmatism and realism: matters must be dealt with "in a reasonable way" - "The position which the shooting lease confers is possession of the locality where game is to be found; for, although game do not keep always on the property where they are protected, we know quite well that they are chiefly to be found there, and that they chiefly feed there [……] You may get a rent or a sum of money yearly for possession of an estate for other purposes which the law has not yet, at least, recognised as to be taken into computation in a question of this kind. Some people might pay a rent for the privilege of shooting Sparrows, or still more readily of shooting Crows, or for sport of any other kind, which may yield either pleasure, or profit, or both. The shooting of certain kinds of singing birds might be turned to profit; for example, larks, or blackbirds, or thrushes, and so on; and the question may be put, why should you stop short of cases of that kind in estimating what the estate may yield? I think the answer to that is just this, that the law must deal with these matters in a reasonable way."

According to Mr Gill, Lord Deas' pragmatism led him to recognise that there would be exceptional cases where, for common sense reasons, the law would not recognise the existence of an un-let shooting (p 1082) - "I do not mean to say that there may not be exceptional cases. I can conceive a case where the value of shootings may be so small or uncertain, and the disadvantages attending the letting so palpable, that though a proprietor might get something for them in a market, they ought not to be taken into account."

In the view of Mr Gill, that common sense and reasonable approach of Lord Deas translated into the following practical guidance: If there is game available to be shot on the lands, at a more than *de minimis* level, there is a un-let right of shooting. This is a question of fact in each case.

Principle 3: A Voluntary Restriction On The Exercise Of A Shooting Right Is To Be Disregarded

This principle is a basic principle relevant to the valuation of all types of land and heritages. It is explained in Armour as follows (18-11 and 18-16): "The rule that premises will be valued on the basis of their actual beneficial use is subject to an important qualification [……] This is that if the proprietor places arbitrary restrictions on the use to be made of the premises so that they are wholly or partly sterilised, they will be valued on the hypothetical basis that full beneficial use is being made of them [……..] The doctrine also applies where the proprietor has so arranged matters as not to be making the most beneficial use possible of the subjects always provided that it is not that he has not gone so far as to destroy their character or existence."

The authority cited to vouch that proposition is to be found in the case of National Trust for Scotland -v- Assessor for Argyllshire 1939 SC291. The National Trust had acquired a deer forest for the primary purpose of giving the public free access to the land. The only return that the Trust obtained from the subjects was for the letting of grazings, which yielded much less than the subjects would have yielded if let as a deer forest. The court held that the diminution of profit was self-imposed: the subjects were in their actual state a deer forest and fell to be valued as such.

At page 300, Lord Pitman explained: "It is the action of the Trust and not of Parliament that has possibly reduced the lettable value of this forest. A proprietor cannot be heard to say, 'I prefer not to stock or allow my friends to stock, and therefore my forest is less valuable'. If Parliament chooses to enact that the public may wander over all the Grouse moors in Scotland, their value to the individual owners will fall because the shooting value of a moor depends largely on the exclusion of the public. Value of anything depends on the use to which it can be put, and a picture is nonetheless valuable because it is in a public gallery. The forest is nonetheless valuable because it has been thrown open to the public, although it may be as a forest. It is not Parliament that has enacted that the public are to be allowed to wander over this deer forest, but the Trust; and its value must be determined at what it would let for were the public excluded. Exclude the public and the grazing tenant, and the value remains what it was before the Trust became proprietors."

Principle 4: Occupation Of A Part Is Occupation Of The Whole

This principal is also a basic principle relevant in the valuation of all types of land and heritages. It is explained in Armour at 14-13 as follows: "If the subject occupied has a recognised value the owner cannot restrict their liability as occupier by using only a part of the property. [……..] It follows that use and occupation in the proper sense of that word, are not synonymous. It would be manifestly inconvenient and practically impossible for the Assessor to investigate the particular mode of occupation and the amount of use of each occupier. Any heritable subject is, therefore, held to be occupied as a whole, if occupied at all."

Where lands are let for shooting, therefore, the shooting rights extend to the whole of the lands, even particular parts of the lands where shooting may not be practicable. The same applies in relation to un-let shootings occupied by the owner.

Mr Gill summarised his position as follows:-

(a) That there is no letting of shooting rights in fact 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 a more than *de minimis* level: If so, there is a shooting right.

DISCUSSION & DECISION

This was one of two "shootings" appeals heard on 4 September 2019. These were the first "shootings" appeals heard by a Committee of this Panel since the re-introduction of that class of subject to the Valuation Roll with the coming into force of the Land

Reform (Scotland) Act 2016. The Committee was particularly grateful to Mr Shepherd and to Mr Gill for the time spent in their evidence and submissions respectively on the principles to be applied to the valuation for rating of such subjects.

It is convenient to start with the summary of submissions with which Mr Gill finished. There he put the following propositions:-

(a) The fact there is no letting of shooting rights in fact is irrelevant. Standing the statement in Armour at 6-15 and what was said by Lord Deas in Leith -v- Leith, the Committee agreed that where, as here, there is no letting of shootings that is not relevant in and of itself, to the issue of whether the subjects should be entered in the Valuation Roll.

(b) The fact that the owner occupier does not himself exercise shooting rights is irrelevant. The Committee accepted the law on this point was clear and fairly stated by Mr Gill given the comments in Armour 18-11 and 18-16 and the authorities quoted there.

(c) What is critical is whether, as a matter of fact, there is game available to be shot on the property, at a more that *de minimis* level: if so there is a shooting right - as with the two previous summary points, the Committee accepted this was an accurate statement of the law. Given the evidence, much turns on this point in this case. The Appellant's evidence, set out above, was that there was game was not present on his land of a volume that would attract a tenant willing to pay for the privilege of shooting it. There was little or no game present.

> The presence of such as nearby roads, a railway line running through the property, a nearby caravan park, public paths on and around the property and five houses, including the farmhouse on the property would make the safe management of shootings problematic.

The Assessor's task was determining the rent which the hypothetical tenant would pay, "Net Annual Value" and that is defined as:

"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 or consideration other than the rent were payable in respect of the lease and if the tenant undertook to pay all rates and to bear the cost of the repairs and insurance and other expenses, if any, to maintain the land and heritages in a state to command that rent."

In order for these subjects reasonably to be expected to command a rent for shootings, a necessary pre-requisite is the reasonable expectation in the mind of the hypothetical tenant of the presence on the land of something he might like to shoot. The Appellant's evidence was that there was nothing to shoot sufficient to attract a paying tenant.

Against that, Mr MacKenzie's evidence was that there may be shooting available on these subjects which someone would take on for the enjoyment of shooting. This possibility appeared to be based on the size of the subjects - over 97 hectares - and location near to comparable subjects with shooting rights entered in the Valuation Roll which entries had not been appealed or, where there had been appeals they had been settled or withdrawn.

No evidence was presented to the Committee as to how the comparable subjects compared to the Appeal Subjects in respect of the availability of game to shoot. The Committee was therefore left not knowing how the Appeal Subjects related to the comparisons as regards the availability of game to shoot.

The level of rateable value attached to all of the comparisons was relatively low. This was a reflection, no doubt, of the fact that they were mainly farms and that the shooting offered was rough shooting and was incidental to the main activity which was farming. For some of the rate payers associated with the comparison subjects, particularly those eligible for Small Business Rates Relief, the exercise of maintaining their appeal against the rateable value to the stage of appearance before the Valuation Appeal Committee may not have been seen to be worth the candle in terms of time and/or money.

For all of these reasons, the Committee felt unable to place much reliance on the comparisons in the task of determining what rateable value should attach to the Appeal Subjects.

In addressing the question of whether there is game to be shot on lands at a more than *de minimis* level, Mr Gill submitted this was a question of fact in each case. The Committee considered the Appellant to be a reliable witness. His evidence was not undermined by the Assessor to any material extent. The Appellant had lived all his life on the subjects. According to him there had been no rabbits on the subjects since 1977. There were two hares. Mention was made of the shooting of "marauding"

deer. There was no evidence as to the preponderance of deer on the subjects. The Appellant was not asked about this. On the other hand, there was the evidence of Mr MacKenzie and his thought there may be game to shoot. In his evidence, Mr Shepherd explained the change in approach to the methodology of valuing shooting rights for rating since the Land Reform (Scotland) Act 2016 came into force. In its Practice Note SAA had decided to move away from the traditional approach based on bag returns to one based on a rate per hectare. The reason given for the change was that it removed the problem of estimating reasonable averages of numbers killed when insufficient information has been provided.

He then went on to acknowledge that in valuing such shooting rights that might exist, regard has to be had to s6(a) of the Valuation and Rating (Scotland) Act 1956. What might the hypothetical tenant pay for the right to shoot over the subjects? It seemed to the Committee that turns on what game there is to shoot both in terms of species and quantity. The Committee considered the evidence led did not allow it to conclude there was game on the subjects at a level to attract a hypothetical, paying tenant. That was the burden of the evidence of the Appellant. The Committee preferred his evidence on this point to that of by the Assessor's witnesses. For this reason the appeal is allowed. The effect is the subjects are to be removed from the Valuation Roll with effect from 1 April 2017.