

THE HIGHLAND & WESTERN ISLES
VALUATION APPEAL COMMITTEE

Inverness, 4 September 2019

Subjects	Reference Number
Shooting Rights, Balkeith, Tain, Ross-shire	03/39/310025/0
Appellant	Respondent
William MacKay	Rob Shepherd, Assistant Assessor
Represented by	Represented by
Colin MacKay	BJ Gill, Advocate

INTRODUCTION

This Appeal concerned the inclusion in the Valuation Roll of Shooting Rights at Balkeith, Tain, Ross-shire. The entry in the Roll was for a Rateable Value of £1,500. The Assessor was seeking dismissal of the appeal at a reduced value of £675. The Appellant sought a Nil valuation.

EVIDENCE FOR THE APPELLANT

Colin MacKay, son of the Appellant, gave evidence. He runs the farm known as Balkeith, Tain. The farm lies approximately two kilometres east of Tain. The farmland extends to some 311 hectares. The farm consists of two distinct parcels of land. One parcel (Parcel 1) is 96 hectares and is situated approximately 500 metres west along the Tain to Portmahomack road from the other parcel (Parcel 2). Parcel 2 extends to some 215 hectares.

Mr MacKay has a flock of Cheviot sheep and a herd of Aberdeen Angus cattle on the farm. The fields are utilised for, variously, the growing of cereals and silage for the livestock and for grazing.

Parcel 1 has situated around it domestic properties, stables and a number of different landowners.

Parcel 2 has a disused aerodrome on it. It is very flat land with few features apart from storage sheds used by the farm and a bonded warehouse. Parcel 2 is bounded to the north and east by an area now used primarily for Army exercises. The neighbouring proprietor to the south west of Parcel 2 runs a horse riding centre there. That neighbour is permitted to take access over Parcel 2, to and from an extensive area of woodland lying to the north of Parcel 2. There is an alternative route from the Riding Centre to the area of woodland. That is by means of the public road, a distance of some 4 miles.

To the north and east of Parcel 2 there is a bridle path and public footpath which runs to the nearest town, Tain, and then turns to cross this parcel of the Appeal Subjects.

There has never been commercial shooting on Balkeith Farm. There are no deer, pheasants, geese, duck or other game. This contrasted with Pithogarty, one of the closest comparisons to the Appeal Subjects cited by the Assessor. Pithogarty is nearer to an area of natural woodland than the Appeal Subjects which would attract animals, including game, for shelter. Unlike the Appeal Subjects, pools of water form on Pithogarty in the winter and geese and duck are attracted to those pools.

There are some rabbits on the Appeal Subjects. The Appellant regards the rabbits as a food stock for foxes, thus making the foxes less likely to prey on his lambs. In any event there were insufficient rabbits to be able to command a rent from a shooting tenant.

The flat and largely featureless nature of the land comprising the Appeal Subjects, the presence of neighbouring proprietors, including a horse riding centre, a public road and railway line running through the Appeal Subjects, a bridle path and pedestrian pathway bounding and crossing the subjects raise issues around the safe discharge of rifles and shotguns. Mr MacKay did not know the safe firing distance for either of these. He thought that risk might be capable of being managed, though not easily.

However, leaving aside issues of safety, shooting would not be compatible with his husbandry of a sheep flock and cattle herd and the use he chooses to make of his farm. Even if there was game on his farm for which someone might pay for the right to shoot, he would, for animal welfare reasons, not allow it. The sound of gun shots could alarm the sheep to the extent they might abort their lambs and could cause the cattle to take fright and scatter, possibly damaging fences in the process.

EVIDENCE FOR THE ASSESSOR

Robert Shepherd, Assistant Assessor, gave evidence. He 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’s evidence was in two parts. Firstly, he spoke to the principles applying to the entry of Shooting Rights in the Valuation Roll. Then he gave evidence specific to these Appeal Subjects.

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 or 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. This is the situation in the present appeal, the land at Balkeith being split into two separate areas.

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:-

Mr Shepherd explained this appeal relates to an entry made in the Valuation Roll on 29 September 2017 with an effective date of 1 April 2017 at a NAV/RV of £1,500. However, following revisal of the National Scheme of Valuation and the Practice Note, the Assessor proposed a revised valuation of £675, the valuation to which he spoke today. Mr MacKay had initially proposed an alternative valuation of £50 although, today, he spoke to a Nil valuation.

Mr Shepherd confirmed there was no dispute between the parties as to the physical characteristics of the Appeal Subjects. Mr MacKay had stated he does not himself shoot, even for vermin control, and states there is very little, if anything, to shoot on the farm with the exception of the odd pheasant which comes in from a neighbouring farm. In Mr MacKay's view the lack of anything to shoot rendered the potential for sporting shooting very limited and he does not believe that anyone would pay money to shoot on his land. He had pointed to the difficulties to shoot on parts of the holding due to the presence of the railway line, the main Tain to Portmahomack road as well as houses, public paths and a riding school.

Assessor's Valuation:-

The subjects comprised two holdings of predominantly grassland extending to approximately 303 (sic) hectares. The subjects had been valued by the application of the comparative principle. At the grassland rate of £2.80 per hectare a figure of £849 resulted. A 20% disability allowance made for the fact of public access on to the farm, roads, etc nearby amounted to £170. Under that deduction a figure of £679, rounded down to £675 resulted.

The rate of £2.80 per hectare is from the Nation Scheme of Valuation in Appendix 1 of the Practice Note. According to the table and map of local evidence produced by Mr Shepherd there are a number of shooting leases over various farms in the area. The evidence is generally from similar types of holding within the eastern side of the Highlands ranging from Nairn to Dornoch. The comparisons used here are broadly similar in size to the Appeal Subjects and the range of rates indicate that a rate of £2.80 is not unreasonable for a holding of this type.

The comparisons indicate the various holdings which have been settled with either a professional agent or the individual rate payer in terms of the scheme of valuation. He noted that some appeals had been settled even although no shooting takes place on the holding. He did not know the quality of shooting available on any of the comparison subjects.

An end allowance of 20% has been granted to reflect the disabilities of the holding.

Response to the Appellant's Grounds of Appeal

Mr MacKay indicated there is very little or no game to shoot. In the view of Mr Shepherd, however, there must be in view of the size, location and type of land, some element of game such as stray marauding deer, geese, ducks or rabbits that are available to shoot for sporting purposes. Other neighbouring holdings confirmed there is some game and it would therefore be highly unlikely that there was simply nothing to shoot on this particular holding. Mr MacKay argued the valuation of the right should be Nil because he thought no-one would be prepared to pay for the right

to shoot over his ground. In the opinion of Mr Shepherd, all of Mr MacKay's arguments regarding the disabilities affecting the holding are reflected in the end allowance granted to the subjects.

In response to a question from the Committee, Mr Shepherd acknowledged that there may be situations where the land yields shooting enough for the farmer to take "one for the pot" or for it to be of interest to someone to engage in some vermin control free of charge but that might not be enough to interest the hypothetical tenant.

SUBMISSIONS FOR THE APPELLANT

Mr MacKay elected not to make any submissions to the Committee.

SUBMISSIONS FOR THE ASSESSOR

Mr Gill invited the Committee to dismiss the appeal at a reduced level of value, £675. 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 the first “shootings” appeal 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 as well as addressing the application of those principles to the subjects of appeal here.

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 - this was a proposition with which Mr MacKay did not seek to disagree. 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 - again, Mr MacKay did not seek to dispute this proposition although he did not shoot the ground himself. 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. Mr MacKay's evidence, set out above, was that there was no game present on his land of a volume that would attract a tenant willing to pay for the privilege of shooting it. This seemed to be for a variety of reasons:-

- (i) The lie of the land, flat and open, provided no attractive habitat for game and there was little or no game present;
- (ii) Nearby properties, for example, Pithogarty provided attractive habitats for such as duck and geese;
- (iii) The presence of such as nearby roads, a railway line running through the property, a nearby riding school, a public path and bridle path on the boundaries of and crossing the property and buildings, including a bonded warehouse, on the property would make the safe management of shootings problematic;
- (iv) The particular use Mr MacKay made of his farmland, mainly keeping sheep and cattle. Mr MacKay gave reasons why this was not a use consistent with the letting of shootings.

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. Mr MacKay's evidence was that there was nothing to shoot sufficient to attract a paying tenant.

Against that, Mr Shepherd asserted that there must be shooting available on these subjects which someone would take on for the enjoyment of shooting. This assertion appeared to be based on the size of the subjects - over 300 hectares - and location near to comparable subjects with shooting rights entered in the Valuation Roll when appeals 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. He had not considered how different agricultural operations on neighbouring land of a similar type - according to the Practice Note categorisations - might impact on the availability of game, one to the other. He had not gathered any information about the interaction of different species of wild animal and how that might affect the availability of game. 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, Mr Shepherd said, mainly farms and that the shooting offered was “fairly basic” rough shooting. 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 great 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. That being so, the Committee had been presented with, on the one hand, the evidence of Mr MacKay, who the Committee considered to be a reliable witness. His evidence which had not been undermined by the Assessor to any material extent, was that there was not game to shoot. On the other hand, there was the evidence of Mr Shepherd. He asserted there must be game to shoot. The Committee could not find a sound foundation in fact for that assertion.

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 there is to shoot both in terms of species and quantity. The Committee considered the evidence led did not allow it to conclude

there is 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 entered in the Valuation Roll at a Rateable Value of Nil with effect from 1 April 2017.