

FULL COURT

(Lord Elliott, D D McDiarmid, A B Campbell)

MacCormick v Crofters Commission

(Application Strathclyde RN 374 - Order of 14 January 1991.)

CROFT - APPLICATION TO CROFTERS COMMISSION FOR DECROFTING DIRECTION - PROPOSED REFUSAL BY CROFTERS COMMISSION — APPEAL TO SCOTTISH LAND COURT - GENERAL INTEREST OF THE CROFTING COMMUNITY - NO EVIDENCE OF DEMAND FOR TENANCY - INSUFFICIENT REASONS FOR PROPOSED REFUSAL GIVEN - APPEAL SUSTAINED

The Applicant, as owner occupier of a croft on the Island of Mull, appealed to the Land Court in terms of Section 16A(8) of the Crofters (Scotland) Act 1955 against a proposed decision of the Crofters Commission to refuse a decrofting direction in respect of his croft. The Court, in sustaining the appeal, held that no evidence of demand for the tenancy of the croft, if it was available for letting on the open market, had been proffered either at the Commission hearing or before the Court nor was there any positive evidence before the Commission of any harm to the general interest of the local crofting community in the event of the decrofting direction being granted nor had sufficient reasons been given by the Commission for their proposed refusal.

The Note appended to the Court's Order is as follows:

This is an appeal by John MacCormick, in terms of Section 16A(8) of the Crofters (Scotland) Act 1955 against a proposed decision of the Crofters Commission to refuse a decrofting Order in respect of his combined croft number 1, 2 and 3 Ardfenaig in the parish of Kilfinichen and Kilvickeon

The appeal was heard by the Full Court in Craignure Community Hall on 13 November 1990 when the Appellant was represented by Mr David J Pender, solicitor, and the Crofters Commission by their solicitor Mr Donald I Smith. The Court made an accompanied inspection of the croft and the surrounding district on the following day. At the hearing Mr Pender led in evidence Mr MacCormick and also a local crofter, Mr Ronald Campbell. No evidence was led on behalf of the Crofters Commission.

The Appellant's combined croft at Ardfenaig is owned by him and is situated in the Ross of Mull to the west of Buessan on the road to Fionnphort. It comprises 23 acres of arable and 200 acres of outrun and has 2 out of the 3 shares in 11,000 acres of adjacent common grazing. The other share effects to the combined croft 4, 5 and 6 Ardfenaig. The Appellant now keeps 16 cows but used to have 25. He also has 400 ewes. There is a commodious two storey croft house on the holding which has been improved by the Appellant with a new kitchen and bathroom to its rear. The house is in a good state of repair. Some distance from the house there is a steading comprising a large stone building converted to a byre with internal wooden partitions with attached lean-to for tethering animals. The 23 acres of arable land are in 3 enclosures.

There is also a more modern multi—purpose shed with corrugated iron roof alongside, approximately 70' x 20'. There is a separate hayshed some distance west of the house, adjacent to the arable fields. Silage grown on this land is bagged for use in the winter. The arable land is enclosed by fences and dykes which all appear

to be in good repair. Some of the hill outrun has recently been drained.

The Appellant bought his croft in 1982 from the Trustees of the 10th Duke of Argyll for £4000 which purchase he says, was with a view to eventual decrofting. He explained that he had been living at Ardfenaig until recently when his sister died and he moved into his old family home at Creich. This is situated about 2 miles away on another smaller croft which he also owns. He now stays at Ardfenaig only occasionally, He is assisted in his farming operations by his unmarried daughter without whose help he could not now manage. The Appellant is 66 years of age and has had an illness involving major surgery as a result of which the doctors have now told him it is time for him to be 'easing off'. His daughter aged 24 stays at home but does not intend to spend her life on the croft, so there is at present no immediate family successor to continue crofting the land.

The Appellant now submits that he needs to recover all the capital he has sunk in Ardfenaig by way of his improvements to the land such as fencing and drainage and extensions to the farmhouse and steading. After working the croft for 40 years he feels he is entitled to capitalise on these assets. To this end he advertised the combined croft for sale at a figure of about £100,000 which included £30,000 for the land but excluded the shares in the common grazings. He thought his improvements were worth about £60,000 - £70,000. Crofting grants were not available to him as he had failed the Commission's "like economic status as a crofter" financial test; and he therefore only receives farmers' grants under the Agricultural Holdings Acts. He regards himself therefore more as a farmer than a crofter.

In response to his newspaper advertisement in the "Oban Times" and one other newspaper, the Appellant received four specific requests for sale particulars, but no concrete offers. As soon as enquirers heard that his property was subject to crofting tenure they lost interest. This was because a croft cannot be used as security for a loan as any purchaser might be asked for his reletting proposals. He himself was not willing to try to relet because any new tenant would then be able to purchase the croft land at 15 times its fair rent. Indeed, for this reason, he did not know of any crofter who was prepared nowadays to relet his croft except within his own family. If, therefore, he could not obtain a decrofting Order to enable him to re-advertise the decrofted croft and so sell it successfully, he would simply decroft and sell the house and garden at market value and perhaps continue to farm the croft land from his other croft at Creich. He himself had no intention, however, of selling up and leaving Null, for Creich was his family home. He was not, however, against incomers coming in and keeping the land properly farmed.

In reply to questions, the Appellant considered that the local crofting community included Creich and Catchean where he had shares in the common grazings. In the district there were also several small farms. Several of the crofts had also been decrofted. Many of these had shares in common grazings and everybody helped each other in the locality rather than contract out the work. He himself was helped by others at the clipping and dipping. In the Appellant's opinion too many of the young were now leaving the Island after secondary schooling at the High School at Oban, there being now no secondary school on Mull and few prospects for the young on the Island.

The Appellant considered that his own croft, if sold, could still make a living for someone. His holding was at least as viable as the adjacent croft 4, 5 and 6 Ardfenaig, which was now owned by the former tenant Mr MacCallum and provided him with a living. The latter croft, in contrast to his own, had been decrofted by order of the Crofters Commission in 1981 and this had made no difference to its upkeep.

Other nearby crofts which had been decrofted by order of the Crofters Commission were No 6 Ardachy, which was decrofted by direction of the Commission on 15 December 1986, and Braemanvoir and Ardchiavaig decrofted by direction of the Commission on 30 July 1987. No. 2 Knockvolagan, extending to 1,530 acres, had also been decrofted on 21 June 1990 shortly after the hearing of the present decrofting Application.

The other witness, Mr Ronald Campbell, lives at Uisgean Croft of which he is the crofting tenant. He is a council member of the Scottish National Farmers Union, and Convenor of their Highlands and Islands Committee. He also has auxiliary employment as Forest Ranger with the Forestry Commission who have recently become engaged in planting on this side of Mull. Mr Campbell has been actively engaged in crofting since 1969. His croft extends to 12 hectares of arable and 50 of outrun and carries 28 cows and 70 ewes. He lives 6 miles away from his croft. He said that crofts in the Ross of Mull were now deteriorating due to the way present prices were going. In recent sales his lambs have been down by £11 and his calves by £100 on last year's prices. He himself would not have been able to continue unless he had also been a Forest Ranger. But there were few such auxiliary occupations. He thought there were now only about 12 crofts worked in the vicinity where once there had been about 150. One or two of these were now owner-occupied; but there was no clear pattern of occupation. He knew of 5 which had recently been decrofted by the Commission and all of which were about the same size as Ardfenaig. These were Achnahard at Ardtun comprising about 12 acres with 8 cows, no sheep and a share in the common grazings; Braemanvoir which had 20 to 30 cows and no sheep; Nos 4, 5 and S Ardfenaig, already mentioned, with one share in the common grazings and which carried 35 cows and 350 ewes; No 2 Knockvolagan extending to 1530 acres carrying on its own 20 cows and 400 ewes; and Ardachy carrying 30 cows and 400 ewes, formerly a Department of Agriculture holding, and recently sold to a merchant banker, who retains a manager there. He said it was about the same size as 1, 2 and 3 Ardfenaig.

Mr Campbell was of the opinion that in this part of Mull the main value was not in the croft houses which were mostly on farming land but in the land itself - particularly to outsiders for whom it was now an attraction. He explained that only they could now afford the high prices being paid.

Under cross-examination on behalf of the Commission, Mr Campbell admitted that the land was also valuable as farmland; and further that, although stock prices might now be deflated, these could pick up again. He nevertheless still thought that there was a demand for the land as such which, once purchased, became treated as a vacant croft unless decrofted. His own view, however, was that if there was no local demand for the croft land to be worked as such, permission should be *given* for it to be decrofted. He thought that there was no real conflict between farmers and crofters and that nowadays one needed to have bigger units than those at Ardfenaig. He remarked that he was representing local farmers and crofters through the Scottish National Farmers Union; but he could not speak for the separate Crofters Union. He added that if Mr MacCormick was not able to sell he would be severely prejudiced and should therefore be allowed to capitalise on the value of his croft and its improvements after a lifetime in crofting.

In reply to questions from the Court, Mr Campbell said that he did not think other local crofters could now afford to take over the Appellant's house and steading and other improvements, so that there could be no adverse effect if the croft were now allowed to be decrofted. If, however, some outsider was prepared to come in and work the

croft -- then well and good. He considered however that the land value alone was about £45,000 without any allowance for croft improvements.

As already indicated, no evidence was led in reply on behalf of the Crofters Commission. The Commission's report on the hearing held by the Commission on 8 March 1990 was nevertheless a production in the appeal and indicated the evidence which was then placed before the Commission. However Mr Pender, during Mr Smith's submissions, questioned the evidential value of all the Commission's productions, as none had been spoken to by witnesses.

Mr Pender, solicitor, in his closing submissions for the Appellant, drew attention to the report of the Commission hearing, in particular, to the evidence given by Mr Clark concerning the decrofting of his holdings when no interest had been expressed by any local persons. His units had now been purchased by incomers and both were worked well, Five crofts had been decrofted locally, ranging from 12 acres to 1100 acres, and the decision now under appeal seemed inconsistent with those decisions, An obvious example was Croft 4, 5 and B Ardfenaig which was back to back with the Appellant's croft, and shared in the same common grazing. Knockvolagan was also decrofted in 1990, and is comparable in stock carrying capacity to 1, 2 and Ardfenaig. There appeared to be no consistent pattern in the Commission's decisions Mr Pender also observed that if his client now sold the site of his dwellinghouse — as was his intention if decrofting was refused — this would leave the croft not only without a house but also possibly without a byre. If, on the other hand, the Appellant were to let the croft land, then in order to avoid it being purchased under the 1975 Act at 15 times its fair rent, he would only do so by way of a grazing let which in itself would be bad for the community

Mr Pender conceded that there was still a local crofting community in the district but nevertheless submitted that this was within a narrower radius than the whole of the Ross of Mull. He said Mr MacCormick's evidence was that the district in question stretched from Creich to Catchean - but the circle of mutual help between crofters was even narrower. In any event no evidence of any demand for the let of this croft had been established before the Crofters Commission or at this appeal.

Asked by the Court about the supply of crofting land available to local people, he said this still remained in the common grazings which were unaffected by decrofting applications. He also pointed out that Mr MacCallum's purchase and decrofting of the adjoining crofts Nos. 4, 5 and 6 Ardfenaig had not adversely affected the local crofting community. His client had put all his money into his croft over 41 years and there was no feasible or practicable alternative to doing what he now wished to do. If the appeal was refused then the house and steading would simply be sold with an owner's title and automatic decrofting. The croft land would thereafter be let on a short-term basis. This might indeed cause deterioration of the land and of the stock. The appeal should therefore be allowed and decrofting directed.

Mr Smith, solicitor for the Commission, submitted it was not the Commission's function to facilitate sales of croft land The Commission recognised Mr MacCormick as a hard-working crofter and an asset to the local community. They also accepted that he had now reached an age when he should be considering winding down. He had bought the croft in 1982 and it was appreciated that he might now wish to pass on his Owner's title to someone else. The reasons however, now advanced on his behalf for obtaining a decrofting Order and thereby taking the subjects out of crofting tenure were quite inadequate. These were, in essence, no more than that he wished to decroft so that he could more easily sell his property on the open market without any restrictions. The problem in the Ross of Mull was that crofting was on the wane,

simply because prices had now gone beyond the reach of local crofters.

On the question of local demand for the Appellant's croft, the Commission's solicitor conceded that no timeous objections to the present decrofting application had been received when it was advertised by the Commission; but he submitted that there was an apparent interest in the tenancy shown by the large turnout at the start of the Commission's hearing. This was heard locally and he referred to the report of the hearing and the evidence from the Crofters Union. He submitted that the Appellant's long association with the croft was irrelevant. The case had to be decided on its merits in terms of the Statute. He submitted that there were only three choices open to the Appellant; first to apply for a decrofting Order; second to continue to work as owner-occupier; and third to sell the croft under crofting tenure. While the Appellant had said he did not contemplate reletting, this need not involve the risk of the new tenant thereafter purchasing the croft land under the 1976 Act, for such a purchase could be opposed by him as landlord on the ground of being detrimental to sound estate management in terms of section 2(2) of the 1976 Act.

Mr Smith also explained that if the Commission found that a croft was vacant and disused and saw a local demand for it they would take measures to ensure that it was relet. But they did not normally call on active owner-occupiers for their reletting proposals. Not being of 'like economic status as a crofter' only led to disqualification for crofting grants as indeed had occurred in the present case. The Commission had never sought to enforce the reletting of Ardfenaig or the Appellant's other croft which he also now owned.

Mr Smith also referred to the statutory position of existing grazing rights deemed to be part of the croft in terms of Section 35 of the 1955 Act. On decrofting, the grazing rights would be left in limbo, which would hardly be in the interests of the local crofting community.

Under reference to the recent decrofting of no 2 Knockvolagan, the Commission's solicitor explained that this croft had no grazing shares. The Area Commissioner's estimate that the high ingoing compensation for the improvements would be outwith the means of any incoming crofting tenant had been the crux of the decision to make the decrofting order. The Commissioner had estimated the ingoing valuation for the improvements at Knockvolagan to be twice his estimate of £40,000 for 1, 2 and 3 Ardfenaig.

At this point Mr Pender objected as there had been no evidence or averment on record to substantiate such submissions. There was no way the Appellant could have known about the estimated level of the value of the Knockvolagan improvements. It was unfair if this unknown criterion had been a crucial factor in the Commission's decision. It was now, in any event, too late for him to answer such a call. The Court upheld the objection.

In explanation of the decrofting of Nos, 4, 5 and 6 Ardfenaig in 1981, Mr Smith said that circumstances could change and also that there might be changes in the demand for land and for letting as opposed to selling. He also commented that the Appellant's present attempt to sell had been at the high price of £100,000 excluding the grazings. The attempted sale was therefore on the basis that £60,000-70,000 represented compensation for tenant's improvements and £30,000-40,000 for the land. Mr Smith's own opinion was that the value of the improvements was about £45,000. Commenting on the Appellant's declared intention not to relet the croft land if a decrofting order was refused, but to decroft and sell the house site and garden,

Mr Smith said that the Commission could not oppose this. But such a sale was likely to be not to local people but to outsiders.

In conclusion, Mr Smith said that there was no evidence of any unfairness or prejudice in the Commission's proposed decision to refuse a decrofting order. They had not called upon the Appellant to relet although he was not of the same economic status as a crofter. The facts and circumstances of the present case were therefore no different from those in the previous decisions of Sutherland v Crofters Commission 1990, (so far unreported) Steven v Crofters Commission 1984 SLCR 30 and McCull v Crofters Commission 1985 SLCR 142, in all of which the proposed decisions of the Commission had been upheld. The reason for wishing to decroft in all those cases was simply to allow freedom of choice and so as to prevent the Commission, in certain circumstances, from seeking reletting proposals. The appeal should therefore be refused.

Decision

The Court do not agree that this case is on all fours with the previous cases of Sutherland, Steven and McCull. In those cases the crofters who had purchased their crofts were still actively farming them, and merely wished, looking to the future, to be freed from the application of the Crofters Acts and, in particular, the inherent threat thereunder of compulsory reletting by the Commission. The Court observed that something more than wishing to be free from the crofting legislation was needed to justify a decrofting order - for otherwise decrofting orders could be obtained merely for the asking. Moreover in all of those cases it was established that there was evidence of potential demand for a lease of the croft in question from persons who might reasonably be expected to obtain that tenancy if the croft were offered for letting on the open market on the date when they are considering the application.

In Sutherland, which was the most recent case, no objections had been lodged to the decrofting application when advertised by the Commission because the applicant was a well-respected local crofter with no immediate intention of retiring, but it was clear from the evidence given that several locals would have liked the croft if it had actually become available for letting. It was a well-farmed croft which lay within a community of some 230 crofts. Only one other croft had been decrofted; and the Commission led evidence as to why a decrofting order had been exceptionally allowed in that case to finance the rehabilitation of another croft owned by the same crofter in the same area.

In this case no evidence of demand has been proffered either at the Commission hearing or before this Court; nor has any satisfactory explanation been given of why the decrofting of several other crofts in the same vicinity has already been allowed.

Directions that the Crofters Acts should cease to apply to a croft used to be given by the Secretary of State. But under the new section 16A(1) of the Crofters (Scotland) Act 1955 (as amended) the Commission were substituted as the adjudicating body subject, however, to a right of appeal to this Court against their proposed decision.

The new Section 16A(7) provided that in deciding whether or not to grant a decrofting order "The Commission shall give notice in writing to the applicant of their proposed decision on an application made to them under the said Section 16(9) or sub-section (4) above, specifying the nature of and the reasons for such decision."

Section 16A(8) provides:

"The Applicant may within 21 days of receipt of the Notice under sub-section (7) above ... appeal against the proposed decision or further direction to the Land Court who may hear or consider such evidence as they think fit in order to enable them to dispose of the appeal." So the appeal to this Court is on fact and law. The Crofters Commission are the administrative body charged under section 1 of the 1955 Act with regulating crofting. This Court have therefore been slow to interfere with a proposed decision of the Commission to refuse a decrofting direction unless they had misdirected themselves in law; had failed to comply with a statutory direction or where there was no evidence to support their conclusion.

We understand that the Commission's normal procedure is to advertise the Application, and seek observations from the local assessor and the DAFS local representative. This is then reported back to the Commission which in plenary session then decide whether to grant or refuse the de-crofting application. In this case the proposed decision to refuse a de-crofting order was intimated to the Applicant, who then requested a hearing which was subsequently held at Bunessan on 8 March 1990. The Commission then considered the Application further on 26 April 1990 and thereafter advised the Applicant that they confirmed their original decision to refuse a decrofting order. This proposed decision is now appealed to the Court.

Section 16A(2) imposes a statutory duty on the Commission, when determining whether or not to *give* a decrofting direction, "to have regard to the general interest of the crofting community in the district in which the croft is situated and in particular to the demand, if any, for a tenancy of the croft from persons who might reasonably be expected to obtain that tenancy if the croft were offered for letting on the open market on the date when they are considering the application."

These are separate matters the last of which is somewhat hypothetical as the croft will not usually be available for letting at the date of application for a decrofting order. The real question is, would there be a demand for a tenancy thereof from persons who would be appropriate tenants assuming that it actually was so available? The general interest of the local crofting community can take many forms. In Gray v Crofters Commission 1980 SLT (Land Ct) 2 this Court favoured de-crofting to enable major drainage works to go ahead, following a voluntary reorganisation scheme agreed by all the local crofters.

In the present case (unlike in Sutherland supra) we have not been informed as to the Commission's views on the district concerned; how many registered crofts are still involved; what is the extent of their grazings, and how many have been decrofted - all of which information will be in their records.

However, there was agreement among witnesses who gave evidence for the Appellant that the relevant district stretches from Ardtun to the Sound of Iona. This district however also includes several farms.

While no evidence was led before the Court on behalf of the Commission, there is a full report of the hearing held before their local Commissioner on 8 March 1990. This indicates the evidence the Commission had before them and includes a report by Mr S Wilkie, Higher Executive Officer, Department of Agriculture and Fisheries for Scotland at Oban dated 15 August 1989. This report and other documents have been lodged as productions and were referred to in the course of the present hearing.

The report (production 4 by Mr Wilkie inter alia states: "Ardfenaig Township consists of two crofts only, one owner-occupied and the other tenanted. Both are progressively run, well stocked and situated about one mile apart. There are no vacant crofts or absentee tenants. Within a few miles there are also sited the small townships of Creich and Pottie. These are still considered as fairly active although an oldish age-pattern of crofters exists. A certain amount of local crofting community environment exists although the decrofting subject is perhaps atypical of the average holding, being somewhat larger, carrying more stock and subsequently being more independent. These facts being perhaps detrimental to its true crofting value within the local communities.... Mr MacCormick is, himself, the Grazings Clerk. I also interviewed the local assessor, Mr J MacInnes and three other crofters in the neighbourhood. All were fairly consistent in their comments, expressing an apparent acceptance that possibly this was another large croft being taken out of crofting legislation and going on the open market. They emphasised that they were not actually objecting to this happening as, due to the *croft* size, they could not think of any local person who could either afford to purchase or indeed take over the tenancy. They knew of no local demand or objections and from the interviews and general discussions, they appear to feel that the actual granting of a decrofting directive would have limited detrimental effect within the local communities. Of the three interviewed, one was elderly and nearing retirement, one was middle-aged, and one was young.

From the report of the hearing itself it appears that a Ms Linda MacGillivray, the chairman of the Mull and Iona Branch of the Scottish Crofters Union, informed the hearing of her Union's opposition to whole croft decroftings because far too much decrofting of whole crofts had already taken place, and such crofts were thereby lost for ever to crofting. Due to lack of prior notice she was, however, prevented from presenting to the hearing a list of persons alleged by her to be interested in obtaining a croft. This statement was ruled out of order in the absence of prior notice. The suitability of such allegedly interested persons was thus never tested nor their ability to farm and take over the improvements - such as occurred in the case of Steven supra.

The report of the hearing also narrated:

"Mr Clark gave evidence that he had been working his units for 22 years. When he decrofted his holdings, no interest in the subjects had been expressed by any local people. These units have now been purchased by incomers and both were well worked. He added that it was impossible to obtain labour locally and the locals have not shown any interest in farming or assisting those with farms. People in the area were very independent. He added that you need capital to take over a croft and that one cannot make a living from crofting. He concluded by saying that members of the local populations would be interested in obtaining a croft if they could get it for nothing."

The report of the hearing also stated that the Chairman asked the hearing if there was anyone present who wished to express a demand for the croft and, if so, what valuation they would put on the permanent improvements if they were to take over the tenancy of the croft. But no one present expressed any such interest.

The Court therefore reject Mr Smith's contention on behalf of the Commission that the large attendance at the public hearing could in itself indicate an interest in obtaining the tenancy. Local hearings often attract a large audience of locals but none of those present in this case expressed a potential interest in the croft even when asked by the chairman. Nor were any objections lodged with the Commission

(as in other cases) in response to their newspaper advertisement of the Appellant's decrofting application.

In the whole matter the Court conclude that there was no evidence before the Commission of potential demand for the lease of this holding on the hypothesis that it was available for letting on the date when they were considering the application. This may well however have been due to the need for any incomer to pay the Appellant the value of his improvements and for which, failing decrofting, no bank loan would be available.

There was also no positive evidence before the Commission of harm to the general interest of the local crofting community if a decrofting order was granted nor any evidence to distinguish this case from others where decrofting applications have recently been allowed.

The decision of the Crofters Commission dated 21 May 1990, refusing the present application was merely in the following terms:

"In terms of Section 16A(7) of the Crofters (Scotland) Act 1955, the Commission are required to give you notice in writing of their proposed decision on this Application. Therefore, the Commission now formally give notice that they propose to REFUSE your Application for a decrofting direction for the following reasons: — That they considered it to be in the interests of the local crofting community to retain the holding within the ambit of the Crofting Acts."

The Court do not regard this bare statement to be, in the circumstances, a sufficient compliance with section 16A(7) or as sufficiently specifying "the nature of and the reasons for such decision", There is understandably no reference to local demand; but there should have been some explanation of the alleged interests of the local crofting community in retaining the holding under the Crofters Acts. This is particularly so in view of the decrofting of so many other nearby crofts. The Appellant was at least entitled to some explanation of why this decrofting application was being refused when so many others were granted. Justice requires that like properties be seen to be treated as like. Croft 4, 5 and 6 Ardfenaig for instance which backs with Nos 1, 2 and 3 Ardfenaig has been decrofted, The decrofting order dated 15 October 1981 for no 6 Ardfenaig (production 13) is produced and reads: "FURTHER CONSIDERING that we have, as required by Section 16A(2) of the Act of 1955 had regard to the general interests of the crofting community and in particular to the demand for a tenancy of the crofts and are satisfied that a direction should be given now, therefore we do hereby direct that the said croft shall cease to be a croft to which the Acts above-mentioned apply." So the same matters were considered in that case but the opposite conclusion reached, with no explanation given.

If there have been subsequent local relevant changes they are not mentioned; nor have the Commission indicated any change of policy in regard to the decrofting of crofts. It even appears from the evidence that the Commission have recently granted another decrofting direction for no 2 Knockvolagan, just after the Commission's hearing in the present case. We were informed that this was allowed on the ground that there was no local demand for a tenancy of this croft due to the high figure that would have to be paid to the outgoing tenant for his improvements. But this is also the main ground on which this appeal is made, namely, that there is no evidence of demand for the lease of this croft were it to be offered for let, because potential offerors would be unable to afford to take over the improvements and stock the holding.

In other cases coming before the Court there has been mention of the need to maintain a reservoir or pool of crofting land available for other persons wishing to engage in crofting agriculture. This is not of course a statutory phrase although it seems a fair inference to be drawn from the wording of section 16A(2). However, it cannot be read as a blanket prohibition against the decrofting of all whole crofts. Each case must still be considered on its merits within the context of the general interest of the particular local crofting community of which it forms a part and any communal crofting activities that are involved, together with any local or wider demand for the lease in question from persons who might reasonably be expected to obtain the tenancy.

As already indicated the Court do not consider that in this particular case the Commission have sufficiently explained the “nature of and reasons for their decision” in terms of section 16A(7). Nor have they explained why it would be detrimental to the general interests of this particular local crofting community to grant the decrofting direction sought — particularly having regard to all the other decrofting directions which they have already allowed in this part of Mull.

As stated earlier, the Court were not satisfied that the Commission had before them any evidence of demand, from the locality or from further afield, for the lease of the Appellant’s croft were it to be available for let. Nor was any such evidence presented before this Court in the course of this Appeal.

The Court therefore allow the appeal and remit the Application back to the Crofters Commission in terms of Section 16A(9) of the Crofters (Scotland) Act 1955 to give effect to our determination - namely, that the holding in question shall cease to be a croft.

We continue the Application to allow parties to lodge any submissions they may think fit in regard to the award of expenses within 28 days of the intimation hereof.

For Applicant: Mr D J Pender, Solicitor, Oban.

For Respondent: Mr D I Smith, Solicitor, Inverness.