

**Appellant:** Mr Mark Whittaker

**Appeal Address:** Self Catering Holiday Unit and Premises, Bridge Cottage, Lone Lane, Penallt, Monmouth, NP25 4AJ

**Appeal No:** 6840363055601/285NV17/90

**The Matter Appealed against:** 2017 Non-Domestic Rating List - Self Catering Holiday Unit

**Date of Hearing:** 29 November 2023

**Appearances:** Mr Whittaker (Appellant) and Mrs Rebecca Morris representing the Valuation Officer (the VO)

**Date of Decision:** 2 January 2024

**Decision of Tribunal:** Appeal Dismissed

**Members of the Tribunal:** Mr N Edwards (Chairperson), Mr R Harris and Ms E Jones

**Tribunal Clerk:** Mrs S Gwilliam

**Introduction:**

1. The subject appeal arose from a proposal submitted by Mr Whittaker on the 31 October 2022 challenging the Valuation Officer's decision to remove the entry of the Self-Catering Holiday Unit and Premises at Bridge Cottage, Lone Lane, Penallt, Monmouth, NP25 4AJ, from the 2017 Non-Domestic Rating List with effect from the 1 April 2020.
2. *The following is a summary of the case and is not intended to be an exhaustive record of the proceedings. However, the parties can be assured that all the evidence was fully considered by the Tribunal when it arrived at its decision. Consequently, the absence of reference to any statement, or evidence, should not be construed as being overlooked.*

**Legislation & Case Law**

- The Local Government Finance Act 1988
- Vines Limited v de Mauny (VO) 2010

**Valuation Officer submission**

3. The VO explained that the appeal property was entered in the 2017 Non-Domestic Rating List (the Rating List) on the 1 April 2017, as a 4 single bed

space self-catering holiday unit and premises with a £2,800 Rateable Value. It is situated in Penallt, a small village in Monmouthshire which stands on high ground above the River Wye.

4. The appellant was not challenging the valuation of the appeal property but rather the VO's determination to delete the assessment from the List with effect from the 1 April 2020. The appellant contended that the assessment should be re-instated in the Rating List with a £2,800 Rateable Value effective 1 April 2020.
5. Ms Morris referred to the conditions prescribed in Section 66(2BB) of the Local Government Finance Act 1988, which she considered had not been met. She clarified that whilst she sympathised with the appellant, Section 66 (2BB) was resolute in its wording and specified that in order for the appeal property to be valued as a self-catering unit and be entered in the Non-Domestic Rating List, each of the following three rules must be met and continued to be met regardless of circumstances, namely:
  - be available to let for short periods for at least 140 days or more over the current and previous tax years;
  - be actually let for at least 70 days in the past 12 months; and
  - be let on a commercial and on a short-term basis.
6. The VO explained that in addition to the covid-19 restrictions which were in place during the trading year of 2020-2021, Bridge Cottage was also affected by flooding when the River Wye burst its banks and entered the appeal property on the 18 February 2020.
7. Ms Morris was satisfied that on the day prior to the flood, the 17 February 2020, the eligibility tests of Section 66(2BB) were met and at that point Bridge Cottage should remain entered in the 2017 Non-Domestic Rating List. However, as a consequence of the flood and having considered the supporting documentation, the VO considered that the cost of repairs would be uneconomic to the hypothetical landlord and so the property should be deleted from the Rating List with effect from the 18 February 2020. Bridge Cottage would not be entered in the 2017 Rating List or the Council Tax Valuation List because it was no longer deemed a hereditament.
8. The appeal property was deemed to be capable of beneficial occupation on the 5 September 2020, the date Bridge Cottage became re-available to let. She explained that all the conditions detailed within the aforementioned tests must be met prior to it being listed for non-domestic rating purposes. Since only 47 days of lets had been achieved in the previous 12 months at that date, Bridge Cottage did not satisfy the criteria for being entered in the Rating List, so it was entered in the Council Tax Valuation List.

9. The VO clarified that there will be a date on which the property had been commercially available for 140 days and a date which it had been let for 70 days in the previous 12 months. Providing it will continue to be commercially available for 140 days in the following 12 months, the date in which a property can move to the Rating List will be the later of these two dates. If the criteria set out in Section 66 (2BB) is not met, a property will remain banded for council tax purposes and entered in the Council Tax Valuation List.
10. Ms Morris acknowledged that Wales was subject to a number of national lockdowns which restricted lettings, however during the period of 1 April 2020 -31 March 2021, there was a period of 150 days where no exclusions were in place, and as Bridge Cottage had only achieved 33 nights of lettings during the 2020 year, the VO deleted the entry from the Rating List on the 31 March 2020 as it had failed to achieve the minimum of 70 days letting for the 2020 period.
11. Having fully reviewed the letting data, Ms Morris considered that the appeal property should be deleted from the Rating List for the period 18 February 2020-5 September 2020, but she admitted that this course of action fell outside the scope of this proposal, and following the hearing she would correct the Rating List by means of a Valuation Officer's Notice. Consequently, she requested that the Tribunal dismiss the appeal as the property was not a hereditament at the relevant material date of the 1 April 2020.

### **Appellant's submission**

12. The appellant explained that during 2020, whilst experiencing the implications of restrictions imposed by lockdowns as a result of the Covid-19 pandemic, the appeal property was flooded by the River Wye on 18 February 2020 where it entered the appeal property at a depth of approximately 70 centimetres and remained for some 24 hours.
13. As a consequence of the flood damage, all kitchen units, the dishwasher, cooker and washing machine had to be replaced along with kitchen walls being replastered, retiled and redecorated.
14. Furthermore, being a business, the appellant was unable to obtain insurance for flood or access any grants which was only available to domestic properties.
15. The appellant confirmed that during Autumn 2020 adhering to Covid-19 restrictions, he managed a handful of lets but a prospective let for the Christmas period did not materialise due to the threat of a further flood.
16. Mr Whittaker informed the Tribunal that whilst his main argument was not in relation to the VO's rules but rather that those rules were misapplied and

contained serious flaws when dealing with instances of forced closure of holiday lets, which in this instance, led to the apparent injustice of paying Council Tax. Whilst the appellant considered that the rules work satisfactorily during normal trading conditions, the process falls apart when there are forced closures, and as such he proposed a number of procedures to the Tribunal which he believed would make the system much fairer and simpler.

17. In conclusion, the appellant intimated that through no fault of his own he had to pay the local authority Council Tax which he considered extremely unfair and had caused him stress both emotionally and financially.

## **Reasons for Decision**

18. Having regard to relevant legislation, referenced case law and the evidence provided, the Tribunal decided as follows:
19. The only issue before the Tribunal was whether the Valuation Officer was correct in her assertion to remove Bridge Cottage from the 2017 Non-Domestic Rating List on the material day of 1 April 2020.
20. The Valuation Officer considered that Bridge Cottage should be removed from the Rating List as the test prescribed in Section 66 (2BB) of the Local Government Finance Act 1988, whereas the appellant considered that the assessment should be re-instated at a Rateable Value of £2,800 with effect from the 1 April 2020.
21. Section 66 (2BB) states: *“A building or self-contained part of a building is not domestic property if each of the following paragraphs apply in relation to it-*
- (a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more;*
- (b) on that day the relevant person’s interest in the building or part is such as to enable the person to let it for such periods;*
- (c) the whole of the building or self-contained part of the building was available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more in the year prior to the year beginning with end of the day in relation to which the question referred to in paragraph (a) is being considered;*
- (d) the short periods for which it was so let-*
- (i) amounted in total to at least 70 days; or*

*(ii) taken together with the short periods for which one or more other buildings or self-contained parts of a building so let, amounted to an average of at least 70 days for each building or self-contained part of a building included within the calculation; where each building or self-contained part of the building included in the calculation .....*”

22. In respect of the subject appeal, the Tribunal was aware that the onus lay with the appellant to prove his case and to show that the appeal hereditament's assessment was incorrect, as directed by the general principle from the High Court case in respect of *Vines Limited v de Mauny (Valuation Officer)* (2010).
23. Mr Whittaker did not dispute that Bridge Cottage had failed to meet the eligibility test of 70 days due to national lockdowns and the flooding of the property. Furthermore, as at the material day of the 1 April 2020, the appellant did not dispute that the appeal property was incapable of beneficial occupation following the flooding and therefore did not constitute a hereditament.
24. Whilst the Tribunal sympathised with the appellant regarding his contentions, it was bound by the same legislation as the Valuation Officer and was unable to diverge from it, consequently, the Members had no option other than to conclude that based upon the weight of evidence presented, the Valuation Officer was correct in her decision to remove the appeal property from the 2017 Non-Domestic Rating List for the period 1 April 2020 – 5 September 2020 and accordingly dismissed the appeal.