

Appeal Number:	681039917757/285NV17/24
Appellant:	Mr D Brown
Appeal Property:	2 Tyddyn Adi, Morfa Bychan, LL49 9YU
Matter Appealed Against:	2017 Non-Domestic Rating List
Hearing Date:	12 November 2024
Appearances:	Mr D Brown Mr R Read (representing Valuation Office Agency)
Decision and its date:	Appeal dismissed on 5 December 2024
Tribunal Members:	Mr D Subacchi (Chairperson) Mr C Wilson Mr P Jones
Tribunal Clerk(s):	Miss R Morris Mr C Richards

Introduction - Issues in Dispute

1. The subject appeal arose from a proposal received by the Valuation Officer (VO) on 14 June 2024. Mr. Brown challenged the decision to remove the appeal property from the 2017 Non-Domestic Rating List for the period 1 April 2020 to 1 April 2021.
2. The following is a summary of the cases presented 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 and Case Law

- Section 66 (2BB) of the Local Government Finance Act 1988
*“(2BB) 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 amounted in total to at least 70 days*
- (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—*
 - (aa) *is not included in another calculation under this sub-paragraph for the year in relation to which the question is being considered,*
 - (bb) *is situated at the same location or in very close proximity to all of the other buildings or self-contained parts of a building included in the calculation, and*
 - (cc) *is so let as part of the same business or connected businesses.”*

- Section 67 (5) of the Local Government Finance Act 1988
“(5) For the purpose of deciding the extent (if any) to which a hereditament consists of domestic property on a particular day, or is exempt from local non-domestic rating on a particular day, [or is a Crown hereditament on a particular day,] the state of affairs existing immediately before the day ends shall be treated as having existed throughout the day.”

Evidence and Submissions

Appellant evidence:

3. Mr Brown explained that the property had been available for letting every day between 1 April 2020 and 1 April 2021. He stated that bookings had been secured, and payments received for 90 days during this period.
4. He noted that many bookings had been refunded or rescheduled due to Covid-19 travel restrictions. He emphasised that these refunds had been voluntary goodwill gestures and not legally required.
5. Referring to Section 66(2BB), Mr Brown contended that the property had met all statutory requirements for inclusion in the Non-Domestic Rating List. He believed that physical occupancy was not explicitly required under the

legislation and that confirmed bookings should satisfy the 70-day letting threshold.

6. To support this, Mr Brown provided detailed booking records, including dates, sources, and lengths of stay, along with evidence of payments. He calculated that the property had been booked and, in his view, let for 90 days within the relevant period, exceeding the statutory requirement.
7. Mr Brown presented a timeline of Covid-19 travel restrictions, describing them as extraordinary circumstances beyond his control. He also compared his situation to student lettings, where non-occupancy had not invalidated agreements.
8. Mr Brown requested that the property be reinstated in the Non-Domestic Rating List for the period 1 April 2020 to 1 April 2021, asserting that the statutory requirements had been satisfied.

Valuation Officer evidence:

9. Mr Read outlined the criteria under Section 66(2BB), and clarified that a property had to be available for at least 140 days in a year and let for 70 days within that period.
10. He noted that neither party disputed the property's availability for 140 days. However, he stated that the property had not been actually let for 70 days between 1 April 2020 and 1 April 2021, as only days when the property had been physically occupied could be counted.
11. Mr Read referenced the Valuation Tribunal for Wales decision in *A Keating v B Davies VOA* (15 November 2023), which he suggested demonstrated that cancelled bookings could not be considered as actual lettings under Section 66(2BB). He quoted:

"The Tribunal did not accept that cancelled bookings [...] could be regarded as lettings within the meaning of S.66(2BB)"
12. Mr Read provided the Tribunal with the Form of Return (FOR) for 2020-2021, completed by Mr. Brown, which indicated that the property had been 'actually let' for 40 nights during the relevant period.
13. In conclusion, Mr Read contended that the statutory requirements under Section 66(2BB) did not permit cancelled or refunded bookings to count as 'days let.' He further asserted that the property had not met the relevant criteria and requested that the Tribunal dismiss the appeal.

Decision and Reason

14. The Tribunal considered the sole issue within the scope of the appeal, which was whether the appeal property should have been reinstated in the Non-Domestic Rating List for the period 1 April 2020 to 1 April 2021, based on whether the criteria set out in Section 66(2BB) had been satisfied.

15. The Tribunal examined whether bookings that had been subsequently refunded or rescheduled could have contributed towards the total “days let” requirement under Section 66(2BB).
16. While the Tribunal noted that a previous Valuation Tribunal for Wales decision had been referenced by Mr Read, it recognised that this decision was not binding. However, it found the interpretation in the prior decision to be informative in understanding the treatment of cancelled bookings under the relevant legislation.
17. In reviewing Section 66(2BB) alongside Section 67(5), the Tribunal placed weight on the requirement to consider “the circumstances immediately before midnight” when determining whether a day qualified as “let.” The Tribunal interpreted this provision to mean that physical occupancy was necessary for a day to be counted and concluded that days booked but not fulfilled by occupation could not be considered as “let” under the statutory criteria.
18. While the Tribunal acknowledged the circumstances faced by Mr Brown due to Covid-19 and his efforts to support affected customers, it determined that the property had not met the statutory requirement of 70 days of actual letting within the relevant period.
19. Consequently, and after a thorough review of all evidence presented, the Tribunal determined that the appeal property had not met the legislative requirements under Section 66(2BB) of the Local Government Finance Act 1988 for inclusion in the Non-Domestic Rating List for the period 1 April 2020 to 1 April 2021, and dismissed the appeal.