IN THE UPPER TRIBUNAL (LANDS CHAMBER)

Neutral Citation Number: [2018] UKUT 327 (LC)
Case No: RA/18/2016

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

RATING – Self-catering holiday cottages – Wales – whether 70 day letting rule to be applied to each cottage in a hereditament or to the hereditament as a whole – s.66(2BB), Local Government Finance Act 1988 – Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE VALUATION TRIBUNAL FOR WALES

BETWEEN:

GAER LIMITED

(TRADING AS GAER COTTAGES) **Appellant**

and

MRS JENNIFER WILLIAMS
(VALUATION OFFICER)

Respondent

Re: Y Gaer
Cribyn
Lampeter
Ceredigion
SA48 7LZ

Determination on written representations

The following cases are referred to in this decision:

Redrose Limited v *Thomas* [2014] UKUT 311 (LC)

Calvert v Thomas [2013] UKUT 482 (LC)

Introduction

1. In Wales, as a result of section 66(2)(BB) of the Local Government Finance Act 1988 ("the 1988 Act"), before self-catering holiday accommodation may be treated as non-domestic property for the purpose of determining liability to pay business rates or Council Tax, it must satisfy a number of conditions. These include that the accommodation should have been let commercially in the year prior to the assessment for periods that amount in total to 70 days or more. This decision concerns the application of that 70 day rule to a complex of nine self-catering holiday cottages in South Wales known as Gaer Cottages which are situated at Y Gaer, Cribyn, Lampeter, Ceredigion ("the Hereditament").

2. The Hereditament was created by the conversion of redundant farm buildings in the mid-1980s following the grant of planning permission. The planning permission restricts the use of the Hereditament to holiday accommodation only and includes a condition prohibiting the occupation of the development between 10 January and 28 February each year. It would therefore be unlawful for the self-catering units to be occupied all year round as conventional residences.

3. The nine self-catering units are comprised in three separate self-contained buildings and have a total of 34 bed spaces. Some of the cottages have been adapted for use by people with disabilities. The complex provides an in-door heated swimming pool, a games room and a play area for the use of its guests. It is set in grounds of eight acres adjoining a house, also known as Y Gaer, which is occupied by Mr Jeffrey Rice, a director of Gaer Ltd which operates the Hereditament trading as Gaer Cottages. It is 12 miles from the coast and 3 miles from the nearest shop, pub, restaurant, post office or garage.

4. The issue with which now arises is whether the 70 day rule applies: (a) to the Hereditament as a whole, so that it is enough to make the whole Hereditament non-domestic property if, for the required number of days, at least one cottage (though not necessarily the same one) has been let commercially; or (b) to each of the nine individual cottages, so that only those cottages let commercially for the required number of days are non-domestic property, with the remainder being domestic property; or (c) to each of the three self-contained buildings, so that the whole building will be non-domestic if there was commercial letting of any part of it (though not necessarily the same part) on at least 70 days.

5. This issue has been considered by the Tribunal on the basis of written representations made in the course of two separate decisions of the Valuation Tribunal for Wales (VTW). Before explaining the slightly complicated procedural context, we will first refer to the relevant statutory provisions.

The statutory provisions

6. The local non-domestic rating list is required by section 42(1) and 64(4) of the 1988 Act to show every relevant "non-domestic hereditament at least some of which is neither domestic property nor exempt from local non-domestic rating".

7. By section 64(8), a hereditament is "non-domestic" if either: (a) it consists entirely of property which is not domestic, or (b) it is a composite hereditament.

8. A hereditament is composite if part only of it consists of domestic property (section 64(9)).

9. What is or is not a domestic property is determined by section 66. The basic principle, as provided by section 66(1), is that property is domestic if it is used only for the purposes of living accommodation or, broadly, is ancillary to such property. That general position is then qualified by a series of detailed exceptions which identify types of property (time shares, pitches occupied by certain caravans, boat moorings etc) which are not domestic.

10. Section 66(2B) is relevant to this appeal and provides as follows:

> "(2B) A building or self-contained part of a building is not domestic property if –
>
> (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, and
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> (b) on that day his interest in the building or part is such as to enable him to let it for such periods."

11. The "relevant person" referred to in subsection (2B) is identified in subsection 2(BC). Where the property in question is a building the relevant person is the freeholder unless it is subject as a whole to a relevant leasehold interest, in which case the relevant person is the leaseholder (or, if there is more than one relevant leasehold interest, it is the leaseholder to whose interest no other is inferior).

12. By section 66(9) the Secretary of State is given power to amend or substitute the definition of domestic property. The power is exercisable in relation to property in Wales by the Welsh Minister by virtue of provisions of the Government of Wales Act 2006.

13. With effect from 1 April 2010 section 66 was amended to provide for a different meaning of "domestic property" in Wales. By article 2(4) of the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010, subsections (2BA) and (2BB) were inserted into section 66. The new subsection (2BA) provided only that the new subsection (2BB) was to apply only in relation to Wales. Section 66(2BB) provided as follows:

> "(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 the 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."

14. Section 66(2BB) therefore made it a condition that, for self-catering accommodation not to be domestic property, the relevant person must have had an intention to let it for 140 days or more, and must have made it available for letting commercially for 140 days or more in the previous year, during which it must actually have been let in total for at least 70 days. The introduction of a requirement for actual letting for at least 70 days distinguished the definition of domestic property applicable in Wales from that used in England.

15. The purpose of this 70 day rule was said by the appellant to be to prevent the owners of second homes in Wales from avoiding Council Tax by purporting to make their property available for occupation as self-catering holiday accommodation for 140 days a year without having any genuine intention that it should be so occupied.

16. With effect from 1 April 2016 section 66(2BB) was itself amended by the Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2016 to add further circumstances in which a building or self-contained part of a building used as self-catering accommodation in Wales is not to be domestic property. Subsection (2BB)(d) (the 70 day rule) was substituted with a new provision allowing for the averaging of days let across buildings or self-contained parts of a buildings in close proximity to each other and which are let as part of a single business or connected businesses. The substituted provision was not in force at the time to which these proceedings relate, but it has been relied on in argument as casting light on the effect of the original provision. We therefore set it out in full, as follows:

"(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."

Procedural history

17. The Hereditament was entered in the 2010 compiled non-domestic rating list with a rateable value of £12,000. The rateable value of a similar complex of holiday cottages known as Rosemoor at Walwyns Castle in Dyfed, also in South Wales, was entered in the same list at £13,000. As the result of an appeal to this Tribunal in *Redrose Ltd v Thomas* [2014] UKUT 0311 (LC) the rateable value of Rosemoor was reduced to £6,000. The Tribunal in *Redrose* considered that the manner in which Rosemoor had been valued was wrong in principle for the reasons it explained in that decision.

The first proposal, VTW decision and appeal

18. Rosemoor has the same number of self-catering units, is in a similar location and has facilities at least as good as those provided by the Hereditament. On 9 January 2015 the appellant, Gaer Ltd, submitted a proposal to the valuation officer to alter the entry for the Hereditament in the 2010 rating list from £12,000 to £5,000. The grounds of the proposal were that this Tribunal's decision in *Redrose v Thomas* indicated that the value attributed to the Hereditament in the 2010 list was also excessive for the same reasons.

19. The valuation officer did not accept the appellant's proposal and referred it to the VTW as an appeal. The appeal was heard on 24 November 2015 and dismissed by a decision of the VTW given on 15 January 2016.

20. The VTW dismissed the appeal without considering the value of the Hereditament. Rather, it determined that the ratepayer had provided insufficient information to satisfy the valuation officer or the VTW that the Hereditament was properly included in the non-domestic rating list at all, having regard in particular to the 70 day rule in section 66(2BB)(d) of 1988 Act.

21. The VTW considered that it was incumbent on the ratepayer to establish that the Hereditament was properly included in the list. The appellant had been asked to provide information relating specifically to the number of days for which the Hereditament had been occupied but had not done so. That omission "made it impossible to determine whether the subject property should remain an entry in the list or not". The VTE concluded, in effect, that because the ratepayer had been unable to establish that the Hereditament was properly included in the list, it was not entitled to challenge the list entry.

22. On 12 February 2016 the valuation officer deleted the hereditament from the 2010 non-domestic rating list with effect from 1 April 2010. Each of the nine self-catering cottages has subsequently been entered in the Council Tax valuation list with effect from the same date.

23. On the same date as the Hereditament was deleted the ratepayer filed a notice of appeal in this Tribunal against the VTW's decision. The grounds of appeal were that the question before the VTW had simply been whether the rateable value of the Hereditament was excessive and ought to be reduced. The question whether the Hereditament should be in the list at all, or alternatively should be in the Council Tax list simply did not arise.

24. The valuation officer responded to the appeal by asking the Tribunal to strike it out because the Hereditament no longer appeared in the non-domestic rating list, meaning the appeal was academic. In response, the ratepayer indicated its intention to appeal to the VTW against the deletion of the Hereditament from the list, and on that basis by an order of 30 August 2016 the Tribunal dismissed the valuation officer's application to strike out the appeal and directed instead that it should be stayed until one month after a decision had been made by the VTW on the appellant's proposed appeal against deletion. The Tribunal recognised that there was force in the valuation officer's contention that the appeal had been rendered redundant by the deletion of the entry in the list which had been the subject of the original appeal to the VTW. Nevertheless, it considered that if the deletion was itself successfully challenged on appeal, the question of the rateable value of the Hereditament in the 2010 list would once again become live and there was no reason in those circumstances why the appellant should be required to forgo its current appeal.

The second proposal, VTW decision and appeal

25. On 11 September 2016 the ratepayer submitted a proposal seeking reinstatement. That proposal was not accepted as being well-founded and was referred to the VTW which considered the appellant's appeal at a hearing on 16 November 2016.

26. At the hearing of the second appeal the valuation officer was prepared to accept that the nine self-catering units had been offered for letting for at least 140 days a year in the relevant year so that the requirement of section 66(2BB)(a) was met. She did not accept that the units were available for letting "commercially" (a word defined by section 66(8A) as meaning "on a commercial basis, and with a view to the realisation of profits") because the ratepayer's accounts showed that it had only made a profit in one of the five years for which they had been provided.

27. Nor did the valuation officer accept that each of the individual units had been let for at least 70 days in the relevant preceding year. No evidence to that effect had been produced by the ratepayer and the income shown in its annual accounts was not consistent with the required number of letting days.

28. On behalf of the ratepayer Mr Rice pointed out to the VTW that the Hereditament was treated as a single hereditament for rating purposes and information had been supplied to the

valuation officer about occupancy levels in respect of that single unit. In 2012, 2013 and 2014 there had been occupation of at least one of the individual cottages on 230, 174 and 195 nights respectively. The Hereditament as a whole had been occupied for more than 70 nights a year in each year since 2004 when the ratepayer first acquired it. The Hereditament as a whole therefore met the 70 day occupancy requirement.

29. In its second decision the VTW identified the issue which it was required to determine as being whether section 66(2BB) applied to each self-catering unit or to the whole Hereditament. It considered that requirement must be applied to each "building or self-contained part of a building" and not to the whole Hereditament. It concluded that it was for the ratepayer to prove that the 70 day requirement was satisfied and it had failed to adduce any evidence "to demonstrate that each unit had been let for 70 days in the period before the day of assessment."

30. The VTW gave its decision on 8 January 2018, and on 29 March the appellant filed an appeal against it. That appeal was directed to be considered together with the original appeal, the stay on which was lifted.

31. In her statement of case in response to the second appeal the valuation officer once again invited the Tribunal to strike out the appellant's case. The Tribunal refused that application on 6 June 2018 on the grounds that it could not be said on the material currently available that the appellant had no reasonable prospect of any part of its case succeeding. In particular, even assuming the valuation officer's interpretation of section 66(2BB)(d) was correct, it would still remain to be determined whether any part of the Hereditament was occupied for the necessary 70 days.

32. The Tribunal invited the parties to agree a statement of facts and suggested that it may be appropriate to determine as a preliminary issue the question whether for the purpose of applying the 70 day rule the relevant unit to be considered was each individual cottage, as the respondent contends, or the Hereditament as a whole, as the appellant contends. A third possibility may be that the relevant unit to be investigated is each self-contained building.

33. The parties subsequently proved incapable of agreeing a statement of facts, although they do appear to have agreed in an exchange of emails on 18 and 20 June 2018 that the Hereditament as a whole had been the subject of occupation for more than 70 nights a year (which we take to mean that for at least 70 days a year at least one cottage). It appeared to the Tribunal that, despite that very limited agreement there was nevertheless merit in determining the preliminary issue on the basis of the parties' written submissions in order to save them the potentially abortive expense of a hearing to investigate the facts concerning the extent of occupation of individual cottages.

The appellant's case

34. In its statement of case for the second appeal the appellant maintained that the complex of cottages should be treated, as it had always been until February 2016, as a single hereditament for

all rating purposes and that the 70 day rule should be applied to that single hereditament, rather than to individual parts of it. It relied on a decision of this Tribunal, *Calvert v Thomas* [2013] UKUT 0482 (LC), in which it had been argued unsuccessfully by the ratepayer that each of three self-catering holiday cottages should be individually assessed as a separate hereditament, thus triggering small business rates relief. The three cottages were comprised in a single terrace which the Tribunal described as "a single contiguous business unit" and it refused to accept that each cottage should be assessed separately. The same approach should be taken to the three buildings forming the Hereditament which, the appellant argued, should be treated as a single unit for all rating purposes. Viewed in that way the Hereditament met the 70 day requirement and ought to be entered in the non-domestic rating list.

35. The appellant submitted that the playground, car park, games room and swimming pool forming part of the Hereditament was plainly domestic property, so that on any basis the Hereditament was a composite hereditament and properly included in the non-domestic rating list. It was not the practice to rate individual holiday units separately, but to treat them as part of the larger hereditament with a single rateable value. In the past the valuation officer had refused to permit the Hereditament to be split into two, separating those cottages which provided facilities for the disabled from those which do not. It was not right for the valuation officer now to apply the 70 day rule to individual parts of the Hereditament.

36. The appellant also criticised the drafting of the 2010 and 2016 Orders which had introduced and then amended the 70 day rule in Wales. The purpose of the amendments had been to ensure that genuine self-catering businesses such as the appellant's were not affected by measures intended to combat abuse by second home owners. If the appellant's business was to be subject to Council Tax rather than business rates it would have a catastrophic effect.

The valuation officer's case

37. The valuation officer invited the Tribunal to conclude on the preliminary issue that the 70 day rule was to be applied to each of the nine cottages individually. The issue turned on the expression "a building or self-contained part of a building". No difficulty was created by the word "building" which was a word in everyday use. The expression "self-contained part of a building", was said, in this context, to convey the idea of a unit of short-stay accommodation.

38. At the very least, it was suggested, a self-contained part of a building ought to be understood as meaning a part of a building all areas of which are accessible from all other areas without needing to leave the building or enter any other part of the building. This approach would treat the expression as being concerned only with the physical characteristics of a space. There might additionally be what was referred to as a functional element of the definition too, because in the legislative scheme a 'self-contained part of a building' was a sub-set of "self-contained self-catering accommodation provided commercially" referred to in section 66(2), which provides that:

"Property is not domestic property if it is wholly or mainly used in the course of a business for the provision of short-stay accommodation, that is to say accommodation—

(a) which is provided for short periods to individuals whose sole or main residence is elsewhere, and

(b) which is not self-contained self-catering accommodation provided commercially.

39. To read the expression 'self-contained part of a building' as connoting a self-contained unit of short-stay accommodation would also be consistent, it was suggested, with the later provisions of the Local Government Finance Act 1992 and Council Tax (Chargeable Dwellings) Order 1992 on the aggregation and disaggregation of dwellings. The expression "self-contained unit" was defined in article 2 of the Order as "a building or a part of a building which has been constructed or adapted for use as separate living accommodation". The recognition of a similar functional element, i.e. that the unit in question was intended for use as accommodation, would allow a consistent approach to the question of self-containment.

40. It was also suggested that where a single 'building' was made up of a number of 'self-contained parts', the practical effect of s66(2BB) was that attention must be focussed on the 'self-contained parts', rather than on the whole. All of the provisions of subsection (2BB) related to the whole of the building or to the self-contained parts. Reference must therefore necessarily be made to the 'self-contained parts' when considering availability for letting and actual lettings.

41. The valuation officer then applied that approach to the three buildings comprised in the Hereditament. The detached cottage constituted a single building and the 70 day rule fell to be applied to it. The two terraces each constituted a building in its own right, but each was sub-divided into self-contained parts, namely, the self-contained cottages which the appellant let separately, each of which contained all the facilities required for day to day living. The fact that other facilities were available for the use of the occupiers of each unit (the swimming pool, playground etc) did not make the unit itself any less self-contained. Nor did the fact that utilities were supplied through a common meter for all the cottages make the cottages themselves any less self-contained.

42. It was irrelevant, the valuation officer suggested, that all of the cottages were comprised in a single hereditament. The Hereditament as a whole comprised much more than a building or buildings, and the requirements of section 66(2BB) could not readily be applied to it. The new subsection (2BB)(d)(ii), introduced in 2016, indicated that simply being let as part of the same business was not sufficient to permit self-contained parts of a building to be aggregated, and if the appellant's approach was accepted the new provisions would have been unnecessary.

Discussion

43. The preliminary issue admits of three possible answers. In applying the 70 day rule in section 68(2BB)(d) the relevant unit to be considered might be each individual cottage as the valuation officer suggests, or the hereditament as a whole, as the appellant argues. Neither party has made submissions in support of the intermediate position, that the relevant unit is each self-contained building, but in view of the language of the provision it is appropriate to consider that possibility as well.

44. We agree with the valuation officer's submission that the starting point must be the opening words of section 66(2BB) which direct attention to "a building or self-contained part of a building". This unit of property is not to be domestic property only if each of the subsequent paragraphs applies in relation to it, including in particular sub-paragraph (d) which requires that "the short periods for which it was so let amounted in total to at least 70 days." The question is therefore whether the short periods for which the building or self-contained part of a building was let in the relevant period amounted to at least 70 days.

45. As a matter of first impression the effect of sub-paragraph is fairly clear. The "it" referred to is obviously the building or self-contained part of a building mentioned at the start of the list of four conditions. No other unit of property is identified. In particular there is no reference to the hereditament.

46. A deliberate choice must have been made by the draftsman not to express the various requirements of subsection (2BB) by reference to the hereditament itself. It is commonplace (especially with the self-catering holiday accommodation with which the subsection is concerned) for a holiday cottage to be part of a larger, composite hereditament, part of which consists of domestic property and part of non-domestic or exempt property. Section 66 is concerned with classification of property into domestic and non-domestic property. That classification would be impossible to achieve if the only unit to be considered was the hereditament itself, with no separate provision being made for hereditaments comprising domestic and non-domestic parts.

47. In this case the Hereditament includes domestic property (the farmhouse occupied by Mr Rice) and property which may be non-domestic (the self-catering cottages); it may also include property which is exempt (if any agricultural land is occupied with the dwellings as a single unit of property). It is necessary in such a commonplace situation to consider the individual components of the hereditament, in order to identify whether they are domestic or non-domestic property. Section 66(2BB) clearly directs attention towards any building or self-contained part of a building, and not towards the hereditament as a whole.

48. For the appellant's approach to the application of the 70 day rule to work it would require the opening words of subsection (2BB) to be construed as including the plural - "buildings or self-contained parts of buildings" - and for each reference to the whole or self-contained part in the subsequent conditions to be understood as including, in a case such as this, a number of buildings and their self-contained parts. Section 6 of the Interpretation Act 1978 provides that unless the contrary intention appears words in the singular in a statute include the plural, but a contrary intention is readily apparent in the drafting of subsection (2BB). In particular, it cannot have been intended that sub-paragraph (a) should require that the whole hereditament, or even every building in it, must have been available for letting commercially during the relevant period. To treat the reference to "a building or self-contained part of a building" as being capable of describing the hereditament as a whole would also make the aggregation and averaging facility introduced by the 2016 Order redundant, as the valuation officer submitted.

49. It follows that we cannot accept that the 70 day rule, in its original 2010 formulation, is capable of being applied in this case to the Hereditament as a whole. The statutory language requires that it be applied to a building or self-contained part of a building. Nothing in *Calvert v Thomas* (which was concerned with a different issue, namely the identification of the hereditament) detracts from that conclusion.

50. On the basis that the four conditions in subsection (2BB) are to be applied to a "building or self-contained part of a building" which is part of the hereditament, rather than to the hereditament as a whole, the next question is how that is to be done. In particular, how is it to be done where a building is divided into a number of self-contained parts, each of which is capable of being let commercially as self-catering accommodation?

51. It is readily apparent from sub-paragraph (a) that the only self-contained parts of a building with which subsection (2BB) is concerned are parts which are capable of being let as self-catering accommodation. With respect to the valuation officer's submissions, we do not think that any more complex exegesis is required to demonstrate that that is so.

52. The default position, as provided by section 66(1), is that property is domestic if it is used only for the purposes of living accommodation or, broadly, is ancillary to such property. For that position to be disapplied in relation to the whole of a building which is used for living accommodation sub-paragraph (a) of subsection (2BB) requires that the whole of the building must be available to be let commercially as self-catering accommodation. For it to be disapplied in relation to a self-contained part that self-contained part must have been available for letting.

53. It would be surprising in the context of distinguishing between domestic and non-domestic property if the availability of only part of a building was intended to be sufficient to satisfy the availability requirement for the whole of the building. If that was the intention it is also difficult to see why there should have been a requirement that the relevant part be self-contained. It appears to us to be obvious as a matter of the structure of subsection (2BB) that each of the four conditions must be applied consistently either to the whole of a building or to a self-contained part of a building. The "it" in sub-paragraph (d) is therefore the whole building, or the self-contained part, in each case which has been referred to in sub-paragraph (a) and again in (c). If it is said that the whole of a building used for the purposes of living accommodation is nevertheless not domestic property it is the whole of the building which must satisfy the four criteria: in particular, it must be intended that the whole be available for letting commercially, and the whole must have been let for the required 70 days. If it is said that a self-contained part is non-domestic, that self-contained part must have been available for 140 days and it must have been let for 70 days. It is not sufficient that the whole was available to be let if only a self-contained part was actually let for the required period. In that case only the self-contained part which satisfied each of the conditions would be non-domestic property.

Disposal

54. It follows that the preliminary issue must be answered in the sense contended for by the valuation officer.

55. To succeed in the appeal against the VTE's second decision the appellant must demonstrate, in relation to each of the self-contained cottages included in the Hereditament that it was let for at least 70 days. Any cottage which was not let for 70 days is to be treated as domestic, rather than non-domestic. If no cottage was let for at least 70 days no part of the hereditament would appear to be non-domestic and the hereditament as a whole would not be a composite hereditament and ought not to appear in the local non-domestic rating list.

56. We have considerable sympathy for the position in which the appellant finds itself. As a result of our decision it appears likely that most, or perhaps all, of the self-catering units comprised in the Hereditament will be liable for Council Tax rather than business rates. Yet because of the planning permission under which they were converted it is unlawful for the units to be occupied except as holiday accommodation for a limited part of the year, and the ratepayer is not in a position to occupy them, or to use them for conventional residential letting. The 2010 Order applies the 70 day rule to the Hereditament in a way which seems unlikely to have been appreciated or intended when it was enacted and the 2016 Order does not assist for the 2010 list. Unfortunately the language of the statute is clear and does not permit a less draconian interpretation.

Martin Rodger QC,

Deputy Chamber President

A. J. Trott FRICS
Member, Upper Tribunal (Lands Chamber)

4 October 2018