

# **SCRUTINY INVESTIGATION REPORT**

## **HOLIDAY HOMES AND TAXES**

**Investigation Members**

Councillor Eirwyn Williams (Chairman)

Councillor Trevor Edwards

Councillor Aled Evans

Councillor Jason Humphreys

Councillor Dyfrig Jones

Councillor John Wyn Williams

Councillor R H Wyn Williams

**Officers**

Dafydd Edwards (Head of Finance)

Dewi A Morgan (Senior Revenue and Risk Manager)

Euryl Lloyd Jones (Taxation Manager)

Emyr Edwards (Strategic Policy Manager - Resources)

Nia Davies (Planning Policy Manager)

Vera Jones (Lead Officer - scrutiny)

Eirian Roberts (Support officer)

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## 1. Background

- 1.1 The Cabinet Member for Resources (Councillor Peredur Jenkins) submitted a number of papers to the Corporate Scrutiny Committee preparatory meeting responding to the committee's questions regarding taxing "second homes" and "self-serviced units", and the situation in Gwynedd. It was clear to see that there was an annual challenge of protecting the taxation base and a financial loss in light of properties transferring out of the Council Tax system to Non-domestic Rates.
- 1.2 The Cabinet Member for Resources asked the committee to establish an investigation to scrutinise the matter on his behalf, by looking at what was happening in other counties, and draw up recommendations for his attention.
- 1.3 A copy of the investigation's full brief is available in **Appendix 1**.

## 2. Context

- 2.1 There is a clear definition within the law for "Second Homes", which are subject to Council Tax, and "Self-serviced Units", namely holiday homes that are within the Non-domestic Rates system - the definitions can be seen in the papers in **Appendix 2**.
- 2.2 The legal requirements for a "self-serviced unit" is that it is available to let for 140 days a year (rolling year) and that it has been let for 70 days. Note, according to law, there is no restriction on use for the remainder of the time.
- 2.3 Every dwelling will start within the Council Tax system (even if they have been granted planning permission for a new dwelling such as self-serviced units).
- 2.4 In recent years, the figures to hand indicate that a number of dwellings transfer out of the Council Tax system to the Non-domestic Rates system. The table including the information can be seen in Appendix 2, with the updated figures presented in **Appendix 3**.
- 2.5 There is an impact on the taxation base and a financial loss for the Council in light of properties that transfer out of the Council Tax system to Non-domestic Rates.

### **3. Purpose of the Scrutiny Investigation**

- 3.1 The purpose of the scrutiny investigation was to look at the situation of other councils in the context of transfers from the Council Tax system to the Non-domestic Rates system, and to find practical solutions in order to deal with the situation in Gwynedd and prevent or decrease any unsuitable transfers.
- 3.2 In order to be able to come to a conclusion, the purpose of the investigation was to:
  - a) Understand the situation in Gwynedd and its impact
  - b) Understand the role and responsibilities of the Valuation Office and scrutinise them
  - c) Understand the role and responsibilities of Welsh Government and scrutinise them (while providing an independent input in response to Welsh Government's technical consultation on the field at the same time)
  - ch) Research the situation in other councils, including England, to see whether or not the same problems existed and to see whether or not they had learned any lessons.
- 3.3 The focus of the investigation was those properties that transferred out of the Council Tax system to Non-domestic Rates. There was no opportunity within the scope of this investigation to consider other matters within the field.

#### 4. Main Activity of the Investigation

4.1 A work programme that sought to address the brief was agreed upon. There were several different elements to the work, and members of the investigation wish to thank everyone who gave their time to come to answer the questions of the investigation in Gwynedd. See below a summary of the work in response to the brief.

#### 4.2 Understanding the situation in Gwynedd and its impact.

Considerable work was undertaken by the Head of Finance and his officers submitting evidence in order to ensure investigation members' understanding of the situation in Gwynedd. The following were submitted:

- a) information about regulations associated with "second homes" and "self-serviced units" and the specific definitions that must be met before being able to transfer from one system to the other,
- b) data indicating trends in recent years in terms of movement between the Council Tax system and the Non-domestic Rates system and
- c) the financial impact of the transfers on the Council was explained.

In addition, evidence was seen of continuous correspondence from the Council to the Welsh Government putting pressure on them to act to tighten the regulations for transferring. A record of matters raised can be seen in **Appendix 2**. The figures have been updated and presented in **Appendix 3**.

#### 4.3 Understanding the role and responsibilities of the Valuation Office and scrutinising them.

An interview with Mr Ritchie Roberts, Chief Valuer Wales/Valuation Officer from the Valuation Office Agency was held. By interviewing the Chief Valuer Wales, there was an opportunity to:

- a) ensure a clearer understanding of the legal requirements on individuals who submit a legal application to transfer a dwelling to a non-domestic rates system,
- b) role of the Valuation Office in the context of the transfers, namely that they determine whether or not a property transfers from a Council Tax system to a Non-domestic Rates system (this is not the Council's decision)
- c) understand and appreciate the continuous collaboration that has been established between Gwynedd Council and the Valuation Office to verify the status of dwellings, seeking to ensure that they are on the correct list.

In addition, the Valuer confirmed that Gwynedd Council was the only local authority in Wales that had expressed concern about the field. Members of the investigation noted that they had appreciated the time of the Chief Valuer Wales attending the interview to ensure a more thorough understanding of the situation and to have an opportunity to question him further. A record of the meeting held can be seen in **Appendix 4**.

#### 4.4 Understanding Planning's role.

As the investigation progressed, it became apparent that there was a difference in definition and restrictions imposed on properties in relation to the planning system, and what was imposed by the taxation system. Essentially, they are two separate systems without any current link. In order to ensure a clearer understanding by members of the investigation, an interview was held with Nia Davies, Planning Policy Manager to seek a better understanding of the different definitions. This was

an additional element to what had been anticipated at the beginning of the investigation, but it was a crucially important element to understand and be able to create recommendations. A record of the meeting can be seen in **Appendix 5**.

4.5 Research into the situation of other Councils.

A brief presentation was given by the Strategic Policy Manager - Resources on the outcomes of his research into the situation in other councils. Except for London and the Isles of Scilly, it was noted that Gwynedd was the highest throughout England and Wales in terms of second homes, and that discussions had been held in the past with some of the councils but that there was not much interest at the time. A record of the meeting can be seen in **Appendix 5**.

4.6 Understanding and scrutinising the role of the Welsh Government.

There were two elements to this work. Firstly, members of the investigation submitted independent observations to respond to the Welsh Government's technical consultation on the draft version of the Non-domestic Rating (Definition of Domestic Property) Order (Wales) 2015 and the supplementary guidance for taxpayers back in September 2015. See **Appendix 6**.

In addition, members of the investigation interviewed Joanna Valentine, Head of Local Taxes within the Department of Local Government, Welsh Government who is responsible for secondary policies and legislation in the context of Council tax in Wales. Discussions were held regarding the rules for "self-serviced units" and the possibility of changing/adapting them. Also, the opportunity was taken to discuss the rateable value of small businesses that are part of the non-domestic rates system, and the current small business rates relief arrangements. An update was received on developments that were in the pipeline to move towards better formal collaboration between the Valuation Agency in order to share information with councils. See record in **Appendix 7**.

## 5. Main Findings of the Investigation, and recommendations.

- 5.1 The work of the investigation has proved to be a very valuable experience for members of the investigation, especially in terms of ensuring a clearer understanding of the situation and regulations, including also eliminating some prejudice about the field based on a lack of evidence.
- 5.2 In order to realise the changes that scrutiny members believe that need to be made, a change in legislations will be required in the field, which is relatively challenging to achieve as they are beyond the direct powers of the Council.
- 5.3 However, it has become apparent that Gwynedd is quite a lone voice as it calls for the changes. The impact on Gwynedd is substantially higher than other Welsh councils. It is a substantially lower matter by other Welsh councils, while Gwynedd Council seeks to strike a balance between tourism, ensuring fairness for local small businesses, and protecting areas in order to safeguard the Welsh language.
- 5.4 The investigation has noted some recommendations for the Cabinet Member, but confirms that there is no simple solution to the situation. Essentially, it involves continuous work to try to persuade/influence others, rather than a situation where Gwynedd can undertake changes itself in order to change the situation.
- 5.5 The following recommendations are submitted.

<b>1. The Taxation System.</b>
<b>Findings –</b> <ul style="list-style-type: none"><li>• An inconsistency remains in the criteria to let self-serviced units, with the requirements of Order 2010 noting 70 days of actual letting, and the HMRC requirements noting 105 days of actual letting.</li><li>• Gwynedd is the authority that draws the attention of Welsh Government and the Valuation Office to the problems. Recently, Pembrokeshire has also corresponded with Welsh Government on the matter (see <b>Appendix 8</b>).</li></ul>
<b>Evidence –</b> <ul style="list-style-type: none"><li>• The Council's work to lobby/persuade in the past has borne fruition as it has prevented the Government from relaxing the rules (as had been intended originally) in the context of regulations to identify real "self-serviced units".</li><li>• Should more than one authority hold discussions with different agencies, the argument would then be strengthened.</li></ul>
<b>Recommendation to the Cabinet Member –</b> <p>Contact the Welsh Government (at the same time as the planning matter) to continue to try to persuade them to reconcile their criteria to let self-serviced units to correspond with HMRC requirements, namely 105 days.</p> <p>At the same time, raise the awareness of other authorities in Wales that have a similar profile to</p>



Gwynedd (in terms of second home profile) to try to raise their awareness of the above, and encourage them to assist us with the task of persuasion.

## **2. The Valuation System**

### **Findings –**

- The rateable value of small businesses appears to be low, especially in comparison with the letting income. Consequently, the business rate paid is low, and less than a council tax bill.
- The Valuation Office verifies that dwellings are on the correct lists to pay either Council Tax or Non-domestic Rates. However, at a time of diminishing resources, the investigation felt eager to ensure that the verifying process for any applications to move from one system to the other should be undertaken as soon as possible, with adequate challenge.

### **Evidence –**

- It is known that the income of "self-serviced units" is part of the formula to try to identify the rateable value of small businesses.
- All dwellings on the non-domestic rates list is subject to long term re-evaluation work, with a statutory requirement for an updated value list to be in place by 1 April 2017.
- It is anticipated that the rateable value of a self-serviced property will generally be assessed as being higher.
- In the long term, should this happen, it could lead to the rateable value of self-serviced properties generally being assessed as higher, which in turn would possibly make it less attractive for individuals to make an application to transfer out of the Council tax system to the non-domestic rates system.
- Good collaborative working arrangements have been established between Gwynedd Council and the Valuation Office, which ensure that details are verified before dwellings are transferred out of the Council Tax system to the Non-domestic Rates system.

### **Recommendation to the Cabinet Member –**

Although it would entail British working changes in the field, it is suggested that the Valuation Office should be contacted to discuss the work of assessing rateable value in order to ensure a fair rateable value for self-serviced units.

Seek the support of other authorities with this (see below).

## **3. The Planning System**

### **Findings –**

Currently, no planning permission is usually required to change the use of a property from a "household" into a "self-serviced unit" because, in terms of planning land use, that does not amount to a "material change of use", i.e. no significant change takes place in the way the property is used.

### **Evidence –**

- The Town and Country Planning Order (Use Class) grants land uses to different groups. Residential use / housing are in Use Class Group C3.
- Planning permission is required for many types of change of use in buildings e.g. from a shop to a café to ensure control over the impact of an alternative use on nearby land or

buildings.

- Currently, the Order does not differentiate between houses used permanently and those that are only used occasionally during the year.
- The need to ensure planning permission to change the use of a property from one that is used permanently / as the main home to one that is used occasionally would make it easier to identify the different types of properties in Gwynedd and to ensure registration to pay the correct rate.
- As a result of lobbying, the Order in England has been adapted, and, very recently the same result in Wales, in relation to multiple occupation housing to ensure control of appropriate use of properties.

**Recommendation to the Cabinet Member –**

Contact jointly with the Cabinet Member for Planning and Regulation, the Welsh Government again to try to encourage them to change the relevant Order so that planning permission is required to change the use of a 'household' to a "self-serviced unit".

Seek the support of other authorities with this (see above).

## **6. The Next Steps**

The Cabinet Member for Resources has received continuous updates throughout the period of the investigation, and although there has been a delay prior to submitting the official report to the Corporate Scrutiny Committee, the Cabinet Member was aware of the direction and draft recommendations.

## **Scrutiny Investigation – Holiday Homes and Taxation**

### **Version 3.00 of the Scope**

#### **Background**

“Second Homes”, which are subject to Council Tax, and “Self Catering Accommodation”, namely holiday homes which are subject to Non-domestic Rates are clearly defined within the law.

The Resources Cabinet Member provided a number of papers to the preparatory meeting held on the 20/05/2015 answering questions raised by the Corporate Scrutiny Committee with regards to taxation of “second homes” and “self catering accommodation” and the situation in Gwynedd. It clearly showed the annual challenge of protecting the taxable base and the budget due to property moving from Council Taxation to Non-domestic rates.

The Resources Cabinet Member requested that the Corporate Scrutiny Committee undertake a Scrutiny investigation into the matter on his behalf, looking at what is happening in other areas, drawing up recommendations to present to him.

The focus of this investigation is the properties moving from Council Taxation to Non-domestic Rates. We will not be considering any other matters within the field.

#### **Purpose of the Investigation**

The purpose of the Scrutiny Investigation is to look at other authorities with regards to transfers from Council Tax to Non-domestic rates and try to find practical solutions to deal with the situation, leading to slowing down or preventing the number of transfers.

In order to fulfill the purpose we will need to:

- Understand the situation in Gwynedd and its effect
- Understand the role and responsibilities of the Valuation Office and scrutinise their work
- Understand the role and responsibilities of Welsh Government (in this context) and scrutinise their work (give independent input into the Welsh Government technical consultation in this field).
- Research into the situation in other authorities, including England, to see if they face the same challenges, and if any lessons can be learnt from others.

## Investigation Timescale

Start	September 2015
End of investigation	December 2015
Report to the Corporate Scrutiny Committee	3rd December 2015 or 4th February 2016
Report from the Scrutiny committee to the Cabinet member	Early in 2016

## Programme

Outline of the main stages and meetings.

**Members will be required to undertake additional work between meetings.**

1.	Presentation from the Cabinet Member for Resources and the Head of Finance to the opening meeting to try and understand the current situation in Gwynedd.	September 3rd
2.	Question and answer session with the Valuation Office	October 13th
3.	Question and answer session with Welsh Government	To be arranged
4.	Question and answer session with the Planning Department in order to establish if there are any opportunities within the planning process to change the situation	To be arranged
5.	Presentation of information about other authorities, and start to consider and summarise the information collated in order to try and form some recommendations.	November
6.	Draft report	
7.	Corporate Scrutiny Committee to consider the report and present the recommendations to the Cabinet Member	

**Questions of the Scrutiny Committee regarding Second Homes and Holiday Homes which are subject to**

**Non-domestic Rates**

**Definitions**

There are clear definitions within the law for "Second Homes", which are subject to Council Tax, and "Self-serviced Units", namely holiday homes that are within the Non-domestic Rates system.

**Definition: "Second Homes"**

The law states that "Second Homes" in Wales are properties **that are not the sole or main residence of an individual, and which has been furnished.**

*(The law also divides second homes into Class A or Class B, depending whether or not its occupation has been prohibited by law for a continuous period of at least 28 days in the relevant year).*

**Definition: "Self-serviced Unit"**

There is also a specific definition of a "Self-serviced Unit" within the Non-domestic Rates system. The Valuation Office assesses properties, but following such an assessment, a property can transfer to the Non-domestic Rates system if the Valuation Office is satisfied that the following have been met:

The property is available to be commercially let as self-serviced accommodation for periods that come to a total of 140 days or more for a minimum period of 12 calendar months **after** the assessment, and if, in the 12 calendar months **before** the assessment -

- (i) the property is available to be commercially let as self-serviced accommodation for periods that come to a total of 140 days or more; **and**
- (ii) therefore, the property was let for periods that came to a total of 70 days or more.

**Questions of the Scrutiny Committee**

- i. What is the county-wide picture in terms of properties that are let as holiday accommodation for a small portion of the year, and what is their tax contribution?

A total of **5,544** second homes have been recorded within the Council Tax system in Gwynedd, and **776** "self-serviced units" have been recorded within the Non-domestic Rates system. **Appendix A** includes an analysis of these figures per community.

- ii. What sort of challenges/opportunities does this picture create for Gwynedd?

An annual challenge of protecting the taxation base and the budget is faced in light of properties transferring out of the Council Tax system to the Non-domestic Rates system, which means that less tax is paid.

Charging a premium on second homes would be an opportunity to address the decline in the taxation base.

- iii. Is the pattern of properties that are let as holiday accommodation for a small portion of the year transferring from one tax system to the other (from Council tax to business rates) continuing? If so, what is its effect on the tax base and the local budget?

**Appendix B** shows the number of properties that have transferred from the Council Tax system to the Non-domestic Rates system since April 2006. It is also noted that it is possible to back-date the property transfer from the Council Tax system, but that no back-dating is possible for grant purposes to compensate us.

- iv. How can the Council ensure fair taxes on holiday homes that are let for a small portion of the year on the one hand and protect local small businesses on the other?

The Council protects local small businesses by implementing a Welsh Government scheme that is involved with small business non-domestic rates relief, but if a property is let for 70 days, it is not possible to charge Council Tax on the property.

- v. What was the result of the consultation on the findings of the Report on the Impact of the Non-domestic Rating (Definition of Domestic Property) (Wales) Order 2010?

Not decided. Enquiries were made regarding the matter and please see the letter from the Cabinet Member for Resources to Jo Valentine from the Finance Policy Division, Welsh Government, dated 27 March 2015 together with Jo Valentine's response to that letter, dated 27 April 2015.

- vi. The Council had concerns regarding the Welsh Government's desire to relax the requirements on the type of properties in question. Should the Welsh Government decide to relax the requirements, what would be the effect of this on the Council, on the owners of properties that are let for a small portion of the year, and on the rest of Gwynedd's residents?

That would add to the concerns of losing properties from the Council Tax system to the Non-domestic Rates system. Please see the letter from the Cabinet Member for Resources, dated 19 March 2014, which was sent to the Welsh Government in response to the threat in question. Note that any relaxation of requirements is objected and that the Council in response recommended to tighten the current system by extending the period to 105 days.

- vii. What powers does the Council have to ensure a fair tax contribution on properties that are let as holiday accommodation for a small portion of the year?

The power to legislate lies with the Welsh Government. The power in relation to designating the rateable value of properties for a Non-domestic Rates assessment or designating a Council Tax band for the Council Tax system lies with the Valuation Office Agency (a division of the Government's Revenue and Customs Department).

viii. How easy is it to monitor and ensure a fair tax contribution on properties that are let as holiday accommodation for a small portion of the year?

This element, as the above, is the responsibility of the Valuation Office Agency.

ix. Is the Council aware of the responses from other Councils and the Welsh Government to this matter?

Other councils' written responses are scarce and a verbal response is not very supportive of Gwynedd Council's viewpoint.



## Appendix A

Number of properties designated as second homes for Council Tax purposes, per Community:

Community	Council Tax - Second Homes			Non-domestic Rates
	Class	Class B	Total	Self-serviced Units
ABERDARON	0	135	135	31
BEDDGELERT	0	73	73	27
BOTWNNOG	0	44	44	7
BUAN	0	35	35	2
CLYNNOG	1	54	55	13
CRICCIETH	0	79	79	26
DOLBENMAEN	0	66	66	24
LLANAELHAEARN	0	40	40	3
LLANBEDROG	25	155	180	8
LLANENGAN	13	658	671	40
LLANNOR	0	36	36	14
LLANYSTUMDWY	13	50	63	32
NEFYN	11	283	294	32
PISTYLL	0	51	51	15
PORTHMADOG	17	312	329	57
PWLLHELI	0	82	82	8
TUDWEILIOG	0	71	71	13
BANGOR	0	39	39	1
CAERNARFON	0	26	26	7
BETHESDA	0	22	22	2
BETWS GARMON	0	33	33	6
LLANBERIS	1	38	39	5
LLANDDEINIOLEN	0	52	52	10
LLANDWROG	0	42	42	10
BONTNEWYDD	1	4	5	7
FELINHELI	0	85	85	6
LLANLLYFNI	0	60	60	2
LLANRUG	160	23	183	11
LLANWDA	16	15	31	2
WAUNFAWR	31	10	41	4
ABER	0	5	5	0
LLANDYGAI	0	26	26	4
LLANLLECHID	0	8	8	2
PENTIR	0	19	19	4
BALA	0	17	17	6
LLANDDERFEL	0	32	32	16
LLANGYWAIR	0	16	16	2
LLANUWCHLLYN	0	21	21	4

LLANYCIL	0	14	14	2
TYWYN	18	203	221	16
BRYNCRUG	44	23	67	7
ABERDYFI	57	328	385	35
BARMOUTH	1	145	146	24
DOLGELLAU	0	79	79	20
BRITHDIR & LLANFRACHETH	0	59	59	19
GANLLWYD	0	10	10	5
LLANEGRYN	0	11	11	5
LLANELLYD	0	43	43	8
DYFFRYN ARDUDWY	42	84	126	17
LLANFIHANGEL Y PENNANT	1	58	59	5
ARTHOG	4	142	146	13
LLANGELYNIN	0	54	54	11
MAWDDWY	5	42	47	14
PENNAL	18	46	64	7
CORRIS	12	48	60	3
FFESTINIOG	0	141	141	22
LLANBEDR	2	39	41	13
HARLECH	0	124	124	17
LLANFAIR	0	64	64	7
LLANFROTHEN	0	19	19	6
MAENTWROG	0	40	40	7
PENRHYNDEUDRAETH	0	39	39	9
TALSARNAU	0	55	55	9
TRAWSFYNYDD	289	35	324	12
<b>TOTAL</b>	<b>782</b>	<b>4762</b>	<b>5544</b>	<b>776</b>

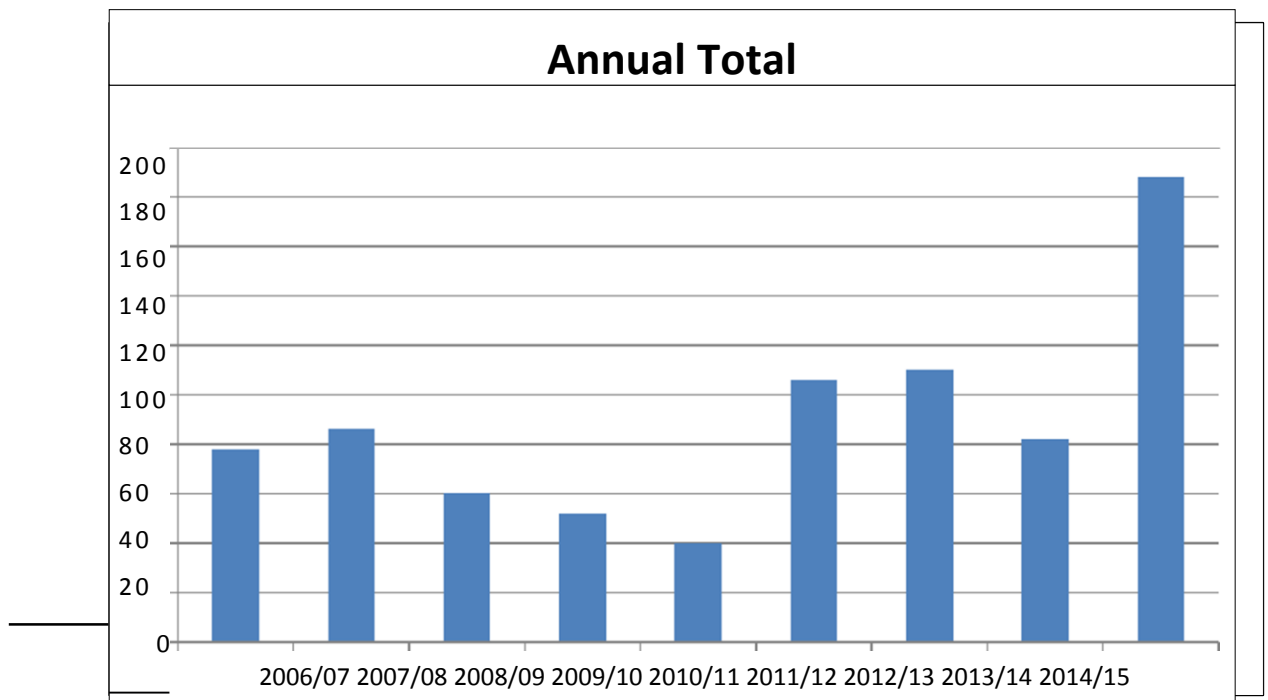
**Class A:** A Second Home where its occupation has been prohibited by law for a continuous period of at least 28 days in the relevant year.

**Class B:** A Second Home where its occupation has not been prohibited by law for a continuous period of at least 28 days in the relevant year.

## APPENDIX B

Number of domestic units lost from the Council Tax system to the Non-domestic Rates system since April 2006.

<b>Financial Year</b>	<b>Annual Total</b>
2006/07	78
2007/08	86
2008/09	60
2009/10	52
2010/11	40
2011/12	106
2012/13	110
2013/14	82
2014/15	188
<b>Total during the period</b>	<b>802</b>



Llywodraeth Leol a Chymunedau  
Local Government and Communities



**Llywodraeth Cymru**  
**Welsh Government**

Councillor Peredur Jenkins  
Cabinet Member for Resources  
Gwynedd Council  
Caernarfon  
Gwynedd  
LL55 1SH

27 April 2015

Dear Councillor Jenkins,

## **COUNCIL TAX**

Thank you for your letter in relation to the recent consultation that was published on potential exceptions from the Council Tax premium on second homes. I look forward to receiving your detailed response in due course.

I understand your concerns regarding second homes and self-serviced properties in your area and the impact of this on your council's taxation base. As you know, we are in the process of researching with solicitors in terms of what improvements are possible to make to the Non-domestic Rating (Definition of Domestic Property) (Wales) Order 2010 in order to address matters raised - this includes concerns from the tourism industry, as well as local authorities' concerns. Your officers have been involved with this work, in the same manner as the Valuation Office Agency and HMRC, with the Welsh Government's Planning Department also advising on this work. Subject to approval from the Minister, we intend to publish a technical consultation in the summer on an amended Order and supplementary guidance.

In the meantime, we have held discussions with the Valuation Office Agency regarding additional support they can provide your council to try to limit second home transfers from the council tax list onto the business list, and I am given to understand that some additional checks have been put into place.

We recognise that effective administration of the Non-domestic Rating (Definition of Domestic Property) (Wales) Order is essential in terms of your council's ability to charge council tax premium on second homes. Ministers have also been informed that introducing the premium will give second home owners an extra incentive to be made responsible for non-domestic rates rather than the council tax.

The recent consultations on council tax premiums mainly focused on potential exceptions that could be required for the premiums, rather than specifically implementing the premium. As a result, it was decided not to include a detailed section on the Non-domestic Rating (Definition of Domestic Property) (Wales) 2010. The technical consultation on the amended Order will specifically consider what will be the impact of implementing the council tax premiums.

It should also be noted that council tax premiums will not be implemented until 1 April 2017, and we intend to review the effectiveness of the amended Order to consider any further improvements that are required prior to introducing the premiums.

I would like to sincerely apologise for the delay in responding to you.

Yours sincerely

**Jo Valentine**

Local Government Finance Policy Division / Yr Is-adran Polisi Cyllid Llywodraeth Leol  
Welsh Government / Llywodraeth Cymru

**Aelod Cabinet Adnoddau**  
**Cabinet Member Resources**  
Y Cyngorydd / Councillor Peredur Jenkins



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Joanna Valentine  
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27 March 2015

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Dear Ms Valentine,

**COUNCIL TAX**

Thank you for your consultation document "Exceptions from Council Tax Premiums on Second Homes in Wales". We will be providing a comprehensive response to that consultation in due course, before the closing date, and I would like to draw your attention to one fundamental matter before then.

I was surprised and disappointed as I read the document as there was no reference in it to the conclusions of the previous consultation on the criteria in the 2010 Order (*The Non Domestic Rating (Definition of Domestic Property) Wales Order 2010*) to determine whether or not Council Tax or business rates are appropriate to a property. There is a clear link between the statutory definition in the Order and protecting the additional tax that will be charged through the premium, and any benefit that will derive from increasing the premium will depend to a vast degree on the Order's strength and resilience.

Therefore, it is reasonable to expect that this matter would have received deserved and appropriate attention in the current consultation and you will be aware that officers and members of this Council took advantage of every opportunity to draw the attention of officers and the Minister to this matter over a period of time. I am also aware that officers from the Council informed you of the continuous number of houses which transfer out of the Council Tax system to business rates.

The Council welcomed the requirement in the 2010 Order for 70 days of actual letting, and we continue to be of the opinion that this is insufficient, and we wish to see consistency with HMRC's criteria, namely 105 days. In addition, we have called for the planning law to be amended so that planning permission is required before a property is moved from the local housing stock to a business field since April 2007 at least. We would also wish to see that permission being reviewed on an annual basis.

Rather than providing full copies of all correspondence that has been sent to you on the matter, in response to various consultations, I enclose the dates of correspondences that were sent by the Council in an appendix, and quote some relevant parts. I trust that our concerns were considered in detail at the time and that this will continue, and that we will receive a favourable response by further tightening of the criteria of the 2010 Order as an integral part of the new powers. This would allow us to introduce and administrate a premium on a strong basis, and it would be a strong tool for councils as they realised the aim of any proposed policy.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peredur Jenkins', with a long horizontal stroke extending to the right.

**PEREDUR JENKINS  
CABINET MEMBER FOR  
RESOURCES**

Enc.

## **Appendix 1**

### **April 2007 - Welsh Government Consultation regarding small business rates relief for commercially let self-serviced units**

"...that current regulations under the Planning Act are insufficient to differentiate between residential use and holiday and commercial use ... as losing residential housing decreases the number of available housing on the market for local people and intensifies the affordability matter, especially in coastal and rural areas. There is a need to co-ordinate the strategy between affordable housing policies and it would not be acceptable to encourage owners / buyers of residential housing to remove such properties from the market. Furthermore, it is believed that owners of residential housing need to try to obtain planning permission prior to changing the use of a property to a business such as self-serviced units."

### **30 June 2009 — response to a Consultation Paper : PROPOSALS TO AMEND THE CRITERIA TO CHARGE NON-DOMESTIC / COUNCIL TAX ON COMMERCIALY LET PROPERTIES**

As a starting point, any step to tighten the criteria is welcomed, and more specifically any step that is linked to its actual use. The move to consider factors over 3 years is to be welcomed, as it would slightly force the commitment of an individual or business to the initiative, rather than for a one year period.

The factor that a property must be let for a minimum of 70 days ((b) in the paper) is certainly regarded as an improvement (it is taken for granted that definite evidence of that will have to be shown to the Valuation Agency). However, it is considered that only two months a year is a short and irrelevant period out of a whole year's use therefore, we recommend that this part of the new criteria is a minimum of 3 months (90 days).

On a practical level, if the criteria will satisfy factors over a period of 3 years, how will the date be dealt with effectively? Bearing in mind the aim of introducing timely bills, a reasonable payment plan etc. any back-dating of tax would be contrary to this.

We would be eager to go further than the proposed criteria, requesting a decision from the local authority (officer or planning committee) in order to permit the change of use from a permanent residency to a business.

### **9 October 2012 - response to a consultation on: "COUNCIL TAX AND LONG TERM EMPTY HOMES IN WALES"**

Our main concern with the proposed legislation is that it does not go far enough in order to deal with second homes (where the standard rate of tax would continue to be payable) and holiday homes (where a substantially lower level of non-domestic rate is payable). We have stated many times that Welsh Government should legislate in order to reduce the ambiguity and create suitable definitions and give billing authorities the power (by means of planning and/or local taxation arrangements) to categorise such properties (C4).

The impact of second homes varies substantially between different areas of the local authorities. Similarly, factors that impact the ability to sell / let empty properties also vary between some areas within the boundaries of individual authorities (e.g. the areas of Abersoch and Blaenau Ffestiniog within Gwynedd Council's territory). Therefore, we will support flexibility for local authorities to be able to vary the additional tax between different geographical areas of their authority (C7).



25 February 2013 - **WELSH GOVERNMENT POLICY ON COUNCIL TAX, SECOND HOMES AND HOLIDAY HOMES**

*We have stated many times that Welsh Government should legislate in order to reduce the ambiguity and create suitable definitions and give billing authorities the power (by means of planning and/or local taxation arrangements) to categorise such properties (C4).*

*By introducing regulations that allow a higher tax to be charged on empty homes without restricting the right to categorise a property as a second home, or as a business (holiday homes), nothing prevents the owner of an empty house to furnish the property and argue that it is not empty!*

*The impact of second homes varies substantially between different areas of the different local authorities and in Gwynedd there is a shortage of places for people to live, and the use of second homes drives up prices."*

You are aware that members and officers from Gwynedd Council and from the Welsh Local Government Association have raised this matter with Welsh Government on many occasions.

**19 March 2014 - response to the Consultation on the Findings of the Report on the Effect of the Non-domestic Rating (Definition of Domestic Property) (Wales) 2010 (The IRRV Paper)**

It was a significant disappointment to discover the recommendations / options with each one of this narrow range proposing to loosen the test! There is a list below of options in the order favoured the most by IRRV:

- (1) Option 4 – Provide an opportunity for the taxpayer to reach the 70 days over a five year period (similar to WASCO recommendations).
- (2) Option 1 – Approve the best year for letting over the last 3/5 years.
- (3) Option 5 – That they satisfy the test for any year during the valuation list period.
- (4) Option 3 – Allow the taxpayer to select any 12 month period over the last five years.
- (5) Option 2 – Use the average for the last 3/5 years.

**None of these above options come close to what the Council would wish to see. Each of them mean loosening the requirement and distancing from Gwynedd Council's previous recommendations.**

Fundamentally, we are of the opinion that the existing criteria, which enables a property to be treated as a business even if it has not been let for more than nine months of the year, is much more generous than the common sense definition of a "business". Any movement towards loosening the rule any further would undo the improvements undertaken to the system in response to pressure from Gwynedd Council and others over a number of years. **The proposed options would be unfair for other taxpayers who have to pay council tax in full, in addition to the "actual" tourism businesses that make a significant contribution to the local economy and therefore merit a more favourable tax treatment.**

In fact, should the requirements be loosened, it is likely that there would be another property category that would then fail to comply with the criteria by a small margin, leading to pressure to loosen the requirements even further to include those also, and consequently there is a danger of losing control of the situation in its entirety.

Rather than going down this irresponsible route, at the very least, we believe **that the criteria of 70 days of actual letting should be increased to 105 days.** This would coincide with business requirements in relation to the HMRC taxes; the Valuation Office Agency is a branch of that Government Department and the opportunity to collaborate and synchronize information between both units is relatively obvious and should be utilised.

Furthermore, as in the past, we once again press for the amending of planning regulation to that permission is required to change the use of a property to a second home or self-serviced holiday property, and to create a link between the tax system and the uses permitted under the planning system in order to have better control of the field in general.

### **13 August 2014 - LISTING PROPERTIES FOR COUNCIL TAX OR NON-DOMESTIC RATES.**

I am concerned (although the criteria has been extended by introducing 70 letting days in 2010) that the current criteria is insufficient in order to avoid substantial impropriety as properties are classed.

"Our main concern with the proposed legislation is that it does not go far enough in order to deal with second homes (where the standard rate of tax would continue to be payable) and holiday homes (where a substantially lower level of non-domestic rate is payable). We have stated many times that Welsh Government should legislate in order to reduce the ambiguity and create suitable definitions and give billing authorities the power (by means of planning and/or local taxation arrangements) to categorise such properties."

The power to charge higher council tax on second homes should include measures to improve and tighten the criteria in relation to self-serviced holiday accommodation taxation. We are very happy to assist the Welsh Government in designing a package of potential measures including, potentially, the tightening of current conditions and/or linking the conditions with planning legislation.

"Based on the above evidence, we strongly believe that introducing these powers on a joint basis with powers that have already been planned in respect of empty properties - would put councils in a better position to implement mitigation measures that could positively contribute towards a community benefit. We also believe that they go hand in hand with the aim of the Future Generations Bill, namely protecting the future of communities ensuring that they are protected from the pressures that threaten their viability and survival."

"... as a minimum, we believe that the criteria of 70 days of actual letting should be increased to 105 days. This would coincide with business requirements in relation to the HMRC taxes; the Valuation Office Agency is a branch of that Government Department and the opportunity to collaborate and synchronize information between both units is relatively obvious and should be utilised.



Paul Bryant  
Local Government Finance and Performance Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

19 March 2014

Dear Mr Bryant,

**CONSULTATION ON THE FINDINGS OF THE REPORT ON THE EFFECT OF THE NON-DOMESTIC RATING (DEFINITION OF DOMESTIC PROPERTY) (WALES) ORDER 2010**

Firstly, we wish to thank you for the opportunity to make representations on what is referred to as a Consultation on the findings of the report on the Effect of the Non-domestic Rating (Definition of Domestic Property) (Wales) Order 2010. We submit this letter as the formal response on behalf of Gwynedd Council.

**We strongly oppose any amendments such as those proposed which appear to undo all the improvements to the system that were achieved following continuous pressure from Gwynedd Council and other councils over a lengthy period of time.**

Before proceeding to respond in full we must note out concern regarding the general lack of balance within the consultation. The Council fully appreciates the key contribution of self-catering premises to the economy, and supports continuing to deal with them as businesses within the tax system. In relation to such a system, criteria are required in order to differentiate between 'real' businesses (that contribute to tourism and the local economy for most of the year) and properties that are houses to all intents and purposes, but are let as holiday accommodation for a small proportion of the year. Inevitably – whatever the criteria may be – some properties will miss it by a margin, and it is also inevitable that the owners of those properties would wish for the criteria to be less stringent. However, this in itself is not a sufficient reason for easing the requirements (neither is the fact that it has "attracted press attention" – as noted in the consultation paper). The broader impacts should be considered as well as the justification for introducing the criteria in the first place.

The following response in full refers o two previous consultations held by the Welsh Government (and Gwynedd Council's response at the time) which can either be applied to this paper or are inextricably linked to the principles in question.

## **Background – taxation position up to 2010**

As we know, Gwynedd Council is a county with 5,600 houses that have been designated as "prescribed classes" under Section 12 of the Local Government Finance Act 1992, loosely referred to as 'second homes'.

Since the establishment of Gwynedd Council in 1996, a decision was made to charge full council tax on second homes (this was in fact a continuation of the procedure adopted by the district councils prior to reorganisation). Over the years, there were concerns as properties moved over from one tax class to the other (from council tax to business rates) and the negative impact this had on the rateable base and local budgets.

On this basis, and of course due to the excessive negative impact of second homes on the availability of local housing stock, all efforts were made by elected members and officers of this Council to tighten the criteria used by the Valuation Agency. There was an obvious financial gain for taxpayers seeking to transfer from council tax to business rates, and there was evidence to show that this was taking place over many years. The Small Business Rates Relief was extended in 2010 (to with no charge for properties below a rateable value of £6,000) which increasingly highlighted the advantages of transferring, and in response to this, the following consultation paper was published.

### **Consultation Paper to Amend the Criteria to Determine the Accountability of Non-domestic Rates on Commercially Let Properties**

In 2009, the abovementioned paper was submitted by the Welsh Government for consultation on adding 70 days of actual letting to the criteria. Gwynedd Council's response at the time welcomed this development as an improvement to the prior test, but argued that this continued to be an insufficient length of time, and also stated that the criteria should be linked with better planning control on changing the use of properties. There were other elements within our response, including the need to highlight the relationship between the criteria and income tax regulations.

The above-mentioned change (70 days of actual letting) was introduced in the form of regulations effective from April 2010. We know that tightening this criteria in 2010 has led to a detailed review which greater resembles the wishes of the Council. The following table indicates the number of properties that moved over to council tax with the need to provide letting evidence to the Valuation Office Agency.

<b>(October – October)</b>	<b>Agency Schedules</b>	<b>Council Tax to Business Rates</b>	<b>Business Rates to Council Tax</b>	<b>Coiled Net</b>
<b>2010/11</b>	276 - 322	84	81	3
<b>2011/12</b>	323 - 380	119	78	41
<b>2012/13</b>	381 - 432	81	28	53
<b>Total:</b>		284	187	97

### **Consultation on Discretionary Powers for Local Authorities to Increase Council Tax on Second Homes**

There is an obvious link between the above-mentioned recently held consultation (October 2013) and the current consultation, as the ability to implement any second home premiums is dependent on the strength and the resilience of the criteria in differentiating between second homes and business premises.

Gwynedd Council's response provided comprehensive, statistical details of the impact of second homes on the affordability of housing stock, on communities and sustainability, on businesses etc. and it would be futile to duplicate this here. Our response recommended introducing a power to raise a premium on second homes in order to contribute towards mitigating some of these problems, but also noting that the current criteria should be tightened in terms of holiday accommodation, to avoid the possibility that owners could avoid tax by letting their own property for a small part of the year.

The Welsh Government has not published its findings on this year, but we are concerned that a decision to loosen the business rate criteria could undermine the process of determining the way forward in setting premiums for second homes, by making it more difficult on a practical level to set a premium.

### **This Consultation on the findings of the IRRV's report on the Effect of the Non-domestic Rateable (Definition of Domestic Property) (Wales) Order 2010**

Based on the fact that Gwynedd Council, for a long time, has shared its concerns and pressed on the Welsh Government to tighten the existing system, and that for many reasons and factors, it is no surprise that we looked forward to the IRRV's findings and expected to see outcomes that would further protect the council tax system. We are very disappointed in the IRRV's report, to say the least. Unfortunately, we do not find any favourable aspect to the review in terms of appropriate and effective taxation.

The document is introduced by Ministers as something that required consultation following criticism of the system by businesses, tourism etc. It refers that the "tax base was being eroded" as grounds for moving to tighten the test in SI 2010 (introducing the 70 days), however; it appears that pressure from the tourist industry is the main basis for this consultation.

### **The IRRV's Report**

It is noted in different sections that the local authority suggested that 70 days were not sufficient: *"there needed to be a strategic coherence between policies ... not acceptable to encourage owners of residential housing to take such property out of the market" / "the responses from Gwynedd in particular reveal a desire to make qualification more rigorous"*. However, there is only a reference to our viewpoint and there is a tendency throughout the report in favour of loosening the criteria, for the convenience of property owners and the Valuation Office Agency, rather than a need to tighten them for justice.

### **The Options**

It was a significant disappointment to discover the recommendations / options with each one of this narrow range proposing to loosen the test! There is a list below of options in the order favoured the most by IRRV:

- (1) Option 4 – Provide an opportunity for the taxpayer to reach the 70 days over a five year period (similar to WASCO recommendations).
- (2) Option 1 – Approve the best year for letting over the last 3/5 years.
- (3) Option 5 – That they satisfy the test for any year during the valuation list period.
- (4) Option 3 – Allow the taxpayer to select any 12 month period over the last five years.
- (5) Option 2 – Use the average for the last 3/5 years.

**None of these options come close to what the Council would wish to see. Each of them mean loosening the requirement and distancing from Gwynedd Council's previous recommendations.**

Fundamentally, we are of the opinion that the existing criteria, which enables a property to be treated as a business even if it has not been let for more than nine months of the year, is much more generous than the common sense definition of a "business". Any movement towards loosening the rule any further would undo the improvements undertaken to the system in response to pressure from Gwynedd Council and others over a number of years. **The proposed options would be unfair for other taxpayers who have to pay council tax in full, *in addition to the "actual" tourism businesses that make a significant contribution to the local economy and therefore merit a more favourable tax treatment.***

In fact, should the requirements be loosened, it is likely that there would be another property category that would then fail to comply with the criteria by a small margin, leading to pressure to loosen the requirements even further to include those also, and consequently there is a danger of losing control of the situation in its entirety.

Rather than going down this irresponsible route, at the very least, we believe **that the criteria of 70 days of actual letting should be increased to 105 days.** This would coincide with business requirements in relation to the HMRC taxes; the Valuation Office Agency is a branch of that Government Department and the opportunity to collaborate and synchronize information between both units is relatively obvious and should be utilised.

Furthermore, as in the past, we once again press for the amending of planning regulation to that permission is required to change the use of a property to a second home or self-serviced holiday property, and to create a link between the tax system and the uses permitted under the planning system in order to have better control of the field in general.

Yours sincerely,



**PEREDUR JENKINS  
CABINET MEMBER FOR RESOURCES**

**APPENDIX 3**  
**UPDATED INFORMATION AND DATA**

Number of properties designated as second homes for Council Tax purposes, per Community:

Community	Council Tax – Second Homes			Non-domestic Rates
	Class. A	Class. B	Total	Self-serviced units
ABERDARON	0	137	137	34
BEDDGELERT	0	80	80	40
BOTWNNOG	0	45	45	9
BUAN	0	33	33	4
CLYNNOG	1	59	60	13
CRICCIETH	0	90	90	43
DOLBENMAEN	0	68	68	26
LLANAELHAEARN	0	41	41	3
LLANBEDROG	25	159	184	11
LLANENGAN	2	687	689	47
LLANNOR	0	37	37	20
LLANYSTUMDWY	12	52	64	35
NEFYN	13	284	297	29
PISTYLL	0	50	50	15
PORTHMADOG	18	311	329	65
PWLLHELI	0	79	79	11
TUDWEILIOG	0	68	68	12
BANGOR	0	47	47	3
CAERNARFON	0	30	30	9
BETHESDA	0	22	22	3
BETWS GARMON	0	31	31	6
LLANBERIS	2	41	43	4
LLANDDEINIOLEN	0	50	50	12
LLANDWROG	0	49	49	11
BONTNEWYDD	1	5	6	8
Y FELINHELI	0	85	85	4
LLANLLYFNI	0	57	57	4
LLANRUG	157	25	182	20
LLANWDA	12	21	33	2
WAUNFAWR	25	19	44	3
ABER	0	5	5	0
LLANDYGAI	0	24	24	3
LLANLLECHID	0	8	8	2
PENTIR	0	21	21	19

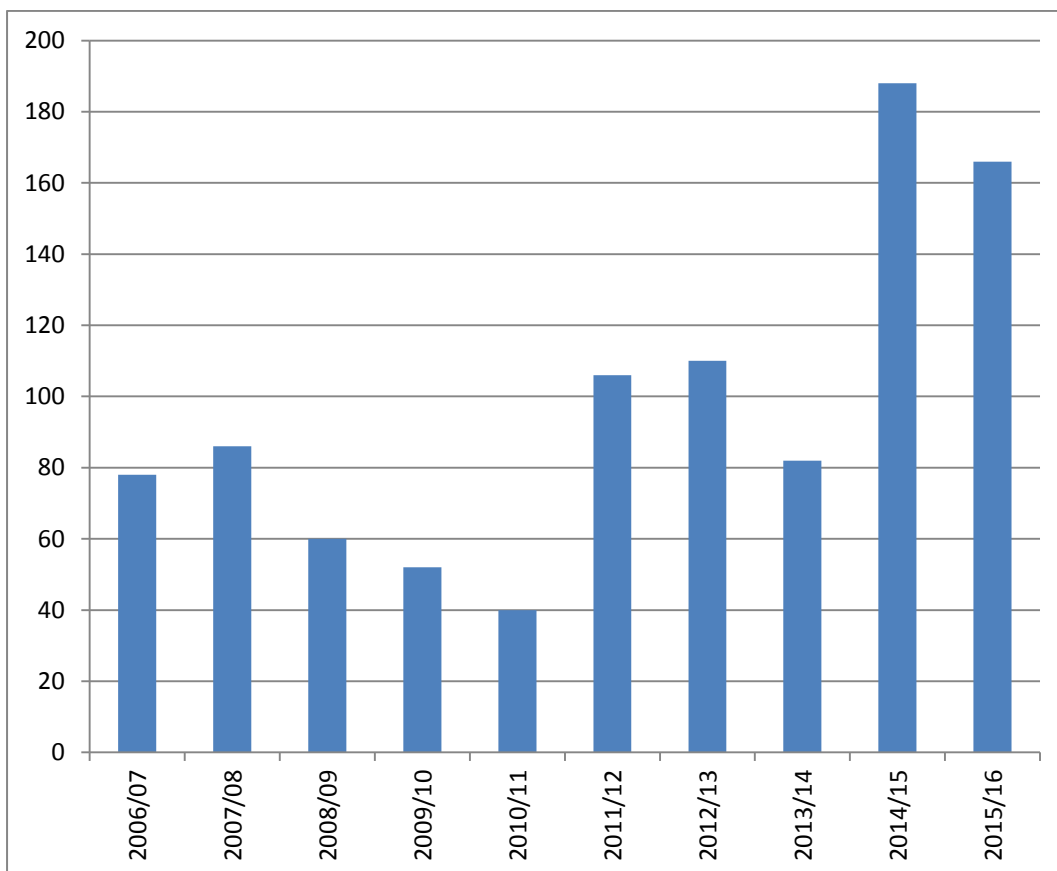
BALA	0	21	21		7
LLANDDERFEL	0	34	34		17
LLANGYWAIR	0	16	16		3
LLANUWCHLYN	0	21	21		7
LLANYCIL	0	13	13		10
TYWYN	18	203	221		16
BRYNCRUG	42	23	65		7
ABERDYFI	57	322	379		48
ABERMAW	1	150	151		24
DOLGELLAU	0	81	81		27
BRITHDIR & LLANFACHRETH	0	60	60		21
Y GANLLWYD	0	10	10		7
LLANEGRYN	0	16	16		4
LLANELLYD	0	37	37		12
DYFFRYN ARDUDWY	37	87	124		22
LLANFIHANGEL Y PENNANT	1	57	58		6
ARTHOG	4	144	148		17
LLANGELYNIN	0	50	50		16
MAWDDWY	5	43	48		15
PENNAL	18	43	61		7
CORRIS	12	46	58		0
FFESTINIOG	0	152	152		26
LLANBEDR	2	41	43		22
HARLECH	0	137	137		15
LLANFAIR	0	68	68		10
LLANFROTHEN	0	16	16		6
MAENTWROG	0	44	44		7
PENRHYNDEUDRAETH	0	35	35		10
TALSARNAU	0	51	51		10
TRAWSFYNYDD	292	33	325		14
<b>TOTAL</b>	<b>757</b>	<b>4874</b>	<b>5631</b>		<b>943</b>



**Number of domestic units lost from the Council Tax system to the Non-domestic Rates system since April 2006.**

<b>Financial Year</b>	<b>Annual Total</b>
2006/07	78
2007/08	86
2008/09	60
2009/10	52
2010/11	40
2011/12	106
2012/13	110
2013/14	82
2014/15	188
2015/16	166
<b>Total over the period</b>	<b>968</b>

**ANNUAL TOTALS**



## MEETING WITH THE CHIEF VALUER WALES, VALUATION AGENCY

**Holiday Homes and Taxes Scrutiny Investigation****Notes of meeting held on 13 October, 2015**

Present: Councillors:- Trevor Edwards, Aled Evans, Jason Humphreys, Eirwyn Williams (Chairman), John Wyn Williams and R.H.Wyn Williams.

Officers:- Dewi Morgan (Senior Manager – Revenue and Risk), Vera Jones (Democratic Services Manager), Geraint Evans (Senior Manager – Non-domestic Rates) and Eirian Roberts (Members and Scrutiny Support Officer).

Also:- Richie Roberts, Chief Valuer Wales (for item 1 below).

Apology: Councillor Dyfrig Jones.

	Item
1.	<b>Discussion with the Chief Valuer Wales</b>
	<p>Richie Roberts, Chief Valuer Wales, was welcomed to the meeting.</p> <p>The context was set and the Chief Valuer Wales was invited to respond to a series of questions by members, as follows:-</p> <p><u>1. What strength of evidence is acceptable to the Valuation Office Agency to allow a transfer from being a domestic property to being a self-catering letting?</u></p> <p>Any transfer has to meet criteria set down to statute. We expect to see intent of letting for 140 days in the forthcoming year, but we have to take that at face value, as it is virtually impossible to obtain definitive evidence of 'intent'. However, we do check whether the property is on a bona fide property letting website and whether they have bookings. We do check that the property has been commercially let for 70 days in the 12 calendar months prior to the assessment. We also send out a statutory form of return and there are penalties if it's filled in incorrectly. The property owners must declare income from the property and costs and we then analyse and check to see that we're satisfied. We would not move a property over without having to go through these tests. If we get a request, and it meets the criteria, we ask Gwynedd Council to carry out a few background checks to make sure that this is a bona fide business. It is the owners' responsibility to sign this legal document as a correct declaration of their situation (as with benefit claimants, etc).</p> <p><u>2. The guidelines state that ratepayers then have to supply evidence of availability and actual lettings, and income derived from lettings, every year. What evidence is provided by the ratepayer to support these figures? What</u></p>

capacity does the Valuation Office Agency have to verify this evidence?

The have to fill in a statutory form which is substantial and detailed and we don't move any property to NDR without this. In terms of the resources available, they are limited, and we have to work smarter. In practice, we do not require ratepayers to supply evidence of compliance annually, but there is a clear legal requirement for owners to report any changes. This is made clear to all owners, when applying for a transfer. I refer back to the owner's responsibility with the legal declaration.

3. There's a statutory requirement for 5-yearly revaluation, which means that details are sought for this general revaluation, but are you committed to regular (ideally annual) review of these cases?

We don't have the resource to check annually, but once again the onus is on the owner of the property to declare any changes in circumstances which would mean that they would not qualify for NDR.

4. Does the Council have any right of appeal when a property is transferred?

This question was addressed under question 1 where reference was made to the joint working that occurs when checks are carried out on dwellings transferring from one system to the other, as there is movement back and forth.

5. The Non-Domestic Rating (Definition of Domestic Property) (Wales) Order 2010 changed the definition of property that is not domestic property for taxation purposes. What effect did these changes have on the speed of the transfer?

The main difference that occurred in 2010 is that in Wales now, letting must have actually taken place before a property is transferred whereas previously (as remains the case in England), the intention of letting during the next year was sufficient.

When asked if other local authorities had raised these issues with the VAO, the Valuer replied that Gwynedd Council is the only local authority in Wales that has reported that this transfer of self-catering property is seen as an issue.

6. If the Council finds that a property listed as self-catering that it suspects that is not complying with the legal definition, would the Valuation Office Agency be prepared to act to transfer it back into a domestic dwelling?

We do not have adequate provisions to go out looking for these changes ourselves, but if informed by any party, be it the Council or any other, we will investigate to find the truth and then act accordingly, working with Gwynedd Council at all times.

7. The Council has figures to show how many properties the Valuation Office Agency has allowed to transfer in each year. Are there figures available for

the number of properties that the Valuation Office Agency has rejected in each year? These figures would help to show whether more property owners are now asking for a transfer, or if the Valuation Office Agency is more willing to allow transfers (e.g. because cuts in resources mean that they cannot investigate as thoroughly).

No, not with any measure of accuracy. There is a net gain of properties going the wrong way from your point of view. I believe that there are currently approximately 850 self-catering properties in Gwynedd that have transferred to NDR. I will verify the exact figures and get back to you.

8. The vast majority of properties that have transferred to business rates have a relatively small rateable value and as such become entitled to 100% small business rate relief. We have seen that some of the peak period lets can realise weekly income of £1,000 and yet the rateable value appears to members to fall well short of a level that is commensurate with the income for that period. Broadly what factors are taken into consideration when calculating a rateable value?

The rateable value is calculated on the estimated income at the time of transfer, and is then set until the next general revaluation. The next revaluation will occur in 2017.

The regulations mean that small businesses must be given rate relief and we cannot refuse or differentiate between one dwelling and another.

9. Does the Council have any "policing" powers? How would the Valuation Office Agency view an exercise by the Council reminding all properties that have transferred to provide the necessary information to the VOA?

We rely on the good working relationship we have with billing authorities. We would have no objection to you carrying out a reminding exercise, but the Council has no policing powers. It would only be able to remand owners to report any changes in circumstances.

10. Much of the success of maintaining an accurate basis for local taxation depends upon good sharing of information. This question is twofold:

i. It's been suggested that the promoting of close relationship with the HMRC by the VOA would encourage the submission of quality data to ensure accurate rateable value. Does the Valuation Agency (being a wing of the HMRC) actively share and compare information submitted with HMRC colleagues.

We could do with better communication because part of the problem is why we've gathered information in the first place.

ii. Both the Valuation Agency and the Council's share a common goal of achieving accurate Valuation Lists and subsequent bills. However, it has been suggested to the Working Group that data sharing mostly involves Councils sending data to the VOA (e.g.

complete information about a property that is about to transfer), and that the VOA does not tend to reciprocate. There will no doubt be good reason as to why the Valuation Agency is not in a position to share information with Councils and I'd be obliged of your observations?

The joint working between the Valuation Agency and Gwynedd Council is especially good and this relationship has developed further than with other councils.

The Chief Valuer was thanked for answering members' questions.

**Scrutiny Investigation - Holiday Homes and Taxes**  
**Notes of Meeting held on 9 December, 2015**

**Present:** Councillors:- Trevor Edwards, Aled Evans, John Wyn Williams and R.H.Wyn Williams (who was selected to chair in the Chairman's absence).

**Officers:-** Dafydd Edwards (Head of Finance Department), Emyr Edwards (Strategic Policy Manager - Resources), Euryl Lloyd Jones (Taxation Manager), Nia Davies (Planning Manager - Policy), Vera Jones (Democratic Services Manager) and Eirian Roberts (Member Support and Scrutiny Officer).

**Also present:-** Councillor Peredur Jenkins (Cabinet Member for Resources).

**Apologies:** Councillors Jason Humphreys, Dyfrig Jones and Eirwyn Williams.

Items 4 and 5 on the agenda were discussed first in order to release some officers.

	Item
3.	<p><b>The results of research work into the situation in other councils</b></p>
	<p>A brief presentation was given by the Strategic Policy Manager - Resources on the results of research work into the situation in other councils, including England, to see whether or not the same problems existed and to see whether or not they had learned any lessons.</p> <p>A table was distributed which listed the 20 councils throughout England and Wales that had the highest number of second homes as a percentage of taxable properties and therefore, were likely to be similar to Gwynedd in terms of a second home profile.</p> <p>The Strategic Policy Manager - Resources noted:-</p> <ul style="list-style-type: none"> <li>• Except for the "City of London" (namely, a specific part of Central London) and the Isles of Scilly, Gwynedd was the highest throughout England and Wales in terms of the proportion of second homes.</li> <li>• The situation had been concentrated in specific areas of Gwynedd, with a much higher number of second homes in some parts of the county.</li> <li>• Cumbria had formulated a report on the holiday home situation in general, which referred to the fact that it was too easy to transfer from the council tax system to the business rates system, but that it was anecdotal evidence and that nothing quantitative was available to confirm the exact situation in England.</li> <li>• The "Taylor Review" for the previous Labour government had examined the problems of rural areas, and although they mentioned that transfers from one system to the other were occurring, this was based on the experience of one area (Cornwall) rather than wider evidence. However, they had suggested that a solution would be available through planning procedures, rather than the taxation</li> </ul>

	<p>system.</p> <p>During the ensuing discussion, it was noted:-</p> <ul style="list-style-type: none"> <li>• They had raised this matter with other councils in the past, and although they did not receive any support from them, that it could be beneficial to re-open that discussion.</li> <li>• Allowing some council tax discount on second homes would make it easier to keep an eye on the number of dwellings that transferred to the business rates system.</li> <li>• It was likely that it would be possible to charge more than 100% tax on second homes in future, but 'there was a danger' that this could encourage more people to transfer to the business rates system.</li> <li>• This Council had pressed that owners should have to submit evidence on an annual basis to show that a property had been commercially let as self-serviced accommodation for 70 days during the previous 12 calendar months, but the government had also been put under pressures by organisations that wished to loosen the regulations, and that would make it too easy for people to transfer to the business rates system.</li> </ul> <p><u>Actions</u></p> <ul style="list-style-type: none"> <li>• Contact 3-4 other authorities in Wales that have a similar second home profile to Gwynedd, e.g. Anglesey, Ceredigion and Pembrokeshire to raise their awareness of the problem and to try to re-open the discussion (<i>this action to be coupled with the second action under item 4 below</i>).</li> <li>• Ask the Valuer to provide information regarding the number of transfers in those counties so that evidence of the financial loss for the councils in question can be submitted.</li> </ul>
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	Item
4.	<p><b>The planning side</b></p> <p>A question and answer session was held with the Planning Manager - Policy in order to consider whether or not there were options in terms of the planning procedure to influence the situation.</p> <p>The Planning Manager responded to the following questions, namely:-</p> <ul style="list-style-type: none"> <li>• <u>Is it possible to confirm what is the current situation (in terms of Planning) when a use of a holiday home (second home for owner's use) changes to be a self-serviced unit?</u></li> </ul> <p>According to the planning act, anything that requires planning permission must be a 'development' and if it does not fall within the definition of a development, it does not come under the act. A 'development' includes a material change of use. Also, under the act, the Use Classes Order places different uses in brief classes and a house comes under category</p>

C3. The planning system views a house as a household where people live together. It does not have to be used all year round to be considered as a house, and if it is rented to other people for short periods, it is still classed as a 'household' according to the act and the use classes order, as there is no change in use. There have been rare cases in Court where a judge had concluded in those specific cases that a material change of use has occurred as the property was not used in a way that was similar to an use by a 'household' and that the amenities of nearby properties were also affected. Therefore, no planning permission is usually required to let a house as a self-serviced unit.

- Planning permission is required to change the use of a building, e.g. from a shop to a café. How is that different to changing use as a self-serviced unit?

Planning permission is required to change the use of a shop to a café as a shop comes under category A1 and a café comes under category A3 in the Use Classes Order. The Planning Manager further noted that she could share a paper with members that listed the different use classes and what had been included in each one.

- What would prevent the Council from insisting that planning permission is required prior to being granted the right to let a house as a self-serviced house when it used to be a home?

Development plans must set policies that relate to a development that requires a planning permission. As there is no change of use according to the act, no policy covers the matter in the Unitary Development Plan and no policy about it can be included in the Joint Local Development Plan which is currently being prepared.

- Would it be practical for the Welsh Government to establish regulations for local authorities to control permission to change the use of a property from a holiday home to a self-serviced unit through the planning procedure?

It is possible to change legislation, e.g. it was managed to introduce use category C4 in England in relation to multiple occupation housing due to the high number of students as a result of research work on the matter. The Welsh Government intends to change the Use Classes Order in Wales to address the same matter. The act / by-law would need to be changed in Wales to address the 'change' to holiday units.

During the discussion, it was noted:-

- The Council had no powers to act under current arrangements and that the only way to solve the problem was by ensuring a change in legislation.

#### Actions

- Ask Welsh Government what are the possibilities regarding changing



the regulations / by-law that are involved with the Use Classes Order in order to insist that planning permission is required to change use to a 'self-serviced unit', requesting that the Planning Manager - Policy assists with the wording.

- Ask authorities (that are intended to be contacted under item 1 above) for their support in this matter as well, requesting that the Planning Manager - Policy assists with the wording.

It was further noted that the Chairman of the Investigation had submitted a question referring to matters beyond the scope of the investigation as he enquired about planning permission to build / develop new self-serviced holiday accommodation, and the Planning Manager responded to the question, namely:-

*Can the Planning Department please explain Policy D15 of the Unitary Development Plan and any implications of the policy?*

The policy permits the development of new permanent self-serviced holiday accommodation on a suitable previously developed site outside the development boundary or to adapt existing buildings outside the boundary into such accommodation, provided that the building is structurally sound and suitable to be adapted. A condition is included that only holiday use is permitted, but a concern has been expressed that some use such accommodation as a residential property, which is tantamount to a new house in the countryside. For some, it appears that it is easier to obtain holiday use rather than residential use in the countryside, but, according to national policies and guidance, economic use should be sought first, which includes holiday homes, before a proposal for a house can be considered. If members know about examples of misusing holiday accommodation in this manner, they are requested to inform the Planning Service.

**APPENDIX 6**  
**RESPONSE TO TECHNICAL CONSULTATION**

**Gwynedd Council response to the Welsh Government Technical consultation on the draft Non Domestic Ratings (Definition of a Domestic Property) (Wales) Order 2015 (“the draft 2015 Order”) and the accompanying guidance for ratepayers.**

## Aelod Cabinet Adnoddau Cabinet Member Resources

Y Cyngorydd / Councillor Peredur Jenkins

Gofynnwch am/Ask for: Dafydd L Edwards

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Ein Cyf / Our Ref: PJ/DLE/AJ

Eich Cyf / Your Ref: WG26148



8 September 2015

Local Government Finance Policy Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

Dear Sir / Madam,

### **Technical consultation on the draft The Non-Domestic Rating (Definition of a Domestic Property) (Wales) Order 2015 (“the draft 2015 Order”) and the accompanying guidance for ratepayers**

Gwynedd Council’s response to the technical consultation is as follows:

#### **Response to the Questions on the Draft Order**

Question	Response
1. Do you agree that provisions should be made to average the 70 day criteria for properties at the same location or within very close proximity of each other owned by the same business?	<b>Where properties are at the same location or within very close proximity of each other owned by the same business, we have no objection to averaging the letting criteria for those. However, this should be considered in the context of our comments on question 3 below.</b>
2. Are there any issues regarding the administration and enforcement of such a provision?	<b>No</b>

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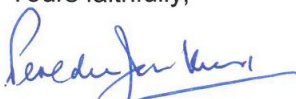


<p>3. Are there any issues regarding the administration and enforcement of such a provision?</p>	<p><b>Gwynedd Council has corresponded several times with the Welsh Government in recent years expressing our opinion on the 2010 Order and the existing arrangements. Our position can be summarised as follows:</b></p> <ul style="list-style-type: none"> <li>○ <b>Gwynedd Council welcomed the tightening of the law which was introduced by the 2010 Order, and we therefore welcome the intention in the draft Order to continue with this.</b></li> <li>○ <b>However, the Council also believes that 70 days should be increased to 105 days in order to be consistent with HMRC guidelines.</b></li> <li>○ <b>The opinion and long-term aspiration of Gwynedd Council is that the basic procedure should be changed so that planning permission needs to be obtained from the Local Authority before changing the use of a property from being a domestic property to being a business property.</b></li> <li>○ <b>Further, where this is allowed, the permission should be renewed annually.</b></li> </ul>
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**Response to the Questions on the Guidance for Ratepayers**

Question	Response
<p>4. Does the guidance provide sufficient advice to self-catering property owners in relation to the draft Order?</p>	<p><b>Yes. However, we would like to see steps being taken to implement what is outlined on page 6 of the guidelines, namely that property will revert annually to the default position of being domestic property unless ratepayers can show differently. The Guidance to Ratepayers should include (possibly as a 4th “checkpoint” within Annex 1) a requirement that ratepayers for self-catering properties should submit evidence of letting annually to the VOA.</b></p>
<p>5. Should the guidance cover any other areas?</p>	<p><b>We do not believe it is necessary, but there is one matter that we believe should be removed. On page 11 of the Guidance, hardship relief under section 13a is mentioned. In the current financial climate, inclusion of this is unnecessary and unhelpful.</b></p>

Yours faithfully,



**PEREDUR JENKINS**  
**CABINET MEMBER RESOURCES**  
 Enc.

**MEETING WITH JOANNA VALENTINE, HEAD OF LOCAL TAXES, WELSH GOVERNMENT****Holiday Homes and Taxes Scrutiny Investigation****Notes of meeting held on 6 January, 2016**

Present: Councillors:- Aled Evans, Jason Humphreys, Eirwyn Williams (Chairman), John Wyn Williams and R.H.Wyn Williams.

Also Present:- Councillor Peredur Jenkins (Cabinet Member for Resources).

Officers:- Dafydd Edwards (Head of Finance), Dewi Morgan (Senior Manager – Revenue and Risk), Euryl Lloyd Jones (Taxation Manager), Nia Davies (Planning Manager – Policy), Vera Jones (Democratic Services Manager) and Eirian Roberts (Members Support and Scrutiny Officer).

Also:- Jo Valentine (Welsh Government) (for item 1 below).

Apologies: Councillors Trevor Edwards and Dyfrig Jones.

	Item
1.	<b>Discussion with Jo Valentine (Welsh Government)</b>
	<p>Jo Valentine of Wales Government was welcomed to the meeting.</p> <p>The context was explained, and Jo Valentine was invited to respond to a series of questions by members, i.e.:-</p> <ul style="list-style-type: none"> <li>• <b><u>Can you explain your role within Government of Wales?</u></b></li> </ul> <p>I'm Head of Local Taxation within the Local Government Department so I look after the Council Tax system, its policy and legislation and the council tax reduction scheme. I've got policy responsibility for non-domestic rates in so far as it relates to the local government finance system and maintenance of the pool. It's a split responsibility with my colleagues in the Economy Department who have responsibility for the relief schemes we operate.</p> <ul style="list-style-type: none"> <li>• <b><u>Before discussing the current regulations with regards to Council Tax or NDR, can you explain if it is possible to legislate so that the 70 day rule is no longer valid, and, as a result, every dwelling would therefore be subject to Council Tax?</u></b></li> </ul> <p>The 70 day rule was introduced by the 2010 order which amended the Local Government Finance Act 1988 to insert additional criteria so that self catering properties must also meet the 70 day evidence of being let in addition to the 140 day availability for let. So if the 2010 order was</p>

removed then in effect what would happen was that it would revert back to the original criteria as set out in the primary legislation which was only the requirement of being available to let for 140 days. So, whilst it could be amended, in order to amend it, it would require primary legislation, which is much more difficult and it takes much longer time to implement than subordinate legislation.

- **We are aware that current regulations state that owners of self-catering holiday units must provide evidence that the units are available for letting for a period of 140 days in a rolling year, and that the unit has been let for 70 days in a rolling year..**
  - (i) **Is it possible to make these requirements more stringent, raising the required number of days available / days let? How could it be made possible?**
  - (ii) **Currently, owners must provide a self-declaration that the unit meets the requirements (140 days availability / 70 days let), though they do not have to do this on an annual basis. What is the possibility of changing the requirements to make it a legal obligation to provide evidence more frequently?**
  - (iii) **What would have to happen legally / legislative to allow any changes to happen?**

That would be a possibility, but obviously, that's a political decision that will be for Welsh ministers and that will be the next administration following the elections in May. Obviously, they'd have to take a view from all stakeholders in relation to that. At the minute they get quite a lot, as well as the views from local government as to their tax base being eroded. There are also a lot of opposing views around the fact that some businesses are struggling to meet the criteria for reasons such as flooding and other aspects such as that. So there is evidence at the minute that, perhaps, not everyone can meet the 70 days and some of those suggest that they are genuine businesses. But that said, we are also aware that the HMRC rules for furnished holiday lets which are a requirement in relation to other aspects of the border taxation system require evidence of 105 days letting and availability for let for 210 days. So, obviously, there is some sort of precedent there in respect of other forms of taxation but it's slightly different in that they are allowed to off set that against other tax purposes. So it's more of a tax relief – that's why it's more stringent. It may be a possibility, but perhaps in the longer term.

- **In general, it appears that the rateable value and the business rate is less than the Council tax bill, and that the rateable value is low in comparison with the income generated from letting. Whatever the reasons for the above, is it possible for the Government of Wales to influence the procedures used to assess?**

I'm not a valuation expert but I do know that at least part of the evaluation basis is the profits from the business and I know that they're in the middle of drawing up a valuation scheme for the 2017 re-valuation and they've been working with representative organisations in the industry to try and pre-agree that before April 2017, looking at the different components that will make up the valuation in terms of how much is attributable to the profits and the square footage and how many bedrooms and so on. So there is a general system in place, but that obviously then allows for special characteristics of the property as well which might increase its value and lead to its rateable value and I know that certainly they are expecting certain increases in the valuations of the property. Certainly, that is what initial indications from the Chief Valuer for Wales have suggested, that probably they have increased over that period of time, and obviously it's quite a long time now since the last evaluation when properties were based on their rental values as at 2008, and for the 2017 re-valuation they will be based on their rental values as at April 2015. So you'd expect to see quite a shift in that period of time but in terms of the question here about whether it's possible for the Government of Wales to influence procedures used to assess we wouldn't seek to encroach on the VOA's role in that because they're the independent organisation that's responsible for the valuation of properties and they have that valuation expertise and we need to make sure that they are able to retain that integrity because that's actually what allows the taxation system to bring in more than £2bn of revenue in Wales. That said, I do recognise that part of the reason why some of these properties pay so little tax is the result of the Small Businesses Rates Relief which, because their rateable value is so low, often means that these properties in effect, if their rateable value is under £6000, they end up paying no rates and we actually looked at the number and there were very few self catering properties in Wales that pay full business rates at all.

*[The Head of Finance suggested lobbying the Valuation Office once again, through the Cabinet Member or this Investigation, in respect of the fact that the rateable value of these self-catering holiday units is so low.]*

- **We have seen that the majority of self-catering units that transfer to NDR qualify for small business rates relief. We also understand that some types of property are exempt of this relief. If the small business rates relief is to continue in 2016/17, what procedures would need to be followed to review the situation?**

In relation to small business rates relief for 2016/17, ministers have taken the decision that it will be extended for the current year in its current terms, partly to give businesses that early certainty about what's happening for next year but partly, obviously, because with the re-

evaluation coming up, it's the logical point in time in which to review a scheme and the policy and what happens and how it's applied for and its eligibility criteria. It does create a very good point in time in which to review effectiveness, and so on, and it's certainly a recommendation that we will be putting to ministers. It's about looking at whether it's achieved what we wanted to achieve. Actually, prior to October 2010, everybody contributed an amount and only received 50% small business rates relief. As a response to the recession that was doubled to 100% which it seems at that point in time was regarded as being a very helpful kind of stop gap, but that's been in place now for nearly 5-6 years, and is it right to have a system where so many people don't contribute anything at all and there are certainly questions around that. It's a very costly scheme in terms of the funding that the Welsh Government has to find to put into the total NDR yield to replace that lost income so these are all certainly questions that need to be considered in the run-up to the re-evaluation. Certainly, what we'll be putting to ministers is about what do they want to see going forward as their response to the re-valuation.

- **We understand that there is currently no formal procedure for the Valuation Office to share information with Local Authorities. Can you explain any changes which may be developed which would provide legal requirement to share?**

Currently, one of the reasons that there aren't any formal information sharing arrangements in place is because the VOA is prevented from sharing identifiable tax payer information as an agency of HMRC. So along with England, we're taking provisions in the Enterprise Bill which is going through Parliament at the minute which will basically create a legal gateway to allow the sharing of more information with local authorities in respect of the local taxation list. So what we envisage that being is information around the name and the occupier of the property, and so on. At the minute all the VOA provide is what the rateable value is and where the property is, and so on. That creates a number of different problems in that there's duplication of work between the VOA and local authorities. It's maybe a little bit too easy for ratepayers to seek to defraud the system because there's no triangulation of that, no verification of that information. So we're taking that through Parliament now and I think the intention is to try to get those regulations in place prior to April 2017 to coincide with the re-valuation. Alongside that, the Welsh Government is also exploring the possibility of whether more can be done in relation to non-domestic rates, and particularly the forward element and the requiring of ratepayers to provide information. So in the Local Government Bill they're currently consulting on, there's an element that talks about the possibility of making some legislation that imposes a duty on ratepayers to notify changes in circumstances, and certain things like that, which there are already elements of within the council tax system. So those proposals are at quite an early stage yet and actually



were conceived prior to the UK government announcement. In the end we have to work out how it all fits together, but certainly there is an appetite there to look at it and to take the work forward.

- **For a member of the public, it appears that there is a 'change of use' from a house / holiday home to a self-catering holiday unit. We understand that the 'use classes order' places a dwelling in Category C3. We also understand from our Planning Officers that planning permission is not required if a holiday home is to change to a self-catering holiday unit as it is not considered a 'change of use'. We understand that no 'relevant change of use' takes place in the majority of cases as there is no change in the character, the use of the house or the effect of that use on the character of the area.**

[As she did not specialise in planning matters, Jo Valentine agreed to pass on this question and also the following question to her colleagues in the planning field and to report back to the investigation through the Taxation Manager.]

- **We understand that the Government of Wales are currently reviewing the Use Classes Order and the Common Development Rights Order. What are the possibilities that this review might include the effects of research into:-**
  - (i) **Looking at and quantifying the nature of the problems associated with the proliferation of self-catering units due to property being used on a commercial basis rather than being used by the owner or relatives, and**
  - (ii) **Offering possible answers? For example, recent research work undertaken for the Government of Wales has recommended changes to the Use Classes Order in order to enable local planning authorities to control the location of Houses in Multiple Occupation.**

**APPENDIX 8**  
**PEMBROKESHIRE CORRESPONDENCE WITH WELSH GOVERNMENT**

11 March 2016

Mr Carl Sargeant AM,  
Minister for Natural Resources  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF199 1NA

Dear Minister

**PLANNING REGULATIONS – SECOND HOMES / HOLIDAY HOMES**

At a recent County Council Cabinet meeting a Notice of Motion relating to Planning Regulations in respect of second/holiday homes was debated. It was agreed that as Cabinet Member for Planning and Sustainability, I would write to you to outline Pembrokeshire County Council's concerns about the adverse social and economic impacts arising from the considerable number of holiday homes within the County. The main effects include a disproportionate increase in house prices which threatens the ability of local people to comfortably afford to rent or buy a place to live, the loss of community cohesion on the out of season 'deadening' effect on areas where holiday home ownership is most popular. Whilst it is recognised that the occupiers of holiday homes can make significant contributions to the local economy when visiting Pembrokeshire, a reasonable balance should be struck.

I appreciate that measures have recently been put in place which enable Councils to double the Council Tax liability for holiday homes and to this end at our Full Council meeting 10 March we determined to add 50% to the same. Additional measures, such as greater planning controls, could assist further. As you will be aware, dwellings currently fall within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). The Order currently makes no distinction between dwellings used as main residences and dwellings used as holiday homes. On this basis, no planning restrictions currently exist which prevent the use of a dwelling as a holiday home, except in instances where a planning condition has been imposed on the original planning permission relating to the subject dwelling.

In light of the current situation, a change to the Order would be required in order to enable Local Planning Authorities to control holiday homes beyond imposing restrictive planning conditions on new residential developments (provided such conditions meet the tests of Welsh Government Circular 016/2014:*The Use of Conditions for Development Management*). Such a change in the legislation could be supported by supplementary planning guidance and eventually, development plan policies, outlining how such changes of use would be controlled and monitored within individual administrative boundaries.

I understand that Welsh Government will be reviewing the Use Classes Order in the summer of this year. May I respectfully request that you use the opportunity to carefully consider the possibility that tighter planning controls could assist in controlling the number of dwellings being used as holiday homes rather than 'family' homes within Wales.

Yours sincerely

Councillor Myles Pepper  
Cabinet Member for Planning and Sustainability