COUNCIL TAXBASE – SECOND HOMES

Purpose

1. The paper highlights a general problem regarding the erosion of council taxbase and requests Members support in seeking a solution with the Welsh Government/Valuation Office Agency.

Background

2. Appended to this short covering note at Annex I is a paper that went to the Rural Forum in April. The issue has built up a head of steam recently as councils have introduced premiums for second homes. Homeowners have been using section 66 of the Local Government Finance Act 1988 to claim properties are not domestic properties. That means that such properties are subject to non-domestic rates rather than Council Tax.

Issues

3. While the attached paper focusses on the issue in 7 authorities, paragraphs 7 to 17 estimate that over 3,000 properties have potentially been lost to the taxbase. There is a loss for local government as a whole (and the public purse) of approximately £4.5m.

Recommendations

4. Members support this issue being raised with the Minister at the earliest opportunity.

Report cleared by:  Cllr Anthony Hunt
Spokesperson for Finance

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Introduction

1. In general, houses are domestic properties and their owners pay the Council Tax.

2. However, Section 66 of the Local Government Finance Act 1988 states that "self-catering units" in Wales are not domestic properties. That means that such properties are subject to non-domestic rates rather than Council Tax.

3. Section 66 declares that the following is the criterion to decide if the property is a "self-catering unit":

   The property will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more in the 12 calendar months following the assessment, and if, in the 12 calendar months before the assessment—

   (i) the property was available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more; and

   (ii) the property was so let for short periods that amounted in total to at least 70 days.

4. It is the Valuation Office Agency who makes the decision if sufficient evidence has been presented to allow such a transfer. The Agency is part of HM Revenue and Customs, and therefore is completely independent of the Welsh Government, but they are operating in accordance with legislation and policies set by the Government.

5. There has been a consistent correspondence between Gwynedd Council and the Welsh Ministers and Government officers expressing our concerns about the ability of owners of second homes to use Section 66 of the Local Government Finance Act 1988 to transfer their property from being domestic properties paying Council Tax to being self-catering units which are subject to non-domestic rates.

6. There are two aspects to this issue, the first of which affects the revenue of all councils in Wales and the second of which particularly affects counties which have a high proportion of such properties which includes many rural authorities.
The first aspect - the loss to all authorities

7. We have conducted a piece of work to analyse the financial impact of the transfer of the properties from paying Council Tax to non-domestic rates.

8. The transfer of property is accelerating in Gwynedd. Over 1,250 properties have transferred from Council tax to non-domestic rates since April 2014, which is an annual loss of almost around £2 million of Council Tax, not including any backdating that has been allowed.

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Number of Transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018-19 (to 28/2/2019)</td>
<td>421</td>
</tr>
<tr>
<td>2017-18</td>
<td>282</td>
</tr>
<tr>
<td>2016-17</td>
<td>199</td>
</tr>
<tr>
<td>2015-16</td>
<td>167</td>
</tr>
<tr>
<td>2014-15</td>
<td>188</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>1,257</strong></td>
</tr>
</tbody>
</table>

9. Contact was made with the other 8 rural Welsh local authorities in order to establish if this transfer is happening across Wales. The data from those who responded indicates that the following number of properties have moved from the Council tax to Non-Domestic Rates since the beginning of 2015/16 the financial year:

<table>
<thead>
<tr>
<th>Transferred Properties</th>
<th>2015-16</th>
<th>2016-17</th>
<th>2017-18</th>
<th>2018-19 (part year)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gwynedd</td>
<td>167</td>
<td>199</td>
<td>282</td>
<td>421</td>
<td>1069</td>
</tr>
<tr>
<td>Conwy</td>
<td>56</td>
<td>89</td>
<td>86</td>
<td>44</td>
<td>275</td>
</tr>
<tr>
<td>Denbighshire</td>
<td>11</td>
<td>13</td>
<td>19</td>
<td>36</td>
<td>79</td>
</tr>
<tr>
<td>Isle of Anglesey</td>
<td>110</td>
<td>149</td>
<td>213</td>
<td>225</td>
<td>697</td>
</tr>
<tr>
<td>Ceredigion</td>
<td>0</td>
<td>76</td>
<td>168</td>
<td>53</td>
<td>297</td>
</tr>
<tr>
<td>Pembrokeshire</td>
<td>0</td>
<td>305</td>
<td>369</td>
<td>198</td>
<td>872</td>
</tr>
<tr>
<td>Monmouthshire</td>
<td>1</td>
<td>9</td>
<td>17</td>
<td>14</td>
<td>41</td>
</tr>
</tbody>
</table>

Source: Gwynedd Council Canvass, December 2018

10. Whilst we do not know the Council tax band for all of these properties, an analysis of the incidence of transfers in Gwynedd shows that it has affected a range of properties from Band A to band I but that overall it has resulted in the equivalent transfer of them all being in Band D.

11. If we assume for illustrative purposes that they are in band D, taking the 2018/19 Band D Council tax for each authority, over the past 4 years, a total value of £4.8m will have moved to the Non-Domestic rates.

<table>
<thead>
<tr>
<th></th>
<th>Transferred since 2015</th>
<th>Band D 2018/19 (£)</th>
<th>One-year CT loss 2018/19 (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gwynedd</td>
<td>1,069</td>
<td>1601.03</td>
<td>1,711,501</td>
</tr>
<tr>
<td>Conwy</td>
<td>275</td>
<td>1469.16</td>
<td>404,019</td>
</tr>
<tr>
<td>Denbighshire</td>
<td>79</td>
<td>1555.39</td>
<td>122,876</td>
</tr>
<tr>
<td>Island</td>
<td>Rateable Value</td>
<td>Council Tax Income</td>
<td>Total Population</td>
</tr>
<tr>
<td>--------------</td>
<td>----------------</td>
<td>--------------------</td>
<td>------------------</td>
</tr>
<tr>
<td>Isle of Anglesey</td>
<td>1440.78</td>
<td>1,004,224</td>
<td></td>
</tr>
<tr>
<td>Ceredigion</td>
<td>1483.61</td>
<td>440,632</td>
<td></td>
</tr>
<tr>
<td>Pembrokeshire</td>
<td>1252.41</td>
<td>1,092,102</td>
<td></td>
</tr>
<tr>
<td>Monmouthshire</td>
<td>1538.93</td>
<td>63,096</td>
<td></td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>4,838,450</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Gwynedd Council Canvass and CT1 returns

12. It is emphasised that this is the loss of tax income on basic band D – it does not include any premium that would be lost.

13. After transfer, the majority of these properties will receive Small Business Rate Relief (SBRR) because of their rateable values. Properties with a rateable value of £6,000 or less receives full relief, and thus pay no taxes, while there is tapered relief for properties with a rateable value between £6,001 and £12,000. Analysis of Gwynedd properties shows that over 99% of the properties that transfer had received some element of relief, with approximately 94% receiving full relief; there is no reason to believe that the rest of Wales will not follow a similar pattern.

14. If we were to assume that 94% of the above figure subsequently gets full relief, we are facing a conservative estimated annual loss of around **£4.5m** to the public purse each year from the 7 authorities included in the survey. There is no doubt that Carmarthen’s and Powys’ figures would swell this estimate and that all authorities will no doubt have some incidence, so the total across Wales is likely to be much higher. Backdating changes to the list also means that the true loss is even greater.

15. This, affects every authority in Wales. If these properties had remained in the Council Tax regime, due to the way the distribution formula works, the higher council tax receipts would have resulted in all authorities sharing this additional £4.5m.

16. For example, it is estimated that whilst Gwynedd’s Council Tax income would increase by £1.7m, but the way in which the formula works would mean that its grant would also decrease meaning that its overall spending increase would be around £200,000. However other authorities’ grant would increase meaning that authorities such as Wrexham and Cardiff which may have no such properties would also see their ability to spend increase by around £203,000 and £526,000 respectively as would every other authority.

17. Whilst £4.5m would not make a large dent in the funding gap for authorities there is a principle at stake here whereby local authorities are being starved of funds to pay for essential local services whilst enriching those who can afford to buy second homes.
The second issue - Council Tax Premium

18. In 2012 the Welsh Government published ‘Homes for Wales: A White Paper for Better Lives and Communities’. This highlighted the problems of housing supply and set out proposals for a programme of actions to address it. One of the proposals was to give local authorities a discretionary power to charge higher rates of Council Tax on long-term empty properties. Following pressure from some local authorities, including Gwynedd, to extend such powers to include second homes, a further consultation was undertaken in September 2013 on discretionary powers for Welsh local authorities to also increase Council Tax on second homes through a Council Tax premium.

19. The result of this was Section 139 of the Housing (Wales) Act which added Sections 12A and 12B to the Local Government Finance Act 1992 to include a discretionary right for Councils to raise an additional “premium” of no more than 100% on long-term empty homes (Section 12A) and second homes (Section 12B).

20. Gwynedd Council strongly supported this initiative as the volume of second homes in the county severely detracts from the supply of properties available to meet the needs of our local people.

21. Whilst it is a matter for each authority to weigh up the benefit arising from levying a premium against any potential detrimental economic effects no authority is forced to do so. The ability to levy a premium however enables authorities to generate resources to try and re-balance the lack of supply which arises and help local people to find a place to live.

22. In being able to take a former domestic property into the National Domestic rates, the ability to generate that additional revenue is removed thus making it impossible to re-balance the supply for local people.

23. The situation is obviously unjust and needs to be resolved.

Proposed solution

24. There are a number of ways in which we could respond to this situation. For example, we could

   - Tighten the definition of "self-catering unit" within the 1988 Act.
   - Amend the Planning Regime so that planning permission is required prior to the transfer of a property to being a non-domestic properties.
   - Prevent properties that have transferred from receiving small business rate relief.

25. The direct, most effective and most transparent answer would be a change to the Local Government Finance Act 1988 to eradicate the exception for self-catering units.
26. We are identifying here of course those who take a domestic property as a second home or for business purposes and as a result, reduce the local community’s ability to use that home for local people.

27. We are not talking about those who have built units specifically for tourism purposes and have received planning permission for that purpose. If the planning permission notes that a building is to be used for planning purposes then it is right that it is placed in the National Non Domestic Rating system.

28. Neither are we saying that people should not be allowed to buy a second home and to rent it out if that is their wish. We are merely noting that at the very least they should be paying the same as every other owner of domestic properties in the area.

29. The Minister for Finance and Trefnydd has recently reiterated in a letter to the Assembly member for Arfon that the “provisions were introduced to assist local authorities in managing issues of local housing supply”. If individuals are able to circumvent the initiative then its policy intent is destroyed.

30. The Welsh Government has the power to modify Section 66 of the Local Government Finance Act 1988 through secondary legislation – they already do so fairly frequently. The last time they did that was by the Non-domestic Rating (Definition of Domestic Property) (Wales) Order 2016 (which replaced the 2010 Order. The 2016 Order did not tighten the requirements within the 1988 Act, which was disappointing, especially given that the Housing (Wales) Act 2014 had amended the Local Government Finance Act 1992 to allow local authorities to charge a premium the Council Tax of second homes and long-term empty properties.

31. Basically, the current criterion noted in Section 66 noted in paragraph 3 above needs to be removed, and replaced by a principle that every property which has been used as a domestic property remains a domestic property regardless of its use unless it has specifically been given planning permission to be used as a business.

32. This provision should also be backdated to bring houses which have previously used the provisions of Section 66 back into the Council Tax lists.

33. Section 66 of the Local Government Finance Act 1988 has been included in full in the Appendix. We believe there is a need to change Subsections 66(2BB)(a) and 66(2BB)(b) but further work would need to be done to establish the exact amendments necessary to achieve the above aims.

34. Such a change would not detract from owners’ rights to let out their properties. It would merely ensure that unless they had planning permission for a domestic unit to be used specifically for business purposes, the property would continue to be classed as a domestic property and would pay the Council Tax.

35. Neither would it affect individual authorities’ determinations on whether to raise a premium on such properties or not.
36. It would merely ensure that second home owners were not being unnecessarily enriched at the expense of public services and that authorities were better able to intervene to manage issues of local housing supply if they so wished.

Conclusion

37. The Rural Forum is asked to consider the above information and determine –

   a) whether it agrees with the sentiments noted in the report and;
   
b) wishes to take forward the issues raised in the name of the Rural Forum.

Dilwyn Williams
Chief Executive
Cyngor Gwynedd
Appendix 1 – Section 66 Local Government Finance Act 1988

66.— Domestic property.

(1) Subject to subsections (2), (2B), (2BB) and (2E) below, property is domestic if—

(a) it is used wholly for the purposes of living accommodation,

(b) it is a yard, garden, outhouse or other appurtenance belonging to or enjoyed with property falling within paragraph (a) above,

(c) it is a private garage which either has a floor area of 25 square metres or less or is used wholly or mainly for the accommodation of a private motor vehicle, or

(d) it is private storage premises used wholly or mainly for the storage of articles of domestic use.

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

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

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

(2A) Subsection (2) above does not apply if—

(a) it is intended that within the year beginning with the end of the day in relation to which the question is being considered, short-stay accommodation will not be provided within the hereditament for more than six persons simultaneously; and

(b) the person intending to provide such accommodation intends to have his sole or main residence within that hereditament throughout any period when such accommodation is to be provided, and that any use of living accommodation within the hereditament which would, apart from this subsection, cause any part of it to be treated as non-domestic, will be subsidiary to the use of the hereditament for, or in connection with, his sole or main residence.

(2AA) Subsection (2B) applies only in so far as this Part applies in relation to England.

(2B) A building or self-contained part of a building is not domestic property if—

(a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more, and

(b) on that day his interest in the building or part is such as to enable him to let it for such periods.

(2BA) Subsection (2BB) applies only in so far as this Part applies in relation to Wales.

(2BB) A building or self-contained part of a building is not domestic property if each of the following paragraphs apply in relation to it—

(a) the relevant person intends that, in the year beginning with the end of the day in relation to which the question is being considered, the whole of the building or self-contained part will be available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more;

(b) on that day the relevant person's interest in the building or part is such as to enable the person to let it for such periods;

(c) the whole of the building or self-contained part of the building was available for letting commercially, as self-catering accommodation, for short periods totalling 140 days or more in the year prior to the year beginning with end of the day in relation to which the question referred to in paragraph (a) is being considered;

(d) the short periods for which it was so let—
(i) amounted in total to at least 70 days; or

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

(aa) is not included in another calculation under this sub-paragraph for the year in relation to which the question is being considered,

(bb) is situated at the same location or in very close proximity to all of the other buildings or self-contained parts of a building included in the calculation, and

(cc) is so let as part of the same business or connected businesses.

(2BC) For the purposes of subsections (2B) and (2BB) the relevant person is—

(a) where the building or self-contained part is not subject as a whole to a relevant leasehold interest, the person having the freehold interest in the whole of the building or self-contained part; and

(b) in any other case, any person having a relevant leasehold interest in the building or self-contained part which is not subject (as a whole) to a single relevant leasehold interest inferior to that interest.

(2D) Subsection (2B) and subsection (2BB) above do not apply where the building or self-contained part is used as the sole or main residence of any person.

(2E) Property is not domestic property if it is overnight accommodation which is the subject of a timeshare contract within the meaning of the Timeshare, Holiday Products, Resale and Exchange Contracts Regulations 2010.

(3) Subsection (1) above does not apply in the case of a pitch occupied by a caravan, but if in such a case the caravan is the sole or main residence of an individual, the pitch and the caravan, together with any garden, yard, outhouse or other appurtenance belonging to or enjoyed with them, are domestic property.

(4) Subsection (1) above does not apply in the case of a mooring occupied by a boat, but if in such a case the boat is the sole or main residence of an individual, the mooring and the boat, together with any garden, yard, outhouse or other appurtenance belonging to or enjoyed with them, are domestic property.

(4A) Subsection (3) or (4) above does not have effect in the case of a pitch occupied by a caravan, or a mooring occupied by a boat, which is an appurtenance enjoyed with other property to which subsection (1)(a) above applies.

(5) Property not in use is domestic if it appears that when next in use it will be domestic.

(7) Whether anything is a caravan shall be construed in accordance with Part I of the Caravan Sites and Control of Development Act 1960.

(8A) In this section—

“business” includes—

(a) any activity carried on by a body of persons, whether corporate or unincorporate, and

(b) any activity carried on by a charity;

“commercially” means on a commercial basis, and with a view to the realisation of profits; and

“relevant leasehold interest” means an interest under a lease or underlease which was granted for a term of 6 months or more and conferred the right to exclusive possession throughout the term.

(9) The Secretary of State may by order amend, or substitute another definition for, any definition of domestic property for the time being effective for the purposes of this Part.