

MEETING:	Full Council
DATE:	3 December 2020
CABINET MEMBER:	Councillor Ioan Thomas Cabinet Member for Finance
TITLE:	COUNCIL TAX: DISCRETIONARY POWERS TO ALLOW DISCOUNTS AND/OR RAISE A PREMIUM
OBJECTIVE:	Formal ratification for 2021/22 of previous decisions not to allow any discounts for second homes and to disallow discount on empty properties, and to raise a Premium of 50% on relevant properties.
AUTHOR:	Dafydd L Edwards, Head of Finance

EXECUTIVE SUMMARY

1. The Local Government Finance Act 1992 provides the Council with the discretion to charge full Council Tax, allow a discount of up to 50%, or to charge a Premium of up to an additional 100% on the Council Tax of certain classes of **second homes** and **long-term empty properties**.
2. The Council has resolved annually since 1998 to allow NO discounts to second homes.
3. The Council has resolved annually since 2009 to allow NO discounts in respect of properties that have been empty for 6 months or more.
4. Section 139 of the Housing (Wales) Act 2014 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 dwellings that have been empty for 12 months or more (Section 12A) and relevant second homes (Section 12B).
5. On 8 December 2016, the Council resolved to raise a Premium of 50% on the Council Tax of relevant second homes and long-term empty dwellings for the 2018/19 financial year. The Council had to make its first determination to raise a "second homes Premium" at least one year before the start of the financial year to which it relates, but any subsequent determination only needs to be made before the start of the relevant financial year. Since then, in December 2018 and December 2019, the Council has resolved to continue with the scheme with no change for 2019/20 and 2020/21 respectively.

RECOMMENDATION

It is recommended that the Council makes no change to the scheme for 2021/22. That is, for 2021/22:

- **That Gwynedd Council allows NO discount on class A second homes, under Section 12 of the Local Government Finance Act 1992.**
- **That Gwynedd Council allows NO discount and RAISES A PREMIUM OF 50% on class B second homes, under Section 12B of the Local Government Finance Act 1992.**
- **That Gwynedd Council allows NO discount on homes that have been empty for 6 months or more and RAISES A PREMIUM OF 50% on homes that have been empty for 12 months or more, under Section 12A of the Local Government Finance Act 1992.**

LEGISLATIVE BACKGROUND

6. Councils have a discretion under Section 12 of the Local Government Finance Act 1992 to grant discount, or not, to two classes of second homes (classes A and B) and to long term empty dwellings (class C). The discount can be 50%, a reduced percentage or no discount.
7. Section 139 of the Housing (Wales) Act added Sections 12A and 12B to the 1992 Act to include a discretionary right for Councils to raise an additional “Premium” of no more than 100% on dwellings that have been empty for 12 months or more (Section 12A) and second homes (Section 12B).
8. In the Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998 (SI 1998/105), 'second homes' have been categorised into two classes, A and B, while class C refers to empty properties:
 - ❑ **Class A** – A dwelling of which there is no resident, which is substantially furnished and the occupation of which is prohibited by law for a continuous period of at least 28 days in the relevant year;
 - ❑ **Class B** – A dwelling of which there is no resident, which is substantially furnished, and there is no limit on occupation by law.
 - ❑ **Class C** – A dwelling which is unoccupied and which is substantially unfurnished.
9. A “resident” in relation to any dwelling means an individual who has attained the age of 18 years and has their sole or main residence in the dwelling (Section 6(5) of the Local Government Finance Act 1992).
10. The Council Tax (Exceptions to Higher Amounts) (Wales) Regulations 2015 (SI 2015/2068) exempts Class A second homes from paying the Premium.

CURRENT POLICY AND INTENTION

11. The Council had resolved to allow NO discounts to second homes (classes A and B) in every year since receiving discretionary powers for these classes under the 1998 Regulations, and had also resolved to allow NO discounts for class C (empty properties) in every year since those regulations were amended for 2009/10.
12. Due to the changes that came into force as a result of the Housing (Wales) Act 2014, the matter was considered by the Full Council on 8 December 2016, which resolved to raise a Premium of 50% on class B second homes and on class C long-term empty properties (empty for 12 months or more) in 2018/19.
13. All background papers in relation to the first determination to raise a Premium are to be found on the Gwynedd Council website:
<https://democracy.cyngor.gwynedd.gov.uk/ielistdocuments.aspx?cid=130&mid=1656&ver=4>
14. The Local Government Finance Act 1992 states that any determination with regards to Sections 12, 12A and 12B must be made annually, by the full Council.
15. The Council had to make its first determination to raise a "second homes Premium" (class B) at least one year before the start of the financial year to which it relates. The “year’s notice” clause does not relate to long-term empty dwellings, nor to any determination on the second home Premium after the first determination.
16. The financial strategy for 2021/22, and the Council’s grant settlement from the Welsh Government, is based on continuation of the policy to allow NO discounts, and any change to that policy would need to be funded by the Council in 2021/22.

17. The regulations for setting the tax base have been written so that a decision to raise a Premium does not effect the Council's grant settlement from the Welsh Government.
18. A public consultation was undertaken in 2016 before making the first determination to raise a Premium. Since the proposal is not to change the arrangements for 2021/22, a further consultation at this stage is not necessary.
19. If Council members wish to amend the level of Premium up to the maximum permitted under the legislation, they must be aware of the risks associated with that:
 - The next part of the report, "Second Homes", shows how the transfer of properties from the Council Tax regime to business rates has accelerated since the first decision to introduce the 50% Premium was taken. There is a risk that this would accelerate again if taxation increases further as the tolerance of some taxpayers ceases and they will look for ways to avoid paying the higher taxes.
 - Any decision to raise or adjust the Premium must be made in accordance with legal requirements. Statutory guidance states expressly that a local authority must give due consideration to its statutory duties to carry out equality impact assessments under the Equality Act 2010 and the Welsh Public Sector Equality Duties 2011 and to all other relevant considerations. A local authority should also give consideration to engagement and consultation with key stakeholders, including the local electorate, before taking a decision as to whether or not to charge one or both of the premiums. A decision to increase the level of the Premium without following the required steps, which include undertaking a meaningful public consultation, would leave the Council open to challenge in the courts. A successful challenge could result in the decision taken by the Council being judged to be unlawful and set aside. This could mean not only that the Premium could not be charged in 2021/22, but second home owners would also have to be given a 50% discount for the year.

SECOND HOMES

20. When resolving in December 2016 to raise a Premium of the Council Tax of second homes in 2018/19, attention was given to detailed studies that had been undertaken on the effect of second homes on Gwynedd's communities. The result of that work was that second homes were having an adverse effect on communities. There is no evidence that the situation has changed since then.
21. The Gwynedd and Anglesey Joint Local Development Plan 2011-2026 notes (in part 6.4.96) that "*affordability is an issue across the Plan area*" and that "*evidence suggests that affordable need is greater in coastal villages particularly within the AONBs and along the Meirionnydd coast*". These are the areas with the greatest concentration of second homes.
22. There is no evidence either that raising the Premium has had any effect on the tourist industry in 2018 and 2019. Of course, 2020 was an exceptional year, but during late summer when the travel restrictions had been relaxed somewhat, there is evidence that the tourism industry was busy in Gwynedd.
23. Statistics were published by the Welsh Revenue Authority in August 2020 which showed that 830 out of 2210 (37.6%) of sales in 2019/20 had attracted Land Transaction Tax at the "higher rate". This higher rate is raised at any time when a house is sold to someone who already owns another property, so in addition to second homes, the figure also includes individuals who buy houses in order to rent them out and also someone who has been able to buy a property while trying to sell their original home. It would not be correct, therefore, to assume that all of these properties would be subject to a Premium.

24. When the initial determination to raise the Premium was made, the risk was identified of an acceleration in the number of properties transferring to being self-catering units, that are subject to non-domestic rates, because the Valuation Office Agency has judged that they reached the necessary criteria. The transfer has accelerated, and the majority of properties that are transferring receive full Small Business Rates Relief, meaning that no tax is payable on them.
25. Since 1 April 2014, a total of **1,967** Gwynedd properties have been transferred from the Council Tax list to Non-Domestic Rates by virtue of being classified by the Valuation Office Agency as being Self-Catering Accommodation pursuant to Section 66(2BB) of the Local Government Finance Act 1988.
26. The number of these transfers has increased year-on-year:

Financial Year	Number of transfers
2020-21 (to 31/10/2020)	280
2019-20	397
2018-19	454
2017-18	282
2016-17	199
2015-16	167
2014-15	188
Total	1,967

27. This is an increase of 450 (30%) since December 2019.
28. Council members and officers continue, as they have for several years, to correspond regularly with ministers and officials in Welsh Government to press the case for acting to change to law, since this is eroding the public purse substantially. One issue that was specifically addressed during 2020/21 was that property owners who had transferred were eligible for Covid-10 grants of £10,000 each. The Welsh Government changed the guidance a few weeks into the scheme to ensure that such grants were paid only to true businesses, by tightening up the requirements further than is necessary to transfer in the first place.
29. Despite this, the Council's members and officers continue to await proposals by Welsh Government, and the unrelenting continuation of the transfer has been recorded on the Council's corporate risk register. We aim to ensure a meeting with the Minister to put pressure on the Government to change legislation relating to holiday homes, and to run a wider campaign to promote that.

EMPTY PROPERTY

30. In terms of empty houses, the Council states "*Houses that stand empty can cause nuisance and damage to neighbouring houses. They are also a waste because they could be used as homes*".
31. Since April 2009, long term empty dwellings have been charged 100% council tax, following either an exempt period of 6 months, or an extended 12 month period of exemption if undergoing major renovation. Since April 2018, this has increased to 150% council tax for properties that have been empty for 12 months or more. Revoking the Premium, or allowing a discount, would provide an unfortunate incentive for owners to keep dwellings empty. The Empty Property Strategy includes the Council exercising its discretion to charge at least 100% council tax on long term empty dwellings, as an incentive for these dwellings to be reoccupied.

32. One of the Council's main priorities (Improvement Priority 4) is "Access to a suitable home". This includes a programme within the Council's Plan 2018-23 to improve the provision of suitable and affordable housing.

EQUALITY IMPACT ASSESSMENT

33. As with all far-reaching decisions, the Council must give due consideration to its statutory duties to carry out equality impact assessments under the Equality Act 2010 and the Welsh Public Sector Equality Duties 2011 and to all other relevant considerations.
34. The initial decision to introduce a Premium was made in December 2016, following consideration of an Equality Impact Assessment that had been carried out in accordance with the statutory requirements on the Council. This assessment is reviewed when the annual decision regarding the premium is made. We do not believe that there are specific equality issues that need to be brought to the attention of the Council when considering this issue, and are of the opinion that the EIA remains valid.
35. The Equality Impact Assessment that was completed at the time of originally introducing the Premium is found here:

<https://democracy.gwynedd.llyw.cymru/documents/s8778/Council%20Tax%20Premium%20-%20Appendix%204.pdf>

WELL-BEING OF FUTURE GENERATIONS (WALES) ACT 2015

36. There is a duty to act in accordance with the sustainable development principle, which is to try to ensure that the needs of the present are met without compromising the ability of future generations to meet their needs. When acting in accordance with this general duty the Council needs to consider the importance of the long term impact, being integrated and inclusive, collaboration and prevention in developing and implementing the proposal.
37. In accordance with the requirement of the Act, Gwynedd Council (in collaboration with Isle of Anglesey County Council) has developed well-being objectives. These are:
- Communities which thrive and are prosperous in the long-term
 - Healthy and independent residents with a good quality of life
38. When the original decision to raise a Council Tax Premium was made in 2016, assurance was given that consideration had been given to these matters. The contents of that report showed that the recommendation to raise a Premium had been made in the context of a proactive approach to strengthening the sustainability of those communities within Gwynedd with high number of second homes and long-term empty properties. The substantial research work that had been made in the years before the Housing (Wales) Act 2014 came into force, and then before the initial decision to raise the Premium, showed that introducing the Premium on second homes and long-term empty properties would contribute to realising the objective of having Communities which thrive and are prosperous in the long-term. It is noted in particular that the decision to raise a Premium was made in the context of responses to public consultation and in order to take steps to reduce depopulation in many communities within Gwynedd.

USE OF THE PREMIUM YIELD

39. The Budget for 2020/21 was approved by the full Council on 5 March 2020. In doing so, the Council resolved to continue to earmark the Council Tax Premium yield in 2020/21 in a specific reserve to be used to finance the Council's Housing Strategy, which aims to provide housing for young people in our communities. It is estimated that £2.7m of additional income in 2021/22 by charging the Premium.

40. The full Council will consider the 2020/21 Budget on 4 March 2021, which will include further information on the use of this Council Tax Premium Fund.

Local member's views

Not relevant

Opinion of the Statutory Officers

Monitoring Officer:

As set out in the report, the Council needs to make a determination for the forthcoming financial year. That has to be done within the statutory requirements, which also states that regard must be had to the statutory guidance. It is appropriate that the decision in relation to Council Tax Discounts and Premiums are considered by the full Council.

Head of Finance:

I have collaborated with the Cabinet Member in the preparation of this report and I confirm the content.