

GWYNEDD COUNCIL CABINET



Report to the Cabinet

Meeting Date:	27 September 2022
Cabinet Member:	Councillor Ioan Thomas
Contact Officer:	Dewi Morgan, Head of Finance
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Item Title:	Council Tax Premium on Second Homes and Long-term Empty Properties

1. DECISION SOUGHT

- 1.1. To hold a public consultation on the possible proposal to raise the Premium on the Council Tax of Second Homes and Long-term Empty Properties beyond 100% and up to 300% for the financial year 2023/24.**
- 1.2. Delegate powers to the Head of Finance in consultation with the Head of Legal Services to prepare a public consultation package in accordance with the report and any recommendations from Cabinet.**

2. REASON WHY DECISION IS NEEDED

- 2.1. For financial years 2021/22 and 2022/23, the Council has charged a Council Tax Premium of 100%, which was the highest allowed under the law for these financial years. Legislative changes mean the Council can charge a Premium of up to 300% from 1 April 2023.
- 2.2. The full Council must make an annual decision on the Premium rate, and in order to comply with the legal requirements, if the Council wanted to increase the Premium level, there would have to be a public consultation on the proposal.
- 2.3. Details on the legal requirement to consult is outlined in part 4 below.
- 2.4. The Cabinet's decision to agree to hold a public consultation on the level of the Premium is sought, so that appropriate action can be taken that would allow the full Council to reach a decision on the Premium level for 2023/24 at its meeting on 1 December 2022, whether that is a decision to increase the Premium or to keep it at the same level.

3. INTRODUCTION

- 3.1. Up to and including the current financial year (2022/23), the Local Government Finance Act 1992 has given the Council discretion to levy full Council Tax, allow a discount of up to 50%, or charge a Premium of up to an additional 100% on Council Tax of certain classes of second homes and long-term empty dwellings. From 1 April 2023, local authorities will be able to charge a Premium of up to 300%.

- 3.2. On 8 December 2016, the Council resolved to charge a 50% Premium on Council Tax for relevant second homes and long-term empty dwellings for the 2018/19 financial year. On 4 March 2021 the Council resolved that it would increase the Premium to 100%, the maximum allowed, for the year 2021/22.
- 3.3. On 2 December 2021, the Council resolved to keep the Premium at 100% for 2022/23. A link to the report is found here:

[Item 8 - Discretionary Powers to Allow Discounts and or Raise a Premium 2022-23.pdf \(llyw.cymru\)](#)

4. RELEVANT CONSIDERATIONS

- 4.1. Local authorities were empowered to increase the maximum Premium charged to 300% from 1 April 2023 through the [The Council Tax \(Long-term Empty Dwellings and Dwellings Occupied Periodically\) \(Wales\) Regulations 2022](#) which came into force in March 2022
- 4.2. This change is part of a wider package of changes announced by the Welsh Government as part of “a wider commitment to address the issue of second homes and unaffordable housing facing many communities in Wales, as set out in the Co-operation Agreement between the Welsh Government and Plaid Cymru”.
- 4.3. According to Welsh Government, “The commitment is to take immediate and radical action using the planning, property and taxation systems.”. A link to the statement is found here: [New tax rules for second homes | GOV.WALES](#)
- 4.4. Addressing the shortage of affordable housing within Gwynedd as well as the high number of second homes are among the Council's top priorities. One of the tools available to the Council to deal with the situation is the Council Tax Premium. The Welsh Government's statutory guidance, *Guidance on the Implementation of the Council Tax Premiums on Long-Term Empty Homes and Second Homes in Wales*, is attached as **Appendix 1** to this report. Paragraphs 20 and 21 state:

20. The discretion given to local authorities to charge a premium is intended to be a tool to help local authorities to:

- **bring long-term empty homes back into use to provide safe, secure and affordable homes; and**
- **support local authorities in increasing the supply of affordable housing and enhancing the sustainability of local communities.**

21. In considering whether or not to charge a premium, regard should be given to these aims. Authorities should take into account the particular housing need and circumstances in their area.

4.5. Paragraph 22 goes on to set out the factors that will need to be weighed up as the Council reaches a final decision if it is to increase the Premium level or not for 2023/23.

22. There are a range of factors which could help inform local authorities in deciding whether to charge a premium. Whilst some factors will be specific to either long-term empty homes or second homes, others will be common to both. A list of these factors is set out below to assist local authorities. It is not intended to be exhaustive.

- **Numbers and percentages of long-term empty homes or second homes in the area;**
- **Distribution of long-term empty homes or second homes and other housing throughout the authority and an assessment of their impact on property values in particular areas;**
- **Potential impact on local economies and the tourism industry;**
- **Patterns of demand for, and availability of, affordable homes;**
- **Potential impact on local public services;**
- **Potential impact on the local community;**
- **Other measures that are available to authorities to increase housing supply;**
- **Other measures that are available to authorities to help bring empty properties back into use.**

4.6. The *Housing Action Plan*, which was adopted by the Cabinet in December 2020, sets out five objectives that must be addressed if the Council is to achieve the vision of ensuring that the people of Gwynedd have access to a suitable, quality home, which is affordable and improves their quality of life. The Plan includes suggestions for a comprehensive work programme, which fulfils the Council's expectation that a significant proportion of Premium income is used to achieve the vision. This is evidence of the Council using Premium income in accordance with statutory guidance.

4.7. The terminology used in Section 12B is not “second homes” or “holiday homes” but rather “dwellings occupied periodically”. The Act states that the conditions for a property to be subject to a “second home” Council Tax premium is, **“there is no resident of the dwelling, and the dwelling is substantially furnished”**. That is, the property is not anyone’s main home, but it has been furnished. The Act does not include any provision to be able to distinguish on the basis of where the owner lives, or if it is used for the purposes of holidays.

4.8. For the purposes of collecting Council Tax, regulations have categorised 'second homes' into two classes, namely classes A and B. Class C refers to empty properties:

- **Class A** – Second homes which are unoccupied and furnished, with a restriction on occupancy for a period of at least 28 consecutive days in any 12-month period.
- **Class B** – Second homes which are unoccupied and furnished.
- **Class C** – empty and unfurnished properties, and have been such for a period of over 6 months.

- 4.9. A “resident” in relation to any dwelling, means an individual who has attained the age of 18 years and has his sole or main residence in the dwelling (Section 6(5)) Local Government Finance Act 1992).
- 4.10. On 13 July 2022, there were:
- **4,656** dwellings subject to the Premium on second homes (Class B)
 - **200** further second homes in Class B but not paying the Premium as they were subject to one of the exemptions outlined in 3.11 below.
 - **761** properties within Class A where occupation is prohibited for a period of at least 28 days in the relevant year.
- 4.11. The Local Government Finance Act 1992 defines a long-term empty property, for the purposes of raising a Council Tax Premium (Section 12A), as follows: “***a dwelling is a “long-term empty dwelling” on any day if for a continuous period of at least 1 year ending with that day it has been unoccupied, and it has been substantially unfurnished***”. To be able raise a long-term empty property Premium on any day, the dwelling must be unoccupied, and unfurnished, for a continuous period of at least one year up to the day from which the Premium is payable.
- 4.12. Since the Council Tax Premium was first introduced in 2018/19, Gwynedd Council has decided annually to raise the same level of premium on long-term empty properties as on second homes, but different levels can be raised if local circumstances justify this.

4.13. The 1992 Act also contains a provision giving the Welsh Ministers the right to impose certain exceptions (in classes) where a Council Tax premium cannot be imposed. This was done through the [Council Tax \(Exceptions to Higher Amounts\) \(Wales\) Regulations 2015 \(SI 2015/2068\)](#) which came into force on 31 January 2016. The table below outlines the exemptions where a Premium cannot be raised:

Classes of Dwellings	Definition	Type of property that is eligible for an exemption from paying the premium
Class 1	Dwellings being marketed for sale – time-limited for one year	Long-term Empty Properties and Second Homes
Class 2	Dwellings being marketed for let – time-limited for one year	
Class 3	Annexes forming part of, or being treated as part of, the main dwelling	
Class 4	Dwellings which would be someone's sole or main residence if they were not residing in armed forces accommodation	
Class 5	Occupied caravan pitches and boat moorings	Second Homes
Class 6	Seasonal homes where year-round occupation is prohibited	
Class 7	Job-related dwellings	

Table 1: Exceptions where a Premium cannot be raised

5. LEGAL REQUIREMENTS

Consultation

- 5.1. Sections 12A and 12B of the Local Government Finance Act 1992 both contain a clause stating unequivocally that the Council must have regard to any guidance issued by the Welsh Ministers: “In exercising its functions under this section a billing authority must have regard to any guidance issued by the Welsh Ministers”.
- 5.2. This guidance, *Guidance on the Implementation of the Council Tax Premiums on Long-Term Empty Homes and Second Homes in Wales*, is included as **Appendix 1** to this report. They set out the framework of considerations that are relevant to a decision. Members' attention is also drawn in particular to the content of paragraph 23:

23. The determination by a local authority to charge a premium under section 12A or 12B of the 1992 Act must be made by full Council. Prior to doing so, 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.

- 5.3. A decision to increase the level of Premium without following the steps in this statutory guidance, which includes meaningful public consultation, would leave the Council open to challenge in the courts. A successful challenge can mean that the decision taken by the Council is judged to be unlawful and set aside.
- 5.4. If this were to happen, this could not only mean that the Premium could not be charged in 2021/22, but second home owners and long-term empty properties would also have to be given a 50% discount for the year as this is the default position under Section 11(2)(a) of the 1992 Act. This is why the Council must decide annually, as it has done since 1998, to allow NO discount to a second home, and has made a similar decision for long-term empty properties since 2009. Note that the Act prevents the billing authority from adjusting the level of Premium or Discount for any financial year once the relevant financial year has commenced.

Equality

- 5.5. As happened on previous occasions when the Premium was introduced or increased, an Impact Assessment on Equality, Welsh language and Socio-Economic Disadvantage will be presented to cabinet and the full Council as they consider the options available to them. A copy of the assessment when the premium was increased in 2021 has been included as **Appendix 2**, and the work of carrying out a new assessment has already begun.

Data Protection

- 5.6. One of the lessons learned from the 2020/21 consultation was that the public asked for a full copy of the responses received, and as background papers to the decision they had to be disclosed. Although the questionnaire did not require respondents to disclose any personal information, significant work was required to ensure that any information contained was removed; this was a significant use of staff resource, and we will act to avoid such a situation arising this time.

Well-being of Future Generations (Wales) Act 2015

- 5.7. There is a duty to act in accordance with the sustainable development principle, which is to seek to ensure that the needs of the present are met without compromising the ability of future generations to meet their needs. In acting in accordance with this general duty the Council needs to consider the importance of long-term impact, being integrated, inclusive, collaborative and preventative in developing and implementing the proposal before. The requirements of the Act shall apply to the recommended direction.
- 5.8. A public consultation would allow us to gather evidence that will give us the means to ensure that the Council's policy with regards to the Council Tax Premium has been properly assessed against the sustainable development principle.

6. NEXT STEPS AND TIMETABLE

- 6.1. The consultation is scheduled to take place during September/October 2022 and be kept open for 28 days, reporting the results to the Cabinet meeting on 22 November 2022, so that it can make a recommendation on the level of Council Tax Premium for 2023/24 to the full Council on 1 December 2022.
- 6.2. As part of the governance arrangements, the matter will be scrutinised by the Governance and Audit Committee on 17 November 2022.
- 6.3. The Finance Department will discuss the practical stages of the consultation with the Communications and Engagement Service in the Corporate Support Department.
- 6.4. A copy of the questionnaire used in 2020/21 is included in **Appendix 3**, and a draft consultation questionnaire for a new exercise is included in **Appendix 4** for comment.

7. ANY CONSULTATIONS UNDERTAKEN PRIOR TO MAKING THE DECISION

The Cabinet is asked to commission a public consultation.

OPINION OF STATUTORY OFFICERS

Monitoring Officer:

With the amendments to the Local Government Finance Act 1992 now in force it is appropriate that the initial work on setting the Premium starts timeously. The requirement to consult on a revision of the Premium is clear and is a step which needs to take place in good time to allow for consideration of the response before coming to a decision on the matter. It will also support the preparation of an Equalities Impact Assessment which will be a key consideration. I have had an opportunity of advising on the contents of the report and am satisfied with the recommendations from a propriety perspective.

Head of Finance Department:

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