

# GWYNEDD COUNCIL CABINET



## Report to the Cabinet

**Meeting Date:** 15 December 2020  
**Cabinet Member:** Councillor Ioan Thomas  
**Contact Officer:** Dafydd L Edwards / Dewi Morgan  
**Contact Number:** 01286 682684  
**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 proposal to raise the Premium on Second Homes and Long-term Empty Properties to up to 100% for the Financial year 2021/22

### 2. REASON WHY DECISION IS NEEDED

- 2.1. A report was presented to the Council meeting on 3 December 2020 recommending that the Premium level be kept at 50% for the 2021/22 financial year. An amendment to this proposal, for the Cabinet to consider consulting on increasing the level of the premium to up to 100%, was tabled and passed. To comply with legal requirements when considering an increase to the level of the Premium, a public consultation on the proposal must be held.
- 2.2. Details on the legal requirement to consult is outlined in part 4 below.

### 3. INTRODUCTION

- 3.1. 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.
- 3.2. 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).
- 3.3. 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.

- 3.4. A report was presented to the full Council on 3 December 2020 recommending keeping the Premium levels at 50% for 2021/22. A link to the report is found here:

<https://democracy.gwynedd.llyw.cymru/documents/s27879/Item%209%20-%20Council%20Tax%20-%20Discretionary%20Powers%20to%20Allow%20Discounts%20and%20or%20Raise%20a%20Premium%202021-22.pdf>

- 3.5. **An amendment was proposed at the meeting to postpone the decision and ask the Cabinet to consider the propriety of increasing the level to 100% and to hold a consultation process on this basis.**

#### **4. RELEVANT CONSIDERATIONS**

- 4.1. A key consideration by the Council in voting on the amendment to postpone the decision on charging the Premium in 2021/22 was the detailed research *Managing the use of dwellings as holiday homes* which appears as a separate item on the agenda of the Cabinet meeting. This report shows that the total number of holiday homes (second homes and self-catering holiday units) within Gwynedd continues to increase, and seeks the Cabinet's commitment to take decisive action to address the situation.
- 4.2. The study is the result of detailed research that has been undertaken over recent months, and highlights that there are a number of factors influencing Gwynedd's housing stock. It builds on studies that have been undertaken in the past and highlights that there are pressing issues that continue to need to be addressed, and that the situation within Gwynedd's communities, particularly those that attract visitors, is intensifying.
- 4.3. While the scope of the study also extends to planning issues, prominent attention is given to the financial incentive that exists from being a holiday home owner as well as the taxation advantage that exists from meeting the legal thresholds for transferring properties to non-domestic rates.
- 4.4. 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 an Appendix 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. Another item on the Cabinet's programme, *Housing Action Plan*, 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.
- 4.6. In postponing the decision to impose the Premium, the Council has instructed Cabinet to undertake further research to identify if changing the level of the Premium would help to make a further difference in the supply of affordable housing and improve the sustainability of local communities.
- 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 25 November 2020, there were:
- **4,718** dwelling subject to the Premium on second homes (Class B)
  - **165** of 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.
  - **811** eiddo o fewn Dosbarth A lle mae'r meddiant yn cael ei wahardd am gyfnod o 28 diwrnod o leiaf yn y flwyddyn berthnasol.
- 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. 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:

<b>Classes of Dwellings</b>	<b>Definition</b>	<b>Type of property that is eligible for an exemption from paying the premium</b>
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

- 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 an Appendix 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.

## 6. PREVIOUS CONSULTATION

6.1. A public consultation was held in 2016 before introducing the Premium for the first time. It was launched on 11 October 2016, and was open until 7 November 2016. The questionnaire was placed on the Council website, with regular reminders from our Twitter and Facebook accounts. Paper versions were prepared for the libraries and three Siopau Gwynedd.

6.2. There were 928 responses to the questionnaire. Of these:

- 518 stated that they do not own a second home nor a long term empty dwelling
- 371 stated that they own a second home
- 16 stated that they own a long term empty dwelling
- 10 stated that they own a second home and a long term empty dwelling
- 13 did not answer the question.

6.3. Before going on to answering the fundamental question “**Do you see a reason why a premium should not be raised on the Council Tax of long-term empty or second homes in Gwynedd**”, participants were asked to confirm if they were the owners of a second home, long-term empty properties, or both. It is emphasised that there is no way of checking the accuracy of responses to this question. The table below analyses the answers by ownership:

	<b>Do you see a reason why a premium should not be raised on the Council Tax of long-term empty or second homes in Gwynedd</b>			
<b>Do you own a long-term empty or second home in Gwynedd?</b>	No reason not to raise a premium	A premium should not be raised.	No answer	<b>Total</b>
No	362	153	3	<b>518</b>
Yes – a second home	28	342	1	<b>371</b>
Yes – a long-term empty home	4	12		<b>16</b>
Yes – both a long-term empty home and a second home	4	4	2	<b>10</b>
No answer	7	5	1	<b>13</b>
<b>Total</b>	<b>405</b>	<b>516</b>	<b>7</b>	<b>928</b>

**Table 2: Attitudes towards the Premium, 2016**

## 7. OTHER LOCAL AUTHORITIES

- 7.1. The earliest a premium could be charged was from the year starting 1 April 2017, and an analysis of the premium that has been charged since it came into force on 1 April 2017 shows the following:

	2017-18	2018-19	2019-20	2020-21
<b>Gwynedd</b>	-	50%	50%	50%
Isle of Anglesey	25%	25%	35%	35%
Conwy	-	-	25%	25%
Denbighshire	-	-	-	50%
Flintshire	50%	50%	50%	50%
Wrexham	50%	50%	50%	50%
Powys	50%	50%	50%	50%
Ceredigion	25%	25%	25%	25%
Pembrokeshire	50%	50%	50%	50%
Swansea	-	-	-	-
Cardiff	-	-	-	-

**Table 3: Levels of Council Tax Premium on Second Homes**

*Source: CT1 Returns StatsWales, Council websites*

	2017-18	2018-19	2019-20	2020-21
<b>Gwynedd</b>	-	50%	50%	50%
Isle of Anglesey	25%	25%	100%	100%
Conwy	-	-	25%	25%
Denbighshire	-	-	50%	50%
Flintshire	50%	50%	50%	50%
Wrexham	50%	50%	50%	50%
Powys	50%	50%	50%	50%
Ceredigion	25%	25%	25%	25%
Pembrokeshire	-	-	25%	50%
Swansea	-	-	-	100%
Cardiff	-	-	50%	50%

**Table 4: Levels of Council Tax Premiums on Long-term Empty Properties**

*Ffynhonnell: Dychweliadau CT1, StatsCymru*

- 7.2. Swansea Council decided at its meeting on 24 October 2019 that it would charge a 100% Council Tax Premium on long-term empty properties from 1 April 2020, and a Premium of 100% on the Council Tax of second homes from 1 April 2021.
- 7.3. Pembrokeshire's premium on long-term empty properties comes into force after the property has been empty for three years rather than the year allowed by law.

- 7.4. Members will note from the above that some authorities (e.g. Anglesey, Pembrokeshire and Cardiff) differ in the level of premium on second homes and long-term empty properties. When the Premium was first introduced in Gwynedd, by the Council's decision of 8 December 2016 (with effect for the two categories of property from 1 April 2018), members were advised that the only distinction between a second home and a long-term empty property under the statutory definition is that one is furnished and the other is not, and it would be relatively easy for an owner of a property without a resident in it to move furniture around as necessary in order to reduce the tax bill.
- 7.5. We remain convinced that there are clear benefits in keeping the premium level on both types of properties consistent.
- 7.6. Two local authorities in Wales have taken steps to adjust the level of premium after its introduction. Following the introduction of a 25% Premium on second homes and long-term empty properties from 1 April 2017, Isle of Anglesey County Council has increased the level from 1 April 2019 to 35% on second homes and 100% on long-term empty properties. Powys Council has been consulting publicly on increasing the premium from 1 April 2021.

#### Isle of Anglesey County Council

- 7.7. Isle of Anglesey County Council made its first decision (which is the decision required at least one year before it comes into force) to charge a Second Home Premium from 1 April 2017 at the full Council meeting on 10 March 2016. This decision included a condition that a review of Council Tax premiums be carried out during 2018/19 (after the full first year of applying the Council Tax premiums) to determine whether the premiums set have met the objectives of the Executive Committee and the Full Council. This meant coming to a conclusion if the set premium levels needed to be varied or abolished when the Full Council set Council Tax requirements for 2019/20. The revised premiums would then, if applicable, take effect from 1 April 2019.
- 7.8. The necessary review was presented to Isle of Anglesey County Council's Executive Committee on 12 November 2018, where a decision was taken to undertake a full public consultation on raising the Council Tax Premium to 100% on long-term empty properties and to 35% on second homes. This would be done as part of the public consultation on the 2019/20 Budget proposals.
- 7.9. The Council consulted on the Executive Committee's initial budget proposals between 16 November and 31 December 2018 with a 7-week consultation period, before a report with the result of the consultation work was presented to the Executive Committee on 18 February 2019. This report included the outcome of the consultation work.
- 7.10. Two questions were asked about to the premiums:
  - **Do you think we should increase the Council Tax Premium on long-term empty properties from 25% to 100%?** 56% disagreed to a 100% increase, with 44% agreeing.
  - **Do you think we should increase the Second Home Council Tax Premium from 25% to 35%?** 83% disagreed with the increase, with 17% agreeing.



7.11. 70% of respondents also included additional comments to support their case. In addition, analysis of the responses suggested that many of the comments did not understand the difference between a long-term empty house and a second home that is empty for long periods during the year. This caused some difficulties in analysing the data although a number of the themes were similar.

#### Powys County Council

7.12. Powys County Council's Cabinet had decided on 15 September 2020 that it would hold a public consultation on increasing the premium level on long-term empty properties as the number of such properties, having fallen in the first year of the Premium, was increasing again.

7.13. However, notice of motion was presented to the full Council meeting on 24 September and it was decided to call for the current premium to be increased to 75% in the next financial year. The public consultation has been open from 2 November to 14 December, a period of 6 weeks.

7.14. Powys Council's public consultation asks a number of questions on respondent's opinions of changing the premium.

- What impact on local communities do you believe periodically occupied properties currently have on
- What impact do you believe periodically occupied properties currently have on supporting a vibrant local community?
- The council is considering increasing the Council Tax premium charged on periodically occupied properties (currently 50%). Please indicate what you think would be the most appropriate option:
  - Leave at 50%
  - Increase to 75%
  - Increase to 100%
- What impact, if any, do you think increasing the Council Tax premium would have on number of periodically occupied properties within Powys?
- What impact, if any, do you think increasing the Council Tax premium on periodically occupied properties would have on the availability of affordable housing within Powys?
- What impact, if any, do you think increasing the Council Tax premium on periodically occupied properties would have within the local community?
- What impact, if any, do you think increasing the Council Tax premium on periodically occupied properties would have on tourism within Powys?
- What impact, if any, do you think increasing the Council Tax premium on periodically occupied properties would have on the local economy?
- What impact, if any, do you think increasing the Council Tax premium on periodically occupied properties would have on the Welsh Language in Powys?

## 8. RISKS

### Self-Catering Units

- 8.1. 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 around 90% of properties that are transferring receive full Small Business Rates Relief, meaning that no tax is payable on them.
- 8.2. Since 1 April 2014, a total of **1,967** Gwynedd properties have been transferred from the Council Tax list to Non-Domestic Rates after being classified by the Valuation Office Agency as being Self-Catering holiday units pursuant to Section 66(2BB) of the Local Government Finance Act 1988.
- 8.3. 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
<b>Total</b>	<b>1,967</b>

**Table 5: Property Transfers**

- 8.4. 450 properties have transferred since December 2019. That is, the total properties which have transferred since 1 April 2014 has increased by 30% in the last year.
- 8.5. 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-19 grants of £10,000 each. After the Leader and officers of Gwynedd Council influenced, 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 (70 days of actual letting, compared with 140 days to qualify for a Covid grant).
- 8.6. It has been seen clearly, therefore, that the tendency to transfer properties has accelerated since the original decision to raise a premium was taken. If the Council decides to raise the tax on second homes further, we expect further incentive to transfer property, but it is likely that we would gain more financially than we would lose.

## **9. NEXT STEPS AND TIMETABLE**

- 9.1. The consultation is planned for January 2021, reporting the results to a Cabinet meeting, for recommendation to the full Council on 4 March 2021 to set Council Tax for 2021/22.
- 9.2. It is intended that a draft of the consultation will be presented to the Cabinet meeting on 15 December. The Finance Department will consult on the practical steps of the consultation with the Communications and Engagement Service in the Corporate Support Department.

## **10. ANY CONSULTATIONS UNDERTAKEN PRIOR TO MAKING THE DECISION**

**The Cabinet is asked to commission a public consultation.**

## **OPINION OF STATUTORY OFFICERS**

### **Monitoring Officer:**

The report provides detailed information in relation to the requirements which are relevant to setting the Council Tax Premiums under Sections 12A and 12B of the Local Government Finance Act 1992. Specific reference is made to the statutory guidance and the implications for decision makers. The decision sought is therefore an appropriate first step in response to the Council's request that the Cabinet undertakes a review and forms a recommendation with a view to making a decision in its March meeting.

### **Head of Finance Department:**

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