



## COUNCIL – 17TH JULY 2018

**SUBJECT: TO REAFFIRM COUNCIL TAX DETERMINATIONS TO DISAPPLY DISCOUNT IN RESPECT OF UNOCCUPIED DWELLINGS**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION AND CORPORATE SERVICES**

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### 1. PURPOSE OF REPORT

- 1.1. To seek full Council approval to reaffirm two council tax determinations in respect of unoccupied dwellings: one made by the Council's Finance Committee on 7th April 1998, and the other made by Cabinet on 18th May 2004. The determinations made were in respect of a discretionary power provided by Section 12 of The Local Government Finance Act (LGFA) 1992; this power enables local authorities to remove the statutory default 50% discount on the amount of council tax payable that would otherwise apply to unoccupied dwellings which are not exempt, i.e. to charge 100% rather than 50% of the standard amount.

### 2. SUMMARY

- 2.1 Section 12 determinations were made by the Council's Finance Committee in 1998 and subsequently Cabinet in 2004. This resulted in 100% (rather than 50%) of the standard council tax amount for each dwelling being charged in respect of unoccupied and furnished dwellings from 1<sup>st</sup> April 1998, and 100% also being charged in respect of unoccupied and unfurnished dwellings from 1<sup>st</sup> April 2005 onwards.
- 2.2 Correspondence has been received from a council tax payer which led to officers reviewing the decision-making processes undertaken in 1998 and 2004. Officers sought clarification in respect of the determinations made. External legal advice has been received which notes that the determinations were not made by full Council and, in order to remove any ambiguity, recommends that full Council should reaffirm the decisions. As a result of that advice, Council is asked to reaffirm the determinations as detailed in this report.

### 3. LINKS TO STRATEGY

- 3.1. Council tax provides significant resources which assist the Council in achieving a balanced budget, providing significant funding for essential services.
- 3.2 The proposal to reaffirm the determinations in respect of unoccupied dwellings that are not exempt maintains the income raised from such dwellings, contributing to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015:-
- A prosperous Wales – council tax funds essential services
  - A resilient Wales – council tax income supports a greater range of services
  - A healthier Wales – council tax income helps fund health and well-being initiatives
  - A more equal Wales – The Council Tax Reduction Scheme assists low income households

- A Wales of cohesive communities – charging 100% rather than 50% council tax on certain types of unoccupied dwellings may encourage council tax payers to sell or let these dwellings
- A Wales of vibrant culture and thriving Welsh language – council tax demand and adjustment notices are bilingual
- A globally responsible Wales – reaffirming the determinations within this report should help maximise use of available housing within the county borough

#### 4. THE REPORT

- 4.1. This report relates to Section 12 determinations made by the Council's Finance Committee in 1998 and subsequently Cabinet in 2004. An extract of the minute of each meeting is in the appendices to this report. These resulted in 100% (rather than 50%) of the standard council tax amount for each dwelling being charged in respect of unoccupied and furnished dwellings from 1st April 1998, and 100% also being charged in respect of unoccupied and unfurnished dwellings from 1st April 2005 onwards.
- 4.2. An enquiry has recently been received from a council tax payer who is liable for two dwellings within the County Borough. The council tax payer resides in one dwelling and is the bill payer for a second dwelling which is currently unoccupied and unfurnished.
- 4.3. Officers have looked into the enquiry raised by the council tax payer which ultimately led to a review of the determinations made in 1998 and 2004 respectively. Officers sought clarification from external legal advisors in respect of the two determinations which notes that the determinations were not made by full Council and, in order to remove any ambiguity, recommends that full Council should reaffirm the decisions.
- 4.4. The original determinations resulted in 100% (rather than 50%) of the standard council tax amount for each dwelling being charged in respect of:
- unoccupied and furnished dwellings (commonly referred to as 'second homes', although they are not always holiday homes) from 1<sup>st</sup> April 1998; and
  - unoccupied and unfurnished dwellings (commonly known as long-term empty dwellings) from 1<sup>st</sup> April 2005.
- 4.5. In order to regularise the position, determinations are required to be reaffirmed by the full Council to allow a nil discount to continue to be applied in respect of each of the prescribed classes of unoccupied dwellings set out below. These determinations apply to those council tax payers liable for such dwellings. The details of the classes of dwellings are contained within The Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998 (as amended) as follows:

**Class A**, which comprises every 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**, which comprises every dwelling –

- of which there is no resident;
- which is substantially furnished; and
- the occupation of which is **not** prohibited by law for a continuous period of at least 28 days in the relevant year.

Classes A and B do not include:

- (a) any dwelling which consists of a pitch occupied by a caravan or a mooring occupied by a boat;
- (b) in relation to which a person is a qualifying person (liable for council tax) in his capacity as a personal representative if –
  - i. no person is a qualifying person in any other capacity, and
  - ii. either no grant of probate or letters of administration has been made, or less than 12 months have elapsed since such a grant was made; and
- (c) where a qualifying person in relation to that dwelling is a qualifying person in relation to another dwelling which is, for him, job-related.

**Class C**, which comprises every chargeable dwelling –

- (a) which is unoccupied; and
- (b) which is substantially unfurnished.

4.6 Members should note that the determination at point 4.5 above in respect of Class C will continue to be administered taking into account certain classes of exemption which may apply prior to an unoccupied property charge commencing. There are currently 3 exemption classes that may apply before a charge on an unoccupied and unfurnished dwelling commences. Each exemption can apply for a certain period of time for which a nil charge is applicable. The maximum time period that an exemption can apply may differ depending on the exemption class involved, as follows:

- Exemption Class A – applies where a dwelling is substantially unfurnished and unoccupied requiring or undergoing structural repair/alteration to make it habitable, and for up to 6 months after such work is substantially completed. The maximum period of exemption allowable is 12 months.
- Exemption Class B – applies for up to 6 months where a substantially unfurnished and unoccupied dwelling is owned by a charity and was last used for charitable purposes.
- Exemption Class C - applies for up to 6 months when a dwelling becomes substantially unfurnished and unoccupied.

4.7 There is one exemption class that may apply to any of the 3 classes of dwellings set out in point 4.5, namely:

- Exemption Class F - applies where the sole owner of a dwelling dies and the dwelling becomes unoccupied, i.e. no-one else lives there. This exemption applies until probate or letters of administration is granted; it can also apply for up to 6 months after probate or letters of administration is granted, provided the dwelling remains unoccupied during that time. If a sole tenant dies and the dwelling becomes unoccupied, this exemption applies until the tenancy is ended.

## 5. WELL-BEING OF FUTURE GENERATIONS

5.1. Effective financial planning is a key element in ensuring that the Well-being Goals within the Well-being of Future Generations Act (Wales) 2015 are met. The report specifically meets the sustainable duty in the following ways: -

Council tax provides significant resources which assist the Council in achieving a balanced budget, providing significant funding for essential services. As this report is purely seeking to reaffirm the existing position, there will be no negative or positive impact on council tax payers liable for unoccupied dwellings if the recommendation in paragraph 10.1 of this report is approved. The level of council tax income will be maintained in order to support essential services.

## 6. EQUALITIES IMPLICATIONS

- 6.1. There are no potential equalities implications of this report and its recommendations on groups or individuals who fall under the categories identified in Section 6 of the Council's Strategic Equality Plan, therefore a full Equalities Impact Assessment has not been carried out.
- 6.2. We will monitor any impact on particular groups through customer feedback and complaints received and use that information to improve policies and procedures.

## 7. FINANCIAL IMPLICATIONS

- 7.1. There are no financial implications on the basis that full Council reaffirms the determinations as set out in the recommendation at paragraph 10.1 of the report.

## 8. PERSONNEL IMPLICATIONS

- 8.1 There are no personnel implications arising from this report.

## 9. CONSULTATIONS

- 9.1. The report has been circulated to the consultees listed below and responses received have been reflected in the report.

## 10. RECOMMENDATIONS

- 10.1 It is recommended that Council reaffirms the determinations to allow a nil discount to continue to be applied in respect of each of the prescribed classes of dwellings contained within The Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998 (as amended), namely:

**Class A**, which comprises every dwelling –

- (a) of which there is no resident;
- (b) which is substantially furnished; and
- (c) the occupation of which is prohibited by law for a continuous period of at least 28 days in the relevant year.

**Class B**, which comprises every dwelling –

- (a) of which there is no resident;
- (b) which is substantially furnished; and
- (c) the occupation of which is **not** prohibited by law for a continuous period of at least 28 days in the relevant year.

Classes A and B do not include:

- (a) any dwelling which consists of a pitch occupied by a caravan or a mooring occupied by a boat;
- (b) in relation to which a person is a qualifying person (liable for council tax) in his capacity as a personal representative if –
  - i. no person is a qualifying person in any other capacity, and
  - ii. either no grant of probate or letters of administration has been made, or less than 12 months have elapsed since such a grant was made; and

- (c) where a qualifying person in relation to that dwelling is a qualifying person in relation to another dwelling which is, for him, job-related.

**Class C**, which comprises every chargeable dwelling –

- (a) which is unoccupied; and  
(b) which is substantially unfurnished.

## **11. REASONS FOR THE RECOMMENDATIONS**

- 11.1. To enable the Council to remove any ambiguity in respect of the determinations made in 1998 and 2004.

## **12. STATUTORY POWER**

- 12.1. Section 12 of the Local Government Finance Act 1992 and regulations made under the Act.

- 12.2 The Council Tax (Prescribed Classes of Dwellings) (Wales) Regulations 1998, The Council Tax (Prescribed Classes of Dwellings) (Wales) (Amendment) Regulations 2004, The Council Tax (Prescribed Classes of Dwellings) (Wales) (Amendment) Regulations 2010 and The Council Tax (Prescribed Classes of Dwellings) (Wales) (Amendment) Regulations 2017.

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Consultees: Cllr David Poole, Leader  
Cllr Barbara Jones, Deputy Leader & Cabinet Member for Finance, Performance and Governance  
Christina Harrhy, Interim Chief Executive  
Dave Street, Corporate Director of Social Services and Housing  
Mark S. Williams, Interim Corporate Director – Communities  
Richard Edmunds, Corporate Director for Education and Corporate Services  
Nicole Scammell, Head of Corporate Finance & Section 151 Officer  
Stephen Harris, Deputy Section 151 Officer  
Lisa Lane, Interim Monitoring Officer  
Anwen Cullinane, Senior Policy Officer (Equalities & Welsh Language)  
Ros Roberts, Performance Manager

Appendices:

Appendix 1 Extract of the Minute of the Finance Committee 7th April 1998

Appendix 2 Extract of the Minute of Cabinet 18<sup>th</sup> May 2004